



MINUTES OF A REGULAR MEETING OF THE **LEGISLATIVE & LICENSING COMMITTEE** HELD ON TUESDAY, **APRIL 16, 2019** AT **7:00 P.M.** IN THE SELIGENSTADT (MAIN) CONFERENCE ROOM, 2000 NORTH CALHOUN ROAD, BROOKFIELD, WISCONSIN

ALDERMAN GARY MAHKORN PRESIDING

MEMBERS PRESENT: Alderman Brad Blumer, Alderman Bill Carnell, Alderman Buck Jurken, Alderman Gary Mahkorn, Alderman Jeff McCarthy

OTHERS PRESENT: City Attorney Jenna Merten, City Clerk Kelly Michaels, Monique Beckley, Victor de Jesus Hernandez

1. Chairman Mahkorn noted a quorum was present and called the Legislative & Licensing Committee to order at 7:02 p.m.
2. Announcements:
 - a. The next regularly scheduled meeting is Tuesday, May 7, 2019.
3. Minutes
 - a. Minutes of the April 2, 2019 meeting.

Motion by Alderman Jurken second by Alderman McCarthy to approve the April 2, 2019 meeting minutes as presented. Motion carried 5-0.

4. New Business.
 - a. Resolution regarding an Original Bartender License for an applicant with a record between 19 months and 5 years – *Monique Beckley*.

Monique Beckley appeared before the committee and introductions were made.

Alderman Mahkorn asked Ms. Beckley to explain the circumstances surrounding her violation. Ms. Beckley stated the violation happened in 2014. She was going to a friend's house and was stopped by a police officer who found drug paraphernalia in her car and arrested her. She noted she paid the tickets and has stayed out of trouble since then.

Alderman Jurken questioned why the officer looked in her car. Ms. Beckley replied she was driving early on a Saturday morning and had just pulled up to her friend's house when she was stopped.

Alderman McCarthy noted that Ms. Beckley was convicted for possession of a controlled substance, not paraphernalia. Ms. Beckley indicated she was confused on what she was convicted of. Alderman Mahkorn noted she was convicted of possession of a controlled substance and the possession of drug paraphernalia was dismissed. Alderman Mahkorn questioned how much marijuana she had in her car. Ms. Beckley said there was marijuana in the pipe only, nothing else. Alderman Mahkorn asked her why she thought the officer stopped her. Ms. Beckley said it was a Saturday night and she was at a few bars earlier but was on her way to a friend's house. The officer may have had a suspicion of drinking and driving, however the officer did not give her a sobriety test.

Alderman Mahkorn asked what happened at her court date; what she has learned from this. Ms. Beckley stated she did not remember if she had an assessment. She remembers going to court and paying a ticket.

Alderman McCarthy asked if there was a reason she stated 'she was not convicted of possession of a controlled substance', on the application even though you were convicted. Ms. Beckley replied that she was not trying to get away with anything, but may have misread the question. She stated she thought the conviction was 5 years ago, but it wasn't. Ms. Beckley then stated the staff at the front counter told her to answer 'no, when she was applying for the license'.

Alderman Blumer asked if she held a retail operator's license within the past 2 years. Ms. Beckley stated she had a license in 2017 with the City of Brookfield, however it expired. She indicated she worked at TGIFriday's. She stated she was confused on how to answer the questions on the application.

Clerk Michaels explained the difference between an Original and Renewal Bartender/Operator's license noting once a license expires, it is considered a new license with no property rights as is typical with a renewal. She addressed the comment that "Clerk's staff told her to answer no on the application" and stressed that it would be highly unusual for her staff to help an applicant to fill out an application. We don't advise people on how to answer the questions but for to read the question and answer truthfully.

Alderman Mahkorn asked Ms. Beckley to explain the circumstances surrounding her completing the application at city hall. Ms. Beckley noted when she originally came in to city hall; she was with her General Manager who was helping her with the questions, and then she asked someone at the counter to help her. Alderman Mahkorn agreed that city staff is not going to tell an applicant how to answer a question. Staff would explain a question but you put down the answer you thought was appropriate. Ms. Beckley agreed with Alderman Mahkorn.

Attorney Merten asked if Ms. Beckley had any documentation or character reference to give to the committee to help them make a decision. Ms. Beckley stated she did not have anything at this time. Attorney Merten offered Ms. Beckley an opportunity to submit documentation to the committee before they make a decision at the next

council meeting in May. Ms. Beckley noted that she did not take any classes, but did pay her ticket. She added that she is a manager and needs a license. She is willing to do whatever she needs to further her employment.

Alderman Mahkorn noted that going forward, all applicants will be allowed to bring documents, have character witnesses or letters, etc., before the committee to be part of the consideration of licensing.

Alderman Mahkorn stated he was willing to support a license since the violation happened about 3 years ago. He felt Ms. Berkley was not trying to 'pull a fast one' on the committee and was comfortable with issuing a license to her.

Alderman Jurken stated he felt just the opposite of Alderman Mahkorn noting he has never been in this type of situation, but he would not have missed the violation date by two years. It happened in 2016 and Ms. Beckley is saying it happened in 2014. So did something else happen in 2014; something of which we cannot ask as it is outside the 5-year parameter. He felt it was 'fishy', even though it was not a serious crime. Ms. Beckley indicated there is nothing else.

Alderman Mahkorn agreed that no one wants an applicant to deliberately mislead the committee. He stated he is willing to give the applicant the benefit of the doubt in this case. Alderman Jurken stressed that the committee is not given the in depth police records like they used to so they must rely on the applicant for the facts.

Ms. Beckley added that she is sorry for the lapse in time regarding the violation. She promised that had the committee received her full record, they would have seen she does not have any other violations. She added she is a mother now and has changed her life for her daughter.

Alderman Mahkorn asked Ms. Beckley if she deliberately wrote down 2014 knowing there was a 2-year window between dates. Ms. Beckley stated definitely not.

Alderman McCarthy stated he was going to agree with Alderman Jurken on this. Whether it pertains to misspeaking or not, the two year difference in what actually happened and what you indicated to the committee. The fact that you do not remember if there were any classes or not, the fact that when asked what the violation was you said for the pipe, but in reality there was marijuana in the pipe and that is what you were convicted of. He sees many holes in the story and is not willing to support a license at this time.

Ms. Beckley explained that when the committee asked what the violations were for she stated paraphernia and THC. Alderman McCarthy answered 'no, you did not'. Ms. Beckley continued that she had "two tickets". She indicated she felt she was honest in answering the committee's questions. Alderman Mahkorn asked the City Attorney if the committee could ask Ms. Beckley to come back. Alderman McCarthy stated he would be voting no.

Alderman Blumer questioned where the pipe was located in her vehicle. Ms. Beckley stated it was in the front of the car. Blumer questioned whether she was smoking the pipe while driving. She answered no, she was smoking earlier in the night and had left the pipe in her car. Alderman Blumer indicated he would probably support a license. Alderman Mahkorn said all members have their own opinions. If he was certain that she was lying, they definitely should all deny the license. He was giving her the benefit of doubt in his decision.

Alderman Carnell noted that people do make mistakes; however, this is a big discrepancy. He stated he would also be voting no. Alderman Mahkorn stated he would respect the opinions of his fellow committee members and join them in supporting the majority vote. It stated he felt there was a case made in support of the license, however it just wasn't strong enough.

Motion by Alderman Jurken, second by Alderman McCarthy, to deny an Original Bartender License for Monique Beckley. Motion carried 4-1, with Alderman Blumer casting the dissenting vote.

Attorney Merten noted Ms. Berkley's application goes before the Common Council on May 7, 2019. If she wants to submit any documentation or character references, she should submit it to the City Clerk by next week Thursday so it can be included in the agenda packet.

- b. Resolution regarding an Original Bartender License for an applicant with a record between 19 months and 5 years – *Victor de Jesus Hernandez*.

Mr. Hernandez appeared before the committee and introductions were made.

Alderman Mahkorn asked Mr. Hernandez to explain the circumstances surrounding his violation. Mr. Hernandez explained he used to work by Corporate Drive and he along with some former coworkers stopped at Champps to have a few beers. After a few hours, they left and he was pulled over on the freeway because he swerved. The officer came to his car and asked if he knew why he was pulled over. He stated no. Then the officer gave him a sobriety test, which he failed. He noted his BAC was high. He explained he had approximately six beers in 2 hours with no food in his stomach.

Attorney Merten questioned whether he had an ignition interlock on his vehicle. Mr. Hernandez replied yes. Attorney Merten stated in that case, the BAC was probably around .15. He agreed and stated he felt it was around .18. He added he has completed an alcohol assessment class as required. Alderman Mahkorn noted he found the BAC in the report and it was .17. Mr. Hernandez explained he went to court, was found guilty of OWI, had the interlock system on his vehicle and a full 8 weeks alcohol assessment class at MATC. He stated he has learned about the consequences of drinking and driving and is taking full responsibility for his actions.

He noted that after taking the course, he was given 3 points back on his license. He said he has learned from his mistake and was thankful he didn't injure anyone.

Alderman Mahkorn asked what Mr. Hernandez does at Embassy Suites. Mr. Hernandez stated he has been there over 5 years. He started as a banquet server/setup working weddings on weekends. Then he was offered a bartender position, but due to his full-time job, his hours are limited with Embassy Suites. Embassy Suites offers CARE courses, which are required. He noted he generally works Wednesdays, Saturdays and Sundays as a bartender. Sometimes he is also called in for holidays or events.

Alderman Mahkorn asked about his demeanor and whether he was cooperative with the officers during his arrest. Mr. Hernandez replied yes.

Alderman Blumer asked where Mr. Hernandez works full-time. Mr. Hernandez stated he is a retail relationship banker at BMO Harris bank and has worked there for one year.

Alderman Mahkorn explained the responsibilities of the committee in licensing and noted they wanted to make sure all licensees are dispensing alcohol responsibly. He noted they take their responsibility seriously so as not to be at risk for putting residents of the community in jeopardy. He stated he was not inclined to support a license as the violation happened only two years ago and the BAC was .17. He felt Mr. Hernandez is learning, but he was just not comfortable with the violation being just two-years ago.

Mr. Hernandez stated the reason he wanted the bartender job, is that he does not serve any alcohol, he just opens the bottles. Alderman Mahkorn noted that it really does not factor into their decision as when a license is given, the applicant can use it at any location in the city. Therefore, what job duties you have are not necessarily relevant.

Alderman McCarthy agreed with Alderman Mahkorn on the time line issue. He noted the interlock has not been on for one year yet. He stated that six months from now, he might be willing to consider a license. He encouraged Mr. Hernandez to reapply but no sooner than six months passing. Alderman Jurken agreed stating there needs to be more time. However, he noted he was glad Mr. Hernandez has a good solid full-time at the bank. He was just not willing to support a license today.

Alderman Carnell stated that if Mr. Hernandez decides to reapply in six months, it would be helpful if he had something from a supervisor showing character support. Attorney Merten indicated that Mr. Hernandez could bring in documents, police reports, character witnesses or letters that show his character and fitness for a license, if he wishes to do so. The committee's decision tonight will be placed on the Common Council agenda in two weeks. She indicated to Mr. Hernandez that if he wanted to submit any documents, he would need to submit them to the City Clerk by next week Thursday so they could be included in the council packet. She

also explained that he could attend the Common Council meeting and address the members directly during the public comment portion of the meeting if he wanted to.

Alderman Carnell asked his fellow committee members, if Mr. Hernandez had a recommendation from his supervisor, whether their opinion would change. Alderman Jurken stated in six months, yes. Alderman McCarthy agreed and stated it was a matter of how recent the violation was for him. Alderman Mahkorn stated the committee is willing to revisit this issue in six months, cautioning the applicant that it doesn't mean he is approved in six months, just they would consider it.

Motion by Alderman McCarthy, second by Alderman Carnell, to deny an Original Bartender License for Victor de Jesus Hernandez. Motion carried 5-0.

- c. Ordinance creating Section 5.44.040 of the Brookfield Municipal Code regarding Investigation of License Applicants.

Attorney Merten stated the ordinance sets forth the standards for the character and fitness evaluations used when considering applicants for licensure and puts them into an ordinance form. She noted this would be for all licenses issued under Chapter 5, as state statutes require this. She explained it is different for alcohol violations because Chapter 125 allows you to deny a license for someone who is a habitual law offender. Currently, you do not have this ability for someone who is, for example, a Solicitor/Transient Merchant.

Attorney Merten noted she left the "look back" parameters to five years. The committee could expand this to include the full history of violations surrounding the applicant. The ordinance includes giving the applicant the option of reapplying for the license one year after the denial and if there are outstanding judgements or fines, they cannot get a license.

Alderman Blumer questioned Section E, which states 'at or prior to the character and fitness review'; and questioned whether that meant when they appear before the Legislative and Licensing Committee. Attorney Merten answered 'yes'. Alderman Blumer commented that an applicant would not have to submit supporting documentation until they are at the meeting and the committee is voting on whether to issue a license or not. Attorney Merten replied, yes unless you want to change the timing to require it be submitted before the meeting. Alderman Blumer stated he is struggling with that as some applicants come more prepared with their thoughts, and in detail about what they want to say whereas others have not thought about it at all until they are before the committee. He felt it would be difficult for members to absorb all that during the meeting. He preferred the applicant write a statement about the situation that the committee can review.

Alderman McCarthy disagreed with Alderman Blumer for the reason just stated. The two applicants tonight are a perfect example where the committee saw some of their demeanor and character come through. To him, this is about character and

judgement. We are not trying to trick or trap anyone, but he does not want anyone preparing their story ahead of time. Alderman McCarthy said you can tell a lot by the way someone presents themselves to the committee and answers questions. He felt, in most cases it is a character issue and this is an effective tool in making decisions.

Alderman Jurken agreed. It is a character issue because they do not receive the supporting documents they use to receive. We are hearing the applicant's story and version of events. He felt the character assessment is important and wanted to make sure what the applicant is saying is true. Alderman Mahkorn stated we see so many personalities and character traits. He preferred the applicant come before the committee and explain their violations without being prepared.

Alderman Blumer said his point was not for the applicant, but for the committee. This is giving the applicant an opportunity to submit documentation while they are here. How can the committee review a statement that is several pages long when we get it during the meeting? Alderman Mahkorn suggested we include a directive in the letter inviting them in to let them know they are free to bring character witnesses, supporting documentation, etc., to the committee.

Attorney Merten questioned the time period in getting notice to the applicant to appear before the committee. Clerk Michaels stated it depends on when the applicant applies and whether they received a provisional license or not. They could have up to two months so there is plenty of time for them to appear before the committee. Alderman Carnell questioned whether this would be the procedure now, which is, requiring the applicant to bring documents and character witnesses. Alderman McCarthy stated the application would have to be amended. Clerk Michaels noted she reviewed the letter that is sent to the applicant requesting them to appear before the committee and if the legislation before you is adopted, then the letter would include a notice to the applicant regarding the character witnesses, supporting documentation, etc. Alderman Mahkorn stated a character witness may be the deciding factor in whether an applicant is given a license. It is important that the applicant have this awareness. Clerk Michaels agreed and noted that applicants have brought in character witnesses in the past without us directing them to do so. Attorney Merten said the new application has language pertaining to applicants bringing evidence, documentation, character witnesses, etc., in it and can also be used in the letter.

Motion by Alderman McCarthy, second by Alderman Jurken, to approve an ordinance creating Section 5.44.040 of the Brookfield Municipal Code regarding investigation of license applicants, as drafted. Motion carried 5-0.

- d. Resolution regarding the Application Information and Criteria for Operator and Provisional Licenses.

Attorney Merten stated this is a change to the Bartender/Operator License application. Previously, the application noted if there was a conviction under 18 months the applicant is automatically be denied. Under the new licensing rules, the applicant would have to appear before the committee for character and fitness review. This also changes what violation is substantially related to the type of license applied for. The committee can decide what is substantially related to the license offense. Some applications will have different violations that related to that type of license. Clerk Michaels noted with this change, the committee would see other applications, not just bartenders. The committee welcomes other applications for review.

Motion by Alderman McCarthy, second by Alderman Blumer, to approve a resolution regarding the Application Information and Criteria for Operator and Provisional Licenses, as drafted. Motion carried 5-0.

Items 4e, 4f and 4g were taken together.

- e. Resolution regarding applicants for Original Operator’s (Bartender) Licenses.

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| Behmke, Blair A. | Johnson, Tierra D. |
| Garrity, Jacob L. | Olsen, Sherry A. |
| Gassert, Dan J. | Paul-Gibson, Gerald H. |
| Hansen, Jennifer C. | Spahr-Vitucci, Samantha M. |
| Hernke, Amber E. | |

- f. Resolution regarding an applicant for a Temporary Class B Beer and Wine License.

St. John Vianney
Parish Festival
1755 N. Calhoun Road
Friday, June 7, 2019 – 5 p.m. to 11 p.m.
Saturday, June 8, 2019 – 12 p.m. to 11 p.m.
Sunday, June 9, 2019 – 12 p.m. to 8 p.m.
Beer and Wine served/sold from parish parking lot
Bartender/Contact: Blair Behmke

- g. Resolution regarding an applicant for an Original Class B Beer and Liquor License. (*new owner*)

BLWI Associates, LLC
D/b/a: Sheraton Brookfield/Milwaukee
375 S. Moorland Road
Agent: Denise L. Kaminski

Motion by Alderman McCarthy, second by Alderman Jurken, to approve Original Bartender Licenses, a Temporary Class B Beer and Wine License

and a Class B Beer and Liquor License to the above named applicants, respectively. Motion carried 5-0.

Motion by Alderman McCarthy, second by Alderman Jurken to adjourn the Legislative & Licensing Committee meeting. Motion carried 5-0. Meeting adjourned at 8:00 pm.

Minutes respectfully submitted by Kelly Michaels, City Clerk