



MINUTES OF A REGULAR MEETING OF THE **LEGISLATIVE & LICENSING COMMITTEE** HELD ON TUESDAY, **OCTOBER 1, 2019** AT **7:00 P.M.** IN THE SELIGENSTADT (MAIN) CONFERENCE ROOM, 2000 NORTH CALHOUN ROAD, BROOKFIELD, WISCONSIN

ALDERMAN GARY MAHKORN PRESIDING

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

1 MEMBERS ABSENT & EXCUSED: Alderman Jeff McCarthy

OTHERS PRESENT: City Attorney Jenna Merten, City Clerk Kelly Michaels, Parks & Recreation Director John Kelliher, Alderman Scott Berg, Alderman Christopher Blackburn, Waukesha Freeman Reporter Dave Fidlin

1. Chairman Mahkorn noted a quorum was present and called the Legislative & Licensing Committee to order at 7:00 p.m.

2. Announcements:

a. The next regularly scheduled meeting is Tuesday, October 15, 2019.

3. Minutes

a. Minutes of the September 17, 2019 meeting.

Motion by Alderman Jurken, second by Alderman Blumer to approve the September 17, 2019 meeting minutes as presented. Motion carried 4-0.

4. New Business

a. Resolution regarding an applicant for a change of agent (with a violation) for a Class A Beer & Liquor licensed premise.

Ultra Mart Foods LLC; d/b/a: Pick N Save #6397
15170 W. Greenfield Avenue; Agent: *Casey T. Smith*

Motion by Alderman Jurken, second by Alderman Carnell to postpone a resolution regarding a change of agent for Ultra Mart Foods LLC, dba: Pick N Save #6397; Agent – Casey T. Smith, as he did not appear before the committee. Motion carried 4-0.

- b. Ordinance creating Chapter 9.05 of the Brookfield Municipal Code regarding Electronic Smoking Devices and amending Subsection 1.12.010.C regarding the Bail Schedule for a violation of Chapter 9.05.

Attorney Merten explained the new ordinance deals with electronic smoking devices such as vaping devices. This would prohibit individuals under the age of 18 from purchasing, using and possessing them. It would prohibit anyone who is enrolled in the school district from having the devices. Vending machines and self-service displays at stores would also be prohibited. This ordinance give police officers the authority to issue citations. Attorney Merten added these devices do not have nicotine. The devices with nicotine are already a violation and are under state control. The violation would be a \$500 base offense and eventually becoming a \$676 total offense approved by the judge.

Attorney Carnell noted he had a problem with page 7, stating '*Subsection (A) does not apply to a minor participating in an undercover operation in which the minor purchases or received a vapor product under the direction s of a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase of receipt of the vapor product by the minor was not under the directions of the local police agency and was not part of the undercover operation*'. Alderman Mahkorn said he did not have a problem with this as it helps the police enforce the ordinance. Especially, as we are trying to stop this type of activity in the schools.

Alderman Jurken agreed with Alderman Mahkorn stating underage individuals would have to be used to purchase the product. Attorney Merten stated that we do not have to use this practice; it is just a possible tool to use. Alderman Blumer asked how else you would gather evidence otherwise, as you are actually selling to a minor.

Alderman Carnell stated concern on the \$500 fine. Alderman Mahkorn asked Attorney Merten what was the rational coming to the amount of \$500 for the fine. Attorney Merten stated the \$500 is the state amount for possession of drug paraphernalia and many youth are adding a marijuana wax and other additives with THC. This may be causing many of the fatal cases of individuals using vaping devices. This cost could be reduced it the individual comes to a pre-trial. The judge has the freedom to reduce the amount of the crime.

Alderman Carnell felt that the violation for a drug offense would be prosecuted differently. Attorney Merten said this would require testing, which would incur an additional cost. By having this ordinance, it would eliminate the additional cost and time from the police officers to test the components. As the device is small, there may be a small amount of THC in the device that goes undetected. Attorney Mahkorn said that is the problem with these devices. It has become an epidemic. We are hearing stories of kids abusing vaping and the harmful additives involved. He is glad we are dealing with this issue.

Attorney Jurken said the \$500 fine will get the minor's attention. He would be open to a sliding scale if one would be proposed. Alderman Carnell felt the violation could be taken care of before going before the judge.

Attorney Merten stated the maximum forfeiture is \$2000 plus penalties. The \$500 amount is what is listed on the citation. Alderman Carnell questioned if THC or another drug is found in the device, the \$500 fine would be the maximum? There would be no prosecution for possession of drugs as it would be too difficult to identify the drug and do the testing. Basically, will the officers test what they fine? Alderman Carnell said they would not as the procedure is too slow and too expensive. Alderman Mahkorn felt the officers would weigh all the criteria and figure out when it is in their best interest to test and when it is a waste of time. Attorney Merten stated the problem is with SBD oil. If you add SBD at 0.3 percent or less, it's considered legal. However, you cannot use the Duquenois Levine test, which is the test the officers use on vaping devices. We have had one instance before, where we suspected there was THC in an electronic cigarette. It was sent to a lab in Texas, which cost \$200 for each test.

Alderman Mahkorn said he was in support of the \$500 fine and our municipal judge to look at all criteria, be fair and consistent. Alderman Blumer asked if the \$500 fine is the same fine for someone who is selling these products to minors. Attorney Merten stated 'yes'. Alderman Blumer said he is less interested in slapping kids on the wrist then slapping the wrists of stores or other people who are selling the devices/products. Could there be a different fine for those convicted of selling. Attorney Merten stated 'yes, she would have to ask the municipal judge for consent.

Alderman Mahkorn asked could we amend the ordinance to increase the fine to \$1000 for anyone selling and subject to the municipal judge's approval. Alderman Carnell felt it should be \$500 fine for selling and less for buying. Alderman Mahkorn noted that the fine for shooting pellet guns was \$1000. The kids who were found guilty were able to 'work down' their fines. The kids should learn their lesson without going bankrupt in the process.

Motion by Alderman Blumer, second by Alderman Jurken to approve an amendment to the ordinance creating Chapter 9.05 of the Brookfield Municipal Code regarding Electronic Smoking Devices and amending Subsection 1.12.010.C regarding the Bail Schedule for a violation of Chapter 9.05 to include a fine of \$1000 for selling conditional on the approval of the municipal judge. Motion carried 3-1, with Alderman Carnell casting the dissenting vote.

c. Resolution regarding applicants for Original Bartender/Operator's Licenses.

Baumgart, Bruce R.
Erickson, Cory M.
McMullen, Paige M.
Mueller, Karie M.
Perkins, Lilly A.

Salisbury, Jared E.
Shopofski, Andrea R.
Simon, Kayla N.
Spano, Joshua
Swanto, Tami G.

Motion by Alderman Jurken, second by Alderman Carnell to approve a resolution regarding Original Bartender/Operator Licenses for the above applicants. Motion carried 4-0.

d. Resolution regarding an applicant for a change of agent for a Class B Beer licensed premise.

Portillo's Hot Dogs LLC; d/b/a: Portillo's Hot Dogs
17685 W. Bluemound Road; Agent: *Dejan Radisic*

Motion by Alderman Carnell, second by Alderman Jurken to approve a resolution regarding an applicant for a change of agent for a Class B Beer licensed premise – Portillo's Hot Dogs LLC, dba: Portillo's Hot Dogs; Agent: Dejan Radisic. Motion carried 4-0.

e. Resolution regarding an applicant for expansion of the premise description for a Class B Beer & Liquor licensed premise.

Sharon Lynne Wilson Center of the Arts
19805 W. Capitol Drive
'Special Sculpture Stroll'
October 18, 2019
5:00 p.m. to 7:30 p.m.
Current: Beer/Liquor sold/served inside the center and
outside lease area
Add: Park area (as shown on map)
Contact: Samantha Barnum

Motion by Alderman Jurken, second by Alderman Carnell to approve a resolution regarding an applicant for expansion of the premise description for a Class B Beer & Liquor licensed premise: Sharon Lynne Wilson Center of the Arts for a Special Sculpture Stroll event at 19805 W. Capitol Drive. Motion carried 4-0.

f. Resolution regarding an applicant for an Original Class B Beer & Liquor license.

LTF Club Operations Company Inc.; d/b/a: Life Time Athletic
17585 Golf Parkway; Agent: John T. Dahman

Motion by Alderman Jurken, second by Alderman Blumer to approve a resolution regarding an applicant for an Original Class B Beer & Liquor license for LTF Club Operations Company Inc., dba: Life Time Athletic at 17585 Golf Parkway. Motion carried 4-0.

Addendum Item

g. Resolution regarding an applicant for a Temporary Class B Beer License.

Brookfield Village Ltd
2848 N Brookfield Road, Suite 4
Brookfield Beer Garden
Friday, October 11, 2019
5:00 p.m. to 8:00 p.m.
Beer sold at city parking lot on Hoffman Avenue
Bartenders: Jeff Hansen and Jean Lane
Contact: Jeff Hansen

Motion by Alderman Blumer, second by Alderman Jurken to approve a resolution regarding an applicant for a Temporary Class B Beer License for Brookfield Village Ltd for a Brookfield Beer Garden at 18725 Hoffman Avenue. Motion carried 4-0.

Motion by Alderman Carnell, second by Alderman Jurken to adjourn the Legislative & Licensing Committee meeting. Motion carried 4-0. Meeting adjourned at 7:35 p.m.

Minutes respectfully submitted by Kelly Michaels, City Clerk