



License Committee

Regular Meeting

335 South Broadway
De Pere, WI 54115
<http://www.de-pere.org>

Agenda

Tuesday, August 15, 2017

7:00 PM

De Pere City Hall Riverview Room

Pursuant to Wisconsin Statutes 19.84, Notice is hereby given to the public that a meeting of the **License Committee** of the City of De Pere will be held on **August 15, 2017** at **7:00 PM** in the **De Pere City Hall Riverview Room, 335 S. Broadway, De Pere, WI 54115**.

Call to Order

1. Roll Call
2. Approval of the Minutes of the August 1, 2017 License Committee Meeting.
3. Public Comment Period and other Announcements.
4. Operator License Applications.*
5. Application for a Temporary Premise Description Change for St. Norbert College.*
6. Consideration of Regulations for Managing numbers of Alcohol Beverage Licenses Issued in Certain Geographic Areas (Ald. Jennings)
7. Consideration of Ordinance to Require Licensed Establishments to Perform Exterior Cleanup After Closing (Ald. Jennings)
8. Adjournment.

Respectfully Submitted,

Shana Ledvina, Clerk - Treasurer

Any person wishing to attend this meeting who, because of disability, requires special accommodations should contact the Clerk-Treasurer's office at 339-4050 by Noon, the previous day so that arrangements can be made.

Mayor
Alderspersons
Department Heads
TV, Newspapers & Radio Stations
Kress Family Library
De Pere Chamber of Commerce
Lauren Martens
Sonia Busch
Tyler Baker
Gary Boyer II
Christi Brisson
Bennett Christensen
Danielle Elwell
Mary Evans
Dylan Govin
Christopher Hinzl

Travis Jarvais
Paul Klinkhammer
Andrew LeMay
Ina Macovei
John Parlow
Sadie Steiglitz-VanVonderen
Daniel Wentland
Terrie DuBois

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 15, 2017

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Approval of the Minutes of the August 1, 2017 License Committee Meeting.

ATTACHMENTS:

- 8-01-17 License Committee Minutes (DOC)



License Committee

Regular Meeting

335 South Broadway
De Pere, WI 54115
<http://www.de-pere.org>

Draft Minutes

Tuesday, August 1, 2017

6:30 PM

De Pere City Hall Riverview Room

1. Call to Order: The meeting was called to order at 6:30 PM by Alderperson Boyd.

Attendee Name	Title	Status
James Boyd	Aldersperson	Present
Dan Carpenter	Aldersperson	Present
Jonathon Hansen	Aldersperson	Present

2. Approval of the Minutes of the July 18, 2017 License Committee Meeting.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Dan Carpenter, Aldersperson
SECONDER: Jonathon Hansen, Aldersperson
AYES: James Boyd, Dan Carpenter, Jonathon Hansen

3. Public Comment Period and other Announcements. None.
4. Operator License Applications.*

CITY OF DE PERE	
License Committee - August 1, 2017	
Previously Tabled Operator License Applications	
1	SMALLS, MICHELLE A.
Temporary Operator License Applications	
1	FOWLER, ALEC C.
New Operator License Applications	
1	BOEDE, AMANDA L.
2	CAPRARIO, CURT R.
3	LEACH, DUSTEN T.
4	MARTENS, MORGAN R.
5	MC CLANNAHAN, KATHY M.
6	NELSON, ASHLEY A.
7	SEEFELDT, KRISTINA M.
8	WAGNER, KATELYN A.

Previously Tabled Operator License Application #1 for Michelle A. Smalls was presented. Aldersperson Boyd moved, seconded by Aldersperson Carpenter to open the meeting. Upon vote, motion carried unanimously. The applicant answered the Committee's questions. Aldersperson Boyd moved, seconded by Aldersperson Carpenter to close the meeting. Upon vote, motion carried unanimously. Aldersperson Carpenter moved, seconded by Aldersperson Boyd to approve the application. Upon vote, motion carried unanimously.

Aldersperson Carpenter moved, seconded by Aldersperson Hansen to approve Temporary Operator License Application #1. Upon vote, motion carried unanimously.

Alderson Carpenter moved, seconded by Alderson Hansen to approve Operator License Applications #1-8. Upon vote, motion carried unanimously.

5. Request of the Chief of Police to conduct a pre-hearing on the Class B Combination Liquor License issued to Dan Cer Inc. (DBA Bilotti's Pizza Garden), 111-113 N. Broadway.*

City Attorney Judy Schmidt-Lehman explained that the pre-hearing is an informal opportunity for the license holders to address the Committee on issues brought forward by the Police Chief and that it is the Committee's obligation to take action in the form of a warning letter, or a hearing before the Council to suspend or revoke the license in question.

Police Chief Derek Beiderwieden provided a general statement on all four license holders on the agenda for this meeting; he explained that his department makes regular inspections on licensed establishments to check on compliance and to make sure that everyone is working within the guidelines of state law and City ordinances. The Police Department conducted an undercover operation, in which they send in a minor into a licensed establishment and attempt to purchase alcohol from the establishment with an undercover police officer watching. If they do make the purchase, the person who sold to the minor receives a citation and the Police Department makes a second attempt at a later date. If the establishment fails the second time, the Police Chief brings that licensed operation forward for a pre-hearing before the License Committee. Discussion followed regarding the citations received by employees of the 4 establishments on the agenda. Chief Beiderwieden explained that in addition to the two failed compliance checks, Bilotti's Pizza Garden had a third citation for not having a licensed operator on premises when checked independently of the compliance checks performed with minors. Alderson Boyd moved, seconded by Alderson Hansen to open the meeting. Upon vote, motion carried unanimously. Amy Pagenkopf, manager at Bilotti's, came forward and discussed the citations received. Alderson Boyd moved, seconded by Alderson Hansen to close the meeting. Upon vote, motion carried unanimously. Discussion followed with the License Committee and City Attorney Judy Schmidt-Lehman regarding the License Committee's options.

6. Request of the Chief of Police to conduct a pre-hearing on the Class B Combination Liquor License issued to Shannons Haystack LLC (DBA Chatterhouse 2016), 614 George St.*

Police Chief Beiderwieden reviewed the violations received by employees of Chatterhouse 2016. In addition to receiving two failed compliance checks, Chatterhouse 2016 had a third citation for not having a licensed operator on premises when checked independently of the compliance checks performed with minors.

Alderson Boyd moved, seconded by Alderson Carpenter to open the meeting. Upon vote, motion carried unanimously. Shannon Charles, spouse of the Chatterhouse agent, Kevin Charles, spoke before the Committee and explained that they were not notified by their employee of the first ticket received in March. Discussion followed. Alderson Boyd moved, seconded by Alderson Carpenter to close the meeting. Upon vote, motion carried unanimously.

7. Request of the Chief of Police to conduct a pre-hearing on the Class B Combination Liquor License issued to Quincy's Restaurant LLC (DBA Birch Street Pub & Grill), 617 Birch St.*

Police Chief Beiderwieden reviewed the two citations issued to employees of Birch Street Pub. Alderperson Boyd moved, seconded by Alderperson Hansen to open the meeting. Upon vote, motion carried unanimously. Richard Hendricks, manager of Birch Street Pub & Grill, spoke before the Committee and explained their citations. Discussion followed. Alderperson Boyd moved, seconded by Alderperson Carpenter to close the meeting. Upon vote, motion carried unanimously.

8. Request of the Chief of Police to conduct a pre-hearing on the Class B Combination Liquor License issued to Proof LLC (DBA Proof), 127 N. Broadway.*

Police Chief Beiderwieden reviewed the two citations issued to employees of Proof. Alderperson Boyd moved, seconded by Alderperson Carpenter to open the meeting. Upon vote, motion carried unanimously. Anthony Oczus, agent and owner of Proof, spoke before the Committee and explained that they have taken proactive steps to make certain that they do not receive any further citations. Alderperson Boyd moved, seconded by Alderperson Carpenter to close the meeting. Upon vote, motion carried unanimously. Discussion followed regarding issuing warnings and the history of suspensions in the City of De Pere. Alderperson Hansen moved, seconded by Alderperson Carpenter to forward Bilotti's and Chatterhouse 2016 to the full Council for a formal hearing. Upon vote, motion carried 2-1 with Alderperson Boyd voting nay. Alderperson Boyd moved, seconded by Alderperson Carpenter to issue warning letters to Birch Street Pub and Proof and to review their licenses in 6 months. Upon vote, motion carried unanimously.

9. Adjournment. Alderperson Carpenter moved, seconded by Alderperson Boyd to adjourn the meeting at 7:11 p.m. Upon vote, motion carried unanimously.

Respectfully submitted,

Shana Ledvina, Clerk-Treasurer

City of De Pere, Wisconsin



Request For License Committee Action

MEETING DATE: August 15, 2017
DEPARTMENT: License Committee
FROM: Shana Ledvina
SUBJECT: Operator License Applications.*

ATTACHMENTS:

- 08-15-17 (PDF)

CITY OF DE PERE
License Committee - August 15, 2017

Previously Tabled Operator License Applications	
1	MARTENS, LAUREN M.
2	BUSCH, SONIA A.

New Operator License Applications	
1	BAKER, TYLER S.
2	BOYER II, GARY D.
3	BRISSON, CHRISTI L.
4	CHRISTENSEN, BENNETT J.
5	ELWELL, DANIELLE D.
6	EVANS, MARY E.
7	GOVIN, DYLAN P.
8	HINZEL, CHRISTOPHER M.
9	JARVAIS, TRAVIS L.
10	KLINKHAMMER, PAUL J.
11	LE MAY, ANDREW D.
12	MACOVEI, INA
13	PARLOW, JOHN L.
14	STIEGLITZ-VAN VONDEREN, SADIE B.
15	WENTLAND, DANIEL V.

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 15, 2017

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Application for a Temporary Premise Description Change for St. Norbert College.*

ATTACHMENTS:

- Temp Premise Description Change_SNC (PDF)

Premise Description Change

5.a

ORIGINAL ALCOHOL BEVERAGE RETAIL LICENSE APPLICATION

Submit to municipal clerk.

For the license period beginning JULY 1 20 17 ;
ending JUNE 30 20 18

TO THE GOVERNING BODY of the: ☐ Town of }
☐ Village of } DEPERE
☒ City of }

County of BROWN Aldermanic Dist. No. _____ (if required by ordinance)

1. The named ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ LIMITED LIABILITY COMPANY
☒ CORPORATION/NONPROFIT ORGANIZATION

hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individual/partners give last name, first, middle; corporations/limited liability companies give registered name): ST. NORBERT COLLEGE, INC.

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of a partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

Title	Name	Home Address	Post Office & Zip Code
President/Member	<u>PRESIDENT BRIAN BRUESS</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>
Vice President/Member			
Secretary/Member	<u>SECRETARY AMY SORENSON</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>
Treasurer/Member	<u>TREASURER EILEEN JAHNKE</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>
Agent	<u>CATERING DIRECTOR TERRIE DUBOIS</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>
Directors/Managers			

3. Trade Name ST NORBERT COLLEGE Business Phone Number 9204031352
4. Address of Premises SEE ATTACHED Post Office & Zip Code 54115

5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? ☐ Yes ☒ No
6. Is the applicant an employee or agent of, or acting on behalf of anyone except the named applicant? ☐ Yes ☒ No
7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business? ☐ Yes ☒ No
8. (a) Corporate/limited liability company applicants only: Insert state _____ and date _____ of registration.
(b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company? ☐ Yes ☒ No
(c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin? ☐ Yes ☒ No
(NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)

9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, consumption, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) SEE ATTACHED-FOR DATES OF EXTENSION OF PREMISE

10. Legal description (omit if street address is given above): _____
11. (a) Was this premises licensed for the sale of liquor or beer during the past license year? ☒ Yes ☐ No
(b) If yes, under what name was license issued? ST NORBERT COLLEGE INC
12. Does the applicant understand they must file a Special Occupational Tax return (TTB form 5630.5d) before beginning business? [phone 1-800-937-8864] ☒ Yes ☐ No
13. Does the applicant understand they must hold a Wisconsin Seller's Permit? [phone (608) 266-2776]. ☒ Yes ☐ No
14. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers, breweries and brewpubs? ☒ Yes ☐ No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.) Any lack of access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

SUBSCRIBED AND SWORN TO BEFORE ME

this 27th day of July, 20 17

Patricia A. Wery
(Clerk/Notary Public)

My commission expires 2/14/20

Eileen M. Jahnke
(Officer of Corporation/Member/Manager of Limited Liability Company/Partner/Individual)

Amy Smith
(Officer of Corporation/Member/Manager of Limited Liability Company/Partner)

(Additional Partner(s)/Member/Manager of Limited Liability Company if Any)

TO BE COMPLETED BY CLERK

Date received and filed with municipal clerk <u>7-27-17</u>	Date reported to council/board	Date provisional license issued	Signature of Clerk / Deputy Clerk
Date license granted	Date license issued	License number issued	

Extension of Premise for:

Bush Art Center; First floor area outside the gallery, 403 Third Street(attached to Michels Commons which is licensed)

Sept. 7, 2017, 4:30-7:30pm

Oct. 19, 2017, 4:30-7:30pm

Nov. 16, 2017, 4:30-7:30pm

Abbot Pennings Hall of Fine Arts; Walter lobby, 315 Third St.

Sept. 18th, 6-8:30pm

Oct. 10th, 2017, 5:30-8:30pm

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 15, 2017

DEPARTMENT: City Attorney

FROM: Judith Schmidt-Lehman

SUBJECT: Consideration of Regulations for Managing numbers of Alcohol Beverage Licenses Issued in Certain Geographic Areas (Ald. Jennings)

ATTACHMENTS:

- Alderperson Boyd-License Committee Memo-Density and Litter7-18-17 (PDF)

MEMORANDUM

TO: Alderperson James Boyd, Chair
License Committee Members

FROM: Judith Schmidt-Lehman, City Attorney 

DATE: July 18, 2017

RE: Request of Ald. Jennings for Consideration of Alcohol License Density
Restrictions and Litter Control Regulations

At the June 20, 2017 Common Council meeting, Ald. Jennings requested that the License Committee:

1. consider an alcohol license density ordinance for the downtown area; and
2. consider an ordinance requiring alcohol licensees to clean around the entrance(s) to their establishment after closing.

The purpose of this memo is to: (1) provide the Committee with an overview of the legal authority for local consumption of alcohol regulations; (2) discuss possible methods of regulating the placement of licensed alcohol establishments in the city; and (3) provide information on litter control regulations.

I. Legal Authority for Regulation

A. State Statute

State law contains a number of regulations covering the sale of alcohol, including creating different classes of licenses for different types of sales¹, regulations on who can purchase or consume alcohol² and when³, and a host of other rules. However, state law has not pre-empted municipal regulation of some aspects of alcohol licensing. State law permits municipal alcohol regulations regarding the sale of alcohol that are “not in conflict” with state law⁴ and it does not affect municipal zoning authority.⁵ Determining whether a particular regulation is in conflict with state law is not always a simple matter

¹ Generally, a Class A license allows sale of alcohol for off-premise consumption (liquor store, C-station) while a Class B license allows sale for on-premise consumption (taverns, restaurants)

² Legal drinking age is 21 years of age (Wis. Stats. §125.02(8m)) unless the underage person is accompanied by a parent or a spouse of legal drinking age [Wis. Stats. §125.07(1)(a)]

³ Wis. Stats. §§125.32(3) and 125.68(4)

⁴ Wis. Stats. §125.10(1)

⁵ §125.10(3)

and is evaluated on a case-by-case basis. Examples of local regulations not in conflict with state statute include self-imposed quotas⁶; banning exotic dancing on licensed premises⁷; and premise restrictions on initial licensure⁸. Examples of local regulations that were rejected include different closing hours⁹; and conditioning the issuance on one license on issuing a second.¹⁰

B. State and Federal Constitutions

Both state¹¹ and federal¹² considerations of due process and equal protection require that municipal regulations:

1. be rationally related to promoting the public health, safety and general welfare; and
2. be rationally related to advancing that public purpose.

In other words, a municipal regulation adopted must have a valid public purpose objective and the means used in the regulation must actually advance that objective. If a regulation is found to not promote public health, safety or welfare or the means chosen are not rationally related to advancing the goal of the ordinance, the regulation will be invalid even if it does not conflict with Chapter 125 Wisconsin Statutes.

II. Permissible Methods of Controlling the Number of Licenses

A. Quotas

Putting a quota on the number of licenses a municipality may issue simply means that a set number of licenses are available and once they are issued, no more will be issued unless the quota number is raised or eliminated. For example, state law currently imposes a quota on the number of Class B liquor licenses a municipality may issue.¹³ The number is a limit on municipal authority; it is the number of Class B licenses the municipality *may* grant or issue. The City could therefore, consider a self-imposed Class B quota that is less than that allowed by state law. The City did, in fact, adopt a quota on Class A licenses in approximately 2001. Self-imposed quotas however are subject to revision or termination at the pleasure of the municipality, as was the case with the Class A quota. The Common Council approved the repeal of the quota in September 2016 in response to an application for a license when the quota had been met.

⁶ *Odelberg v. City of Kenosha*, 20 Wis. 2d 346, 122 N.W.2d 435 (1963)

⁷ *City of Milwaukee v. Piscuine*, 18 Wis. 2d 599, 119 N.W.2d 442 (1963)

⁸ *Wis. Dells, LLC v. Town of Dell Prairie*, 2012 WI 76, 342 Wis. 2d 350

⁹ *Village of Little Chute v. VanCamp*, 136 Wis. 526, 117 N.W. 1012 (1908). See also Wis. Stats §§125.32(3) and 125.68(4)(c)5

¹⁰ *Torres v. Krawczak*, 217 Wis. 2d 593, 259 N.W.2d 607 (1935)

¹¹ Wisconsin Constitution Article I

¹² 14th Amendment to U.S. Constitution

¹³ Wis. Stats. §125.51

Adopting a self-imposed quota that does not conflict with the state imposed Class B quota system is permissible under state law. The Council should also be able to articulate what the public interest (health safety and welfare) goal is and how the quota will meet that goal, when approving the measure.

B. Density Regulations

Density regulations address concerns regarding licenses issued in a specific geographic area. For example, state law has decided that no licensed establishments should be located within 300 feet from the main entrance of a public, parochial or tribal school, hospital or church, unless the establishment is a restaurant or unless otherwise approved by the governing body.¹⁴

The council could determine to limit the number or types of licenses allowed in a certain geographic area in order to either preserve a certain character or an existing location or to prevent certain activities from occurring or increasing in certain areas. The difficult aspect of this type of regulation lies in properly articulating the public interest (health, safety, welfare) involved with the regulation and properly designing the regulation so that it advances those public interest goals. For example, if a specific geographic is home to a number of taverns and restaurants with liquor licenses where there ongoing public safety and welfare issues, including disproportionate police calls to taverns (and not restaurants) in the area, the council could consider restricting itself to issuing new Class B licenses to restaurants only as a way to diminish the number of taverns in the geographic area through attrition. This type of regulation may be more effective and less subject to challenge however when deployed as a zoning regulation.

C. Zoning Regulations

As earlier noted, the state liquor laws specifically do not affect municipal zoning powers. Zoning regulations identify what specific uses are permitted¹⁵ on specific properties. Municipal zoning regulations therefore can be used to allow or not allow specific uses which require alcohol beverage licenses. Current City zoning regulations generally restrict taverns, restaurants, and liquor stores to commercial districts.

The City of Madison uses an Alcohol Overlay District in which taverns, liquor stores and accessory retail sales are no longer permitted after the effective date of the ordinance. Currently licensed establishments are continued to exist as permitted non-conforming uses. Additionally, the ordinance creates "Nightclub" and Restaurant-Nightclub" property uses and identifies which zoning districts in the city these uses are permitted uses and/or conditional uses, again with non-conforming use provisions for existing establishments outside those zoning districts.

¹⁴ Wis. Stats. §125.68(3)

¹⁵ "Permitted," when used in the zoning context, means "allowed" and not that a "permit" is issued. A "permitted" use in a zoning district means the right to conduct that use.

Using zoning code regulations to determine where various types of alcohol sales are permitted is an allowable way of addressing license concentration issues and effects easily and without the concern of easy repeal of the regulation, as in self-imposed quotas.

III. Exterior Cleanup Requirement

Ald. Jennings has requested the Committee to consider recommending the Council adopt an ordinance requiring alcohol license holders to clean the entrance area(s) of the licensed establishment after closing.

The city municipal code currently requires all property owners to maintain their premises. That ordinance reads:

§8-9 (g) *Maintenance of premises.* The owners or person in control of any private property shall at all times maintain the premises free to litter; provided, however, that this section shall not prohibit the storage of litter in authorized refuse or garbage containers for collection.

("Litter" is defined as: *Litter* means garbage, refuse and rubbish as defined in this section and all other waste material which is thrown or deposited as prohibited in this section, and tends to create a danger to public health, safety and welfare.

"Refuse/rubbish" is defined as: *Refuse or rubbish* means miscellaneous waste material that is bulky or of such a size that will not fit in polycart and as is not normally collected with garbage.....)

Therefore, the requested regulation for licensed establishments would be in addition to the general requirements imposed upon other property owners. The additional regulation will likely be found to comply with due process and equal protection requirements when drafted to address an existing concern in a manner that is likely to meet those objectives.

An example of a potential ordinance language might be:

In addition to the requirements for litter removal set forth in Section 8-9(g) De Pere Municipal Code, owners or persons in charge of establishments licensed under this Chapter (Chapter 7 De Pere Municipal Code) shall maintain the exterior entrance(s) and surrounding area that is used by customers, invitees and guests of the licensed premises, clean, free and clear of all other noxious materials or matter, including bodily fluids and other such offensive substances. This section applies during all hours of operation of the licensed premises and the owner or person in charge shall ensure that said area(s) are clean and free of all such materials at such time as the licensed premises is closed and all patrons and employees have left the premises. (Note: this language is subject to further revision.)

These issues are set for discussion at the License Committee meeting of July 18, 2017. If you have any questions or concerns prior to the meeting, please feel free to call me at 339-4042.

H:\azills\Memos\2017\Alderson Boyd-License Committee Memo-Density and Litter7-18-17.docx

City of De Pere, Wisconsin



Request For License Committee Action

MEETING DATE: August 15, 2017

DEPARTMENT: City Attorney

FROM: Judith Schmidt-Lehman

SUBJECT: Consideration of Ordinance to Require Licensed Establishments to Perform Exterior Cleanup After Closing (Ald. Jennings)

ATTACHMENTS:

- Alderperson Boyd-License Committee Memo-Density and Litter7-18-17 (PDF)

MEMORANDUM

TO: Alderperson James Boyd, Chair
License Committee Members

FROM: Judith Schmidt-Lehman, City Attorney 

DATE: July 18, 2017

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II. Permissible Methods of Controlling the Number of Licenses

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⁶ *Odelberg v. City of Kenosha*, 20 Wis. 2d 346, 122 N.W.2d 435 (1963)

⁷ *City of Milwaukee v. Piscuine*, 18 Wis. 2d 599, 119 N.W.2d 442 (1963)

⁸ *Wis. Dells, LLC v. Town of Dell Prairie*, 2012 WI 76, 342 Wis. 2d 350

⁹ *Village of Little Chute v. VanCamp*, 136 Wis. 526, 117 N.W. 1012 (1908). See also Wis. Stats §§125.32(3) and 125.68(4)(c)5

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The council could determine to limit the number or types of licenses allowed in a certain geographic area in order to either preserve a certain character or an existing location or to prevent certain activities from occurring or increasing in certain areas. The difficult aspect of this type of regulation lies in properly articulating the public interest (health, safety, welfare) involved with the regulation and properly designing the regulation so that it advances those public interest goals. For example, if a specific geographic is home to a number of taverns and restaurants with liquor licenses where there ongoing public safety and welfare issues, including disproportionate police calls to taverns (and not restaurants) in the area, the council could consider restricting itself to issuing new Class B licenses to restaurants only as a way to diminish the number of taverns in the geographic area through attrition. This type of regulation may be more effective and less subject to challenge however when deployed as a zoning regulation.

C. Zoning Regulations

As earlier noted, the state liquor laws specifically do not affect municipal zoning powers. Zoning regulations identify what specific uses are permitted¹⁵ on specific properties. Municipal zoning regulations therefore can be used to allow or not allow specific uses which require alcohol beverage licenses. Current City zoning regulations generally restrict taverns, restaurants, and liquor stores to commercial districts.

The City of Madison uses an Alcohol Overlay District in which taverns, liquor stores and accessory retail sales are no longer permitted after the effective date of the ordinance. Currently licensed establishments are continued to exist as permitted non-conforming uses. Additionally, the ordinance creates "Nightclub" and Restaurant-Nightclub" property uses and identifies which zoning districts in the city these uses are permitted uses and/or conditional uses, again with non-conforming use provisions for existing establishments outside those zoning districts.

¹⁴ Wis. Stats. §125.68(3)

¹⁵ "Permitted," when used in the zoning context, means "allowed" and not that a "permit" is issued. A "permitted" use in a zoning district means the right to conduct that use.

Using zoning code regulations to determine where various types of alcohol sales are permitted is an allowable way of addressing license concentration issues and effects easily and without the concern of easy repeal of the regulation, as in self-imposed quotas.

III. Exterior Cleanup Requirement

Ald. Jennings has requested the Committee to consider recommending the Council adopt an ordinance requiring alcohol license holders to clean the entrance area(s) of the licensed establishment after closing.

The city municipal code currently requires all property owners to maintain their premises. That ordinance reads:

§8-9 (g) *Maintenance of premises.* The owners or person in control of any private property shall at all times maintain the premises free to litter; provided, however, that this section shall not prohibit the storage of litter in authorized refuse or garbage containers for collection.

("Litter" is defined as: *Litter* means garbage, refuse and rubbish as defined in this section and all other waste material which is thrown or deposited as prohibited in this section, and tends to create a danger to public health, safety and welfare.

"Refuse/rubbish" is defined as: *Refuse or rubbish* means miscellaneous waste material that is bulky or of such a size that will not fit in polycart and as is not normally collected with garbage.....)

Therefore, the requested regulation for licensed establishments would be in addition to the general requirements imposed upon other property owners. The additional regulation will likely be found to comply with due process and equal protection requirements when drafted to address an existing concern in a manner that is likely to meet those objectives.

An example of a potential ordinance language might be:

In addition to the requirements for litter removal set forth in Section 8-9(g) De Pere Municipal Code, owners or persons in charge of establishments licensed under this Chapter (Chapter 7 De Pere Municipal Code) shall maintain the exterior entrance(s) and surrounding area that is used by customers, invitees and guests of the licensed premises, clean, free and clear of all other noxious materials or matter, including bodily fluids and other such offensive substances. This section applies during all hours of operation of the licensed premises and the owner or person in charge shall ensure that said area(s) are clean and free of all such materials at such time as the licensed premises is closed and all patrons and employees have left the premises. (Note: this language is subject to further revision.)

These issues are set for discussion at the License Committee meeting of July 18, 2017. If you have any questions or concerns prior to the meeting, please feel free to call me at 339-4042.

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