



## MINUTES OF AN OFFICIAL MEETING:

Regular Meeting of: Legislative & Licensing Committee

Date and Time: Tuesday, August 18, 2020 at 6:00 pm

Location: City Hall, 2000 N. Calhoun Road – Council Chambers

Members Present: Alderman Gary Mahkorn (Chair), Alderman Brad Blumer, Alderman Bill Carnell, Alderman Mark Nelson, Alderman Rick Owen

Members Excused: None

Others Present: City Attorney Jenna Merten, City Clerk Kelly Michaels

### 1. ROLL CALL

Alderman Mahkorn noted a quorum present and called the Legislative & Licensing Committee to order at 6:02 pm.

### 2. ANNOUNCEMENTS

The Next Regularly Scheduled meeting will be held on Tuesday, September 1, 2020.

### 3. MINUTES

a. Motion by Alderman Owen , seconded by Alderman Blumer, to approve the minutes of the July 21, 2020, Legislative & Licensing Committee meeting.  
Motion carried 5-0.

### 4. NEW BUSINESS

a. Legislative Referral: Amend Section 15.04.340 Fences, to permit installation of netting at fenced playfields to preclude balls from leaving the field of play when the fenced playfield is proximate to streets, ponds or storm water basins.

Alderman Owen stated this referral is the result of a request of Kiddie Academy regarding fencing, specifically netting, to keep balls from leaving the play areas into the retention ponds and Capitol Drive around the Academy's location. This item came before the Plan Commission at which time there was not a request for netting. It is now before the Legislative and Licensing Committee for consideration. He added that there were individuals who were not pleased with this request as it encroaches on neighboring properties. The applicant wanted to minimize those concerns by adding landscaping and retaining walls.

Alderman Carnell felt the request was before the committee for one of two reasons. One, being safety or two, being an inconvenience. He does not see it as a safety issue as there would be an adult outside watching the children at all times. If a ball goes over the fence into the pond, an adult would retrieve it. Therefore, it could be seen as an inconvenience, so adults would not have to go over the fence to retrieve balls. He is not sure if he would be in favor of a code change for an inconvenience to one applicant.

Alderman Mahkorn stated if this was passed, he did not see it being vastly used throughout the city as this is a unique circumstance. Alderman Carnell noted St. John Vianney Church has a playground. Would they request netting to prevent balls from going into the street? He felt other places would request netting, if possible. Alderman Blumer asked if staff would undertake drafting an ordinance that keeps the scope down; limiting who could request netting at their location. He noted District 7 has a driving range and they have occasionally requested something like netting, however, they are not next to a retention pond. Neighbors may object or not. Each request could be considered separately.

Alderman Mahkorn agreed with Alderman Blumer indicating that requests for netting at sites could be limited. Alderman Nelson stated the committee should give direction to staff to draft an ordinance if we are in favor of this. The ordinance should be 'tight enough' to achieve the purpose we want it to, then beyond that, adding other criteria such as it has to be a fenced play field, then a fenced play field at a daycare academy for safety, not convenience, etc. He felt the ordinance could work especially for the one applicant.

Alderman Owen stated his feelings towards this request were similar to those of Alderman Carnell's initially. He added this request is similar to the school district's request for lighting. Council members were skeptical initially, and then eventually felt it was a good idea. He felt neighboring concerns may be on the aesthetics of the netting.

Alderman Mahkorn appreciated the concerns of the committee and felt the issue should not die with this discussion. The committee directed staff to develop an ordinance that is sufficiently restrictive, yet not eliminate a situation like this. Clerk Michaels will give the committee's comments to the City Attorney to draft an ordinance. The ordinance will be on the agenda for next meeting. Alderman Carnell noted the ordinance should also include how opaque or open the netting would be.

#### UNFINISHED BUSINESS

- a. Reconsideration of a denied Original Bartender/Operator License for an applicant with violations – Amanda Kuspa.

Amanda Kuspa appeared before the committee and introductions were made.

Alderman Mahkorn asked Ms. Kuspa to explain the charges against her. Ms. Kuspa stated she was sleeping in her car and was arrested for 'intent to drive' as her keys were on her person, therefore she was charged with an OWI. Alderman Mahkorn asked Ms. Kuspa to explain further, why she was arrested in 2014 for an OWI. Ms. Kuspa said

again, because her keys were on her, therefore, there was an intent to drive. Alderman Mahkorn clarified questioning the circumstances that led up to the violation. Ms. Kuspa stated she went out for a friend's birthday and had too much to drink. Alderman Mahkorn asked what her blood alcohol content was. Ms. Kuspa stated it was a 1.12.

Alderman Mahkorn asked Ms. Kuspa to explain the circumstances surrounding the accident she had in April 2019. Ms. Kuspa stated, she was T-boned in Waukesha.

Alderman Mahkorn asked Ms. Kuspa to explain the circumstances surrounding the OWI and BAC charge in June 2019. She indicated a group of friends went to Pride Fest. She was intoxicated and was speeding on her way home. She was on I-94 near the stadium and was pulled over by a Sheriff's Deputy. She drank approximately 4-5 cider beers within 4 hours. She noted her blood test came back as a .13. The Sheriff's Deputy indicated she was erratic in her driving and deviated lanes. Ms. Kuspa stated she had to do a field sobriety test and was arrested. She added she was very cooperative.

Alderman Carnell said he did not understand how a violation in 2014 and one in 2019 makes someone a habitual offender. Attorney Merten explained that the two violations were similar, therefore, showing a pattern. There was also, an accident and a 'habitual warning letter' was sent to Ms. Kuspa. Alderman Carnell questioned whether it becomes habitual due to the seriousness of the violation. Attorney Merten stated the process of being a habitual offender under Chapter 125 of State Statutes would be different from what it would be for a criminal case. Alderman Mahkorn stated that a second similar violation could be seen as habitual.

Alderman Nelson asked if Ms. Kuspa was considering whether she should drive home or not or whether she was aware of how much she had to drink? Ms. Kuspa replied that she realized she had a little too much and made the wrong choice. Alderman Blumer asked what the serving policies are in Delafield and New Berlin where she has a license. Ms. Kuspa stated patrons are watched and they make sure they are not serving more than 1-2 drinks per hour. She has also personally paid for lifts for people to get home. If someone comes in intoxicated, service is refused.

Alderman Mahkorn summarized the duties of the committee regarding consideration of licensing. Ms. Kuspa stated her job always come first before her personal life. She has letters of recommendation for both employers stating what they see in her and brought her manager with her today. She noted she has done AODA counseling and still goes to the group sessions even though she is not required to go. Ms. Kuspa stated she takes her job seriously and added she has held a bartender's license in the State of Wisconsin for 20 years. She has made mistakes in her life and has learned from them.

Alderman Owen stated the committee has to make tough decisions and take recent violations seriously. The committee likes to see some distance between the offenses. They do not want to see offenses reoccurring. They look at this as a judgement issue. He noted he appreciates the fact that she is making progress, but he would not be supporting a license for her.

Alderman Blumer stated he is 'on the fence' because the committee typically does not deny a license the first time it comes before the committee if the applicant is absent. He would support a license as Ms. Kuspa brought her manager and letters of support.

Alderman Mahkorn stated these are always tough decisions. If he would support a license for Ms. Kuspa, it would 'fly in the face' of every decision he has made concerning someone who has an OWI with less than 18 months. As Ms. Kuspa has a recent violation, which is also a second violation, he feels uncomfortable in granting a license. Alderman Nelson agreed with Alderman Mahkorn.

**Motion by Alderman Carnell, seconded by Alderman Owen, to DENY an application for Amanda Kuspa for an Original Bartender/ Operator License, on reconsideration. Motion carried 4-1, with Alderman Blumer casting the dissenting vote.**

5. NEW BUSINESS (CONT.)

- a. Resolution regarding an applicant for a Renewal Bartender/Operator License with violations – Lester T. Proctor.

Lester Proctor appeared before the committee and introductions were made.

Alderman Mahkorn asked Mr. Proctor to explain the circumstances surrounding his OWI violation in Georgia in 2017. Mr. Proctor stated on September 21, 2017 he asked his then wife for a divorce, which caused her to come to his work and cause a scene. He was in a bad place; he went out after work and had a few drinks. He then called the police to come to his home, knowing his wife would be there and wanted to avoid a scene. When he got there, his wife told the police he had been drinking, as she smelled alcohol on him. The police made him taken a breathalyzer and he received an OWI violation. He was released and went home. His wife attacked him and he defended himself. The police were called again and he was charged with domestic violence. There is not a day that goes by that he does not regret that day.

Mr. Proctor stated was working at Bar Louie. Then when Covid 19 happened, he started working at Champps in February 2020, where he was offered a manager position in May 2020. He noted his duties, as a House Manager is to manage the staff, doing all the beverage orders.

Alderman Owen wanted clarification on the renewal process. Clerk Michaels stated it depends on when the applicant applied. If it was before June 30, it is considered a renewal application, if it was applied for July 1<sup>st</sup> or after, then it is considered an original application. She noted the date was before July 1<sup>st</sup>. Attorney Merten noted that when Mr. Proctor applied for the original license on March 5, 2019, he answered 'no' to question #5 which states '*As an adult have you been convicted of violating any laws of the United States, state, county, city, village or town, relating to the use or sale of alcohol beverages or the manufacture, sale, distribution, possession, or use of a controlled substance within the past 5 years*'. As the violation was out of state, we did not catch it, as a special background check would have been needed. When his violation was discovered on the renewal application, the applicant was told to appear before the committee to discuss the discrepancy.

Alderman Blumer questioned whether it is standard to do a background check for Wisconsin and not any other states. Attorney Merten replied 'no, as each state has different rules. Some background checks take longer depending on which state it is. Alderman Blumer noted Mr. Proctor listed his violations on his renewal application, which is what we want to see. Attorney Merten noted if his response has been 'yes' to a question on the Original application, it would have alerted staff to complete an out-of-state background check. Mr. Proctor stated he was a resident of South Carolina at the time, but working in Georgia temporarily.

Alderman Nelson stated if Mr. Proctor had come before the committee back in March 2019 with the correct application and information, it would have been a 'trigger' for the committee to have the details for the Georgia activity, which would have been within the 18 month period. The license probably would have been denied at that time. Mr. Proctor stated it was not his intention to omit information from the application. Alderman Nelson said Mr. Proctor's violation took place approximately two and a half years ago, correct application and support of your employer. Alderman Nelson stressed that the application is aware of the responsibilities that comes with a bartender license. He is persuaded by Mr. Proctor's appearance before the committee and support of his employer.

Alderman Owen noted the committee tries to be fair to each applicant by asking the same questions. He asked what Mr. Proctor has learned for his experience. Mr. Proctor stated he has learned that alcohol is not for him; therefore, he does not drink. He has been working in the restaurant industry for a long time and knows how alcohol can affect an individual. Once he realizes a bartender overserved a patron, he makes sure the patron gets some water and food and make sure they do not drive. Then have a serious talk with the bartender. He added that Champps has a regular staff that works well together that does not allow alcohol abuse.

Alderman Mahkorn said he is in favor of supporting the license and felt Mr. Proctor, in no way, was trying to deceive the committee with answers on last year's application.

**Motion by Alderman Nelson, seconded by Alderman Carnell to approve an application for Lester Proctor for a Renewal Bartender/Operator's License. Motion carried 5-0.**

- b. Resolution regarding an applicant for an Original Bartender/Operator License with violations – Zachary J. Darr.

Clerk Michaels noted that Mr. Darr could not attend tonight's meeting and requested to have his application withdrawn and placed on the September 1, 2020 Legislative & Licensing Committee agenda.

- c. Resolution regarding an applicant for an Original Bartender/Operator License with violations – Austin G. Duy.

Austin Duy appeared before the committee and introductions were made.

Alderman Mahkorn asked Mr. Duy to explain the circumstances surrounding OWI violation on August 1, 2019. Mr. Duy stated he was before the same committee a few months ago. He said he was new to Wisconsin and picked up a friend after work and stopped to have a couple of beers. As he was leaving, he was driving through a construction area where there were no

markings on the roadway to delineate separate lanes. He pulled up to a squad car and was told he was going the wrong way on a one-way road. When he pulled over, the officer smelled alcohol coming from the vehicle. His friend stated he had been drinking. The officer noticed Mr. Duy had red eyes and performed a field sobriety test on him. He was arrested and he refused a breathalyzer test. He was charged one year later.

Mr. Duy summarized why he was before the committee 2 months ago. He was applying as the agent for Carrabba's Italian Grill and had been denied. He noted he has had a license with the city before.

Alderman Owen recalled the previous meeting and one area of concern was how many beers Mr. Duy had consumed. Mr. Duy's answer did not make sense due to the blood alcohol content level. Alderman Owen asked if there is a different story this time versus the last meeting. Mr. Duy said his original statement is the same statement he gave tonight. Mr. Duy indicated the violation was two years ago and noted the questions at the previous meeting were mainly regarding his integrity and the truthfulness of his answers. He added that he owns and runs Carrabba's and is in charge of employees. They have quarterly training of their bartender's.

Alderman Owen indicated that there were two different options of the two attorney's at the previous meeting, who felt he would not have been convicted of an OWI. He asked Mr. Duy if there was anything different he could add, knowing how the committee felt at the last meeting, which would change our minds. Mr. Duy stated in Illinois, if you do not admit to anything, then nothing would be done to you. Obviously, that is an 'old wives tale'. Then when he moved to Wisconsin, he thought it would help him more than hurt him. It was a mistake. To this day, he is still dealing with the mistake he made and cannot seem to get past it.

Alderman Mahkorn remembered the conversation at the previous meeting and feels that Mr. Duy is being very sincere. He felt the city's standards for approving a license for Mr. Duy were not meet a few months ago; therefore, the same would be applied to today.

Alderman Nelson asked if Mr. Duy would become the agent, practically speaking, even though another person was approved as agent one month ago. Mr. Duy said even though the agent has been changed, his responsibilities remain the same in the restaurant.

Alderman Nelson asked why Mr. Duy took the Serve Safe Course. Mr. Duy said a beverage course is required aspect to apply for the license and the course is very informative.

Alderman Carnell summarized the events of the violation. Mr. Duy clarified the events. Alderman Mahkorn stated he has many other questions that will go unanswered. The committee can only go on what Mr. Duy is telling them. Alderman Blumer stated he would feel more comfortable in considering a license for Mr. Duy, if more time has passed.

**Motion by Alderman Owen, seconded by Alderman Blumer, to DENY an application for Austin G. Duy for an Original Bartender/Operator License. Motion carried 4-1, with Alderman Carnell casting the dissenting vote.**

d. Resolution regarding an applicant for an Original Bartender/Operator License with violations – Aram Feriants.

Aram Feriants appeared before the committee and introductions were made.

Mr. Feriants noted he is a recovering drug addict. He had a drug overdose in 2014. Prior to that, his life was not good as he actively used drugs and had tried to get sober many times.

Alderman Mahkorn asked when Mr. Feriants overdosed. Mr. Feriants stated he overdosed in 2014. He was offered a deferred prosecution with Waukesha in drug court, which is an intensive yearlong program. He had no infractions or positive drug screens while he was in the program. He graduated and attended Dewey outpatient. He has been in two rehab facilities. He was on probation and was released after 6 months. His life has changed incredibly.

Alderman Mahkorn asked what drug Mr. Feriants took most often. Mr. Feriants said it was heroin. He started with prescription pills. Some were his and some were not.

Mr. Feriants stated he has worked at Vino Cappuccino since 2011 and does pretty much anything he is asked. He is primarily a server but also he is a manager. With Covid happening, there is a skeleton crew and he has to work many hours. Obviously, there needs to be a licensed bartender at all times.

Alderman Mahkorn asked what is Vino Cappuccino's policy in serving alcohol. Mr. Feriants stated there is a strict plan in place to ask for ID for anyone under forty. He makes sure all servers are trained to recognize someone who is intoxicated and how to stop the process.

Alderman Mahkorn asked Mr. Feriants if he has been clean since his violation on July 29, 2016. Mr. Feriants replied 'yes, he has'.

Alderman Blumer stated he is willing to support a license for Mr. Feriants as enough time has passed since the violation. He understands the struggles Mr. Feriants is going through and appreciates his recovery effort.

Alderman Owen asked how his experience has helped him with dealing with patrons. Mr. Feriants stated his experience has molded his entire perception. He is grateful to have a second chance at life. As far as the work place goes, it is an 'it takes one to know one' type mentality. He is able to screen employees and customers to see if there is some type of issue happening.

Alderman Mahkorn said he is willing to support a license for Mr. Feriants. The key tonight is his record of accomplishment and the length of time that has passed since the violation.

**Motion by Alderman Owen, seconded by Alderman Nelson, to approve an application for Aram Feriants for an Original Bartender/Operator License. Motion 5-0.**

e. Resolution regarding an applicant for an Original Bartender/Operator License with violations – April J. Jacobson.

April Jacobson appeared before the committee and introductions were made.

Alderman Mahkorn asked Ms. Jacobson to explain her violations.

Ms. Jacobson stated, as a favor to her boyfriend, she was taking his car in to have a tire fixed. As she was leaving the F&F Tire store, she was warned that the brakes were in very bad condition and to be careful in driving the vehicle home. She drove 25 miles per hour into an industrial truck on 76<sup>th</sup> Street and Beecher Avenue. Alderman Mahkorn questioned why she was before the committee. Ms. Jacobson said she answered 'no' to a question on the application instead of 'yes'. Alderman Mahkorn was not too concerned with why she checked the box incorrectly. He feels she is telling the truth surrounding the traffic accident.

Alderman Owen wanted clarification on the sequence of violations. Regarding the compulsory insurance, she did not have proof of insurance on her or in the vehicle. Alderman Nelson agreed with Alderman Mahkorn saying he would approve a license for Ms. Jacobson.

**Motion by Alderman Nelson, seconded by Alderman Owen, to approve an application for April J. Jacobson for an Original Bartender/Operator License. Motion carried 5-0.**

- f. Resolution regarding an applicant for an Original Bartender/Operator License with violations – Alexis A. Kress.

Alexis Kress appeared before the committee and introductions were made.

Alderman Mahkorn asked Ms. Kress to explain violations on her record. Ms. Kress stated as a teenager she had an issue with marijuana where she experimented a lot. She learned the hard way that you cannot do illegal things. She has taken a class called 180 Diversion. There has been only one violation after her juvenile record.

Regarding the August 2016 violation, she was driving in Menomonee Falls and was pulled over for a tail light out. She had a marijuana smell in the car but she was not smoking marijuana at the time. The vehicle was searched and a small amount of marijuana was found. She was then arrested for possession of marijuana.

Alderman Mahkorn asked if Ms. Kress used another drugs or alcohol. Ms. Kress said she mainly used marijuana and very rarely drinks. Alderman Mahkorn noted she answered 'no' to a question on the applicant that asked *'have you been charged, ticketed, cited, or arrested for any violation of state, federal or local laws within the past five years, including crimes, forfeitures, military violations, traffic violations and all tickets, except parking tickets'*. Ms. Kress explained she was not sure the 2016 violation was on her record. She felt that since she took the assessment class, the charge would have removed from her record.

Alderman Mahkorn said the committee scrutinizes an applicant's record because a bartender license can be used anywhere in the city and dispense alcohol. That is a huge responsibility. The bartender needs to make judgement calls. They have to have respect for the laws and rules. He looks at the nature of violations, time that has lapsed and the programs she has taken in considering a license for her.

Alderman Owen agreed with Alderman Mahkorn's comments adding the committee looks for 'red flags' such as individuals who does not show responsibility in their actions. This is not the case with Ms. Kress.

**Motion by Alderman Blumer, seconded by Alderman Carnell, to approve an application for Alexis A. Kress for an Original Bartender/Operator License. Motion carried 5-0.**

g. Resolution regarding applicants for Original Bartender/Operator Licenses.

McCormick, Darcy M.

Ott, Nicholas M.

Ruhl, Harrison

Spencer, Shedric M.

**Motion by Alderman Blumer, seconded by Alderman Carnell, to approve applications from the above applicants for Original Bartender/Operator Licenses. Motion carried 5-0.**

6. ADJOURNMENT

**Motion by Alderman Owen, second by Alderman Nelson to adjourn the meeting. Motion carried 5-0. Meeting adjourned at 8:50 pm.**

RESPECTFULLY SUBMITTED: KELLY MICHAELS, MMC, WCPC  
CITY CLERK'S OFFICE, CITY CLERK