



MINUTES OF AN OFFICIAL MEETING:

Regular Meeting of: Legislative & Licensing Committee

Date and Time: Tuesday, September 1, 2020 at 6:15 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, Alderman Dan Sutton, Alderman Scott Berg, various license applicants.

1. ROLL CALL

Alderman Mahkorn noted a quorum present and called the Legislative & Licensing Committee to order at 6:21 pm.

2. ANNOUNCEMENTS

The Next Regularly Scheduled meeting will be held on Tuesday, September 15, 2020.

3. MINUTES

a. Motion by Alderman Owen, seconded by Alderman Carnell, to approve the minutes of the August 18, 2020, Legislative & Licensing Committee meeting. Motion carried 5-0.

4. NEW BUSINESS

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

Zachary Darr appeared before the committee and introductions were made.

Alderman Mahkorn noted Mr. Darr has a long violation history. Mr. Darr stated he was reckless, ignorant and not being careful in driving. The committee was concerned with Mr. Darr driving history.

Mr. Darr explained his OWI violation occurring on March 17, 2018. He went to Whitewater to see friends. He was not 21 yet and had been drinking. While his car was warming up, he fell asleep. The campus police were called. He drank beer and liquor and his BAC was .16. The campus police conducted a few sobriety tests. Mr. Darr said he was under the influence, but was not operating his vehicle, however, under

Wisconsin law, sleeping in your car while it is running is still considered operating under the influence. He was taken to a holding area, was handcuffed and waited for the breathalyzer test. He called his parents to pick him up.

Alderman Mahkorn asked if Mr. Darr had to take any alcohol assessment tests. Mr. Darr replied he had to take an alcohol assessment class.

Alderman Nelson asked if it was Mr. Darr's intention to get in his car and drive. Mr. Darr said his intent was to warm up the car, but was going to walk back to the dorms.

Alderman Blumer questioned what the 'obstructing traffic' violation was about. Mr. Darr felt it was about speeding and had to pay a fine. The December 17, 2019 speeding violation was reduced to an interfering with traffic sign/signal violation, but he had to pay the full fine.

Alderman Owen asked if it is common to 'plea down' for a lesser charge. Alderman Mahkorn stated all violations do not rise to the level of State charges. Local and county municipalities can adjust violations to a lesser charge. He was concerned with the amount of violations Mr. Darr has.

Attorney Merten stated many times a 3 or 4 point violation is amended to a 1 or 2 point violation which saves the individual some points and does not affect their insurance as much. The fine may stay the same or be higher. Alderman Owen noted the significant issue is the OWI violation, which has extenuating issues. He said he is inclined to deny a license for Mr. Darr due to his lengthy record.

Alderman Carnell wondered if the applicant has the maturity to hold a bartender's license. Alderman Blumer agreed with Aldermen Carnell and Owen, stating the committee tends to be forgiving for violations with extenuating circumstances and youthful mistakes. He feels he could not support a license at this time due to the continuing violations.

Alderman Mahkorn noted the committee looks at the totality of the violations. The OWI violation was quite recent. The committee wants a bartender to have responsibility in serving alcohol and ability to make judgement calls.

Mr. Darr added that he is a hard worker and very dependable. He is in the Marine Corp Reserves and while his lack of judgement is idiotic at times, he has suffer from it.

Motion by Alderman Owen, seconded by Alderman Carnell, to DENY an application for Zachary J. Darr for an Original Bartender/Operator License. Motion carried 5-0.

b. Resolution regarding an applicant for an Original Bartender/Operator License with violations – Jordan Finkbeiner.

Jordan Finkbeiner appeared before the committee and introductions were made.

Ms. Finkbeiner stated her violation occurred while she was a sophomore at Carroll College in Waukesha. She was with a bunch of friends and smoking pot because they

were young and stupid. She added she is pursuing a doctorate degree in Occupational Therapy at Mount Mary. She was not required to take any classes.

Alderman Mahkorn asked what Ms. Finkbeiner had learned from this experience. Ms. Finkbeiner stated she has learned it is stupid to do drugs; it is not good for your brain or your body. She added she got behind in her studies after using drugs.

Alderman Mahkorn asked Ms. Finkbeiner how much marijuana she consumed. Ms. Finkbeiner said it was less than 2 grams. She added she is a server at Parkside 23 and is looking to move up to a bartender position.

Parkside 23's serving policy is to ID anyone who looks under 30 years of age. Ms. Finkbeiner stated they do not serve to anyone under 21 years of age. Patrons who have had too much to drink are cut off from alcohol and a manager is called to handle the situation.

Motion by Alderman Blumer, seconded by Alderman Carnell to approve an application for Jordan Finkbeiner for an Original Bartender/Operator License. Motion carried 5-0.

- c. Resolution regarding an applicant for an Original Bartender/Operator License with violations – Shannon M. Miller.

Shannon Miller appeared before the committee and introductions were made.

Alderman Mahkorn asked Ms. Miller to explain her OWI violation on January 11, 2017. Ms. Miller stated she was 20 years old at the time and was not an experienced drinker. After a couple of drinks at a friend's house she decided to drive home and was arrested for OWI. She was driving from her friend's house in Waukesha to her parent's house in Brookfield. She was making a left hand turn and collided with another vehicle that was going straight. There was a police officer in the intersection at the time and completed a field sobriety test on Ms. Miller after which he drove her to the hospital for the blood test. Her blood alcohol content was .214.

Ms. Miller added she had a valuation and took a first offenders course at WCTC in 2017, which she passed. Alderman Mahkorn asked her what she learned from the course. Ms. Miller replied she learned how reckless and irresponsible it is, not only for her but other driver's on the road, to drink and drive. It has made an impact on her life. Ms. Miller added she had an interlock device on her car for one year and her insurance increased. Her friends and family were disappointed in her, which bothered her the most.

Ms. Miller noted she is a server and bartender at Saloon on Calhoun, but since Covid, they no longer have servers. She added she has had a prior license in the City of Brookfield and currently holds one in Oconomowoc.

Alderman Blumer questioned if Ms. Miller was before the committee because this is an Original application. Clerk Michaels replied 'yes'. She noted the February 19, 2019

minutes were distributed to the committee members. Clerk Michaels added that Ms. Miller has provided the same answers today as she did in February 2019 when her license was approved.

Alderman Blumer noted he supported a license for Ms. Miller at the February 2019 meeting. He noted she has another violation since that time. Ms. Miller stated she ran a red light a few years ago.

Alderman Owen asked if Ms. Miller was approved an Original Bartender License prior to 2017. Clerk Michaels stated Ms. Miller appeared before the committee on February 19, 2019 to discuss her 2017 OWI violation. The committee at that time approved a license for Ms. Miller with instructions to staff to conduct another background check in six months. Staff reported back to the committee in August of 2019 that no further violations had occurred. Attorney Merten noted the applicant completed an old application dated March 2019. Clerk Michaels indicated she would check the stock at the counter to see if outdated applications were out there.

Alderman Owen asked Ms. Miller why she lapsed in renewing the license. Ms. Miller stated she made an honest mistake and was two weeks late in applying. Alderman Owen questioned if the previous license was a renewal or an original. Clerk Michaels stated both applications were Original applications. Alderman Owen asked why the committee did not discuss the OWI violation from 2017. Alderman Blumer stated the committee did discuss the OWI violation, however, the application came shortly after the committee had started to review applications in greater detail. The committee was 'honing' their analysis regarding applicant violations.

Alderman Nelson stated he reviewed the minutes of the February 19, 2019 meeting and felt if Ms. Miller would have been 'penalized' (denied a license), it should have been at that time. It would not be fair to penalize her one year later for the same violation considered in 2019. He was in support of a license for Ms. Miller.

Motion by Alderman Nelson, seconded by Alderman Owen, to approve an application for Shannon M. Miller for an Original Bartender/Operator License. Motion carried 5-0.

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

Baldwin, David A.

Simchak, Nicholas J.

Towne, Morgan T.

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

5. UNFINISHED BUSINESS

- a. Legislative Referral: Discussion and possible action on a revision of Chapter 8.36 of the code, Open Burning.

Alderman Berg stated he is familiar with the open burning rules and regulations. He noted current regulations allow burning 3 days per week under certain wind conditions. He noted he had received an email from a resident whose neighbor, whom they have gotten along with for years, has an elderly father who takes care of the yard. He burns yard waste 3 days a week and there is continuous smoke. The neighbors would like to have more restrictions placed on the current burning regulations, such as, you can burn a single day of the 3 days allowed. Another option is to limit burning to only 4 months out of the year. He feels the difficulty and driving force is if the city cuts off burning, we would need a plan B to deal with yard waste and the challenge is funding that plan. He noted that 20 years ago, when the city did ban burning, there was a forced referendum, which is rare. It showed the city was 'out of touch' with views from voters on burning. At that time, the majority wanted burning, but a significant number of that majority was concentrated in Districts 4 and 7. The other districts were fifty-fifty. He questioned whether the results of that referendum would depict how residents feel about burning currently. Having a referendum is an option to consider. Banning burning would be a drastic option. If there was a referendum, the outcome could be different with changing residents, lifestyles, etc. If burning is banned, the city would have to come up with six figures worth of money without raising taxes, which would be problematic.

Alderman Owen summarized that the referendum was in 2004, and at that time it was a Charter Ordinance. Attorney Merten noted the Charter Ordinance was actually repealed in 2003, therefore, it is a regular ordinance. Alderman Owen said there was confusion at the time, as the ordinance was assigned to two different committees. The issue was brought before the Board of Public Works in October 2018 and at that time, the season was pretty much over so the issue was delayed until February 2019. The Board of Public Works felt they could 'solve some of the issues and passed along their suggestions to the Legislative & Licensing Committee. The thinking was to make incremental moves to the ordinance as it is a big issue and drastic moves would take some time to vet. He referenced some possible changes which are included in the current ordinance under review.

Alderman Nelson reported he is getting comments from residents continually regarding burning. Many opinions are either to ban burning altogether or restrict it as much as possible. The revised ordinance looks at the enforcement of the regulations, even narrows them down a bit. He feels the city's options are to leave the ordinance as is or to ban burning altogether. He questioned whether the city is responsible to come up

with a plan B? He feels the majority of the city would be fine with a burning ban. He also feels burning is a health issue and noted his support to limit burning as much as possible.

Alderman Carnell stated he has lived in the city since 1977 and back then anyone entering the city in 1977, would be entering a cloud of smoke. Since that time, very few people burn. It seems it is the 'old timer's' who love to burn. He feels there are many options other than burning, such as: bagging leaves and having it picked up, hiring yard waste haulers to pick up for deposit at the recycling center, mulch or composting and direct resident use of the recycling center. He noted his support of a major restriction on burning.

Alderman Blumer commented on Alderman Berg's analysis of District 7. He feels he is correct as many homes are owned by families who are not into burning. He personally, did not care to go the city's recycling center as it is quite the drive from where he lives. He agrees that there should be more options for yard waste and suggested issuing burning permits to residents. This would 'weed out' the burning enthusiasts who are burning for fun. The burning permit would give the resident a window of time in which to burn.

Alderman Owen indicated the city has received many complaints regarding outside contractors having restricted access to the recycling center. He noted the ordinance also outlines that burning is being abused as residents are burning furniture, toys, etc. The city is trying to very carefully define what can and cannot be burned and regulations on recreational fires. If the city has a ban on all burning, he feels we will get complaints from all residents as we just cannot make everyone happy.

Alderman Mahkorn stated it's important for the city to come up with a good finished product. He would not be in agreement with banning burning outright as it would be a drastic change. He is in favor of scaling back. In the future, he sees the community as a non-burning community. There is abuse with burning in the city and the city has an obligation to provide clean quality air for the residents. He is in favor of making more restrictions on the ordinance at this time.

Attorney Merten stated the ordinance does not enforce cooking fires. The ordinance has changed with the number of days allowed for burning. Alderman Nelson noted if the current ordinance is more restrictive and allows the city to enforce it, he would like to see the ordinance in place this burning season. The committee agreed. Alderman Mahkorn noted his support of limiting burning to one day a week. Alderman Carnell felt the ordinance, as currently written, will not stop burning abuse.

Alderman Sutton commented he has been a resident for 20 years. He feels if you are going to ban burning, you must come up with an alternative avenue, so there is not an unfinanced tax placed on tax payers who have trees. There are many senior citizens who cannot get to the recycling center and have no financial means. It is not right to make a law with no solution for the people who have the problem. Alderman Carnell noted that there is a misunderstanding that senior citizens are poor. He feels it is more a case of being cheap.

Alderman Blumer questioned if the ordinance goes to council for approval, whether it terminate the legislative referral. If we want to look at it again, would we need to make another legislative referral? He prefers that the ordinance be sent to council for adoption but that the discussion continue.

Alderman Mahkorn stressed that the rules have been changed on how often someone can make a referral. Once a legislative referral is made, there is a time line it must follow. Attorney Merten stated the code indicates the legislative referral must be. She noted the municipal code on legislative referrals has a specific process including that the matter be first considered within 90 days of its initial referral date. The activity of adopting an ordinance would close the referral. She opined that it would be appropriate for an alderman to make new referral as to additional considerations for a future ordinance.

She noted the current ordinance under consideration allows opening burning but restricts it to the months of April, May, October and November.

Motion by Alderman Nelson, second by Alderman Owen to place the restricted burn ordinance on the September 15, 2020 Legislative & Licensing Committee agenda and also on the Common Council meeting agenda for the same night. Motion carried 5-0.

Motion by Alderman Nelson, second by Alderman Owen to adjourn the meeting. Motion carried 5-0. Meeting adjourned at 8:05 p.m.

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