



MINUTES OF A REGULAR MEETING OF THE **LEGISLATIVE & LICENSING COMMITTEE** HELD ON TUESDAY, **OCTOBER 15, 2019** AT **7:00 P.M.** IN THE SELIGENSTADT (MAIN) CONFERENCE ROOM, 2000 NORTH CALHOUN ROAD, BROOKFIELD, WISCONSIN

ALDERMAN GARY MAHKORN PRESIDING

5 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, Alderman Christopher Blackburn, Tami G. Swanto, Harry Swanto

1. Chairman Mahkorn noted a quorum was present and called the Legislative & Licensing Committee to order at 7:01 pm.
2. Announcements:
 - a. The next regularly scheduled meeting is Tuesday, November 5, 2019.
 - b. Report: A Change of Agent for Pick N Save at 15170 W. Greenfield Avenue – Casey T. Smith, who had a OWI violation, was postponed from the October 1, 2019 L&L Committee. Applicant is requesting a new agent for consideration (Item 4e).
3. Minutes
 - a. Minutes of the October 1, 2019 meeting.

Motion by Alderman Jurken, second by Alderman Carnell to approve the October 1, 2019 meeting minutes as presented. Motion carried 5-0.

4. New Business
 - a. Resolution regarding an Original Bartender/Operator’s License for an applicant with pending violations.

Manner, Marshall P.

Motion by Alderman Carnell, second by Alderman Blumer to deny a resolution regarding an Original Bartender/Operator’s License for Marshall Manner as he did not appear before the committee. Motion carried 5-0.

b. Resolution regarding an applicant for a Class C Wine License.

The Jar Inc.; dba: The Jar
200 N. Moorland Road; Agent: Tami G. Swanto

Tami Swanto and Harry Swanto appeared before the committee and introductions were made.

Alderman Mahkorn indicated this request is original. Clerk Michaels noted an application was received from The Jar. It is her understanding that it is a restaurant inside the Azana Spa. There is a limited food menu. They have a food license from Waukesha County. The city does not see this type of request often. She noted The Corners of Brookfield has a nail salon that has a similar license. According to the Town Clerk, the nail salon is getting prepared plates of food from the Sendik's Center. They warm up the plates of food; therefore, they needed a restaurant license. The Town Board decided the nail salon qualifies as a restaurant as they have a perishable food license.

Clerk Michaels feels the request by The Jar is similar. They want to be classified as a restaurant; therefore, it is up to the committee to decide if they meet the qualifications of a restaurant. The Class C license is a state created license type specifically for restaurants. Alderman Mahkorn asked if this type of license has any limitations. Clerk Michaels replied there are no limitations. This type of license was created after the quota came into effect and was 'pushed' by the restaurant association. Mostly for pizza joints who were coming in for beer licenses, but also for an Italian pizza place that wanted to offer a glass of wine. The State created this license type for restaurants that had sales of 50% of gross receipts. At the time of the quota license, pizza joints were not able to get this type of license.

Alderman Mahkorn noted that if a Class C Wine license was approved for The Jar, the city is opening the door for other similar businesses requesting a license. The city has to be fair with other establishments throughout the city. He feels the city should not hand out licenses just because a business qualifies for one. Alderman Mahkorn asked what the percentage would be for wine sales. Clerk Michaels stated that would be hard to tell, as the applicant is not currently selling wine. Alderman Mahkorn asked if the applicant has done some analysis on wine sales.

Tami Swanto indicated that one thing that makes her different from the nail salon at The Corners is that she has a commercial kitchen, is licensed as a food protection handler/manager along with allergens and alcohol. She serves homemade food made from starch. We are licensed to sell homemade desserts served in mason jars. She noted that patrons are not coming to the business to drink. They are coming there to have a glass of wine with a service.

Ms. Swanto added that corporate accounts that will have employee appreciation days and a bridal party will have a mimosa while getting hair done.

The committee stated concern that the wine sales are not more than the food sales. Ms. Swanto replied no, they sell much more lunches, snacks and desserts than they would wine. Alderman Carnell noted that the business seems to have high standards, but if we open this up to other businesses, how are we hold these other businesses to the same high standards as The Jar. Clerk Michaels noted that the requested license is identical to the license of the nail salon at The Corners who is bringing in food from Sendik's. Even though the business operations are different, the license is the same legally. The criteria of both businesses meets the requirements of the Class C Wine license.

Ms. Swanto said it was her understanding that you could not receive a restaurant license if you did not have a commercial kitchen. Clerk Michaels said she did received the license from the Town Clerk; therefore, she knows it is the same type of license. Waukesha County issues the restaurant licenses.

Alderman Mahkorn praised Clerk Michaels stating she notices things and spots concerns that may be precedent setting. She wants the committee to have a well-informed discussion. He is willing to support this request. He feels the city will see more of these requests. Attorney Merten supplied a letter to the committee regarding state statutes on Class C Wine licenses.

Alderman Carnell asked if the nail salon in The Corners has a restaurant license from Waukesha County. Clerk Michaels stated she did not check to see if they had a restaurant license. She contacted the Town Clerk and asked how the nail salon was licensed. She understands that the Town initially did not want to license the nail salon, but did give them a license once they found out Waukesha County gave them a restaurant license. Alderman Carnell noted that this would be one of the standards in the future on whether a business would qualify for a Class C Wine license.

Alderman Mahkorn said he feels The Jar has met the standards/qualifications of a Class C Wine license. The committee has to make sure the business is reputable and not a scam or having abuse issues. The committee needs to do its job. Alderman Jurken asked if The Jar and Azana Spa are separate. Ms. Swanto indicated that there are two separate corporations. She noted she owns the building and has been in the city for twenty years. The restaurant is a designated space with tables and chairs.

Alderman Blumer noted that the letter from Attorney Merten states *'if the City does grant the license to The Jar, the City will need to issue such licenses to any similarly-situated and similarly-designed business to avoid litigation that alleges applicants were treated differently and contrary to statutory and constitutional protections'*. He questioned if this means the committee should not review the premise description but only look at the type of license requested. Alderman Mahkorn said *'no, it's a matter of precedence setting'*. If another business comes in with the same business model as The Jar, it shows consistency. Clerk Michaels noted the State is saying a Class C Wine license is eligible for restaurants. The

committee would be saying The Jar is a restaurant inside of Azana Spa, if approving this license.

Alderman Carnell asked if Sendik's could apply for a Class C Wine license as they have kitchens with sinks, etc. Clerk Michaels noted Sendik's has a Class A Beer & Liquor license. They cannot have a combined Class A and Class C license or a Class A and Class B license. Attorney Merten stated that everyone that sells food that is not a frozen pizza, has to have a commercial kitchen to qualify for a restaurant license.

Alderman McCarthy questioned if Ms. Swanto foresees a time when wine sales are more than food sales. Ms. Swanto said no, as she also sells The Jar desserts. In addition, they serve lunch to anyone spending more than four hours at Azana and/or anyone that stops in to have lunch. Alderman McCarthy asked what would happen is an applicant is approved a Class C Wine license and wine sales are more than 50%. Attorney Merten said the Department of Revenue would be the party to look into this. Alderman Mahkorn noted the committee has to make a credibility/trust assessment to each applicant.

Ms. Swanto added she wants to stay competitive with Wisconsin Athletic Club and Lifetime Fitness who have or will be getting alcohol licenses. Alderman Mahkorn noted that The Jar is not going to be a destination for wine, but for everything else, Azana Spa offers that. Alderman Jurken feels more supportive of the request as Ms. Swanto is the owner of the business. Ms. Swanto added that she has owned the business for 20 years and rebuilt the business after the shooting in 2012. She feels the business is improved. Ms. Swanto noted that she has learned a lot going through this process.

Alderman Mahkorn indicated that when looking at applicants requesting any type of alcohol license, the committee must consider State criteria, and assess the credibility, demeanor, representations of the applicants. All of this information should be kept on official record, so the committee has greater authority when scrutinizing future applicants.

Attorney Merten said the committee could set forth some guidelines internally when considering alcohol licenses for applicants.

Alderman McCarthy asked if there are both, The Jar employees and Azana Spa employees. Ms. Swanto replied 'yes'. Clerk Michaels added that the licensed bartender must be working on the licensed premise, not in the salon area cutting hair. The committee wanted to make sure that Ms. Swanto understood where the licensed areas were on the premise.

Motion by Alderman Jurken, second by Alderman McCarthy to approve a resolution regarding an Original Class C Wine License for The Jar at 200 N. Moorland Road. Motion carried 5-0.

- c. Legislative Referral: Ordinance amending Subsections 2.08.020.B.6.a-b and 2.08.020.B.6.e-f regarding the Composition and Duties of the Economic Development Committee. (Mayor Ponto)

Motion by Alderman Carnell, second by Alderman McCarthy to approve an ordinance amending Subsections 2.08.020.B.6.a-b and 2.08.020.B.6.e-f regarding the Composition and Duties of the Economic Development Committee. Motion carried 5-0.

- d. Resolution regarding applicants for Original Bartender/Operator’s Licenses.

Aldrich, Elizabeth V.	Kopka, Journey L.	Tom, Samuel TR
Folk, Jamie L.	Levetzow, Adam E.	Twitchell, William J.
Gamez, Sierra J.	McKnight, Merissa T.	Wilson, Danielle K.
Gerringer, Jesse W.	Nesheim, Daniel M.	Zabel, Dawn L.
Gogin, Robert W.	Smeltzer, Richard C.	Zimmermann, Ashley A.
Ketterhagen, Jack R.		

Motion by Alderman Jurken, second by Alderman Carnell to approve a resolution regarding Original Bartender/Operator’s Licenses for the above applicants. Motion carried 5-0.

- e. Resolution regarding an applicant for a change of agent for a Class a Beer & Liquor licensed premise.

Ultra Mart Foods LLC; dba: Pick N Save #6397
15170 W. Greenfield Avenue; Agent: *Dominique M. McLure*

Motion by Alderman Jurken, second by Alderman Carnell to approve a resolution regarding an applicant for a change of agent for a Class A Beer & Liquor licensed premise – Pick N Save at 15170 W. Greenfield Avenue; Agent: Dominique M. McLure. Motion carried 5-0.

- f. Resolution regarding an applicant for a change of agent for a Class B Beer & Liquor licensed premise.

Sharon Lynne Wilson Center for the Arts, Inc.
Dba: Sharon Lynne Wilson Center for the Arts
19805 W. Capitol Drive; Agent: *Matthew P. Scales*

Motion by Alderman Blumer, second by Alderman Carnell to approve a resolution regarding an applicant for a change of agent for a Class B Beer & Liquor licensed premise - Sharon Lynne Wilson Center of the Arts at 19805 W. Capitol Drive; Agent: Matthew P. Scales. Motion carried 5-0.

g. Resolution regarding an applicant for a change of agent for a Class B Beer & Liquor licensed premise.

BLWI Associates LLC; dba: Sheraton Brookfield/Milwaukee
375 S. Moorland Road; Agent: *Lisa A. Sheets*

Motion by Alderman McCarthy, second by Alderman Jurken to approve a resolution regarding an applicant for a change of agent for a Class B Beer & Liquor licensed premise - Sheraton Brookfield/Milwaukee at 375 S. Moorland Road; Agent: Lisa A. Sheets. Motion carried 5-0.

Motion by Alderman McCarthy, second by Alderman Carnell to adjourn the Legislative & Licensing Committee meeting. Motion carried 5-0. Meeting adjourned at 7:45 p.m.

Minutes respectfully submitted by Kelly Michaels, City Clerk