

JUDICIARY, LICENSE AND CEMETERY COMMITTEE
MINUTES OF MARCH 3, 2009

Meeting called to order by Chairperson Wagner at 5:00 p.m., in the Common Council Chambers, City Hall Plaza.

PRESENT: Alderpersons Ed Wagner, Alanna Feddick and Donald Krueger

ABSENT: None

ALSO PRESENT: Alderpersons Feirer, Hansen, Buttke, Spiros and Noble, City Administrator Brehm, City Clerk Hall, City Attorneys Hutchinson and Wolfgram, Police Chief Stroik, Lorrie Krokstrom, Gordon Earll, Gary Gray, Butch and Mary Lou Duerr.

JLC09-016 Motion by Krueger, second by Feddick to grant seven (7) Beverage Operator Licenses for the 2007-2009 License Year to: Emilie Burrill, Daniel Gebelein, Todd Jensen, Brenda Miller, Jacqueline Poppe, Maria Schlag and Danielle Schulta. All Ayes

Motion carried

Alderperson Wagner said that when considering granting or denying a license one of the things you base it on is whether or not the licensee has been convicted of or committed offenses substantially related to the licensed activity. What constitutes substantially related to the license?

Attorney Wolfgram responded that what it is going to come down to is an exercise of reasonableness. Those that are most directly related are those items where you have problems under chapter 125 where you have a history of either serving minors or violations of procuring and those sorts of things. The further you get away from something that is directly related to a violation of the law in terms of dispensing alcohol than more of the overall picture needs to be consistent.

Chief Stroik said that it is fairly clear in the ordinance. Section 9-40 (4) states that for purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two offenses which are substantially related to the licensed activity within the bar immediately preceding the license application or activities or violations which would result in 50 demerit points under the provisions of section 9-34 (3). He explained that they look at different scenarios:

1. Does the applicant have a felony? Automatically it is kicked out.
2. If the person is on probation or parole, he will typically call the probation officer and 100% of the time they do not want the applicant tending bar.
3. Alcohol related; serving in the bar. If they are procuring for underage people.

Alderperson Feddick pointed out that in section 9-40 (4) it says that because the license is a privilege, the issuance of which is a right granted solely by the council, the council reserves the right to consider the severity and facts and circumstances of the offense when making the determination to grant, deny or not renew a license.

JLC09-017 Motion by Krueger, second by Wagner to deny the Beverage Operator License application of Christopher Lockhart based on his criminal record. All Ayes

Motion carried

JLC09-018 Motion by Feddick, second by Krueger to grant a Temporary Class "B"/"Class B" Retailer's License to the Foundation of Saint Joseph's Hospital for April 30, 2009. All Ayes

Motion carried

JLC09-019 Motion by Feddick, second by Krueger to grant a Transient Merchant License to Farmhouse Bakery and Cheese Shop; Jay Sommer, owner. All Ayes
Motion carried

Concerns of Tavern Owners

Alderson Wagner summarized the concerns of the tavern owners. One of the concerns is the compliance checks. The bartenders seem to be getting off scot-free. They also had some concerns regarding the compliance checks in general.

Attorney Wolfgram said that they had to decide how to prosecute these cases. He recommended to the police department that they issue citations on these cases to the taverns as opposed to the individual bartenders. Primarily because often times what he is dealing with is an issue of proof. The case that started all this is the city had a sweep and they picked up an underage person. The underage person said that they were served in the bar. The bartender was cited. When they got into the trial the question came down to whether that was the right bartender that actually served the individual. Now he had an issue of proof in terms of being able to identify one of three bartenders who actually served the individual. While the individual that was served pointed out the bartender, he had other employees from the bar testify that given that time period that person was down in the basement or something like that. It ended up raising a bunch of different issues. He said that what they are really doing this for is basically to try and make a determination long-term whether there is a problem with serving minors on those locations. From an evidentiary point-of-view, you are better off citing under the code for procuring alcohol under the license. Regarding the undercover compliance checks, if they start to take steps to identify the bartender, they run a greater risk that the information will spill out they are doing undercover checks and then they will lose some of the opportunity for that to be undercover in nature.

Alderson Wagner asked if fining the bartender would make it less likely that they would serve a minor.

Attorney Wolfgram responded that the problem with the bartender is that the bartender doesn't have any association with those points. It is not going to be about the fine.

Chief Stroik said that the bartender can be held accountable if they are a felon, or if they have two violations within two license years, which amount to 50 points. That is how we can hold the bartenders accountable. The police department is keeping track of the violations of the bartenders and once they hit 50 points and they come in for a license renewal the JLC committee can deny them. Keep in mind that they do not need a license to tend bar as long as there is a licensed bartender on the premise. They can not work alone but they can work with someone that has a license.

Alderson Feddick said that one of the problems with that is that the police are not citing the bartenders; they are only citing the tavern owners who are holding the liquor license. She feels that this is unfair. As an employer you can only control your employees so much. You can't stand over them. You can give them the rules and regulations. Your only recourse against them is to fire them. They can't get their license back if they lose it for demerit points. She doesn't necessarily want to get rid of the system but something needs to be done. It is inappropriate to fine a bar owner and take away their livelihood when they personally do not deliberately serve to a minor. There is one side of willfully doing it and there is another thing as to an employee did it.

Chief Stroik has a report of liquor license holders and servers that currently have demerit points assessed to them. He will supply the committee with that report.

Alderson Wagner recommended to the committee that they table this indefinitely and if somebody comes up with an idea on how to deal with this sometime in the future, they can call it from the table. He can see both sides of the issue and something needs to be done with it but he is not sure if they have reached consensus of this at this point.

Alderson Krueger said that one of the concerns of the bar owners was that during the compliance checks, an individual is dressed up to look older than they really are and they didn't think this was right. If anybody is underage and wants to go to a bar they will dress up to look 21 so he doesn't see that as a concern. As far as the owner not watching the individual and where they were supposed to get trained in order to get their license, it is still up to the bar owner to train the individuals as best they can to do the checks.

Alderson Wagner would like to know how big of a problem is underage drinking in the bars. He asked Chief Stroik to contact the lady from the Marshfield Youth Coalition and ask her to address this at a future meeting.

Alderson Feddick asked if this could be set for the first meeting in April.

JLC09-020 Motion by Feddick, second by Krueger to place this item on the agenda for the first meeting in April. All Ayes

Motion carried

Agenda Preparation

JLC09-021 Motion by Feddick, second by Krueger to table this item until the next meeting. All Ayes

Motion carried

Future agenda items:

1. Agenda Preparation
2. Tavern Owners Concerns (1st meeting in April)

Motion by Feddick, second by Krueger to adjourn at 5:42 p.m. All Ayes

Motion carried

Deb M. Hall
City Clerk