



City of Waukesha

City Hall,
201 Delafield Street
Waukesha, WI 53188

Meeting Minutes

Ordinance & License Committee

Monday, May 8, 2017

6:00 PM

Council Chambers, City Hall
Use lower level glass door.

1. Call to Order

Ald. Jankowski arrived at 6:10 pm

Present 4 - Perry, Manion, Jankowski, and Rodriguez

Absent 1 - Johnson

2. Approval of Minutes

[ID#17-0690](#) Minutes - April 24, 2017

A motion was made by Manion, seconded by Rodriguez, to approve the Minutes for April 24, 2017.

Aye: 3 - Perry, Manion and Rodriguez

Absent: 2 - Johnson and Jankowski

3. Licenses

[ID#17-0722](#) INVITED Bartender Applications - May 8, 2017

Leanne Miller appeared before the Committee at its request; she appeared with her agent, Michael Hahn, from Kwik Trip. Miller has an OWI from November 2016. This case is still pending.

A motion was made by Perry, seconded by Rodriguez, to approve the bartender application for Leanne Miller. The motion carried by the following vote:

Aye: 3 - Perry, Manion and Rodriguez

Absent: 2 - Johnson and Jankowski

Michael Pellechia appeared before the Committee at its request; he appeared with Jim Taylor of Taylor's Peoples Park. Pellechia has an OWI from May 2016. He said he is aware of his poor decision that date. He is aware of the responsibility related to serving alcohol. The manager from Taylor's appeared also. Taylor's randomly gives their bartenders breathalyzer tests, as they do not allow them to drink while working. Mr. Taylor believes Pellechia is a responsible person.

A motion was made by Perry, seconded by Manion, to approve the bartender license for Michael Pellechia. The motion carried by the following vote:

Aye: 4 - Perry, Manion, Jankowski and Rodriguez

Absent: 1 - Johnson

Nicholas Zimmermann appeared before the Committee at its request, along with Jim Taylor of Taylor's Peoples Park. Zimmermann has an OWI from May 2015. He said he made a poor choice that day. He is very aware of the consequences of drinking and driving. Taylors does not allow bartenders to drink while working.

A motion was made by Perry, seconded by Manion, to approve the bartender license for Nicholas Zimmermann. The motion carried by the following vote:

Aye: 4 - Perry, Manion, Jankowski and Rodriguez

Absent: 1 - Johnson

Kyle Johnson appeared before the Committee at its request; he appeared with his agent from Chancery. Johnson has an OWI from December 2015. He said he made a bad decision that day.

A motion was made by Perry, seconded by Jankowski, to approve the bartender application for Kyle Johnson. The motion carried by the following vote:

Aye: 3 - Perry, Manion and Jankowski

Absent: 1 - Johnson

Recused: 1 - Rodriguez

[ID#17-0723](#) Bartender Applications - May 8, 2017

A motion was made by Manion, seconded by Jankowski, to approve the remaining bartender applications, with the exception of Lisa Perdue. The motion carried by the following vote:

Aye: 4 - Perry, Manion, Jankowski and Rodriguez

Absent: 1 - Johnson

A motion was made by Perry, seconded by Manion, to approve the bartender application for Lisa Perdue. The motion carried by the following vote:

Aye: 3 - Perry, Manion and Jankowski

Absent: 1 - Johnson

Recused: 1 - Rodriguez

[ID#17-0724](#) INVITED Other Applications - May 8, 2017

Robert Boehnen appeared before the Committee for an extension of premise for Wednesday car shows. Boehnen has provided a new map indicating where he will rope off the area. He will have at least two security personnel (one at each entrance) plus himself to monitor the area. They expect approx. 100 cars for each event. Jankowski said this is in his district and he has not heard any complaints from last year.

A motion was made by Rodriguez, seconded by Jankowski, to approve the extension of premise request for Fox Run Lanes. The motion carried by the following vote:

Aye: 4 - Perry, Manion, Jankowski and Rodriguez

Absent: 1 - Johnson

Steve Dunlap appeared for Salty Toad; he is an assistant manager. This is an extension of premise application for Friday Night Live dates. This will be their 4th year; no changes to layout from previous years. Dunlap said he is not aware of any issues in the past 3 years; they have had the support of the police department.

A motion was made by Perry, seconded by Manion, to approve the extension of premise application for Salty Toad. The motion carried by the following vote:

Aye: 4 - Perry, Manion, Jankowski and Rodriguez

Absent: 1 - Johnson

Sendik's Food Market, appearances by Greg Devorkin and Jim Clemens (agent). Devorkin said he is here to have the floor plan approved for a new Waukesha store. They do take alcohol sales seriously; they haven't had any issues in their other stores. Their plan would include displaying empty bottles in retail area; customers would pick up a ticket for the bottle they would like to purchase and give it to the cashier while checking out; a Sendik's employee would then retrieve that product from the locked storage area at front of store. He said having the alcohol in the front of the store would increase security. Purchases before or after hours cannot be rung up with their registers; they have camera surveillance 24/7.

Ald. Boyle supports this application. He views Sendik's as a single business and is compliant with sec. 9.09(4). He believes their plan satisfies the security concerns of the ordinance.

Atty Running said the ordinance as it has been interpretation in the past would require the transaction to take place in a separate room. Running said it is logical to look at Sendik's as one business and not separate departments.

Manion asked for the reasoning in operating in this manner rather than the way that other businesses operate in the city. Devorkin said this gives them the most efficient and secure floor plan.

Ald. Pieper supports this application. He said he has consistently supported the ordinance as previously interpreted, however, he has discussed this issue with staff and constituents and has had a change in his opinion.

Manion supports this application; he respects the security aspect of it.

The police department was called away for an emergency, however, they have voiced their support for this application.

Running said a vote in favor of this application would not be in opposition of the ordinance.

Joan Francouer thanked Sendik's and the committee for their efforts in bringing this store to Waukesha and their common sense. She said the intent of the ordinance was to control access.

A motion was made by Perry, seconded by Rodriguez, to approve the "Class A" license for Sendik's. The motion carried by the following vote:

Aye: 3 - Perry, Manion and Rodriguez

Nay: 1 - Jankowski

Absent: 1 - Johnson

[ID#17-0725](#) Other Applications - May 8, 2017

A motion was made by Manion, seconded by Jankowski, to approve the remaining Other Applications, with the exception of Chancery. The motion carried by the following vote:

Aye: 4 - Perry, Manion, Jankowski and Rodriguez

Absent: 1 - Johnson

A motion was made by Perry, seconded by Manion, to approve the "Class B" Beer & Liquor Combination license for Chancery Pub & Restaurant. The motion carried by the following vote:

Aye: 3 - Perry, Manion and Jankowski

Absent: 1 - Johnson

Recused: 1 - Rodriguez

4. Review & Act On

[ID#17-0753](#) Consider revisions to Mun. Code sec. 11.41, regarding residency restrictions on sex offenders, to comply with a recent decision from the federal court in the Eastern District of Wisconsin, and possibly make a recommendation to the Common Council

Atty Running presented the Committee with a memo this evening. Last year the distance used to establish a child safety zone in sec. 11.41 was increased from 750' to 1500'. Last month the federal court found Pleasant Prairie's sex offender residency ordinance unconstitutional. Their safety zone restriction left more than 90% of their community in a restricted area. Banishment from a municipality is an additional punishment and constitutionally prohibited. Pleasant Prairie's ordinance left people homeless; the City of Waukesha has had a similar outcome. Pleasant Prairie could not show that the original domicile provision made a difference in safety; this fails to meet equal protection requirements. Running said the court did not say what percentage of available housing was acceptable, however, near 90% is not acceptable to the court.

Running recommended backing off the 1500' distance; he pointed out Waukesha is more dense; our current ordinance blocks off 86% of the city; and blocks 94% of the residential areas of the city. A lot of the land not restricted by our ordinance is the airport and industrial parks.

Running said we need to gather some current statistics to rely on. The court is looking differently at the 10 year old cases that we relied upon in creating the current ordinance. Running said we don't have to act instantly on this; the damages portion of this case is pending. He also wants to make rational decisions based on fact. He said we may want to consider adding the grandfather provision that was removed last year.

Perry would like to see the state legislators address this statewide. Manion asked what the liability risk would be if we did not change our ordinance. Running said if we are made aware of something being unconstitutional, we can't ignore it; we have all taken an oath to uphold the constitution. Running said damages would include legal fees; he said there is a potential that Pleasant Prairie may be hit hard. He doesn't believe a lawsuit would be in our best interest.

Jankowski said he was the only one that voted against the increase in the residency restriction. Jankowski recommended reinstating our previous ordinance this evening. Rodriguez agrees with Jankowski.

Atty Running said the previous ordinance was not "cut and true" because it was never challenged; but that the 750' would be treated more favorably. He recommended if a change were made tonight, that the numbers just be changed back to 750' and add the grandfather clause back to the domicile requirement; he does not recommend changing the entire ordinance. Running also said he didn't mean to say that we don't need to act immediately; he said we have a larger pool of potential plaintiffs than others in this county. At the same time, he wants to make sure that what we do is backed by statistics. He suggests that his office be allowed to complete their research and they can bring it to the next Ordinance & License meeting for discussion.

Manion asked if 750' would meet the requirements. Manion asked for Running's recommendation whether to amend the ordinance tonight or wait for the analysis. Running said the trial to determine damages in the Pleasant Prairie matter is set to begin May 15th. Running prefers to not make a change tonight to the ordinance; he would like to gather statistics and bring this back in two weeks and bring to the Council in three weeks.

A 750' distance covers 59% of the city.

Ald. Jankowski made a motion to rescind the current version of sec. 11.41 and to immediately reinstate the previous version with the understanding that this will be reviewed by the Common Council. Motion was seconded by Rodriguez. No vote was taken on this motion.

[Amendment to Original Motion] Ald. Jankowski made a motion to amend sec. 11.41 to reduce the residency distance from 1500' to 750' and reinstate the grandfather clause. Motion was seconded by Rodriguez.

Aye: 2 - Jankowski and Rodriguez

Nay: 2 - Perry and Manion

Absent: 1 - Johnson

5. Communications

There were no communications.

6. Adjournment

Meeting adjourned at 7:53 pm.

Ald. Steve Johnson, Chairman

"A majority of the Council members may be in attendance"

NOTICE: Any person who has a qualifying disability under the Americans with Disabilities Act that requires that the meeting be accessible or that materials at the meeting be in an accessible format, please contact Fred Abadi 48 hours prior to the meeting at 524-3600, Fax 524-3898, or the Wisconsin Telecommunications Relay System so that arrangements may be made to accommodate the request.