

MINUTES  
Ordinance and License Committee  
Tuesday, June 1, 2004 – 6:00 p.m.  
Common Council Chambers

MEMBERS PRESENT: Ald. C. Waldenberger, Chair, Ald. J. Hoelkinger, Ald. S. Johnson, Ald. J. LaPorte and Ald. E. Vitale

OTHERS PRESENT: Ald. Radish, Ald. Panozzo, City Attorney Meitz, Robert C. Johnson, Transit Director, Patrick Hannon, Mark Hannon of Hannon's, Jamie Voelkel, Jeff Braley, Mike Giangreco, Stephen Hoehnen with Michael Hoehnen

Meeting was called to order at 6:00 p.m.

**1. ORDINANCES**

**2. LICENSES**

Class B Combination Intoxicating Liquor and Fermented Malt Beverage Licenses (per list), Class B Fermented Malt Beverage and Class C Wine License, (per list). Ald. LaPorte moved to approve the above licenses, seconded by Ald. Johnson, carried.

Extension of Premises, Back Street Pub, June 25, 2004 from 8:30 to 12 Midnight, for 25 year reunion. Ald. Johnson moved for approval and to change the ending time to 11:00 p.m., Ald. LaPorte seconded. Motion carried.

Class B Combination Intoxicating Liquor and Fermented Malt Beverage Licenses (per list), Ald. Vitale moved to approve the above licenses, seconded by Ald. LaPorte. Motion carried.

Miscellaneous Licenses (per list) Ald. Johnson moved for approval, seconded by Ald. LaPorte. Motion carried.

Bartender Licenses (per list) Based on the applicant's record which substantially relates to the activity of a bartender, Michael Giangreco's license was denied for now; all other listed applicants were approved upon motion of Ald. LaPorte, seconded by Ald. Johnson. Motion carried. (Ald. Vitale absented the room, temporarily)

**3. DISCUSSION AND RECOMMENDATION: PLEASE CONSIDER AMENDING CHAPTER 8, LICENSES & PERMITS DEALING WITH LARGE SCALE PUBLIC GATHERINGS. (M. Eastman, 2/26/04) (Hold until 5/18/04 for PRF review)**

Ald. Waldenberger said he received a call from Mr. Grall at Park/Rec/Forestry requesting that this matter continue to be held to make further modifications.

**ON HOLD**

**4. DISCUSSION AND RECOMMENDATION: PLEASE CONSIDER CREATING AN ORDINANCE BANNING SCAVENGING THROUGH JUNK LEFT AT THE CURBS FOR PICK UP. (Ald. Johnson, 5/4/04)**

Ald. Johnson addressed the Committee stating that this item came about because of the City's "Big Pick Ups" where people scavenged through junk at curbside. The ordinance now says you can put things out 24 hours in advance of your pick up date, providing people can scavenge through it without leaving a mess. If items are put out according to the ordinance, within 24 hours of the pick up, scavenging can be done within the 24-hour period. He explained he ran into a situation where someone had things out on the curb, including a skateboard ramp. They had to leave, pulled the ramp onto the curb, returned two hours later and the ramp was gone. He said he has heard of people leaving things out, but not intending the items to be put out with the junk, and the items are taken. This is the rationale behind this item.

He said this was on a very small street. Ald. Vitale said when putting something between a sidewalk and a curb, especially before a big pick up, you are asking for trouble. Enforcement is a problem. However, this wasn't an easy item to pick up.

Ald. Radish added that he has had trouble in the past with items in front of his house, even when putting the recycling bin out. He has had people taking cans for recycling. He feels this shouldn't be done.

Ald. Waldenberger thought there was an ordinance in place with regard to this situation. City Attorney Meitz responded that he didn't recall what the ordinance said as it was drafted some time ago. He said if one wanted to eliminate what Ald. Radish and Ald. Johnson was talking about, one needed to amend the ordinance to eliminate anything of this sort.

Ald. Hoelkinger said taking recyclables isn't an issue, because the City gets paid back by the County. It becomes very difficult when putting things out on the curb. What one thinks is junk, another person thinks is pretty good stuff. He felt one has to look at this from a point of enforcement. As an example, drinking is prohibited in the parks. Are the police going to be out watching the neighborhood for garbage pickers? We have to have the ability to enforce. If someone starts rummaging through a pile of junk and leaves a mess, it gives the police an opportunity to cite.

Ald. Johnson said the ordinance now says the junk must be left neatly. He said the issue here is if someone takes something like, in this instance, that is so large, this would make it against the law and the police can be called.

Ald. LaPorte added that if there was a mess, the owner was responsible for it regardless, so you are better off not letting anyone scavenge at all.

Ald. Waldenberger said this matter would be referred to the City Attorney's office to review the ordinance for possible amendment.

Discussion continued, with the aldermen reviewing the ordinance as written. Ald. Hoelkinger didn't think the police would be an issue. They can enforce, but just like the muffler issue and the Jake brake issue, they have to be there to enforce. Ald. Johnson agreed, but said in this particular instance, it could be reported to the police and if the ramp shows up on the other side of the City somewhere they can make a claim on it then. It's the only way to enforce it. As an example, he said if a bike was stolen and they had the serial number, it could be identified. In this particular case, the skateboard ramp wasn't thrown out. It was taken. He thought the party filed a report with the police.

Ald. Johnson said he wanted a ban on scavenging.

Ald. Vitale said it bothers him to have an ordinance created because of an isolated incident. Ald. Johnson responded that in the past this has happened quite a bit, especially when the City had the big pick up twice a year. Ald. Vitale added that he remembered when the ordinance was passed and he remembered allowing people to scavenge through junk provided they put everything back.

Ald. Johnson said that in this particular situation, one could make a claim and if the item turns up someplace, the claim is there. Ald. Johnson would like to find out how the police would be able to respond if a claim is made.

Ald. Hoelkinger felt this was for the courts to decide. He feels we should either ban it or not. Ald. Johnson agreed.

Ald. Waldenberger questioned if the Committee wanted the City Attorney's office to come back with a rewritten ordinance banning scavenging.

Ald. Vitale said he was not in favor of it. Ald. Johnson asked what the benefit was for people cruising the City picking through junk. Ald. Vitale thought the ordinance was written as it is for a specific reason. Scavenging was going on at the time and City officials wanted to legalize it.

Ald. Ripplinger said Ald. Vitale was correct. People were coming through scavenging. The requirement was that they put it back. It reduced the amount of items that the City had to pick up, transport and pay to have disposed. It was the ability to save the City money by allowing the scavengers to pick through junk.

Ald. Johnson asked if the City is charged by the volume picked up or the fact that they pick up everything. Ald. Ripplinger said it was by the ton. He wasn't sure how the contract was written now, but it does predate Onyx now picking it up on garbage collection day. It was a big pick up with City employees doing the work. That's when the ordinance was changed.

Ald. Waldenberger felt that after this discussion there would not be support for changing the ordinance, but if Ald. Johnson still wants to pursue it, it could be done. It sounded to him like this was one unfortunate incident.

A vote was then taken: **Ald. Hoelkinger moved to deny and leave the ordinance as written. Ald. Vitale seconded the motion. Motion carried, with one nay.**

**5. DISCUSSION AND RECOMMENDATION: PLEASE CONSIDER MODIFYING THE CURRENT ORDINANCE THAT CONTROLS PUBLIC DRINKING SO THAT IT IS MORE USER FRIENDLY TO THE BUSINESS OWNERS, PARTICIPANTS, AND SPECTATORS OF EVENTS IN THE CITY. (Ald. Radish, 5/18/04)**

Ald. Radish addressed the Committee and said this matter has to do with a lot of the events held downtown, in particular the bike race. He said this isn't like the Gaelicfest that's held in a confined area. The bike race covers anywhere from one-half to three-quarters of a mile on a bike. With a bar or restaurant owner in the area, the extension of premises is out to the end of the sidewalk or parking lot. He feels it is not conducive to doing business. In the race series he is involved in, this is the only community where the problem exists that you can't take a glass of wine or beer and walk around the race course to watch the race. No other city in the area has this. He also mentioned the art crawls downtown in the evening.

Ald. Waldenberger questioned if Ald. Radish was requesting that people be allowed to have open intoxicants up and down the street, wherever they want to without any limits? Ald. Radish said limits could be put in, but thought the Committee needed to be realistic. He said he and City Attorney Meitz had briefly talked and thought there was something that could be done. He felt this item needed to be held to have the City Attorney check into this.

City Attorney Meitz said the issues involved were: (1) what area are you defining? and (2) what are you allowing to be in your possession drinking? The City has ordinances that already restrict. There are special events for Cutler and Frame Parks. You cannot buy wine or beer somewhere else and come into the park. As far as extending the premise, you can't really extend that into the public right-of-way. He believes it is against state law to allow intoxicating liquor to somebody who will leave with a glass and go into the street. That's different than buying it in the original container. The statute is also silent relating to fermented malt beverages. There is also a temporary license, or picnic license, which could be issued to a bona fide club. He felt this has to be looked at as there are a number of issues to be addressed. The easiest one is defining the area in which the beverages are sold. He asked Ald. Radish come in and look at the options and prohibitions and from that, decide on a formula that is workable.

Ald. Radish said what they have done in the past with the race is to band everyone. You have to show an ID and be banded. Every year the color of the band is changed or it is a design that is not generic for that reason.

Ald. Johnson asked if other communities allow this? Ald. Radish responded that there is a Downer Ave. Race in Milwaukee, and there is a split between a residential and business district. He said it is like a giant neighborhood party. The neighbors have their picnics, walk down the street with their martini glasses or glass of wine or beer, and if they get to the start or finish line and their glass is empty, they go to a local business owner and buy a beverage. He added that Manitowoc has the same thing.

Ald. Vitale asked if the entire area where the bike race is run, in essence, would be an extension of premises? He asked if someone is carrying a beer and walked across the street, got hit by a car, would the City then be liable because they are carrying an open intoxicant? He expressed concern about that, even if it is just for the bicycle race. He doesn't think it sends the right message.

Ald. Hoelkinger asked if there was a specific area, specific time, specific volume involved. He feels we are opening up a Pandora's box. Outside of the mentioned questions is the issue of public safety. He asked if we would close off a street, or if patrons would be walking publicly down the street. It comes down to the fact that if they drink enough and walk into a street and get hit by vehicular traffic, that bar owner is in trouble. Now you have all these people milling around, who takes responsibility?

Ald. Radish said this was a family event. If you talk to the police (and he will get the statistics) there have been no problems in the five or six years they have had the block party on West Main Street. They have even hired their own security besides the police. He said the bar and restaurant owners understand the ramifications.

Ald. LaPorte said there are block parties where permits are given and you can drink on the street. He added the City is also careful about drunks in the parks.

Ald. Waldenberger said this item would be placed on hold and someone could investigate what the other communities do, how their ordinances are set up, etc.

City Attorney Meitz added that the City has a number of ordinances already in existence. There are certain issues regarding who is going to serve alcohol and where, because there are different types of licenses, different prohibitions with the state liquor laws. He feels this would be the way to do approach it and at least come back and show what is permitted, either under state law or what is required by the interplay of the ordinances. It would be very simple if you had a situation where there is an exception to the open intoxicants in public law like you have for Frame Park for a certain event. It is a confined area and put on by certain vendors. This presents different issues. He feels it is the best thing to do is present to the Committee what our possibilities are, what would have to be changed and what is strictly prohibited. Then you can better analyze it and come up with a better answer on how to deal with this issue.

**This matter placed on hold pending a report from the Ald. Radish.**

**6. DISCUSSION AND RECOMMENDATION: PLEASE CONSIDER CREATING AN ORDINANCE FOR NEWS RACK REGULATIONS. (J. Wallner, Community Development, 11/07/03) (Request to Waive 3<sup>rd</sup> Reading by Ald. Panozzo, 4/29/04)**

Ald. Waldenberger said this item was taken off the Consent Agenda by Ald. Panozzo. This comes with a request to waive the 3<sup>rd</sup> reading. He asked if there was an item of concern.

City Attorney Meitz said it was his understanding that the item was put on hold because the Journal/Sentinel wanted to have some input and he thought their representative was in attendance.

The representative of the Journal/Sentinel, Jim Pepelnjak, the attorney for the Journal/Sentinel, then addressed the Committee. He said the concerns the Journal/Sentinel has are the application fees (\$25 per box). He said parts of the ordinance were vague but he thought they could work with that. He said the application fee was the main problem and he assumed it only applied to newsracks on public property and not every newsrack on private property.

City Attorney Meitz said it applies to public property because right-of-ways presented another issue. Some of the same issues may overlap as far as impeding traffic or creating visibility problems, but as far as newsracks in general, the law allows municipalities to regulate, with reasonable regulations that are in the public right-of-way.

Ald. Vitale asked if Mr. Pepelnjak's only question was with the fee and some of the language of the ordinance. Mr. Pepelnjak said he was not concerned with the \$10 annual fee, but the \$25 application fee per box.

Ald. Vitale asked why the City was imposing a fee? City Attorney Meitz said it was the same as with any other ordinance, with processing the amount of time spent by various offices and staff. In this particular case it is planning and preparation of the ordinance, secretary and staff time, etc. It is basically an administrative fee.

Mr. Pepelnjak thought there should be a limit. He thought there were approximately 30 boxes with about 16 in the City that the Journal owns. They all will come in and apply at one time. He thought the application fee was somewhat troublesome.

Ald. Vitale asked if \$700-\$800 was prohibitive to the Journal Company. Mr. Pepelnjak responded yes. He thought at some point they needed to draw a line somewhere. Ald. Vitale asked if there were any other communities they paid a fee to. Mr. Pepelnjak said he didn't know. He said they had no problem with the \$10 annual fee, but he didn't think they ever paid a \$25 application fee.

Ald. Hoelkinger asked if they came in once a year and said, for example, we have 57 boxes and it is all on one application, that's one thing, the fee itself and possibly the limit. But, if you come back in two months and add 12 more boxes, you would end up paying the fee. Mr. Pepelnjak thought the Journal Company could live with that.

City Attorney Meitz said each box is different. He wasn't making an argument, but just stating what the process is for what would be involved. There is preparation, postage, copying, someone in Planning would need to review each application, and the fee is based on their actual time spent on it.

Ald. Hoelkinger feels that the Clerk/Treasurer's office needs to be brought in because what they see is a reasonable fee for processing. He doesn't know the

amount of work involved. If they have a tremendous amount of work the \$25 makes sense.

Mr. Pepelnjak said that in looking at the ordinance, this is something the Journal Company will help with. He said they self-police themselves. It is in their best interest not to have bad or damaged boxes. Safety is the only issue that would deny the Journal a box.

Ald. Waldenberger said this would be reviewed by the City's Clerk's office to see what they have to say about the fee. Personally, he said he didn't think the Journal/Sentinel would be hurt by an application fee. It's a one-time application fee with a \$10 renewal. Mr. Pepelnjak responded that it wasn't the money, but the principle.

City Attorney Meitz thought it would be fair to come back in two weeks for the Clerk's office and Community Development office to justify their costs and it would give a little more time for this.

Ald. Panozzo felt that everything said was correct, but \$25 one time per box doesn't seem out of the ordinary for Journal/Sentinel Communications to have to pay. He added that people would have to follow up when the boxes are in place to check on them and make sure everything is in order and the ordinance is being obeyed. He said we are thinking about public safety. He added that in his district there are boxes that are obstructing view. He feels that the \$25 is reasonable.

Attorney Pepelnjak said as far as public safety, the Journal/Sentinel will cooperate with the City to make sure they are placed correctly. He said the fee was more in principle than fact. \$25 for the Journal/Sentinel isn't that much, but that wasn't the question at hand. The question is, is that a legal fee. The Journal/Sentinel doesn't think it is justified.

**Ald. Waldenberger placed this item on hold for further review by Community Development and the City Clerk's office.**

**7. DISCUSSION AND RECOMMENDATION: PLEASE CONSIDER AMENDING THE NEWLY ADOPTED SECTION 3.08(2) OF THE WAUKESHA MUNICIPAL CODE BY REMOVING LANGUAGE THAT GAVE THE CEMETERY COMMISSION AUTHORITY TO APPOINT STAFF. (Ald. Vitale, 5/18/04)**

Ald. Vitale said the reason for this referral is this was suggested by the Mayor and confirmed by our City Attorney that the Manager of the Cemetery Commission will appoint staff and not be approved by the Common Council. The reason for that is if they dismiss somebody working at the Cemetery, and that person was appointed by the Council, it would come before the Council. City Attorney Meitz interjected that staff, other than the Director, goes through the process with the involvement of HR. That was the simplest way to change the ordinance.

**Ald. Hoelkinger moved for approval to the changes to Municipal Code Sec. 3.08(2). Seconded by Ald. Vitale. Motion carried for approval.**

- 8. DISCUSSION AND RECOMMENDATION: PLEASE CONSIDER DEVELOPING THE PROPER ORDINANCES FOR THE NEW DOWNTOWN TRANSIT TERMINAL, TO INCLUDE, BUT NOT LIMITED TO, THE FOLLOWING: NO SKATEBOARDING; NO ROLLERBLADING; NO BICYCLE RIDING; NO LOITERING; NO SMOKING; NO SOLICITATION; NO PANHANDLING, NO PETS; NO NEWSPAPER BOXES; NO WEAPONS, NO LITTERING; NO EXPLOSIVES, GAS CANS OR CAR BATTERIES; NO SWIMMING OR BATHING IN THE FOUNTAIN; NO SLEEPING OR CAMPING IN THE BUILDING, BATHROOMS, OR ON THE PLATFORM; NO TRAFFIC IN BUS LANES EXCEPT BUSES. (Bob Johnson, 5/18/04)**

Bob Johnson, Transit Director, said this was a referral from the Transit Commission Board and not himself. There is a new downtown transit terminal and parking ramp which will probably be ready by the end of July. There is a need for some regulations as to what is covered. This was also referred to the City Attorney. He said he and Mr. Meitz met last week. Basically the Transit Commission wants to make sure they are covered when they do open and that proper conduct is carried on.

Ald. Waldenberger asked if this was typical of all other City facilities. Mr. Johnson said this also involved a waiting area for buses that is indoors with seats, bathrooms, etc.

Attorney Meitz said this was going to involve the placement of signs as we have restrictions relative to skateboarding and rollerblading (which is the same as inline skating), bicycle riding, plaza areas, etc. Some of this is just the placement of signage which would be sufficient. No smoking is a state law with regard to public buildings. The same is true with solicitations or panhandling. Put a sign up and it is prohibited. You don't have to draft an ordinance. We have ordinances on littering and loitering. Swimming would be similar to what we have at the plaza area. Sleeping and camping – sleeping is going to be tough. He said the City has a habitation ordinance that would cover people camping out and sleeping in the corridor with sleeping bag. That would be prohibited. As far as traffic and bus lanes, that can be referred to the Buildings & Grounds Committee for appropriate signs. There are things that would cover the platform areas, and Mr. Johnson had a concern about that, but that's not a problem. Most of these things can be covered with the proper signage at the facility.

There are a couple of things Mr. Meitz said he has issues with and will be considered. He said he will get information from the feds on that, but most of these things can be in place, if you have a waiver of a second and third reading, by the first meeting in July. He felt ninety percent of this can be taken care of at the next meeting. The ones that require ordinances are very minor.

Ald. Waldenberger asked when waiting for a bus become loitering? Attorney Meitz said there is a specific law the City has incorporated which has been upheld by the state Supreme Court. Just standing waiting for a bus does not

meet the criteria. Attorney Meitz said he did not anticipate any problems with it. That is a valid, legal ordinance that has been upheld in most communities that have the law which was challenged awhile back.

Attorney Meitz added that to answer some questions regarding signage, he thought there were ten percent that required an ordinance that still has to be looked at. He has completed most of them and they will be at the next meeting.

**Ald. Hoelkinger moved that this matter be passed to Buildings & Grounds for any signage needed. Any other items that require an ordinance, will be sent to the City Attorney's office. Seconded by Ald. Vitale. Motion carried.**

**9. DISCUSSION AND RECOMMENDATION: PLEASE CONSIDER LA CASA ESPERANZA REQUEST FOR VARIANCE OF PERMITTED HOURS TO SELL FERMENTED MALT BEVERAGES AND WINE. CHAPTER 9 (Cr. #39-02) (Park, Rec & Forestry Board, 5/17/04)**

Ald. Waldenberger stated that he thought this item was an amendment to something the Committee already acted on. There was some confusion. This item already came before the committee as La Casa wanted the event to run until 12 Midnight, selling wine and malt beverages, but the Committee approved this item until 11:00 p.m. Ald. Hoelkinger added that La Casa wanted to extend the event until 12 Midnight and serve malt beverages until 11 p.m.

A representative from La Casa said they wanted to have the park open until midnight on Friday and Saturday and open until 11:00 p.m. on Sunday. Serving the beverages would be one hour prior on each night, until 11:00 p.m. on Friday and Saturday and until 10:00 p.m. on Sunday. This was also done last year.

Ald. Hoelkinger reiterated that the drinking would stop at 11:00 p.m. and leave an hour to clear the park.

**Ald. Johnson moved to approve this item. Seconded by Ald. LaPorte. Motion carried.**

**Moved, seconded and carried to adjourn.**

Meeting adjourned: 7:20 p.m.