

**Item 24-0420 Class "B" Beer and Reserve "Class B" Liquor License application for Delaires LLC d/b/a Delaire's, David Boulanger, Agent, located at 823 W. College Ave**  
**Safety and Licensing Committee**

Wed, Jan 22, 2025 5:30PM

**Alderson Chris Croatt (District 14) 23:02**

Oh, okay, he's gonna be delayed? Okay, okay. Let's see here. We can, we can take up your item, or we can continue on our agenda with the other items. So why don't we—why don't we take up your item? He may be stuck, and maybe even turn around and go back. He's coming from Milwaukee, right?

**David Boulanger (Owner - Delaire's) 23:19**

Yeah.

**Alderson Chris Croatt (District 14) 23:20**

Okay. All right, 24-0420 is the Class B beer and reserve Class B liquor license application for Delaires LLC, doing business as Delaire's, David Boulanger—okay—agent located at 823 West College Avenue. So, this was on our agenda at the last meeting. We had a pretty robust discussion about it. We sent it to the Council, and a member of the council, who is also a member of this committee, referred it back to the committee to discuss possible options for approving. Alder Siebers, go ahead.

**Alderson William Siebers (District 1) 23:54**

Thank you, chair. The reason I asked for it to be referred back was I didn't—we talked about conditions and stipulations, and I—unless I saw something in black and white that was on the license saying that he would close at 10 o'clock, he would not have gaming machines, I felt very uncomfortable, and I was hoping that sending it back, we could get something in writing, black and white, on the license, so that if there is a violation from the conditions, he would automatically lose his license. Well, he wouldn't automatically, but we'd have a hearing.

**Alderson Chris Croatt (District 14) 24:38**

Okay. We do need a new motion, since it's back in front of our committee. We did discuss those—I believe it was the hours and it was the gambling machines that were discussed—but it left this committee with no conditions. So.

**Alderson William Siebers (District 1) 24:56**

I'll move—do we—do you want me to do the conditions first?

**Alderson Chris Croatt (District 14) 25:01**

If you want the conditions, you need to make a motion to approve the license with conditions X or attorney—hang on one second, attorney.

**Zak Buruin (Assistant City Attorney) 25:09**

I think it might be worthwhile to add, there was some discussion of conditions last time we were here, as Alder Siebers noted. The two components that were primarily looked at were requirements or prohibitions, additional prohibitions, regarding gambling and then additional prohibitions regarding the hours. In the intervening time, it's come to my attention, statutorily, we're not able to further restrict open hours. So, we're not able to impose any conditions in that particular regard.

Wed, Jan 22, 2025

**Zak Buruin (Assistant City Attorney) 25:41**

The other thing that I will note, and this has kind of come up over the past couple of days here, and this may be interest of—of interest to the committee and how it wants to go forward here. There was reference to surveillance video, and a conversation captured on surveillance video between one of the neighboring businesses and somebody working at the establishment. Until recently, the person that was in that video with the—I believe somebody was here for public participation at Council last week—was not identified. Over the past couple of days, working with our inspections department and their contacts in the community that person has been identified. So, we know who that person is now. I've reached out to Lieutenant Goodin about following up with that individual and getting more background information from them. I think that may be of interest to the committee. Lieutenant Goodin is not on duty, hasn't been early part of this week, but he's back in tomorrow, and we'll be following up on that. So that information would be of interest to the committee in terms of how it wants to proceed on this matter. That is information that could be had. I just don't have it available right now.

**Alderman Chris Croatt (District 14) 26:50**

Okay. Thank you very much for sharing that, and I do want to give you an opportunity to speak. So why don't we do that now? We may or may not take action on this tonight based on that comment. So, if you want to, you need to come to the podium and please give your name and address for the record.

**David Boulanger (Owner - Delaire's) 27:08**

David Boulanger [**He pronounced it with an English pronunciation not the French one he used on 01/08/2025**], [XXXXX], West Bend, Wisconsin. You're Emil—I'll let Emil speak here. So, the recent is they have video footage from a neighboring business that they need to follow up on with the individual who has been identified, but they need to get that information to proceed and possibly hold. Was it hold the till next meeting?

**Alderman Chris Croatt (District 14) 27:36**

Well, we don't have that information, so that would probably be what we would want to do is hold it so we can get that and review that information before we take further action.

**David Boulanger (Owner - Delaire's) 27:45**

Sure. So, they'll hold it, and then review that information for next time. Is there anything you need to say, Emil?

**Emil Ovbiagele (Attorney - Delaire's) 27:53**

Yeah, members of the committee, my apologies for not being able to be there in person. The highway is just—it's just riddled with accidents, and unfortunately, I wasn't able to make it. Again, we have no—we have no real issues with that. But I also, just for sake of expediency, given the fact that this matter has sort of been kicked around for some time now, you know, at the last hearing, all of these concerns—it's important to note a couple of things. All these concerns were addressed. This isn't some widespread concern. This is a concern—you know, I'm not trying to disparage anyone here, but this is—this is a nice—this is this is one individual in one business next door. A lot of—I listened to the hearing. A lot of comments that I just believe were sort of inappropriate were made, and it seems like a one person, a one person, firing squad on some level.

**Emil Ovbiagele (Attorney - Delaire's) 28:49**

The idea—you know, when I, when I listen to it, it's sort of the arguments I think sometimes folks have about, you know, you know, guns, for example, right? The whole idea of, well, you know, we have laws on the books that says you shouldn't kill people with guns, or you shouldn't kill people at all. And for some reason there is this false or the sense of, hey, you know, we need to do more.

**Emil Ovbiagele (Attorney - Delaire's) 29:13**

So, we have zero—we have zero qualms reaffirming that we wish we would follow the law. So that's the that's the exception that wants to be—rather the stipulation that needs to be created again, which is a little odd, so be it. All right? Because that's—because we don't have any intentions of not following what's already you know what the laws are. If it's prescribed by your jurisdiction, it's prescribed by your jurisdiction. I don't know what else can be done or what else needs to be done, but I absolutely understand, and I respect to the extent that the committee want you know, wants to, wants to, you know, wants to review videos or contact individuals, that that's fine. But I think we also need to focus on what the end goal is here because I, when I when this was sent back, it was sent back to add a stipulation that there will be no gambling machines. That's the law, and if that's the stipulation, we're willing to agree to it. But again, I'll defer to the committee's wishes, but I just, I just wanted to present that humble insight, and I hope it is considered, and thank you very much for your time and your consideration.

**Alderson Chris Croatt (District 14) 30:27**

Okay, thank you. Stay safe out there. Just to clarify so the hours of operation are off the table. We can't we can't put a restriction on that or a stipulation on that. So, what what—really, I think the only thing to address is this gambling machines concern, and I was comfortable with the way we sent it to Council based on at least twice stated by the applicant and the attorney that this establishment would not be operating gambling machines.

**David Boulanger (Owner - Delaire's) 30:58**

Correct.

**Alderson Chris Croatt (District 14) 31:00**

So, committee, we need something on the table here.

**Alderson William Siebers (District 1) 31:05**

I'm not going to make a motion.

**Alderson Chris Croatt (District 14) 31:06**

Okay.

**Alderson William Siebers (District 1) 31:07**

But I do want to speak.

**Alderson Chris Croatt (District 14) 31:10**

Okay, hang on. I want to get a motion. I want to get this on the table. Motion to approve? I'll second for discussion. I want to keep this moving. So, I got a couple of people. I got Alder Hartzheim. Go ahead Alder Siebers. And then Alder Schultz.

**Alderson William Siebers (District 1) 31:23**

We talk about gambling machines, but I'm referencing gaming machines—gaming machines—because the owner says that he wants to do board games. And I want to—my idea would be that we would restrict gaming machines from the establishment. So, it's not just gambling machines; it's gaming machines.

**Alderson Chris Croatt (District 14) 31:54**

Alder Hartzheim.

Wed, Jan 22, 2025

**Alderson Sheri Hartzheim (District 13) 31:56**

Thank you, Chair. In—many moons ago, I believe this committee was sort of debriefed about how there are demerit points for being found with gaming machines on a liquor license establish—an establishment with a liquor license. So, could I have some clarification from the attorney what is legal as far as gaming machines on a liquor license establishment?

**Zak Buruin (Assistant City Attorney) 32:21**

I'm sorry, gaming machines, or gambling machines?

**Alderson Sheri Hartzheim (District 13) 32:24**

I mean, I guess, either—correct?—whether they're illegally paying out on a gaming machine, or whether they have actual gambling machines. What is it—what is—what is the law in that regard?

**Zak Buruin (Assistant City Attorney) 32:37**

Gambling machines are not legal. They are a public nuisance by City of Appleton code. They are not lawful by state statutes. Some of the state statutes have prohibitions on local level enforcement, which is where some of the confusion comes in.

**Zak Buruin (Assistant City Attorney) 32:53**

The differentiation between a gaming machine and a gambling machine, that is not something I know readily. I would need to, I would need to look into that to be more comfortable providing an answer on that distinction. But as far as gambling machines specifically go, they are not lawful. They are a public nuisance in the City of Appleton, and nothing about the weirdness regarding state statutes and the things about those that we're not allowed to enforce—nothing about that prohibits us from enforcing our own local code, which would include the demerit points in the public nuisance aspects of it.

**Alderson Sheri Hartzheim (District 13) 33:30**

Thank you. What makes me really uncomfortable about this discussion is that I'm not sure that this City Council, if, if we follow through with what is on the table at this point, is fairly and equally treating all folks who come in for a liquor license, and that makes me extremely uncomfortable. As a government entity, how are we to, like, preemptively assume that something bad is going to occur on this particular site? I don't—I don't feel like that is a way that a government should operate. We shouldn't just assume that something bad is going to happen so we should restrict this particular license.

**Alderson Sheri Hartzheim (District 13) 34:10**

And we're, we're kind of walking a thin line in that regard. If we, if we do that here, then we have to look at every single applicant and wonder whether something bad is going to happen. This is why we have the demerit system in place to begin with, that there are things that you can look at as the establishment moves along, not preemptively assume that there is going to be some problem on that particular establishment. So, considering that, and considering that gaming machines, with whatever terminology you use, are not illegal in the state or in the city, I don't—I feel, again, very uncomfortable about enforcing a one-off type of preemptive restriction on this particular license. Thank you.

**Alderson Sheri Hartzheim (District 13) 34:10**

Thank you, Alder Hartzheim, and that's pretty much the reason why I was comfortable sending it to the Council the way we sent it last time, so that we handled these on an equal type basis, without—not, you know, not the hours restriction or stipulation, or the gambling/gaming restriction. So, Alder Schultz, I think you were next.

**Alderson Alex Schultz (District 9) 35:18**

I think my fellow alder answer—or asked a number of questions that I was going to ask, but I guess just in a—maybe just as another point of clarification, if this business opens, operates, and is found to have gambling machines, what is—how many times is a citation issued for that? What's the demerit point for finding them with gambling machines on premises are paying out? Just curious to know, as it stands now and as we are considering approval, assuming things go south or the operation is in violation, what does that look like? How many times does he hit that demerit before it becomes a situation we have the power to revoke the license?

**Zak Buruin (Assistant City Attorney) 36:02**

So, to answer directly it would be—it would—enforcement would take the form of citations under the nuisance code. There are provisions in the in chapter nine of our code related to gambling related offenses or gambling items, paraphernalia being on the presence. I forget offhand what the number of demerit points is for that, but it would effectively take the same form as any other type of violation. I believe it's towards the higher end, but I am not sure. But once those add up to those thresholds, it would take the form of any other suspension/revocation, the come in, explain yourself, summons that we attempted to deal with today for a couple of other businesses. So that's the form it would take.

**Zak Buruin (Assistant City Attorney) 36:51**

There is one thing that I want to address here in terms of the equal treatment here, because I think there's a legal component to that that I want to be very careful about. The committee and the Council have a large amount of discretion to consider relevant information. And I want to be clear—I want to clarify here that this whole discussion was precipitated by information that was brought to the committee and the Council's attention. So, I don't think there's any issue with addressing it, with mulling it over, and with considering it. Ultimately, what's done with that information is down to the body's discretion. So, I'm not trying to say anything with that, but I'm, I am from a legal standpoint not concerned about this being a treatments and an equal treatment situation, because it is based on information specific to this case.

**Alderson Chris Croatt (District 14) 37:41**

Okay. Alder Fenton.

**Alderson Denise Fenton (District 6) 37:43**

Thank you, Chair. Um, and may I direct to Attorney Buruin? So, and I think that I when I emailed you last week or whatever, I think that I didn't make myself very clear on my question. I'm looking at the Wisconsin Department of Revenue fact sheet, which says—and it's quoting section 945.01 sub three. It says, a gambling machine is a contrivance for which a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill, and whether or not the prize is automatically paid by the machine. So, I think that that's what clarifies a gaming machine, as opposed to a bar that has a pinball machine.

**Alderson Denise Fenton (District 6) 38:30**

But the—what confuses me, and concerns me somewhat, is this same Department of Revenue fact sheet, it talks about the possession is a class one felony or a Class A misdemeanor. Except for businesses there's an exception (and I think that was what I was trying to ask about) there's an exception for a premise with a Class B or alcohol beverage retail license and they have five or fewer machines. And I think that Mr. Boulanger's attorney talked about this, in which case none of the, you know, the big penalties apply. You just can go in and fine them \$500 per machine. And I know we have our own codes where we would the public nuisance would cause demerits to be issued. And I think one of my questions is—and you know, who knows what the state legislature thinks when they make these exceptions to laws, but it is concerning to me that if somebody has a Class B license, I mean,

Wed, Jan 22, 2025

basically, they could just, according to the state, they could just write a check and go on, and we'd have to do demerit points, issue a summons, hope somebody appears, go through a whole lot of trouble, and I personally would rather get—would do due diligence and not grant the license, as opposed to trying to do this. So, I would be interested in hearing other information.

**Aldersperson Denise Fenton (District 6) 40:27**

And I'll be honest, the example of the sister business in West Bend—I mean, a quick Google search and a their Facebook page—it looked to me like there were machines in the windows. So, my—I'm not sure that we're not being misled here, and that's my bad feeling about this, and the fact that the business plan turned on a dime—all of this makes me really uncomfortable. And I can understand that legally, we're not allowed to put our restrictions, but I don't feel—and I think that the fact that I wasn't physically present at the last meeting, and I needed some time to digest all this—I just don't feel comfortable granting this license, because I just don't believe that this is not going to be the case. And I'm open to holding it. I'm open to hearing more evidence. But as of, like, tonight, I can't vote to grant this license.

**Aldersperson Chris Croatt (District 14) 41:36**

Okay. Thank you. Alder Firkus.

**Aldersperson Brad Firkus (District 3) 41:41**

Thank you. I think with what this committee has available to it to take into consideration, I don't think the Grafton situation is something that can be easily ignored, and I think that a contractor who was working on behalf of the applicant just happened to mention a business model that more aligned to that. I don't think that's something that somebody comes up with randomly, and I think for this committee and our Council to approve this without any conditions whatsoever, is really to suspend belief if not just straight up common sense.

**Aldersperson Brad Firkus (District 3) 42:20**

I think there's enough here to just straight up say no—say "We don't trust you." Especially in this case, I know the argument of making special cases, but not every applicant comes in here with the kind of background and paper trail that this applicant has brought with him. If we—if the committee wants to add the stipulation around the gaming machines, I think that's acceptable. I think the stipulation on the liquor license would be make it easier to enforce if there were issues later. But I just—I can't fathom this committee or this Council suspending these links, these observations, this data, this evidence, and just saying, like, "Well, I'm sure things will just work out." Because, yeah, we don't have to be the ones that deal with it, but there are employees of the city that will have to deal with the consequences if we're wrong and we offer this license. Thank you.

**Aldersperson Chris Croatt (District 14) 43:20**

Thank you. Alder Hartzheim.

**Aldersperson Sheri Hartzheim (District 13) 43:22**

Thank you, Chair. Just for the record, gambling and gaming paraphernalia on the premises is 150 demerit points. And what are the maximum amount of demerit points before it is lost? 200? So immediately should something be found, that would be a potential suspension, and then at 200 would be an actual revocation.

**Aldersperson Sheri Hartzheim (District 13) 43:50**

I see and understand the paper trail that seems to come along with this applicant, but I still feel as though we are making a preemptive assumption, and I am, again, extremely uncomfortable with that. If we already know what this organization could potentially come to, then we have APD have regular checks of this particular

Wed, Jan 22, 2025

location. We grant the license like we would any other licensee, and we have APD keep a little bit closer eye on this just because of those particular potential background issues. Thank you.

**Alderson Chris Croatt (District 14) 44:26**

Okay. Thank you. Other comments? Alder Doran.

**Alderson Chad Doran (District 15) 44:29**

Thank you. Can I direct a question to Chief Olson? Chief, do you find value in allowing Lieutenant Goodin to potentially try to track down this person for more information for the committee?

**Alderson Chris Croatt (District 14) 44:45**

District three? Okay, go ahead.

**Police Chief Polly Olson 44:47**

I think that any time you allow for time for additional investigation when it's potentially needed or warranted, I think is valuable. I think it's up to the committee, obviously, to decide whether or not you know that they want to consider that additional information, but we would be happy to have any additional investigation commence if needed.

**Alderson Chad Doran (District 15) 45:10**

Thank you. And I guess then, knowing that, appreciate that, my suggestion to my colleagues would be that we're not making any traction or headway on this at this point. I would, I would recommend we hold this again, and I would ask my colleagues who want to put forth some stipulations here to sit down this time with the attorney's office and figure out what sort of stipulations we could put that they'd be comfortable with, and then bring those to the next committee meeting, so that we have a clear sense of direction of where we're going. At that point, we could potentially have more information from the Police Department to shed a little bit more light on this also, and we can make a decision and move this forward.

**Alderson Chris Croatt (District 14) 45:52**

Okay, thank you. I'm not totally opposed myself to holding it; however, this has been our agenda since October, and I'm just trying to keep things moving along for all parties involved. Alder Fenton, we still have on the table a motion and a second to approve.

**Alderson Denise Fenton (District 6) 46:10**

I would like some guidance on this, but I would like to make a motion to approve the liquor license with the stipulation that there would be no gaming machines on the premise, as defined by state statute and city code, on the premises.

**Alderson Chris Croatt (District 14) 46:33**

Okay, we already have a motion on the table. So is that a—do we have

**Alderson Denise Fenton (District 6) 46:38**

That's—I'm amending the motion—

**Alderson Chris Croatt (District 14) 46:39**

Amending? Amendment? Okay.

Wed, Jan 22, 2025

**Alderson Denise Fenton (District 6) 46:40**

—on the table.

**Alderson Chris Croatt (District 14) 46:41**

Okay, is there a second based on Alder Fenton statement?

**Alderson William Siebers (District 1) 46:44**

Second.

**Alderson Chris Croatt (District 14) 46:45**

Okay. All right, we have a motion and a second. So now we have an amended—could you repeat, summarize or repeat your amended

**Alderson Denise Fenton (District 6) 46:53**

So—and I would request that Attorney Buruin Attorney Buruin helped me with the legal language—but grant the license with the stipulation that no gaming machines as identified by state statute or city code be on the premises.

**Alderson Chris Croatt (District 14) 47:17**

Okay. And that's the second?

**Alderson William Siebers (District 1) 47:19**

Yes.

**Alderson Chris Croatt (District 14) 47:19**

Okay, all right. On—Clerk Lynch, would you like to comment?

**Clerk Kami Lynch 47:24**

Yeah. So, no gaming machine?

**Alderson Denise Fenton (District 6) 47:26**

Gaming machines.

**Clerk Kami Lynch 47:27**

No gaming machines whatsoever?

**Alderson Denise Fenton (District 6) 47:29**

Right.

**Clerk Kami Lynch 47:29**

Not just gambling.

**Alderson Denise Fenton (District 6) 47:30**

But I—but as identified by—in other words, I do not want to prohibit somebody having a pinball machine or a, you know, whatever.



**Clerk Kami Lynch** 47:41

That would be a gaming machine that we would license through an amusement device license. So "gaming machines" means nothing at all. They can't get any amusement device—

**Alderson Denise Fenton (District 6)** 47:50

Okay.

**Clerk Kami Lynch** 47:51

—licensing, but gambling machine would restrict just—

**Alderson Denise Fenton (District 6)** 47:55

Thank you.

**Clerk Kami Lynch** 47:55

—gambling.

**Alderson Chris Croatt (District 14)** 47:57

Alder Siebers?

**Alderson William Siebers (District 1)** 47:58

The gentleman said that he was going to do board games.

**David Boulanger (Owner - Delaire's)** 48:04

Board games, yes. Like table board games.

**Alderson William Siebers (District 1)** 48:05

Right. Not gonna do any kind of gaming machines.

**David Boulanger (Owner - Delaire's)** 48:08

No, just board games.

**Alderson William Siebers (District 1)** 48:09

Just board games.

**David Boulanger (Owner - Delaire's)** 48:09

Yeah.

**Alderson Chris Croatt (District 14)** 48:11

Do you want to restate your part of your plan or your plan here, just to for clarification, or?

**David Boulanger (Owner - Delaire's)** 48:17

Just, it's just board games, like the stuff that you're all familiar with, just stuff that sits on the table, little pieces, yep.

**Alderson Chris Croatt (District 14)** 48:23

Okay, all right. Alder Schultz.

**Alderson Alex Schultz (District 9) 48:28**

Was the motion for that approval and agree to the amended motion, but we do need something on the back side of that saying, if they are found, then the licenses need to stipulate what happens if gaming machines are found on premise. You basically said they can't be found, but I'm not sure what—

**Alderson Chris Croatt (District 14) 48:50**

I don't know—Attorney Buruin, do we need that language in the motion if there's already something of a penalty system in place?

**Alderson Denise Fenton (District 6) 48:50**

Do we?

**Zak Buruin (Assistant City Attorney) 48:58**

Well, if we're going to do gaming machines, that would be something different than gambling machines.

**Alderson Chris Croatt (District 14) 49:01**

Okay.

**Zak Buruin (Assistant City Attorney) 49:02**

There's nothing specific to gaming machines. I don't know if there's a violation that would apply, and that's not something I'd be comfortable coming up with on the fly.

**Alderson Chris Croatt (District 14) 49:09**

Okay, I'm going to ask this committee to consider withdrawing that motion and hold this, and I keep thinking of this additional information that I really feel that we should consider. If no one's opposed, I would, I would like to see us take in all the information that we have. I know it's been—and I say this with reluctance, because it's been on our agenda since October 9, but I really, I really would like to see the additional—or hear the additional information. So, we still have the amended motion on the on the floor. So, what is the committee's prerogative here?

**Alderson Denise Fenton (District 6) 49:49**

I think we should vote on what we have.

**Alderson Chris Croatt (District 14) 49:52**

Okay, so you're—

**Alderson Denise Fenton (District 6) 49:52**

—and if and if that fails, then we can—

**Alderson Chris Croatt (District 14) 49:55**

Okay on the amended motion. Any comments, questions, final comments? Okay, seeing none all those in favor of approving based on the amended motion, signify by saying aye.

**Aldersons Siebers and Fenton 50:06**

Aye.

**Alderson Chris Croatt (District 14) 50:07**

All opposed?

**Alderspersons Schultz and Doran 50:08**

Nay.

**Aldersperson Chris Croatt (District 14) 50:09**

Okay, that fails 2-3. 2-3, I believe. Okay, so now we have nothing on the floor, or we're back to the original which is approval. Okay. So, discussion?

**Aldersperson Alex Schultz (District 9) 50:28**

I made that motion. I'd like to withdraw it.

**Aldersperson Chris Croatt (District 14) 50:31**

Okay, I made the second for discussion. I would withdraw it. So, then we have no motion on the table.

**Aldersperson Alex Schultz (District 9) 50:36**

Motion to hold.

**Aldersperson Chris Croatt (District 14) 50:37**

Second. So, we're gonna hold—we're gonna, unless this vote doesn't go through, we're going to hold this 'til our next meeting, which is a couple weeks from now, just so you know, which was February, what?

**Aldersperson Denise Fenton (District 6) 50:50**

12

**Aldersperson Chris Croatt (District 14) 50:51**

12? Okay. Any comments on holding to get the additional information? APD, you're clear on the direction the committee is going? Okay. All right. All those in favor of holding signify by saying, aye. All opposed? All right, five zero, it's held.

**David Boulanger (Owner - Delaire's) 51:08**

All right.

**Aldersperson Chris Croatt (District 14) 51:09**

Thanks for coming. Tell your attorney thanks for his efforts to get here.