



## OFFICIAL NOTICE AND AGENDA

of a meeting of a City Board, Commission, Department, Committee, Agency, Corporation, Quasi-Municipal Corporation, or sub-unit thereof.

**Special Meeting:** PUBLIC HEALTH & SAFETY COMMITTEE  
**Date/Time:** Monday, January 26, 2015 @ 5:15 PM  
**Location:** City Hall (407 Grant Street) - Council Chambers  
**Members:** Lisa Rasmussen {c}, Karen Kellbach, Tom Neal, Gary Gisselman, Romey Wagner

### AGENDA ITEMS FOR CONSIDERATION (All items listed may be acted upon)

**REVOCAATION HEARING** Pursuant to Wis. Stats. 125.12(2): Consider Class B Beer & Liquor License Revocation for Paradox of Wausau LLC 932 S 3rd Avenue, Scott Kurzynski Registered Agent.

**CLOSED SESSION** Pursuant to Section 19.85(1)(a),(b) of the Wisconsin Statutes:  
(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body; and  
(b) Considering licensing of any person licensed by a board or commission or the investigation of charges against such person, and the taking of formal action on any such matter; provided that the person licensed is given actual notice of the of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken,  
for the purpose of deliberating on the revocation of the Class B Beer & Liquor License for Paradox of Wausau LLC

**RECONVENE** into Open Session for the purpose of making a determination on the revocation of the Class B Beer & Liquor License for Paradox of Wausau LLC.

Lisa Rasmussen, Chairperson

**IMPORTANT: THREE (3) MEMBERS NEEDED FOR A QUORUM:** If you are unable to attend the meeting, please notify Toni by calling (715)261-6620 or via email [toni.rayala@ci.wausau.wi.us](mailto:toni.rayala@ci.wausau.wi.us)

This Notice was posted at City Hall and faxed to the Daily Herald newsroom on 1/22/15 @ 4:00 p.m.

Other Distribution: Media, Council (Nagle, Nutting, Oberbeck, Mielke, Abitz, Winters), \*Tipple, \*Alfonso, \*Rayala, \*Hardel, \*Kujawa

CERTIFICATE OF SERVICE

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF MARATHON )

I hereby certify that on the 19 day of January, 2015, at 3:10 o'clock in the P.m., in the City of Wausau, County of Marathon, I duly served the hereto annexed summons and complaint on the within named, PARADOX OF WAUSAU, LLC by then and there (delivering to and leaving with him/her) (delivering to and leaving with Scott Kurzynski, a member of his/her household of suitable age and discretion), a true copy thereof; and informing him/her of the contents, and I endorsed my name, official title and date of service on said copy.

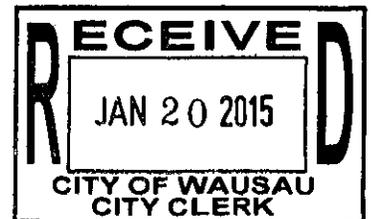
HOLLIE JONES

By Hollie Jones

PLEASE RETURN TO:

Office of City Attorney  
407 Grant Street  
Wausau, WI 54403-4783

#1 1-19-15 @ 9:50 AM - Residence  
calls - #1 1-19-15 Home 8:22 AM  
#2 1-19-15 Bar 9:54 AM  
#3 1-19-15 Home 9:54 AM  
#4 1-19-15 Bar 11:48 AM  
#5 1-19-15 Home 11:49 AM  
#6 1-19-15 Home 2:13 pm  
#2 1-19-15 @ 2:34 pm Residence  
calls #7 1-19-15 Home 2:42 pm  
#8 1-19-15 Home 2:43 pm



BEFORE THE CITY OF WAUSAU  
STATE OF WISCONSIN    PUBLIC HEALTH & SAFETY COMMITTEE    MARATHON COUNTY

BRENT OLSON,

Complainant,

vs.

SUMMONS

PARADOX OF WAUSAU LLC  
932 S. 3<sup>rd</sup> Avenue  
Wausau WI 54401,

Respondent.

---

TO:    PARADOX OF WAUSAU LLC  
       932 S. 3<sup>rd</sup> Avenue  
       Wausau WI 54401

THIS IS TO ADVISE you that a hearing will be held before the Public Health & Safety Committee of the City of Wausau on **January 26, 2015, at 5:15 p.m. in the Council Chambers of Wausau City Hall** located at 407 Grant Street, Wausau, WI 54403. At said hearing the Public Health & Safety Committee will consider whether or not your Class "B" Beer & Liquor License issued for the period of July 1, 2014, through June 30, 2015, for the operation of your business, located at 932 S. 3<sup>rd</sup> Avenue, Wausau, Wisconsin, should be revoked.

The hearing has been called because a Complaint has been filed by Brent Olson pursuant to Section 125.12 of the Wisconsin Statutes, alleging certain violations of Chapter 125 of the Wisconsin Statutes and municipal regulations adopted pursuant to Section 125.10 of the Wisconsin Statutes, in reference to the operation of the licensed premises mentioned above. A copy of the Complaint is attached to this Summons.

**YOU ARE HEREBY SUMMONED to appear at a hearing to be held before the Public Health & Safety Committee on the 26th day of January, 2015, at 5:15 p.m. in the Council Chambers of Wausau City Hall, located at 407 Grant Street, Wausau, WI 54403, and show cause why your license should not be revoked.**

YOU ARE FURTHER NOTIFIED that you may have an attorney represent you at your own expense. Both you and the Complainant have the right to testify and are then subject to cross examination. Both you and the Complainant have the right to subpoena witnesses to testify on your behalf who are subject to cross examination. If you desire to subpoena

witnesses subpoenas will be issued by the Mayor of the City of Wausau and can be secured from the office of the City Attorney. Evidence at the hearing will consist of sworn testimony and any relevant exhibits presented to the Public Health & Safety Committee. A written transcript of the hearing will be provided at your expense.

YOU ARE FURTHER NOTIFIED that failure to appear shall result in the allegations of the Complaint being taken as true and if the Public Health & Safety Committee finds them to be sufficient your license shall be revoked pursuant Section 125.12(2)(b)1. of the Wisconsin Statutes. If you appear and the Public Health & Safety Committee finds the Complaint to be true, your license may be revoked. If the Public Health & Safety Committee finds the complaint untrue, the proceedings will be dismissed without costs. Judicial review of the findings of the Public Health & Safety Committee is set forth in Section 125.12(2)(d) of the Wisconsin Statutes.

Dated at Wausau, Wisconsin, this 19th day of January, 2015.



A handwritten signature in cursive script, appearing to read "Toni Rayala", is written over a horizontal line.

Toni Rayala, City Clerk

BEFORE THE CITY OF WAUSAU  
STATE OF WISCONSIN PUBLIC HEALTH & SAFETY COMMITTEE MARATHON COUNTY

BRENT OLSON,

Complainant,

vs.

COMPLAINT

PARADOX OF WAUSAU LLC  
932 S. 3<sup>rd</sup> Avenue  
Wausau WI 54401,

Respondent.

---

NOW COMES Brent Olson, a police officer with the City of Wausau Police Department, and alleges as follows that:

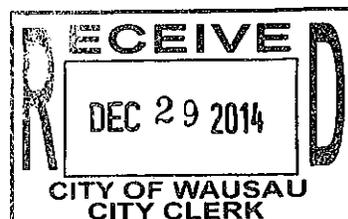
1. The Complainant, Brent Olson, is an adult resident of the City of Wausau with a business address of 515 Grand Avenue, Wausau, Wisconsin, and at all times material to this action, he was and is a police officer employed by the City of Wausau Police Department.

2. The Complainant, Brent Olson, as a police officer with the City of Wausau Police Department, is familiar with the efforts of City police officers and local law enforcement agencies and their investigations into violations by taverns and other places where alcohol is sold within the City of Wausau, of alcohol beverage and other laws, and by employees and agents of such taverns and other places.

3. The Respondent herein, Paradox of Wausau LLC ("Respondent"), is an alcohol beverage licensee according to documents filed with the City Clerk of the City of Wausau. To the best information and belief of Complainant, the Respondent is a Wisconsin limited liability company whose agent is Scott Kurzynski ("Kurzynski") and who is also president and sole member of the limited liability company. The licensed premises operated by the Respondent is known as the Paradox Bar ("Paradox Bar") and is located at 932 S. 3<sup>rd</sup> Avenue, Wausau, Wisconsin.

4. On May 19, 2014, the Public Health & Safety Committee of the City of Wausau recommended the granting of a Class "B" Beer & Liquor License to Respondent for the period July 1, 2014, through June 30, 2015.

5. On June 10, 2014, the Common Council of the City of Wausau granted a Class "B" Beer & Liquor License ("License") to Respondent for the period of July 1, 2014, through June 30, 2015.



6. The Respondent has been operating under a Class "B" Beer & Liquor License continuously since March 1, 2006.

7. The Public Health & Safety Committee should revoke the Respondent's License on the grounds that the Respondent has violated chapter 125 of the Wisconsin Statutes as adopted by Section 5.64.010 of the Wausau Municipal Code, and municipal regulations adopted pursuant to Section 125.10 of the Wisconsin Statutes in that the Respondent keeps or maintains a disorderly or riotous, indecent or improper house under Wis. Stat. Section 125.12(2)(ag)2., such knowledge being based upon Complainant's review of Marathon County Sheriff's Department Narrative and Supplemental Narrative Reports/Case Number 14-6442, City of Wausau Police Department ACISS Search Warrant with Charges Report No. 14-5578/3 and other Marathon County Sheriff's Department and City of Wausau Police Department records made at or near the time of the incidents reported therein in the course of regularly conducted law enforcement activity, based upon the personal knowledge of those law enforcement officers as follows:

- a. Kurzynski and the Paradox Bar have recently been the subject of a law enforcement investigation concerning the trafficking of high grade marijuana ("HGM") conducted by the Marathon County Sheriff's Department Special Investigation Unit which includes law enforcement personnel assigned from the City of Wausau Police Department and conducted in cooperation with the Milwaukee Wisconsin High Intensity Drug Trafficking Area Drug/Gang Taskforce ("HIDTA"). During the course of the investigation, Special Agent Ken Peters, Wisconsin Department of Justice - Department of Criminal Investigations ("Peters") frequented the Paradox Bar on multiple occasions.
- b. On Thursday, September 25, 2014, Peters was at the Paradox Bar operating in an undercover capacity. Peters and Kurzynski had a conversation that led Kurzynski to believe Peters was a source of supply for HGM. Kurzynski expressed interest in a prospective purchase of 100 pounds of HGM to be delivered to him by Peters.
- c. On Friday, September 26, 2014, while working in an undercover capacity, Peters met with Kurzynski at the El Mezcal Restaurant located in Rib Mountain, Wisconsin. During this meeting Kurzynski indicated he was interested in purchasing from Peters 100 pounds of HGM for \$1,300.00 per pound in two weeks and would then purchase 100 pound quantities of HGM per month for the next two years.
- d. Kurzynski indicated that the delivery of the 100 pounds of HGM could occur at the Paradox Bar and that he had HGM deliveries there in the past.

- e. Kurzynski agreed with Peters' statement that the HGM could be brought to the Paradox Bar by putting it inside a box so it would look like a refrigerator. Kurzynski stated to Peters the HGM could also be put in speakers or vending machines. Kurzynski told Peters in connection with the delivery "people don't give a shit out there."
- f. Kurzynski stated to Peters that the HGM could be removed from the Paradox Bar by individuals taking out a couple cases of beer or liquor boxes.
- g. Kurzynski agreed to purchase 100 pounds of HGM in exchange for his delivery of cash in the amount of \$65,000.00 and vehicle titles with a value of at least \$65,000.00 as collateral for the HGM to Peters. The transaction between Kurzynski and Peters was agreed to occur on Friday, October 10, 2014.
- h. On Monday, October 6, 2014, Kurzynski and Peters had telephone contact, changing the location of the HGM transaction.
- i. On Friday, October 10, 2014, Kurzynski met with Peters at the agreed location, viewed the 100 pounds of HGM and provided Peters with \$60,000 in cash and several vehicle titles.
- j. On Friday, October 10, 2014, Kurzynski was subsequently arrested for conspiring to deliver a controlled substance, namely, Tetrahydrocannabinols (THC), in an amount of 10,000 grams or more, contrary to section 961.41(1)(h)5, 939.50(3)(e), and 939.31 Wis. Stats., a Class E Felony.
- k. On Friday, October 10, 2014, at approximately 5:53 p.m., members of the Wausau Police Department executed a search warrant at the Paradox Bar. During execution of the search warrant, among other things, the following evidence was obtained from the Paradox Bar:
  - (i) 40.81 grams of THC in a clear plastic bag found inside a plastic tote in the basement hallway (Item #16/Marathon County Sheriff's Department Custody Document/Case No. 14-6442);
  - (ii) 3.55 grams of THC located on a Styrofoam plate on a shelf in the northeast corner of the kitchen, under which was a notebook with a recipe that had the name "Scott" written at the top (Item #17/Marathon County Sheriff's Department Custody Document/Case No. 14-6442);
  - (iii) Foodsaver Brand Vacuum Sealer from kitchen containing flakes of a green leafy substance consistent with THC, tested by

City of Wausau Police Officer Ben Graham using a NARK II Duquenois Levine Reagent Test Kit, which produced a delayed but positive test result for THC . (Item #18/Marathon county Sheriff's Department Custody Document/Case No. 14-6442).

- l. On Friday, October 10, 2014, an alleged co-conspirator, Timothy E. Kleinschmidt ("Kleinschmidt") was arrested in connection with the same matter.
- m. In an interview with Lt. Gary Schneck and Detective Michael Lechleitner of the Marathon County Sheriff's Department, on October 11, 2014, Kleinschmidt stated he had been in a drug business relationship with Kurzynski for at least the past year and had purchased prior to the incident resulting in his arrest, on one occasion 10 pounds of marijuana from Kurzynski , and usually one or two pounds not more than once a month.
- n. Kleinschmidt stated that within a few weeks prior to the interview of October 11, 2014, he had seen marijuana in the basement of the Paradox Bar. When asked how much marijuana he had seen in the basement of the Paradox Bar, Kleinschmidt stated, "10, 20, 30, 40 pounds."
- o. Kleinschmidt also stated in the interview he had also seen marijuana in the candy machine in the shed, downstairs, in boxes and in the back room of the Paradox Bar.

9. That under applicable State law, the license holder or corporate agent is held strictly liable for the actions of its employees, agent, and for the activities occurring on the licensed premises.

THEREFORE, your Complainant respectfully requests the Common Council of the City of Wausau, Marathon County, Wisconsin, to revoke said license of the Respondent, Paradox of Wausau LLC, for said premises.

 #053  
Brent Olson, Complainant

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF MARATHON)

BRENT OLSON , being first duly sworn on oath, states that he has read the foregoing Complaint against Paradox of Wausau LLC, and that the statements are true to his own knowledge, except for those which are stated upon information and belief, and as to such matters he believes them to be true.

 #053  
\_\_\_\_\_  
Brent Olson

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of December, 2014.

  
\_\_\_\_\_

Notary Public, Wisconsin,  
My commission: 7/10/16

**Mandell**  
&  
**Ginsberg** Attorneys at Law  
David L. Mandell  
Court Commissioner  
Bill Ginsberg

RECEIVED  
JAN 23 2015  
CITY ATTORNEY  
WAUSAU, WI

306 E. Wilson Street  
PO Box 2095  
Madison, WI 53701-2095  
Phone: 608-256-7765  
Fax: 608-256-7723

Website: [mandellginsberglaw.com](http://mandellginsberglaw.com)  
email: [mandellginsberglaw@lds.net](mailto:mandellginsberglaw@lds.net)

January 22, 2015

*Via Fax + Reg Mail*

Wausau City Clerk  
407 Grant Street  
Wausau, WI 54403

Re: Brent Olson v. Paradox of Wausau LLC

Dear Clerk:

Please find enclosed for filing the respondent's Motion to Dismiss.

Thank you for your attention.

Sincerely,

*David L. Mandell*  
David L. Mandell

DLM:dmk  
Enclosure

cc: Asst. City Attorney Tara Alfonso

*Via Fax + Reg Mail*

*cc: Attorney's office*

RECEIVED  
JAN 23 2015  
CITY OF WAUSAU  
CITY CLERK

BEFORE THE CITY OF WAUSAU  
 STATE OF WISCONSIN PUBLIC HEALTH & SAFETY COMMITTEE MARATHON COUNTY

---

BRENT OLSON,

Complainant,

v.

PARADOX OF WAUSAU, LLC,

Respondent.

---

MOTION TO DISMISS

---

TO: Wausau City Clerk  
 407 Grant Street  
 Wausau, WI 54403

NOW COMES the respondent, Paradox of Wausau LLC, by its attorney, David L. Mandell, and moves for an Order dismissing the complaint against it on the grounds that §125.12(2)(ag)2, Stats., is unconstitutionally vague as applied in this case in the attempt to revoke the bar's liquor license. The respondent further moves to dismiss the complaint on the grounds that the complaint filed herein does not support revocation of the liquor license under the "disorderly house" statute, §125.12(2)(ag)2, Stats. since there are insufficient facts in the complaint alleging that there was disorderly conduct occurring on a regular basis; that there was riotous conduct occurring; that there was indecent conduct occurring; or that it was an improper house which term is so vague as to be unconstitutional for failure to put the respondent on proper notice as to the definition of improper house.

In the United States District Court for the Western District of Wisconsin, *Hegwood, Nasty Habit, Inc.* brought an action against the City of Eau Claire on similar grounds. The Court in that case did not dismiss the complaint on due process grounds because it found from the facts alleged in the complaint that there were a number of instances where fights, obstructing officers, and highly intoxicated patrons were involved therefore supporting the unvague portion of the statute that this constituted disorderly conduct under the State definition of disorderly conduct.

In the *Hegwood* case, the court found that the State statute definition of disorderly house does have a specific meaning, "which is a house of prostitution or gambling." "The degree of vagueness that the constitution tolerates - as well as the relative importance of fair notice and fair enforcement - depends in part on the nature of the enactment." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). The Court ruled that the respondents (plaintiff in the appeal) are constrained to a challenge of the statute "as applies to the particular facts at issue." The Court further stated this is because "a plaintiff who engaged in some conduct that is clearly prescribed cannot complain of the vagueness of the law as applied to the conduct of others." Basically, the Court was saying that you cannot complain that a disorderly house statute has unclear boundaries if it is clear that its provisions would apply to the bar in question. In that case, there were many instances including fights, while others included obstructing officers and a highly intoxicated patron. The illegal activities at the bar, therefore, fit any natural reading of a "disorderly house" making the bar challenging the statute in that case clearly within the boundaries of a disorderly house statute.

That is different than the case we have alleged in this complaint. The complaint alleges that on one prior instance an individual claims to have observed an indefinite amount of

marijuana in the basement of the Paradox bar and that when a search warrant was executed at the bar, some 44 grams of THC (not including the weight of the packaging) were found in two different places within the bar building. This is a personal use quantity. It is not clear as to whose marijuana that was nor how in any way it affected the operation of the bar. What is clearly absent from the complaint was that there was an ongoing history of controlled substance violations occurring at the bar. There are no allegations that patrons were using or selling controlled substances at the bar. There are no allegations that any activities affected the neighborhood. There is absolutely no allegation that sales were taking place on the premises. At best, there is a evidence that the owner of the bar engaged in conversations with an undercover detective to purchase marijuana at a location not associated with the bar at a price well below the going rate of marijuana. The offer to sell 100 pounds of high grade marijuana for \$1,300 per pound is preposterous. The going rate from growers in Colorado who talked openly on television programs on CNBC and CNN is that the wholesale price for high grade marijuana from the grower is between \$2,500 and \$3,000 per pound. In other words, the special agent entrapped the owner of the bar to agree to purchase marijuana at a price that was 35 cents on the dollar for what the actual price is. It was impossible for the state to perform and provide additional hundred pound quantities per month for the next two years since they could not obtain the marijuana themselves directly from growers in the states where marijuana growing is legal for a price less than \$2,500 - \$3,000 per pound. Therefore, all the talk about possibly bringing marijuana in and out of the bar was regarding possible future activity that had not possibility of occurring.

It is interesting to note that there is no allegation that the marijuana was ever brought to the bar and in fact, it was set up so that the marijuana would not be brought to the bar. Mr.

Kurzynski was merely answering questions of Agent Peters as to how marijuana could be taken out of there if it ever was in there. This was completely hypothetical. Mr. Kurzynski never indicated, as alleged, that the delivery of marijuana could occur at the bar and, in fact, it was set up in two locations other than the bar because he did not want to compromise the bar. It was actually Agent Peters who asked whether or not the delivery could take place at the bar and it was agreed that it would not. There definitely is some discussion that IF it took place at the bar it could be brought in and out with boxes. In reality, since the state could never produce additional marijuana other than the sample they used to set up the sting operation at a location separate from the bar, that the bar was not involved in any way with the sale of marijuana or the delivery of marijuana.

What this really is is a personal arrangement made by Mr. Kurzynski with a state agent who was the supplier of marijuana to entrap Mr. Kurzynski into agreeing to obtain large quantities of marijuana on credit (Mr. Kurzynski had no money to consummate the deal when the transaction took place other than money provided by Mr. Kleinschmidt who, in order to try and get a deal, claimed that he might have seen some pot in the basement but could not even specifically say how much he saw). He is not a credible witness and his hearsay statement to obtain a deal for himself should not be relied upon.

Mr. Kurzynski couldn't even provide the \$5,000 out of the original \$65,000 down payment and had to give the agent titles to some snowmobiles and a junk car. Again, none of this was associated with the Paradox, did not occur on the premises of the Paradox, nor was it intended to occur or involve the Paradox business in any way.

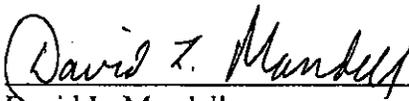
The facts stated in the complaint, on their face, do not support the allegation that this is a

violation of §125.12(2)(ag)2, Stats., and the definition of an improper house is vague and does not put Mr. Kurzinsky on notice pursuant to his constitutional rights. There are no allegations that he engaged in disorderly, riotous, or indecent behavior proscribed by the Statute and City Ordinances.

For these reasons, the complaint should be dismissed.

Dated this 22 day of January, 2015.

MANDELL & GINSBERG  
Attorneys at Law

  
\_\_\_\_\_  
David L. Mandell  
State Bar Number 1017324  
Attorney for Paradox of Wausau, LLC

306 E. Wilson Street  
P.O. Box 2095  
Madison, WI 53701-2095  
(608) 256-7765  
(608) 256-7723 fax