



MEMORANDUM

Date: February 14, 2013

To: Administration Committee
From: Pamela A. Captain, City Attorney

RE: LIQUOR LICENSE DEMERIT POINTS AND SUSPENSION HEARING – MR. FROG’S NIGHTCLUB, LLC.

In accordance with SEC. 7-2-19 of the Code of Ordinances, a hearing is set before you for the following reasons:

- (1) To administratively assess demerit points to Mr. Frog’s Nightclub, LLC., Luis A. Morales, agent, for the alcohol beverage license convictions of Luis A. Morales; and
- (2) To impose a penalty for acquiring 170 demerit points within an 18-month period.

For your convenience a copy of the applicable ordinance provisions is attached.

The chart below identifies the convictions and applicable points to be assessed:

DATE OF INCIDENT	CITATION #	VIOLATION	OUTCOME	POINTS
8/23/2012	77023539	OPEN AFTER HOURS	Guilty by stipulation	40
10/21/2012	77022458	TRAFFIC TO UNDERAGE	Guilty by stipulation	80
11/18/2012	7700134	UNDERAGE ON PREMISES	Guilty by stipulation	50
				170

Mr. Morales, represented by attorney Brian Hough, has worked with me in resolving the municipal court matters referenced above. Mr. Morales pled guilty on each of the three citations referred to above by written stipulation and without the need to go to trial. As part of our effort to resolve these matters we also reached a written agreement as it relates to continuing operations at the business establishment. A copy of that AGREEMENT is attached for your review.

Finally, we agreed to make a joint recommendation to the Administration Committee when it considers the appropriate penalty to impose as a result of acquiring 170 demerit points. According to city code, should there be an accumulation of more than 150 but

less than 200 points in an 18-month period, "the Administration Committee shall suspend such license for not less than 10 days nor more than 90 days."

JOINT RECOMMENDATION: Our joint recommendation to the Administration Committee is to impose a 30 day suspension. We believe a 30 day suspension to be fair.

SEC. 7-2-18 REVOCATION AND SUSPENSION OF LICENSES; NON-RENEWAL.

- (a) **PROCEDURE.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 5, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by Chapter 125, Wis. Stats.
- (b) **ABANDONMENT OF PREMISES.** Any licensee holding a license to sell alcohol beverages who abandons such business shall forfeit any right or preference he may have to the holding of or renewal of such license. Abandonment shall be sufficient grounds for revocation of any alcohol beverage license. The losing of the licensed premises for at least six (6) months shall be prima facie evidence of the abandonment, unless extended by the Common Council. All persons issued a license to sell alcohol beverages in the City for which a quota exists limiting the number of such licenses that may be issued by the City shall cause such business described in such license to be operated on the premises described in such license for at least one hundred fifty (150) days during the terms of such license, unless such license is issued for a term of less than one hundred eighty (180) days, in which event this Subsection shall not apply.
- (c) **OTHER PROVISIONS.** Any license issued pursuant to this Chapter shall be subject to such further regulations and restrictions as may be imposed by the Common Council by amendment to this section or by the enactment of new ordinances. If any licenses shall fail or neglect to meet the requirements imposed by such new restrictions and regulations his license may be revoked in accordance with this Section. In case of revocation of any license or any violation of any provision of this Chapter in accordance with this Section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.

SEC. 7-2-19 POINT SYSTEM FOR ALCOHOL BEVERAGE LICENSE VIOLATIONS AND REVOCATIONS AND SUSPENSIONS.

- (a) **PURPOSE.** The purpose of this section is to administratively interpret those portions of the Menasha Municipal Code relating to alcohol beverage violations and to establish a system for suspension and revocation.
- (b) **POINT SCHEDULE.** The scheme of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license holders who have repeatedly violated State Statutes and the Menasha City Ordinance, for the purpose of recommending suspension or revocation of their alcohol beverage license.

Type of Violation: Traffic to underage person
Demerit Points: 80

Type of Violation: Traffic to intoxicated person
Demerit Points: 50

Type of Violation: Underage person on premises
Demerit Points: 50

Type of Violation: Failure to be licensed
Demerit Points: 100

Type of Violation:	False statement on application
Demerit Points:	50
Type of Violation:	Failure to post liquor license
Demerit Points:	40
Type of Violation:	Transfer of license without permission, including operating on another's license
Demerit Points:	90
Type of Violation:	Unlicensed bartender
Demerit Points:	40
Type of Violation:	Failure to display bartender license upon request
Demerit Points:	25
Type of Violation:	Open after hours
Demerit Points:	40
Type of Violation:	No carry-out after hours
Demerit Points:	25
Type of Violation:	Gambling
Demerit Points:	50
Type of Violation:	Adult entertainment without permit
Demerit Points:	50
Type of Violation:	Nude or semi-nude entertainer employee visible outside
Demerit Points:	100
Type of Violation:	Nude or semi-nude entertainer employee visible inside
Demerit Points:	50
Type of Violation:	Failure to display permit
Demerit Points:	25
Type of Violation:	Owner selling controlled substances
Demerit Points:	130
Type of Violation:	Bartender selling controlled substances
Demerit Points:	75
Type of Violation:	Failure to continue residency or ownership status during the license year
Demerit Points:	75
Type of Violation:	Outdoor food and beverage service
Demerit Points:	40

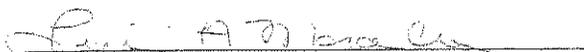
- (c) **VIOLATIONS HOW CALCULATED.** In determining the accumulative demerit points against a licensee within 24 months, the City shall use the date each violation was committed as the basis for a determination if there has been a conviction.
- (d) **SUSPENSION AND REVOCATION OF LICENSE.** Prior to the imposition of the demerit points by the Administration Committee, a hearing shall be scheduled to allow any licensee to provide any relevant information to the Administration Committee. Any conviction resulting from any violation is sufficient evidence for the Administration Committee to impose the demerit points. If the demerit point accumulation accumulated from the date of violation which results in a conviction which meets or exceeds 75 points in a 12-month period, the Administration Committee shall issue a warning to the licensee. Failure to appear at the time of the hearing before the Administration Committee shall not be a reason to claim lack of notice of the warning. Notice shall be provided to the named licensee that the Administration Committee intends to issue the demerit points. Should such accumulation of points exceed 125 within a 12-month period, the Administration Committee shall suspend the license for a period of not less than 3 days nor more than 10 days. Should such accumulation exceed 150 points and be less than 200 in an 18-month period, the Administration Committee shall suspend such license for not less than 10 days nor more than 90 days. Should such accumulation exceed 200 points in a 24 month period, the penalty shall be revocation.
- (e) **TIME OF SUSPENSION OR REVOCATION.**
- (1) The dates for any suspension shall be negotiated between the licensee and the City Attorney provided that the beginning date shall not be less than 15 days after the Administration Committee order.
 - (2) Any revocation ordered by the Administration Committee shall begin three days from the date of the Administration Committee order. No licensee whose license has been revoked may apply to be an officer, agent, or licensee for 12 months after the revocation.
 - (3) The Common Council will not act on a request for a license for any property or license that has been revoked until not less than 60 days has elapsed since the date of revocation.
 - (4) The Common Council will not act on a request for a license for any property or license that has been suspended until the suspension period has expired.
- (f) **EGREGIOUS VIOLATIONS.** Should the Administration Committee make a specific finding that the circumstances of the violation constitute an egregious violation, the Administration committee may determine to impose a suspension or revocation even if the number of demerit points is not sufficient to meet the threshold of paragraph d.

AGREEMENT

This AGREEMENT is entered into between the City of Menasha, by City Attorney Pamela A. Captain, and the Defendant, Luis Alberto Morales (MORALES), as it relates to business operations of the premises at 6 Tayco Street in the City of Menasha licensed in accordance with Title 7, Chapter 2 of the Code of Ordinances and arising out of municipal citations that were issued by the Menasha Police Department to MORALES and shall be effective for one year. The parties agree as follows:

1. During any bar check the Menasha Police Department shall be granted full access to the entire establishment at 6 Tayco Street, Menasha, without delay. *See* SEC. 7-2-14(a), Menasha Code of Ordinances.
2. MORALES shall cooperate with police. Upon the report of any disturbances or law violations, whether inside or outside the establishment, video will be turned over to the Menasha Police Department upon request and without delay, generally within 24 hours.
3. All patrons must show identification to gain entry into the licensed premises at 6 Tayco Street, Menasha. A log shall be kept containing the following information:
 - A. Any person who alleges that he or she is an underage person's parent, guardian or spouse; and
 - B. Any person who has shown documentary proof that he or she has attained the legal drinking age, if the person's age is in question; and
 - C. Any person without ID; and
 - D. Log shall contain the date, the identification used, name, address, date of birth and person's signature; and
 - E. The log shall remain on the licensed premises at 6 Tayco Street, Menasha, at all times; and
 - F. The log shall be made available to an officer immediately upon request.

4. An employee must be present at each entrance during hours of operation of the licensed premises at 6 Tayco Street, Menasha, for the purpose of checking identifications.
5. As required by state and local law, there shall be a responsible person on the licensed premises during all hours of operation and all employees working shall be aware of who is the person responsible on premises and shall be able to name that person. The responsible person shall have authority to address all immediate issues which arise within the establishment at 6 Tayco Street, Menasha. When MORALES is not on the premises, the responsible person will also serve as the point of contact for relaying any information or questions to MORALES.
6. The following term will be effective for 16 months: The video system will be checked at the open of each business day and if it is found to be non-operational, MORALES will contact the police shift commander at (920) 967-3500 and inform of the status of the system.
7. The following term shall be effective for 90 days following the license suspension imposed by the Administration Committee of the City of Menasha: All employees shall be out of the establishment within one hour after close, except in the case where it is necessary that employees be in the establishment longer than one hour after closing in which case the responsible person shall contact the Menasha police shift commander at (920) 967-3500 prior to the expiration of one hour after closing to provide the reason for the cleaning extension, estimated length of extension necessary, name and contact phone number for the responsible person.


LUIS ALBERTO MORALES, Defendant

02-14-2013
Date


PAMELA A. CAPTAIN, Attorney for Plaintiff
State Bar No. 1023192

2-14-2013
Date

STATE OF WISCONSIN MUNICIPAL COURT MENASHA-NEENAH

CITY OF MENASHA Plaintiff,

STIPULATION FOR JUDGMENT AND JUDGMENT DIVERSION AGREEMENT *

vs.

Morales, Luis A. 2450 Honey Ln Ct #102 Appleton, WI 54915

new address

Defendant,

Case No(s) 07700135

1. Charge: Indecent on Premises Place of Sale (1st) Statute # Ordinance # 11-5-3(a)

2. Date of Offense: 1-18-13 in the City of Menasha, Winnebago County, Wisconsin

3. No Amendment Move for dismissal

Amended to Statute # Ordinance #

4. Plea: GUILTY NO CONTEST

Defendant realizes points may be assessed by State of Wisconsin Department of Transportation. Estimated number of points: D.L. Revocation: Alcohol Assessment: Ignition Interlock Device: Other:

5. Penalty: \$ 100.00 Forfeiture \$ 77.00 Costs \$ 177.00 TOTAL

6. Forfeiture in due on 5-6-13 Payment is to be made to the Menasha-Neenah Municipal Court, 2111 Marathon Ave., Neenah, WI 54956.

If defendant fails to pay the forfeiture, defendant's driver's license will be suspended for a period of up to two (2) years.

If defendant fails to pay the forfeiture, a warrant will be issued. 2 days in jail alternative.

7. Wisconsin's code of Attorney's conduct prohibits prosecutors from providing legal advice. For information regarding defendant's rights, it is recommended that the defendant consult with his or her attorney.

8. The parties agree that judgment will be withheld for months. If the defendant receives no other citations under then, after the time expires, this case will be dismissed. If the defendant receives another citation under within months, then judgment will automatically be entered as set forth in this Agreement.

9. Once entered and approved, by the Court, this plea is binding and permanent. Cases cannot be reopened except upon certain statutory grounds.

Date: 2-14-13 Pamela A. Captain City of Menasha Attorney SBN 1023192

Defendant Defendant Attorney

JUDGMENT

This Stipulation is approved and Judgment entered in accord with same.

Date: 2/18/13 By the Court:

Municipal Judge

STATE OF WISCONSIN MUNICIPAL COURT MENASHA-NEENAH

CITY OF MENASHA Plaintiff,

STIPULATION FOR JUDGMENT AND JUDGMENT DIVERSION AGREEMENT *

vs.

Morales, Luis A. 2450 Hansen Ln Ct #1012 Appleton, WI 54915

new address

Defendant,

Case No(s) 077022454

1. Charge: procure/sell alcohol to underage. Statute # Ordinance # 11-5-a(2)

2. Date of Offense: 10-21-12 In the City of Menasha, Winnebago County, Wisconsin

3. No Amendment Move for dismissal

Amended to: Statute # Ordinance #

4. Plea: GUILTY NO CONTEST

Defendant realizes points may be assessed by State of Wisconsin Department of Transportation. Estimated number of points: D.L. Revocation: Alcohol Assessment: Ignition Interlock Device: Other:

5. Penalty: \$ 200.00 Forfeiture \$ 103.00 Costs \$ 303.00 TOTAL

6. Forfeiture is due on 5-6-13 Payment is to be made to the: Menasha-Neenah Municipal Court, 2111 Marathon Ave., Neenah, WI 54956.

If defendant fails to pay the forfeiture, defendant's driver's license will be suspended for a period of up to two (2) years.

If defendant fails to pay the forfeiture, a warrant will be issued. 2 days in jail alternative.

7. Wisconsin's code of Attorney's conduct prohibits prosecutors from providing legal advice. For information regarding defendant's rights, it is recommended that the defendant consult with his or her attorney.

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Dated: 2-14-13 Pamela A. Captain City of Menasha Attorney SBN 1023192

Luis Morales Defendant Defendant Attorney

JUDGMENT

This Stipulation is approved and Judgment entered in accord with same.

Dated: 2/18/13 By the Court:

James B. Henry Municipal Judge

STATE OF WISCONSIN MUNICIPAL COURT MENASHA-NEENAH

CITY OF MENASHA Plaintiff,

STIPULATION FOR JUDGMENT AND JUDGMENT DIVERSION AGREEMENT *

vs.

Morales, Luis A. 2450 Honey Loc Ct #102 Appleton, WI 54915

new address

Defendant,

Case No(s) 077023539

1. Charge: Open after closing hrs (class B) 1st Statute # Ordinance # 7-2-15(a)
2. Date of Offense: 8-23-12 in the City of Menasha, Winnebago County, Wisconsin

3. No Amendment Move for dismissal Amended to Statute # Ordinance #

4. Plead: GUILTY NO CONTEST

5. Penalty: \$ 60.00 Forfeiture \$ 66.60 Costs \$ 126.60 TOTAL

Defendant realizes points may be assessed by State of Wisconsin Department of Transportation. Estimated number of points: D.L. Revocation: Alcohol Assessment: Ignition Interlock Device: Other:

6. Forfeiture is due on 5-6-13 Payment is to be made to the: Menasha-Neenah Municipal Court, 2111 Marathon Ave., Neenah, WI 54956.

If defendant fails to pay the forfeiture, defendant's driver's license will be suspended for a period of up to two (2) years. If defendant fails to pay the forfeiture, a warrant will be issued. 2 days in jail alternative.

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Date: 2-14-13 Pamela A. Captain City of Menasha Attorney SBN 1023192

Luis Morales Defendant [Signature] Defendant Attorney

JUDGMENT

This Stipulation is approved and Judgment entered in accord with same.

Date: 2/18/13 By the Court:

[Signature] Municipal Judge

CITY OF MENASHA,
a Wisconsin Municipal Corporation,
140 Main Street
Menasha, WI 54952
Plaintiff,

vs.

NOTICE OF HEARING

Mr. Frog's Nightclub, LLC
Luis Morales, Agent
6 Tayco Street
Menasha, WI 54952

Defendant.

PLEASE TAKE NOTICE that pursuant to City of Menasha Code of Ordinances, SEC. 7-2-19, a hearing will be held by the City of Menasha, through its Administration Committee, to consider an assessment of demerit points against your license. A copy of the reasons for the recommendation to assess demerit points against your license is attached and served upon you.

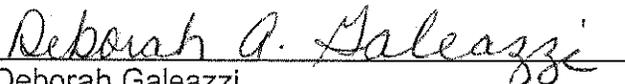
DATE: February 18, 2013

TIME: 6:30 p.m.

LOCATION: City of Menasha
City Hall Council Chambers (3rd Floor)
140 Main Street
Menasha, Wisconsin

YOU ARE FURTHER NOTIFIED, that at the hearing you have the right to provide any relevant information to the Administration Committee for its consideration. You also may be represented by counsel, at your own expense, if you wish.

Dated this 14th day of February, 2013 at Menasha, Wisconsin.


Deborah Galeazzi
City Clerk

City of Menasha
140 Main Street
Menasha, WI 54952

STATE OF WISCONSIN

CITY OF MENASHA

CITY OF MENASHA,
a Wisconsin Municipal Corporation,
140 Main Street
Menasha, WI 54952

Plaintiff,

vs.

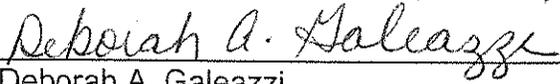
Mr. Frog's Nightclub, LLC
Luis Morales, Agent
6 Tayco Street
Menasha, WI 54952

REASON FOR IMPOSITION OF
DEMERIT POINTS

Defendant.

The City Clerk recommends that 170 demerit points be assessed against the liquor license of Mr. Frog's Nightclub, LLC due to a conviction for Open After Hours, Traffic to Underage, Underage on premises.

Dated this 14th day of February, 2013.


Deborah A. Galeazzi
City Clerk
City of Menasha
140 Main Street
Menasha, Wisconsin 54952