



LEGAL SERVICES DEPARTMENT

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To: Safety & Licensing Committee Members

**Class "B" Beer & "Class C" Wine License Application
Poppy Avenue Boutique & Clean Beauty Bar
161 S Riverheath Way Suites 2600 & 2700**

The application for a Class "B" Beer and "Class C" Wine License from Poppy Avenue Boutique, a retail clothing/beauty store, has been submitted for review. I am recommending that the Safety & Licensing Committee, and ultimately, the Common Council, deny the license application due to the business not meeting the statutory qualifications for receiving such licenses.

The qualifications of a Class "B" Fermented Malt Beverage License are outlined in Wis. Stat. § 125.32 (3m):

Limitations on other business; Class "B" premises. No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class "B" premises. No other business may be conducted on premises operating under a Class "B" license or permit. These restrictions do not apply to any of the following:

- (a) A hotel.
- (b) A restaurant, whether or not it is a part of or located in any mercantile establishment.
- (c) A combination grocery store and tavern.
- (d) A combination sporting goods store and tavern in towns, villages and 4th class cities.
- (e) A combination novelty store and tavern.
- (f) A bowling center or recreation premises.
- (g) A club, society or lodge that has been in existence for 6 months or more prior to the date of filing application for the Class "B" license or permit.
- (h) A movie theater.
- (i) A painting studio

A retail store, such as Poppy Avenue Boutique & Clean Beauty Bar does not fall into any of the listed exceptions and would be considered a place where "any other business is conducted in connection with the premises."

The qualifications of a "Class C" Wine License are outlined in Wis. Stat § 125.51 (3m):

- (a) In this subsection "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.
- (b) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.
- (c) A "Class C" license may be issued to a person qualified under s. [125.04 \(5\)](#) for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which does not have a barroom or for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. A "Class C" license may not be issued to a foreign corporation, a foreign limited liability company or a person acting as agent for or in the employ of another.
- (d) A "Class C" license shall particularly describe the premises for which it is issued.
- (e) The annual fee for a "Class C" license shall be determined by the municipal governing body issuing the license. The fee shall not exceed \$100 and shall be the same for all "Class C" licenses.

Additionally, Wis. Stat. § 125.02(18) defines a restaurant as:

"Restaurant" means any building, room, or place where **meals** are prepared or served or sold to transients or the general public, including all places used in connection with it and including any public or private school lunchroom for which food service is provided by contract. For purposes of this subsection, "meals" does not include soft drinks, ice cream, milk, milk drinks, ices, and confections. "Restaurant" does not include any of the following:

- (a) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter.
- (b) Churches, religious, fraternal, youths' or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve, or sell meals to transients or the general public.
- (c) Any public or private school lunchroom for which food service is directly provided by the school, or a private individual selling foods from a movable or temporary stand at public farm sales.
- (d) Any bed and breakfast establishment, as defined in s. [97.01 \(1g\)](#), that serves breakfasts only to its lodgers.
- (e) The serving of food or beverage through a licensed vending machine, as defined in s. [97.01 \(15p\)](#).
- (f) Any college campus, as defined in s. [36.05 \(6m\)](#), institution as defined in s. [36.51 \(1\) \(b\)](#), or technical college that serves meals only to the students enrolled in the college campus, institution, or technical college or to authorized elderly persons under s. [36.51](#) or [38.36](#).
- (g) A concession stand at a locally sponsored sporting event, such as a little league game.
- (h) A potluck event, as defined in s. [97.01 \(13g\)](#)

Poppy Avenue Boutique & Clean Beauty Bar do not meet the definition of a restaurant to hold a "Class C" Wine license. Meals will not be sold/served at their retail store.

I have spoken with the applicant, Ms. Balof, about the license qualifications and indicated that I could not prohibit her from applying for the licenses even though my interpretation and the State of Wisconsin Department of Revenue Alcohol & Tobacco Enforcement Division's interpretation of the statutes indicate the this business would not qualify for the licenses sought.

Therefore, it is my recommendation that the Safety & Licensing Committee recommend denial of the license application to avoid setting a future precedent of licensing establishments that do not meet the statutory qualifications.

Respectfully,

