



Office of the Mayor

Paul R. Soglin, Mayor

City-County Building, Room 403
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July 25, 2011

To: Alcohol License Review Committee, Common Council, and Public Safety Review Committee

Re: Habitually Intoxicated Persons Ordinance

The United States Supreme Court ruled in *Constantineau v. State of Wisconsin* (1969) that the posting of habitually intoxicated persons without procedural due process is unconstitutional. The Court held that the stigma associated with the public posting, combined with the deprivation of a right guaranteed by the State (purchasing of alcoholic beverages) without creating an opportunity of notice and appeal, violated the Fourteenth Amendment of the Constitution. This was further clarified in *Paul v. Davis* (1976), which held that procedural due process protections apply when a person is subjected to the combination of a stigma and an alteration in legal status from a government action.

It is clear that through creating a list of “known habitually intoxicated persons” and by preventing purchase of carry-out beverages by known persons, the City must address all procedural due process concerns *prior* to the release of such list. Based on the criteria set forth within this particular ordinance, the information would be subject to release to the public, no matter how the list is distributed. In essence, once the list is compiled, it is open and public information, laying the ground for stigmatization. Thus, procedural due process must be guaranteed prior to the release of said list.

This process must, as per ordinance, provide notification to persons that have met the definition of “habitually intoxicated person” and allow them a reasonable amount of time to appeal. The ordinance gives that person five business days to respond to such a notification. Careful consideration must be made in the method of notification to the person, and the nature and timing of appeal. For example, a letter is not sufficient for those without a permanent address. Further, five business days to formally appeal to the City may not be a reasonable amount of time under due process protections.

It should also be noted that the ordinance treats “habitually intoxicated persons” in a significantly different way than outlined in State Statutes. The State explains disruptive behavior attributable to habitual alcohol abuse can be grounds for involuntary treatment for physical and mental health reasons. In other words, the State treats alcoholism as an illness and intervenes in a way to provide treatment; a much different approach than this ordinance takes.

Regardless of the action the Common Council will take with the potential repeal of the Habitually Intoxicated Persons Ordinance, we find it compelling to use a list of persons as a way to concentrate resources on the individuals who might be most receptive to treatment. It is apparent a few cost the City and County a disproportionate amount of money and resources. We will move forward with identifying and contacting those persons in a responsible, proactive way, while continuing to search for alternatives to avoid the possible legal issues that this ordinance has the potential to raise.

Sincerely,

Mark Woulf
Alcohol Policy Coordinator
Office of Mayor Paul R. Soglin