

RESOLUTION NO. 7-2021

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, RECOMMENDING ISSUANCE OF A DOWNTOWN ALCOHOLIC BEVERAGE PERMIT PURSUANT TO I.C. 7.1-3-20-16(g)

WHEREAS, during the 2005 legislative session, the Indiana General Assembly enacted and the Indiana Governor signed Senate Enrolled Act 282, which is codified at Indiana Code § 7.1-3-20-16(g); and

WHEREAS, the aforementioned legislation provided that after **June 30, 2005**, the Indiana Alcohol & Tobacco Commission may issue not more than ten (10) new three-way, two-way or one-way permits to sell alcoholic beverages for on-premises consumption to applicants, each of whom must be the proprietor, as owner or lessee, or both, of a restaurant located within a district, or not more than five hundred (500) feet from the district, that meets the statutorily created boundaries ("Downtown Alcohol Permit"); and

WHEREAS, on **August 22, 2005**, the Common Council of the City of Valparaiso, Indiana, adopted Resolution No. 15-2005 which established objectives and criteria for the issuance of Downtown Alcoholic Permits; and

WHEREAS, in 2011 the Indiana General Assembly amended Indiana Code § 7.1-3-20-16(g) in order to permit the Indiana Alcohol & Tobacco Commission to issue a Downtown Alcohol Permit to restaurants not more than seven hundred (700) feet from the above-referenced district; and

WHEREAS, in 2015 the Indiana General Assembly amended Indiana Code § 7.1-3-19-17 to: (1) further clarify the prohibition on the transfer of Downtown Alcohol Permits; (2) require a holder of a Downtown Alcohol Permit to execute Written Commitments with the City as to the "character and type" of restaurant; (3) afford a greater oversight role to the Licensing Committee and City in the Downtown Alcohol Permit renewal process; and (4) terminate a Downtown Alcohol Permit if the holder ceases business operations for more than six (6) months; and

WHEREAS, on **December 14, 2015**, the Common Council of the City of Valparaiso adopted Ordinance 29-2015, which approved the *Amended Criteria for License Allocation and Applicant Compliance Requirements* that was initially approved by Resolution 15-2005; and

WHEREAS, on **April 26, 2021**, the Common Council of the City of Valparaiso heard presentations and after discussion, decided to recommend **Le Bon, LLC** for a District Permit.

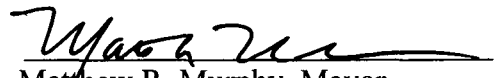
NOW THEREFORE BE IT RESOLVED by the Common Council of the City of Valparaiso, Indiana, that:

1. **Le Bon, LLC** should be, and is, hereby recommended for a Downtown Alcohol Permit. Such recommendation being conditioned upon full compliance with the objectives and criteria contained in Resolution 15-2005, Ordinance 29-2015 and pursuant to Indiana Code §§ 7.1-3-19-17 and 7.1-3-20-16(g)

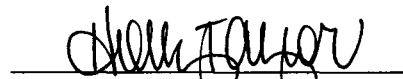
2. That upon written request by the City Council, representatives from **Le Bon, LLC** shall appear and provide a report as to its activities and answer questions relating to any complaints/problems.

3. At all times **Le Bon, LLC** shall fully comply with the executed Written Commitment. It is noted that **Le Bon, LLC** made a significant number of representations and commitments during its presentations. Such have been memorialized in the Meeting Minutes, presentation material provided by **Le Bon, LLC** and the executed Written Commitment. As more fully identified in the Written Commitment, it is the expectation that **Le Bon, LLC** will adhere to all such representations and commitments.

PASSED AND ADOPTED by the Common Council of the City of Valparaiso, Porter County, Indiana , by a 7-0 vote of all members present and voting, this 10th day of May, 2021.


Matthew R. Murphy, Mayor

ATTEST:


Holly Taylor, Clerk-Treasurer

Formal Written Commitment

This Formal Written Commitment and Use Agreement ("Commitment") is entered into this **10th** day of May, 2021, by and between the **Common Council of the City of Valparaiso** ("City") and **LeBon, LLC** ("Holder").

Whereas, IND. CODE § 7.1-3-20-16(g) ("Enabling Statute") allows the Indiana Alcohol and Tobacco Commission ("IATC") to issue ten (10) additional on-premises alcoholic beverage permits, without regard to the quota provisions of IND. CODE § 7.1-3-22, within the historic district (as defined within the Enabling Statute) of the City of Valparaiso, ("District Permits");

Whereas, pursuant to IND. CODE § 7.1-3-19-17 ("Local Approval Statute"), the Common Council of the City of Valparaiso adopted **Ordinance 29-2015** ("Ordinance") requiring a formal written commitment as a condition of eligibility for all Holders of a District Permit;

Whereas, subject to the Enabling Statute, the Local Approval Statute, *Amended Criteria for License Allocation and Applicant Compliance Requirements* and the Ordinance, Holder is required to enter into this Commitment regarding the character and type of business that will be conducted on the Permit Premises (as defined below):

Whereas, Holder acknowledges that the cost of the District Permit was substantially below the cost of a 3-Way Liquor License and that the reduction in cost was meant, in part, to allow the Holder to expend greater resources on food offerings; and

Whereas, the intent of this Commitment is to: i) ensure that the Holder operates a restaurant within the downtown historic district area that provides a food oriented dining experience and is consistent with the Holder's representations to the City; and, ii) prevent Holder from operating a bar or similar establishment; and iii) ensure that Holder honors the representations and commitments made to the City.

Now, therefore, in consideration of receiving favorable continued support from the City for its District Permit, Holder hereby agrees to the following requirements, covenants, and restrictions on the use of the Permit Premises licensed by the Indiana Alcohol and Tobacco Commission:

Section 1. **Recitals.** The Recitals set forth above are hereby fully incorporated in and made a part of this Commitment by reference.

Section 2. **Location.** The location where alcoholic beverages will be dispensed is **157 Lincolnway, Valparaiso, Indiana** ("Permit Premises"). A District Permit may not be transferred to a new location without the written consent of the City. Any attempt to transfer the District Permit to a new location, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. Any change in location renders this Commitment voidable at the sole discretion of the City. The City

may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

Section 3. **Ownership and Management.** A District Permit may not be transferred to a new owner without the written consent of the City. Any attempt to transfer a District Permit, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. As provided in the *Amended Criteria for License Allocation and Applicant Compliance Requirements*, any Holder that is a business entity is required to disclose a list of all owners. To the extent that any change in ownership occurs, Holder must provide written notice to the City within 30 days of the effective date. Any material change in the equity ownership or management of the Holder or Permit Premises renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment. For purposes of this Commitment, "material change" shall include, but not be limited to, any change that alters the ownership structure as represented in **Appendix A**.

Section 4. **Permit Application and Renewals.** Holder will provide the City with its IATC Application for Permit. All additional renewals, forms, applications, questionnaires, and disclosures that Holder submits to the IATC, at any time, must be submitted to the City of Valparaiso Mayor's Office with a copy to the City Attorney within two (2) business days following submission to the IATC.

Section 5. **Character and Uses.** Holder shall use the Permit Premises for the operation of a full service **French inspired brasserie restaurant featuring grilled items, shellfish, and charcuterie paired with specialty cocktails and wines**; meaning, a restaurant where food and drink orders are primarily taken from, and served to, seated customers at tables, by wait staff that are not bartenders. The menu and offerings of the Permit Premises shall be primarily designed to provide a food-oriented dining experience to the public. The Holder shall, at all times of operation, provide to the public its full menu from its kitchen facility. The Holder shall operate a minimum of **seven (7) days per week and five (5) consecutive hours during each day of operation which shall cover both lunch and dinner offerings during their traditional times**. The City may void this Commitment or publicly advise against the renewal of Holder's District Permit if the use of the Permit Premises is merely designed to provide customers with an alcohol consumption experience (e.g., a majority of sales or transactions occur at the bar counter). If the Holder desires to change or amend its use of the Permit Premises, Holder must first receive City's written consent, which shall become a part of this Commitment. Any unauthorized change in use renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the permit in lieu of formally voiding this Commitment.

Section 6. **Additional Obligations.** Holder covenants the following:

- (a) All representations and commitments written in **Appendix A** of this Commitment, as amended or supplemented over time, are full and binding obligations of Holder.
- (b) Permit Premises shall be fully non-smoking and Holder must operate the Permit Premises in strict compliance with the City's Smoking Ordinance.
- (c) Holder must be a full and current dues paying contributor to the Downtown Dining Marketing Fund at all times it possesses a District Permit.
- (d) Both Holder and the Permit Premises must remain in compliance with all State and City laws and ordinances, including, but not limited to, all building, health, and zoning laws, as well as all architectural standards established by the City of Valparaiso. The burden of evidencing compliance is on the Holder.
- (e) Holder agrees to comply with the Enabling Statute, the Local Approval Statute, and the Ordinance, as amended, regardless of whether such provisions are specifically expressed in this Commitment.
- (f) Holder has received a copy of the *Amended Criteria for License Allocation and Applicant Compliance Requirements*, as amended from time to time. Such is incorporated by reference into this Commitment. Holder accepts the terms and agrees to be bound by its provisions, as amended.
- (g) Holder acknowledges that the City has adopted rules for outdoor dining on public walkways/easements/property. The rules, in large part, balance the desire of providing outdoor dining options with the need to assure that all pedestrians have sufficient space to safely move in the downtown area. Holder agrees to abide by all such rules relating to outdoor dining.
- (h) Holder acknowledges the benefit of collaboration with other restaurants in the Valparaiso downtown. Holder shall be an active member of the Valpo Downtown Dining group and shall make reasonable best efforts to attend group meetings and participate in group promotional activities.
- (i) Any breach of the foregoing covenants renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

Section 7. **General Provisions.** The Parties agree as follows:

- (a) This Commitment shall extend to and be binding upon the heirs, personal representatives, and successors of the Holder.
- (b) This Commitment may not be modified or amended unless agreed upon in writing and signed by the Parties.
- (c) This Commitment may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
- (d) This Commitment and its Appendices constitute the entire agreement of the Parties with respect to this matter, and it supersedes all prior negotiations, representations, or agreements, either written or oral, between the Parties.
- (e) The Commitment shall be governed by and interpreted in accordance with the laws of the State of Indiana. Any proceeding seeking to enforce any provision of this Commitment may only be brought in a court sitting in Porter County, Indiana.
- (f) The IATC and its associated Local Board has independent regulatory authority over these matters and the City of Valparaiso cannot be held liable or responsible for any act of the IATC. Furthermore, the City of Valparaiso has no duty or responsibility to advocate or intervene in any proceeding before the IATC or its associated Local Board.

Section 8. **Notice.** Whenever any notice, statement or other communication is required under this Commitment, it shall be sent by first class mail or via an established courier or delivery service to the following addresses, unless otherwise specifically advised.

Notices to the City shall be sent to:

City of Valparaiso Attorney
166 W. Lincolnway
Valparaiso, IN 46383
Attn: Patrick Lyp

Notices to the Holder shall be sent to:

LeBon, LLC
c/o Jason Gatzka
157 West Lincolnway
Valparaiso, Indiana 46383

Section 9. Term. The Commitment shall become effective upon approval by the City and shall remain effective so long as the Holder continues to hold an active unexpired District Permit with the IATC.

Section 10. Breach and Remedies. Notwithstanding anything to the contrary contained herein, the City shall have the right to seek legal, injunctive, or other equitable relief from a court of competent jurisdiction in the event of a breach. All rights and remedies provided in this Commitment are cumulative and not exclusive of any other rights or remedies that may be available herein. The City is not required to exhaust remedies with the IATC before proceeding against Holder in event of breach.

Section 11. Authorized Party. Each individual executing this Commitment represents that he/she has the requisite authority to sign this Commitment.

Section 12. Additional Commitments. See Attached **Appendix B**. Any violation of the Additional Commitments shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

All of this having been agreed to by the Parties on the date first indicated above and memorialized by the signatures contained herein.

Holder: LE BON LLC
By: [Signature]
Printed Name: JASON LATZKY
Title: MANAGER
Date: 10 MAY 2021

Valparaiso Common Council
By: [Signature]
Printed Name: MATTHEW R. MURPHY
Title: ~~President~~ MAYOR
Date: MAY 10, 2021

Acknowledgment

I am the owner of the property at 157 Lincolnway. I have read this Commitment and understand the obligation of the Holder.

[Signature]
DAM Fine Properties, LLC

10 May 2021
Date

Appendix A

Application for District Permit

[To be added once Filed]

**Historic Downtown Liquor License
2021 Updated Contact Information Form**

License No. _____

Name of Restaurant: LE BON BRASSERIE

Restaurant Address: 157 W LINCOLNWAY VALPARAISO IN 46383

Contact Person: JASON GATZKA

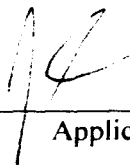
Telephone No.: 219-229-5829

Email Address: JASON@LEBON157.COM

Name of all individuals and/or entities that hold an ownership interest & the percentage of ownership each individual/entity has.

Individual/ Entity Name	% of Ownership
JASON GATZKA	95
DUDLEY NIKTO	5

X



Applicant's Signature

State of Indiana
Office of the Secretary of State

CERTIFICATE OF EXISTENCE

To Whom These Presents Come, Greeting:

I, HOLLI SULLIVAN, Secretary of State of Indiana, do hereby certify that I am, by virtue of the laws of the State of Indiana, the custodian of the corporate records and the proper official to execute this certificate.

I further certify that records of this office disclose that

LE BON LLC

duly filed the requisite documents to commence business activities under the laws of the State of Indiana on May 09, 2021, and was in existence or authorized to transact business in the State of Indiana on May 10, 2021.

I further certify this Domestic Limited Liability Company has filed its most recent report required by Indiana law with the Secretary of State, or is not yet required to file such report, and that no notice of withdrawal, dissolution, or expiration has been filed or taken place. All fees, taxes, interest, and penalties owed to Indiana by the domestic or foreign entity and collected by the Secretary of State have been paid.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, May 10, 2021

HOLLI SULLIVAN
SECRETARY OF STATE

202105091488614 / 20212008151

All certificates should be validated here: <https://bsd.sos.in.gov/ValidateCertificate>

Expires on June 09, 2021.

Appendix B Additional Commitments

Holder appeared before the City on **April 26, 2021** and made a presentation as to the proposed restaurant and its request for a District Permit. It is acknowledged that three other applicants applied, and that one of the other three applicants made a presentation to the City Council. This was a competitive process and all parties acknowledge that multiple applicants met the baseline criteria for a District Permit. During Holder's presentation certain representations and commitments were offered. In addition, it is acknowledged that the owner of the Permit Premises made additional representations and commitments. Collectively, these representations and commitments distinguished Holder's application and presentation. As a material condition to this Agreement, Holder commits to the following:

1. **Offer a full-service menu for lunch, dinner, and weekend brunch seven (7) days per week.** Providing lunch offerings in the City's downtown and being open seven days per week were two key elements of Holder's presentation. Notwithstanding the preceding, it is acknowledged that Holder's restaurant will be closed to the public for holidays and occasional private events. Should Holder intend to reduce scheduled lunch/diner operations to less than seven (7) days per week, Holder must contact the City. Depending on the specifics of the revised schedule, the City may require Holder to seek an amendment to this Agreement.
2. **Employ a minimum of 18 FTE that work at Holder's restaurant.** This employment commitment was the highest of any applicant. It is understood that all 18 FTEs will not be working simultaneously. Upon request of the City, Holder shall provide documentation that it employs a minimum of 18 FTEs at its restaurant.
3. **Complete interior renovations by August 30, 2021 and spend in excess of \$200,000.** All work must comply with all applicable State and local building codes. Upon request, Holder shall provide documentation to substantiate the amount spent on the interior of the Permit Premises. Holder acknowledges that it does not own the Permit Premises and a portion of these expenses may be the obligation of the owner of the Permit Premises. Holder shall not be excused from its interior renovation obligations due to the fact that the owner of the Permit Premises is unwilling and/or unable to spend the funds and/or complete the work.
4. **Complete both front and rear façade improvements by May 1, 2022 at a cost of at least \$100,000.** It is understood that the owner of the Permit Premises may seek a Façade Improvement Grant offered by the City. Such grants are dependent on the availability of funds and compliance with all rules and regulations. Securing a Façade Improvement Grant **shall not** be a condition to satisfying this commitment. Upon request of the City, Holder shall provide documentation to substantiate the amount spent on the front and rear exterior.
5. **Secure all necessary licenses and permits, and be open as a full service restaurant by September 30, 2021.** Upon written request with a showing of a good faith effort to comply, the City Council President is empowered to extend this deadline to **December 1, 2021**.

6. **Chef Dudley Nieto will retain an ownership interest in Holder for a minimum of 24 months after the restaurant opens.** Holder's presentation emphasized Chef Nieto's involvement and his experience, knowledge, and expertise in French cuisine. It was also represented that Chef Nieto's association will enhance the restaurant's distinction and attract a unique upscale dining clientele.

7. **Chef Dudley Nieto will be actively engaged in the kitchen and be a part of the restaurant's operations for a minimum of 4 months from the restaurant's opening and serve as the Executive Chef.** Holder's presentation emphasized Chef Nieto's involvement and his experience, knowledge, and expertise in French cuisine. It was also represented that Chef Nieto would have "hands-on" involvement and that his association will enhance the restaurant's distinction and attract a unique upscale dining clientele. Should Chef Dudley Nieto terminate his position as Executive Chef with Holder's restaurant for any reason, Holder shall notify the City. Depending on the specifics, the City may require Holder to seek an amendment to this Agreement.

8. **The overview of the structural, interior and exterior improvements contained in Holder's PowerPoint presentation are incorporated into this Agreement and shall be included in all improvement work.** Although no specific plans were provided, the PowerPoint overview was considered appropriate.

9. **It is understood that the rear patio is owned by the Valparaiso Parks Department. Any use of the outdoor area needs to be approved by the Valparaiso Park Board.**