



To: Members of the Administrative Committee

From: Chief Tim Styka

Date: March 22, 2012

RE: Bartender Licensing Policy

Over the past few months there has been discussion about reviewing the Alcohol Operator Licensing Policy. I thought it would be appropriate to provide some foundation to the issue by looking at the number of applications, approvals and denials.

The Police Department has received over 340 applications since the 2011 cycle began. During this same time period the Police Department denied approximately 24 applications, or just over 7% of total applications. Eleven of the 24 denials did come before the Administration Committee, which resulted in four licenses being granted.

We have already updated the application form, which should reduce some of the issues. Should you wish to review the criteria used to make the decision to approve or deny an application I have attached the policy with the following possible changes which various committee members have brought to my attention or I am recommending:

- Alderman Langdon's Request: Reduce the amount of time in Guideline #2 from 7 years for two offenses to 5 years for two offenses.
- Alderman Taylor's Request: Reduce the amount of time in Guideline #3 from 7 years for two offenses to 3 years for two offenses.
- I am suggesting adding "criminal" to disorderly conduct in Guideline #2. Disorderly conduct is listed in both Guideline #2 and #3. Adding criminal clarifies that a criminal charge would fall into #2, while a municipal or civil forfeiture charge would fall into #3.

I also took this possible new standard to see what impact this would have had on the licenses which were denied. It would appear that 5 licenses would have been approved during the initial application process, reducing total denials to 19.

I hope this information is helpful in making any updates to the policy the committee deems appropriate.

CITY OF MENASHA POLICY GUIDELINES FOR OPERATOR LICENSES

1. Intent: It is the responsibility of the Menasha Police Chief to screen applications for operators' licenses (bartender licenses) for the City of Menasha. The following guidelines are adopted in order to specify the reasons for denying, non-reviewing or revoking an operator's license and outlines the steps and considerations given, for any denials that are appealed to the Menasha Common Council.

All applications for operators' license applications are submitted to the Menasha Police Department for a background check. The Menasha Police Chief makes the decision on licensing by either accepting or rejecting the application.

*Due to the discretionary nature of the alcohol beverage licensing process, it is not possible to state every circumstance that may result in approval of a license application and what circumstances will result in approval of a license application. However, it is possible to enumerate what will be considered in the decision-making and what circumstances are more likely to result in the **denial** of a license application.*

Individuals granted an operator's license must act in cooperation with law enforcement to enforce the alcohol beverage laws, drunk driving laws, and assist with minimizing disturbances of the peace and maintain the safety of the community. Therefore, individuals with a past history of negative or uncooperative contacts with police agencies will be scrutinized.

It is with these goals in mind that these guidelines are adopted. Furthermore, to the extent that Wis. Statutes Ch. 125 or Menasha City Ordinances provide additional grounds for denial, suspension, revocation or non-renewal, the Police Chief may also rely on such provisions.

In the event an individual with an operator's license is considered for non-renewal, suspension or revocation, all offenses will be considered, the circumstances of which are substantially related to the license regardless of whether some of the offenses occurred prior to the adoption of these guidelines.

Upon request, a copy of these guidelines shall be provided to each person who applies for a license.

Guidelines: What is meant by substantially related? The law does not specifically define this term although there are many court decisions on the topic. The Wisconsin Supreme Court has stated that the purpose of the test is to assess whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed. The “**substantially related**” test looks

at the circumstances of an offense, where it happened, when, what, etc. compared to the circumstances of the licensed activity. Where does the licensed activity typically occur, when and what is involved in performing the licensed activity, etc.

Examples of “substantially related” in the context of an operator’s license: There is a substantial relationship between the illegal purchase, use and sale of controlled substances and engaging in bartending, which involves the purchase and sale of a closely regulated substance. The same is true for offenses involving alcohol, e.g. drunk driving, selling to underage, possession and/or consuming as an underage, committing law violations while under the influence of alcohol or drugs, etc.

- **Guideline 1.** Provided the offense is substantially related to the circumstances of the license activity, circumstances of the offense substantially relate to the circumstances of the job or licensed activity, **any person who has been convicted of any FELONY, unless duly pardoned, does not qualify for an operator’s license.** Sec. 125.04(5)(b), Wis. Stats. (To the extent the other guidelines reference a specific offense; this guideline shall apply if the offense constitutes a *felony*.)

- **Guideline 2.** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, **offense is substantially related to the circumstances of the licensed activity**, any person who has been convicted of or has a current charge pending, for two (2) or more offenses within the last **five**seven (57) years or for two (2) or more offenses, arising out of separate incidents, within the last **five**seven (75) years in the following subcategories, does not qualify for an operator’s license:
 - Violent crimes against the person of another, including but not limited to battery, **criminal** disorderly conduct, sexual assault, injury by negligent use of a vehicle, intimidation of a victim or witness.
 - Crimes involving cooperation (or lack thereof) with law enforcement officials, including but not limited to, resisting or obstructing a police officer, bribery of public officers/employees, eluding police, bail jumping, hit and run, perjury, or acts/threats of terrorism.
 - Manufacturing, distributing, delivering a controlled substance or a controlled substance analog; maintaining a drug trafficking place; possessing with intent to manufacture, distribute, or deliver a controlled substance or a controlled substance analog. Sec. 111.335(1)(c), Wis. Stats.

- **Guideline 3.** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, offense is **substantially related to circumstances of the license activity**, any person who has been convicted of or has a current charge pending, for two (2) or more offenses, arising out of separate incidents, within the last **three**seven (37) years in the following subcategories, does not qualify for an operator’s license:

- Disorderly conduct, criminal damage to property, solicitation of prostitution or other prostitutions-related offenses, wherein the offense involves an incident at a place that is, or should have been licensed under Wis. Stat. Ch. 125.
- Alcohol beverage offenses (under Wis. Stat. Ch. 125 or Menasha City Ordinances).
- Possessing a controlled substance, controlled substance analog without a valid prescription, or possessing drug paraphernalia.
- Operating a motor vehicle while under the influence of intoxicants or drugs.
- Operating a motor vehicle with a prohibited alcohol concentration (PAC) in excess of .08% by weight.
- Open intoxicants in a public places or in a motor vehicle.

What is a **habitual law offender**? The term “habitual” refers to multiple convictions or pending charges and could include an offender with two (2) offenses occurring within a relatively short period of time. The term “offender” refers to a person with civil violations such as ordinance convictions and/or misdemeanor convictions (or pending charges), which substantially relate to the licensing activity. A legal opinion rendered by the League of Wisconsin Municipalities states that a person with two drunk driving convictions within the last couple years would be considered a habitual offender under the alcohol beverage licensing laws. Intoxicating Liquors #890 (1991). Some examples include:

- Two (2) or more offenses, each with a separate incident, within the immediately preceding one (1) year.
 - Three (3) or more offenses, each a separate incident, within the immediately preceding five (5) years.
 - Six (6) or more offenses, each a separate incident, within the preceding ten (10) years.
- **Guideline 4.** Applicants must truthfully and completely fill out applications:
 - If an applicant provides false information on an application, that application shall be denied and the applicant shall not be eligible to reapply for an operator license for a period of one (1) year from the date of denial of such application.
 - If the Police Chief determines that information was *intentionally* omitted from an application, the application shall be denied and the applicant shall not be eligible to reapply for an operator license for a period of one (1) year from the date of the denial of such application.
 - If the Police Chief determines that information was OMITTED from an application due to inadvertence, mistake or excusable neglect, the Chief may allow the applicant to submit a corrected application and recommend granting of the license, if the applicant is otherwise qualified.

- **Guideline 5.** Recommending approval of an operator’s license application for an applicant who would otherwise be denied under these policy guidelines:
 - The Common Council may approve an operator’s license application if the application would otherwise be denied under this policy if the applicant presents substantial, credible evidence of rehabilitation. Such evidence includes letters of recommendation from Alcohol and Other Drug (“AODA”) counselors, probation agents or other relevant service providers, other professional counselors, certificates and/or letters confirming satisfactory completion of an AODA or other relevant counseling program. Any such letters shall be on the letterhead of the agency offering the recommendation in order for the letter to be considered credible evidence of rehabilitation. Any evidence must be in the form of documents submitted to the Common Council and may not be statements of the applicant at the time of the hearing.
 - The reason for any recommendation of approval of an operator’s license application under this paragraph must be clearly stated in the record.

- **Guideline 6.** If the Police Chief recommends denial of an operator’s license application, the reasons for the denial must be clearly stated on the record and shall be consistent with the criteria outlines above.

APPEAL PROCESS FOR DENIED LICENSE APPLICATION.

If the Police Chief recommends denial of an operator’s license application, the applicant has the right to file an appeal with the City Clerk within thirty (30) days and appear and be represented before the Common Council, to be heard, to present evidence in favor of the granting of the license, and to rebut the evidence presented in opposition to the granting of the license, at a hearing held within forty (40) days of the filing of such appeal.