



**TO: Mayor Merkes
Members of the Common Council**

FROM: Police Chief Stanke *RS*

DATE: September 09, 2009

RE: Bartender Licensing Procedure

I have attached a copy of the guidelines I have been using for the review and issuing of bartender licenses. As I indicated at the September 08, 2009 Administration meeting, I am hoping that you review and make adjustments as you deem appropriate.

If these guidelines are adjusted it will make it easier for the applicant, the bar owners and me. We are now finding situations where I have denied a license with the applicant now finding that another with a similar record has appealed to the council and was granted a license. This has caused confusion and resentment.

I do not think an ordinance is needed but at least a majority approval of the guidelines which we can then incorporate into our process.

Operator License Holders and Applicants

All applications must be filled out properly and completely, including full disclosure of previous summons, citations and arrests with a full explanation of circumstances. Failure to do so will result in the denial of license and forfeiture of fees. Applicants denied for this reason may reapply after 6 months by completing a new application form and submitting proper fees.

State Statute provides that no alcohol beverage or server license be issued to any person who has been convicted of a felony which substantially relates to the alcohol beverage licensing activity. City ordinance requires the police department to forward such applications to the City Attorney for review and recommendation.

State Statutes also provide that no alcohol beverage license may, subject to the Fair Employment Act, be issued to any person who has habitually been a law offender. The term habitual refers to multiple convictions with two offenses within a relatively short period of time qualifying as an habitual offender. This includes civil convictions such as ordinance violations and or misdemeanor convictions, OWI's, underage consumption, and ordinance possession of controlled substance violations.

Guidelines for considering applications

Successful completion of the beverage server training course.

A resident of the state of Wisconsin for 10 days.

18 years of age or older.

1 OWI conviction in past 5 years, discussion with applicant prior to approval.

2 OWI convictions in past 7 years, clear record must be in place for at least 5 years with the understanding that any alcohol or drug related offenses will result in revocation of license..

3 OWI convictions on DOT record, rejected unless clear record for the past 10 years with the understanding that any alcohol or drug related offenses will result in revocation of license.

4 or more OWI arrests on record. Rejected.

1 conviction for ordinance possession of controlled substance, in past 5 years, discussion with applicant prior to approval.

2 or more possession of controlled substance ordinance violations in past 7 years, refusal unless clear record for past 5 years.

3 or more possession of controlled substance ordinance violations, rejected unless clear record for the past 10 years.

4 or more possession of controlled substance ordinance violations, rejected.

1 underage consumption conviction, discussion with applicant prior to approval.

2 underage consumption convictions, rejected unless clear record for at least 1 year and discussion with applicant

3 or more underage consumptions, rejected. Will need at least 3 years clear record for approval.

Combination of any of the above will be viewed as multiple convictions.

Conviction of 961.41 (1) or 961.41 (1m) sale, manufacture, delivery or intent to do so of a controlled substance. Reject.

CITY OF MADISON POLICY GUIDELINES FOR OPERATOR LICENSES

Intent. It is the responsibility of the Alcohol License Review Committee (“ALRC”) of the Madison Common Council to screen applications for operators’ licenses (bartender licenses) in the City of Madison. The ALRC adopts the following guidelines in order to specify the reasons for denying, non-renewing or revoking an operator’s license.

All applications for operators’ licenses are forwarded to the Madison Police Department for a background check. The police department forwards operators’ license applications to the ALRC only if there is something in the record check that would warrant further review. The ALRC reviews the forwarded application and makes a recommendation to the Council regarding approval or denial. The Council makes the final decision on licensing by either accepting or rejecting the recommendation.

Due to the discretionary nature of the alcohol beverage licensing process, it is not possible to state every circumstance that may result in denial of a license application and what circumstances will result in approval of a license application. However, it is possible to enumerate what the ALRC will consider in making its decision and what circumstances are more likely to result in a 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 maintaining 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 Wis. Stat. Ch. 125 or Madison Ordinances provide additional grounds for denial, suspension, revocation or non-renewal, the ALRC may also rely on such provisions.**

In the event an individual with an operator’s license is considered for non-renewal, suspension or revocation, the ALRC may consider all offenses, 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, what is involved in performing the licensed activity, etc. Examples of “substantially related” in the context of a 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, possessing 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 licensed 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 one (1) or more offenses within the last five (5) years or for two (2) or more offenses, arising out of separate incidents, within the last ten (10) years in the following subcategories, does not qualify for an operator's license:

(a) Violent crimes against the person of another, including but not limited to battery, disorderly conduct, sexual assault, injury by negligent use of a vehicle, intimidation of victim or witness.

(b) 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.

(c) **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)(cs), 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 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, arising out of separate incidents, within 3

the last five (5) years in the following subcategories, does not qualify for an operator's license:

(a) Disorderly conduct, criminal damage to property, solicitation of prostitution or other prostitution related offenses, wherein the offense involves an incident at a place that is, or should have been licensed under Wis. Stat. Ch. 125.

(b) Alcohol beverage offenses (under Wis. Stat. Ch. 125 or Madison Ordinance Ch. 38 - excluding administrative violations such as "failure to post license under glass").

(c) Possessing a controlled substance, controlled substance analog without a valid prescription, or possessing drug paraphernalia.

(d) Operating a motor vehicle while under the influence of intoxicants or drugs.

(e) Operating a motor vehicle with a prohibited alcohol concentration (PAC) in excess of .08% by weight.

(f) Open intoxicants in 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 of years would be considered an habitual offender under the alcohol beverage

licensing laws. Intoxicating Liquors #890 (1991).

Guideline 4. Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, offenses are **substantially related to the circumstances of the licensed activity**, any person who is a habitual law offender does not qualify for an operator's license. Sec. 125.04(5)(b), Wis. Stats. For purposes of these guidelines, an habitual offender includes, but is not limited to a person who has committed: **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 of years would be considered an habitual offender under the alcohol beverage licensing laws. Intoxicating Liquors #890 (1991).

(a) Two (2) or more offenses, each a separate incident, within the immediately preceding one (1) year.

(b) Three (3) or more offenses, each a separate incident, within the immediately preceding five (5) years.

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(c) Six (6) or more offenses, each a separate incident, within the preceding ten (10) years.

Guideline 5. Applicants must truthfully and completely fill out applications.

(a) 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.

(b) If the ALRC 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 denial of such application.

(c) If the ALRC determines that information was omitted from an application due to inadvertence, mistake or excusable neglect, the ALRC may allow the applicant to submit a corrected application and recommend granting of the license if the applicant is otherwise qualified.

Guideline 6. Recommending approval of an operator's license application for an applicant who would otherwise be denied under these policy guidelines.

(a) The ALRC may recommend approval of an operator's license application if the application would otherwise be denied under this policy if the applicant presents the ALRC with 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 ALRC and may not be statements of the applicant at the time of hearing.

(b) The reasons for any recommendation of approval of an operator's license application under this paragraph must be clearly stated in the record.

Guideline 7. If the ALRC recommends denial of an operator's license application, the reasons for denial must be clearly stated on the record and shall be consistent with the criteria outlined above.

APPEAL PROCESS FOR DENIED LICENSE APPLICATION

If the ALRC 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.