

PROPOSED POLICY GUIDELINES FOR LICENSES RELATED TO ALCOHOL BEVERAGES

Intent.

It is the responsibility of the Public Safety & Licensing (PS&L) Committee of the City of Racine to screen applications for retail alcohol beverage and operator's licenses (bartender licenses) in the City of Racine under the licensing authority granted by Ch. 125 of the Wisconsin Statutes and Chapter 6 of the City of Racine Code of Ordinances. The committee hereby adopts the following guidelines in order to specify the reasons for denying or denying renewal of such licenses, wherein such denial is based on the person's arrests or conviction record which substantially relates to the business of selling or giving away alcohol beverages.

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 committee 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 or a retail alcohol beverage 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 should be scrutinized, subject to Wis. Stat. § 111.321, 111.322, 111.335, and 125.12(1)(b). This also applies to individuals applying as a corporation, limited liability company, agent, or partnership, subject to Wis. Stat. § 125.04(5)(c). It is with these goals in mind that these guidelines are adopted.

Furthermore, to the extent Wis. Stat. Ch. 125 or Racine Code of Ordinances provide additional grounds for denial, suspension, revocation or non-renewal, the entity responsible for making these decisions 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 Committee 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.

Procedure.

All completed applications for a retail alcohol beverage and operator's licenses are forwarded to the Racine Police Department for a background check, who shall cause an investigation to be made and report their findings of any relevant arrest and conviction record. The city clerk shall forward such findings to the committee only if there is

something in the record check that would warrant further review. The committee reviews the forwarded application and makes a recommendation to the council regarding approval or denial based on these guidelines. Prior to making a recommendation to deny, the committee shall afford the applicant with an opportunity to rebut or explain his record. The council makes the final decision on licensing by either accepting or rejecting the recommendation.

Definitions.

What is meant by “substantially related”? To avoid discrimination against such applicants based on a prior arrest or conviction record, the record may only be considered by the licensing authority if it “substantially relates” to the circumstances of the particular licensed activity. This term is not specifically defined in statute 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. Such factors as the nature and number of offenses, the circumstances of the offense, the severity of the offense, the time intervening since the offense, and any and all information evidencing rehabilitation of the offender, including job history and reputation in the community, should be reviewed. Only then can an informed, nondiscriminatory decision be made as to the substantial relation of the conviction to the circumstances of the licensed activity.

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 a habitual offender under the alcohol beverage licensing laws. See guideline 4 below for more details.

“Materially false statement” is any statement on a license application that is either untruthful or inaccurate, and has a natural tendency to influence or is capable of influencing the decision-making body.

“Offense” means any contact or interaction with a law enforcement official wherein the person was either arrested for or convicted of a violation under Wisconsin state law, or an equivalent offense in another jurisdiction. For purposes of counting “offenses” under Guideline 4, each separate and distinct interaction with a law enforcement official shall be counted as one offense.

Guidelines.

Guideline 1. Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has been convicted of a felony, unless duly pardoned, does not qualify for an operator's license. Wis. Stat. § 125.04(5)(b) (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, any person who has been convicted of 1 or more offenses within the last five years, or has been convicted of or has pending charges of 2 or more offenses arising out of separate incidents within the last ten years, in the following subcategories, does not qualify for such licenses:

(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, and/or intimidation of victim or witness.

(b) Crimes involving lack of cooperation 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, assault by prisoner, escape from custody, perjury, or acts/threats of terrorism.

(c) Crimes involving the distribution or intent to distribute drugs, including but not limited to the 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.

Guideline 3. Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has been convicted of or has a current charge pending, for 2 or more offenses, arising out of separate incidents, within the last five 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 Racine Ordinance Ch. 6).

(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%.

(f) Open intoxicants in public places or in a motor vehicle.

(g) Perjury, false swearing, theft, or other crimes which involve lack of credibility and truthfulness of the person.

Guideline 4. Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who is a habitual law offender does not qualify for an operator's license. For purposes of these guidelines, a habitual offender includes, but is not limited to a person who has committed:

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

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

(c) Five (5) or more offenses, each a separate incident, within the preceding ten years.

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

(a) *Application for a retail alcohol beverage license.* If an applicant provides a materially false statement or omission on any new license application, that applicant shall be deemed disqualified and the application shall be denied, unless the committee finds good cause to grant an exception. A statement by the applicant that he or she misunderstood the question or was unable to recall a conviction does not constitute good cause for purposes of this section. A false statement or omission on any renewal license application under chapter 6 shall constitute grounds for denial of renewal, suspension or revocation of a license. An applicant denied or denied renewal under this section shall not be eligible to reapply for an alcohol related license for a period of one year from the date of denial of such application.

(b) *Application for an operator's license.* If an applicant for an operator's license provides a materially false statement on an application relating to the person's arrests or conviction record, the person shall be deemed disqualified based on the false statement and the person's arrests and conviction record. The application shall be summarily denied based on the false statement and a notice of denial shall be sent to the applicant by the city clerk. A person who is denied a license under this section may appeal in writing to the public safety and licensing committee within 10 days of the notice. The appeal shall contain a written explanation specifying good cause for why he or she is not disqualified. For purposes of this section, a statement by the applicant that he or she misunderstood the question or was unable to recall a conviction does not constitute good cause.

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

(a) The committee may recommend approval of a license application if the application would otherwise be denied under this policy if the applicant presents the committee 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 of the applicant in order for the letter to be considered credible evidence of rehabilitation. Any evidence must be in the form of documents submitted to the committee 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 Committee recommends denial of an operator’s license or a retail alcohol beverage application, the reasons for denial must be clearly stated on the record and shall be consistent with the criteria outlined above.

Appeals Process.

If the committee recommends denial of an alcohol beverage license or an operator’s license application, the applicant has the right to file an appeal by submitting with the city clerk a written notice of intent to appeal within 5 days of the committee’s decision. The applicant shall thereafter submit a written appeal within 20 days containing arguments in favor of the granting of the license and/or rebutting evidence in opposition of granting of the license. The matter shall be scheduled before the common council for a hearing within 30 days of the written appeal.