

## POLICY GUIDELINES FOR LICENSES RELATED TO ALCOHOL BEVERAGES

**NOTICE TO APPLICANTS:** You are entitled to obtain a predetermination of whether you would be disqualified from obtaining a license due to a prior conviction before submitting a full license application. Please contact the City Clerk's Office for more details. Upon request, a copy of these guidelines shall be provided to each person who applies for a license.

### **Intent.**

It is the responsibility of the Public Safety & Licensing Committee (PS&L) 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 denial, denial of renewals, suspension or revocation, wherein such decisions are 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 the type of offenses that the committee considers to be "substantially related" and may therefore lead to a denial of a license application consistent with Wis. Stats. §§ 111.322 and 111.335. It is with these goals in mind that these guidelines are adopted.

Furthermore, to the extent that Wis. Stats. Ch. 125 and/or Ch. 6 of the City of Racine Code of Ordinances provide additional grounds for denial, suspension, revocation or non-renewal, the committee and the common council may also rely on such provisions as a basis for their decisions, irrespective of these guidelines.

In the event an individual with an operator's license is considered for non-renewal, suspension or revocation, the committee and common council 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.

### **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, what, where, when, etc. compared to the circumstances of the licensed activity. Factors such 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, 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.

In the particular context of alcohol beverage licenses, 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. Additionally, individuals who serve in these capacities are required to deal with the members of the public on a regular basis and under circumstances that require good judgment and decision-making. Therefore, individuals with a history a convictions related to drugs or alcohol, a violent past, or a past history of negative, uncooperative or untruthful contacts with police agencies, should be closely scrutinized as “substantially related”, subject to Wis. Stats. §§ 111.321, 111.322, 111.335, and 125.12(1)(b). This similarly applies to individuals applying as a corporation, limited liability company, agent, or partnership, subject to Wis. Stat. § 125.04(5)(c).

**What is a “habitual law offender?”** The term “habitual” refers to multiple arrests or convictions and could include an offender with multiple arrests or convictions occurring within a relatively short period of time, including any civil violations such as ordinance convictions that substantially relate to the licensing activity. A legal opinion rendered by the League of Wisconsin Municipalities, for example, 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 federal, state, or local 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.

### 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 report such findings to the committee only if the person would be disqualified under these guidelines. The committee shall allow the applicant an opportunity to present sufficient evidence of rehabilitation and fitness. The committee shall then make a recommendation to the council regarding approval or denial of the license based on these guidelines.

### Guidelines.

Pursuant to Wis. Stats. §§ 111.321, 111.322, and 111.335, only offenses which are deemed "substantially related" may be considered by the licensing authority. In addition to what has been stated above, the council hereby adopts the following guidelines as to notify potential applicants which offenses are "substantially related" to the business of selling and providing alcohol and would disqualify the applicant. An applicant is disqualified if any of the following guidelines apply:

**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 a license. See Wis. Stat. § 125.04(5)(b).

**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 of the following offenses within the last five years or 2 or more offenses of the following offenses within the last ten years, arising out of separate incidents, does not qualify for a license:

(a) Violent crimes against the person of another, including but not limited to battery, 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 2 or more of the following offenses within the last five years, arising out of separate incidents, does not qualify for a 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 a license. For purposes of these guidelines, a habitual offender includes, but is not limited to a person who has been convicted of:

- (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.** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has a pending charge for any of the following does not qualify for a license:

- (a) An exempt offense as defined in Wis. Stat. § 111.335(1m)(b), including any offenses for crimes against life and bodily security and certain offenses against children.
- (b) A violent crime against a child.

**Guideline 6.** Applicants must truthfully and completely fill out applications. If an applicant provides a materially false statement or omission on any new license application, that applicant shall be deemed disqualified based on the statement 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 materially 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.

#### *Evidence of Rehabilitation or Fitness*

Prior to denial of any license, the committee must allow the applicant an opportunity to present sufficient evidence of rehabilitation and fitness, unless the offense is otherwise exempt under Wis. Stat. § 111.335(1m)(b). The committee must accept as competent evidence of sufficient rehabilitation and fitness either of the following:

- (a) a certified document of a federal department of defense form DD-124 showing that the person was honorably discharged or separated under honorable conditions from the armed forces and had no subsequent criminal convictions since then; or
- (b) a local, state or federal release document; and either a copy of a department of corrections document showing completion of probation or extended supervision, or evidence that at least one year has passed since his or her release from an institution without subsequent conviction of a crime along with evidence showing compliance with all terms of probation or extended supervision.

A showing under either (a) or (b) constitutes sufficient evidence of rehabilitation and fitness. If the applicant is unable to present either (a) or (b) above, the committee shall consider other documented evidence of rehabilitation, including factors such as:

- Evidence of the nature and seriousness of any offense of which he or she was convicted.
- Evidence of all circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense.
- The age of the individual at the time the offense was committed.
- The length of time that has elapsed since the offense was committed.
- Letters of reference by persons who have been in contact with the individual since the applicant's release from any local, state, or federal correctional institution.
- All other relevant evidence of rehabilitation and present fitness presented.

If the committee recommends denial of an operator's license or a retail alcohol beverage application and the decision is approved by the common council, written notice must be sent to the applicant stating reasons for the denial pursuant to Wis. Stat. § 111.335(4)(c)(1(a)).

Appeals Process.

Once the committee recommends the grant or denial of an alcohol beverage license under this section, the item shall be referred to the common council for its final decision. Prior to the date of the common council hearing, any applicant may appeal by submit written arguments to the common council in favor of the granting of the license and/or rebutting evidence as to why the license should be denied. At the discretion of the common council, the applicant may supplement his written arguments with oral statements at the common council hearing in favor of the license. No additional evidence shall be received at the hearing of the common council. The decision of the common council shall be final, except that within 30 days of the common council's decision, any applicant aggrieved by such decision may request judicial review of the common council's decision by filing an action with the circuit court pursuant to Wis. Stat. § 125.12(2)(d).