

**POLICY GUIDELINES
FOR ARREST AND CONVICTION RECORDS
RELATED TO ALCOHOL BEVERAGES LICENSES**

Note to applicants:

You are entitled to a predetermination of whether you are disqualified from obtaining a license due to a prior conviction(s) before and without submitting a full license application. Please contact the City Clerk for more details. A copy of these guidelines will be posted on the City's website and shall be provided to each applicant, upon request.

Purpose:

It is the responsibility of the Common Council (herein referred to as "the Council") and Public Safety and Licensing Committee (herein referred to as "the Committee") of the City of Racine to determine whether to grant or deny alcohol beverage licenses, pursuant to Ch. 125 of the Wisconsin Statutes and Chapter 6 of the City of Racine Code of Ordinances. The Council hereby adopts the following guidelines in order to specify and elaborate the reasons for denial or denial of renewals, wherein such decisions are based on the person's arrest or conviction record.

Pursuant to Wis. Stats. §§ 111.321, 111.322, and 111.335, only offenses which "substantially relate" to the licensed activity may be considered by the licensing authority. In the particular context of alcohol beverage licenses, individuals who serve or sell alcoholic beverages are often placed in a position of trust, dealing with members of the public who may, at times, be impaired, vulnerable or uninhibited. The job may also require the person to work in often unsupervised, stressful and demanding work environments. It is therefore crucial that applicants for an alcohol beverage license be able to consistently exhibit self-control, demonstrate trustworthiness, cooperate with law enforcement, and exercise good judgment. Individuals who own, manage or supervise licensed premises, in particular, must act in cooperation with RPD to enforce the alcohol beverage and drunk driving laws, and to assist with minimizing disturbances of the peace and maintaining the safety of the community. Therefore, it is crucial that such applicants have a demonstrated history of being law-abiding citizens.

For all of the above reasons, the Council finds that any offense which involves an act of violence or threat of violence against another individual, prostitution or human trafficking, uncooperative or untruthful contacts with the police department, offenses involving untruthfulness or lack of credibility, possession or possession with intent to sell drugs, operating while intoxicated or operating under the influence, and/or violations of any alcohol beverage laws, are substantially related to the person's ability to sell and serve alcohol in a responsible manner. This list is not exhaustive, but rather, serves as an illustration of the types of character traits that the Council deems to be unfit for the licensed activity herein.

Accordingly, the Council hereby adopts the following guidelines in order to notify potential applicants that the following offenses are substantially relate to the act of selling and

serving alcohol. A person who is presumably unfit to engage in the licensed activity under these guidelines may, nevertheless, present competent evidence of rehabilitation and fitness, pursuant to Wis. Stat. § 111.335(4), in order to obtain a license.

Definitions:

“Applicant” means an individual who has applied for or whose name appears on the application for any alcohol beverage license, either in his or her individual capacity or as a representative or member of a corporate entity, and includes any such persons applying for the renewal of such license.

“Arrest” or “arrest record” means the person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried pursuant to law enforcement for a felony, misdemeanor or other offense. Wis. Stat. § 111.32(1).

“Conviction” or “conviction record” means the person has been convicted of any felony, misdemeanor or other offense, adjudicated delinquent, less than honorable discharge, placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority. Wis. Stat. § 111.32(3).

“Corporate entity” means a corporation, partnership, or limited liability company.

“Habitual law offender” means a person who has multiple arrests or convictions within a relatively short period of time. A person does not need to be *convicted* of any offense in order to be considered a habitual law offender. See guideline # 5 below for more details.

“Materially false statement” means any statement on a license application that is either untruthful or inaccurate, and has a tendency to influence or is capable of influencing the decision-making body. See Guideline #7 for more details.

“Operator’s license” means a license issued to an individual, which authorizes the individual to sell or serve alcoholic beverages to patrons or other members of the public.

“Retail alcohol beverage license” means a license issued to an individual owner, sole proprietorship, partnership, limited liability company, or other corporate entity, which authorizes the sale of fermented malt beverages or intoxicating liquors at a specified premise or location.

“Substantially relate” means that the circumstances surrounding a particular offense are materially related to the facts, events and conditions surrounding the licensed activity, to the extent that they suggest tendencies or inclinations that the person may repeat certain criminal behavior in the context of the licensed activity.

The “substantially related” test looks at three key considerations: 1) Do the circumstances of the arrest or conviction suggest a propensity to commit a similar offense? 2) Does the job provide a particular and significant opportunity for similar criminal behavior? 3) What circumstances exist in the licensed activity that might foster criminal activity? In other words, what character traits

did the arrest/conviction reveal, and are there circumstances that exist in the job that would present opportunities for recidivism given the character traits revealed by the offense?

Procedure:

Background checks generally: RPD shall conduct a background check for all new applicants and report their findings of any relevant arrest or conviction record to the Committee. For renewal applications, RPD shall conduct background checks for operator's licenses and retail licenses at least every other year.

Process for Operator's license: If an applicant for a new or renewal operator's license does not have an arrest or conviction record pursuant to Guideline #1, such license may be issued administratively by the City Clerk and without Common Council approval. The City Clerk shall refer to the Committee any applicant who is disqualified under these guidelines, along with a cover sheet identifying reason(s) for the disqualification. Prior to recommending the denial of any license based on the applicant's arrest or conviction record, the Committee shall allow the applicant an opportunity to present sufficient evidence of rehabilitation and fitness (see below).

The City Clerk shall summarily deny an operator's license to any person who provides a materially false statement in the license application pursuant to Guideline #7. Applicants aggrieved by a decision of the City Clerk under Guideline #7 for providing a materially false statement may appeal to the Committee within ten days of the denial by submitting a written explanation for the false statement.

Process for Retail alcohol beverage licenses: If an applicant for a new retail license has an arrest or conviction record, RPD shall report its findings to the Committee. If the applicant for a renewal retail license has an arrest or conviction record in the two years immediately preceding such application or in the time since the last license application, the City Clerk shall report such findings to the Committee. The City Clerk or RPD shall submit a cover sheet for any arrest or conviction record, identifying whether the applicant is presumably disqualified from obtaining a license and if so, under which guideline(s). Prior to denying a license based on the applicant's arrest or conviction record, the Committee shall allow the applicant an opportunity to present sufficient evidence of rehabilitation and fitness (see below). The Committee shall make a recommendation to the Council regarding approval or denial of such license, pursuant to Guidelines #2-7.

Guideline for Operator's Licenses

Guideline #1. Applicants convicted of any of the following offenses do not qualify for an operator's license and such application shall be referred to the Public Safety and Licensing Committee:

- 1) Underage persons. Any violations within the immediately preceding two years for serving underage person(s) or allowing underage person(s) to be present on licensed premises in violation of state law.
- 2) Operating while impaired. Any violations within the immediately preceding two years for operating a motor vehicle under the influence, operating while intoxicated, or operating with a prohibited alcohol concentration.
- 3) Other drug, alcohol or weapons violation. Any convictions within the immediately preceding two years involving the unlawful use, distribution, sale or possession of any controlled substance, alcohol or weapon.
- 4) Provided the offense is substantially related, any pending charge for an exempt offense or a violent crime against a child as defined under Wis. Stat. § 111.335(1m).
- 5) Provided the offense is substantially related, any felony conviction within the immediately preceding ten years.

Guidelines for Retail Alcohol Beverages Licenses

Guideline #2. Provided the circumstances of the offense substantially relate, applicants convicted of a felony, unless duly pardoned, do not qualify for a retail alcohol beverage license. See Wis. Stat. § 125.04(5)(b).

Guideline #3. Provided the circumstances of the offense substantially relate, applicants convicted of 1 or more of the following offenses within the immediately preceding five years, or 2 or more of the following offenses within the immediately preceding ten years, do not qualify for a retail alcohol beverage license:

- (a) Violent crimes or threats of violence against another person, including but not limited to battery, sexual assault, injury by negligent use of a vehicle, and/or intimidation of a 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, 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, distribution, or delivery of 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 #4. Provided the circumstances of the offense substantially relate, applicants convicted of 2 or more of the following offenses within the immediately preceding five years, do not qualify for a retail alcohol beverage license:

- (a) Any unruly, indecent or disruptive behavior in public, such as disorderly conduct, criminal damage to property, or solicitation of prostitution or other prostitution related offenses.
- (b) Any alcohol beverage offenses under Wis. Stat. Ch. 125 or Ch. 6 of the Ordinance.
- (c) Any offense that involves possessing a controlled substance, controlled substance analog without a valid prescription, or possessing drug paraphernalia.
- (d) Any offense that involves operating a motor vehicle while under the influence of intoxicants or drugs.
- (e) Any offense that involves operating a motor vehicle with a prohibited alcohol concentration (PAC).
- (f) Any offense that involves drinking or having an open intoxicant in a motor vehicle in violation of Wis. Stat. § 346.935.
- (g) Any offense that involves perjury, false swearing, theft, or other crimes which involve lack of credibility or truthfulness of the person.

Guideline #5. Provided the circumstances of the offense substantially relate, applicants who are habitual law offenders do not qualify for a retail alcohol beverage license. For purposes of these guidelines, a habitual offender includes any person deemed by RPD to be a habitual law offender based on the person's arrest record, or any person who has any of the of the following arrest record:

- (a) An arrest record with two or more separate offenses, within the immediately preceding year.
- (b) An arrest record with three or more separate offenses, within the immediately preceding five years.
- (c) An arrest record with five or more separate offenses, within the immediately preceding ten years.

Guideline #6. Provided the circumstances of the offense substantially relate, applicants who have a pending charge for any of the following offenses do not qualify for a retail alcohol beverage 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; or
- (b) A violent crime against a child.

False Statement on any Alcohol Beverage License Applications

Guideline #7. Any applicant who provides a materially false statement or omission on any license application is disqualified based on such statement, and such application shall be denied unless the Committee finds good cause to grant an exception. For purposes of this guideline, the Council deems a “materially false” statement as any statement or omission related to a misdemeanor or felony conviction within the ten years immediately preceding the application.

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 Ch. 6 shall constitute grounds for denied of renewal, suspension or revocation of a license. Any 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 the denial of any license based on the person’s arrest or conviction record, the Committee must allow the applicant to request a hearing to present sufficient evidence of rehabilitation and fitness to engage in the licensed activity, 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-214 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 of the 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; and
- All other relevant evidence of rehabilitation and present fitness presented.

Any evidence of rehabilitation must be submitted in writing to the City Clerk at least two business days in advance of the Committee meeting. Failure to submit the required documentation by the deadline may result in the application item being deferred or moved to the next Committee agenda.

If the Council denies an alcohol beverage application based on the applicant's arrest or conviction record, the City Clerk shall send written notice to the applicant stating reasons for the denial and how the circumstances of the offense relate to the particular licensed activity pursuant to Wis. Stat. § 111.335(4)(c)(1(a)).

To the extent that Wis. Stats. Ch. 125 and/or Ch. 6 of the Ordinance provide additional grounds for denial, suspension, revocation or non-renewal, the Council may also rely on such provisions as a basis for its decision, irrespective of these guidelines.

Appeals Process.

If the Committee recommends denial of an alcohol beverage license under this section, the City Clerk shall refer the item to the Council for its final decision. Prior to the date of the Common Council hearing, the applicant may appeal by submitting written arguments to the 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 Council, the applicant may supplement the appeal with oral statements at the Council hearing in favor of the license. No additional evidence may be received at the hearing of the Council. The decision of the Council shall be final, except that within 30 days of the Council's decision, any applicant aggrieved by such decision may request judicial review of the decision by filing an action with the circuit court pursuant to Wis. Stat. § 125.12(2)(d).