



## **LEGAL SERVICES DEPARTMENT**

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To: Safety and Licensing Committee,  
Common Council

From: Assistant City Attorney Zak Buruin

Date: January 15, 2024

RE: Bartender License Application of Andrew DeRuyter

During the meeting of the Safety and Licensing committee on January 10th, 2024, there were some concerns expressed regarding the operator license appeal procedure. There were also questions about Mr. DeRuyter's eligibility for an operator license. This memorandum is intended to address both issues.

To qualify for an operator (bartender) license, the applicant may not have an arrest or conviction record. (Wis. Stat. §125.04(5)(a)1.) This exclusion does not apply if it would result in unlawful employment discrimination.

To qualify for an operator license, the applicant may not be a habitual law offender or previously convicted of a felony of which they have not been pardoned. (Wis. Stat. §125.04(5)(b)). Again, this does not apply if it would result in unlawful employment discrimination.

Denial of a license based upon arrest or conviction record is not unlawful employment discrimination where the individual has been convicted of a felony, misdemeanor, or other offense which substantially relates to the circumstances of the licensed activity. (Wis. Stat §111.335(3)(a)1.)

In the instant situation, Mr. DeRuyter's criminal history includes several convictions for Chapter 940 offenses which are considered "exempt offenses" under Wis. Stat. §111.335(1m)(b). These are listed in the memorandum submitted by Lt. Goodin. At least one of the offenses listed in Lt. Goodin's memorandum is a felony.

§111.335(4)(c)2. Removes the requirement that the licensing entity provide written notice of how the circumstances of the offense relate to the licensed activity, and the requirement that the opportunity to show rehabilitation be provided, if the conviction upon which a denial is based is an "exempt offense."

Each of the convictions noted in Lt. Goodin's memorandum required, as a matter of law, elements that must be present for the conviction to be valid. The elements of these offenses present circumstances which are substantially related to the licensed activity at issue.<sup>1</sup> Because of this, denial based upon these convictions is not unlawful employment discrimination, and therefore Mr. DeRuyter does not meet the eligibility criteria to be granted an operator license under §125.04(5)(a) and (b). Granting such a license would constitute a violation of Wisconsin Statutes.

Based upon the above analysis by the Appleton Police Department and City Attorney's Office, the Clerk's office advised Mr. DeRuyter of the decision to deny his application and of his ability to appeal that decision.

Mr. DeRuyter requested to appeal the denial as is provided for in §9-26 of the Appleton City Code. The decision to have the matter heard by the Committee and Council is in the hands of the applicant who is denied.<sup>2</sup> Staff assessment that a requested license may not legally be granted does not deprive the applicant ability to avail themselves of this procedural protection.

The appeal affords an appellant the opportunity to provide additional information which may materially change the evaluation of the application. For example, an applicant may be able to provide additional information relevant to the determination that an offense substantially relates to the licensed activity. An applicant may be able to show that they have been pardoned of an offense that serves as the basis for a denial. The Committee and / or Council may seek additional information or explanation to assist in making its decision, either from the applicant or staff. The Committee and Council could disagree with the staff conclusion about the substantial relationship.

There may be ways to provide additional information to applicants about the statutory eligibility criteria. To the extent that can be done without discouraging applicants or discouraging denied applicants from availing themselves of the procedural protections provided by statute or Appleton's municipal code, that can be considered. However, all denied applicants are informed in writing as to the basis for the denial. That information is in their possession at the time they must make the decision to appeal the decision. They are also provided with contact information in the event they have specific questions about the decision.

My hope is that the above information addresses the most pressing concerns and potential points of confusion. Should you require other information or additional clarification, please do not hesitate to reach out to me.

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<sup>1</sup> It is not the intended purpose of this memorandum to detail the substantial relationship between the offenses and the licensed activity.

<sup>2</sup> I was partially mistaken when I advised that the Council must make all licensing decisions. It is only denials that are typically brought to Committee and Council.