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ADMINISTRATIVE  
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TO: Safety and Licensing Committee, Common Council

From: ACA Zak Buruin

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RE: Chelsey Strauch Operator License Denial Appeal

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Chelsey Strauch has applied for an operator's license and is appealing the denial of that application. Below is a summary of the relevant Chapter 125 eligibility requirements and an analysis of their application in this case.

### **Summary**

The applicant is statutorily ineligible to be granted an operator's license based upon her conviction record, which includes a felony offense and an "exempt" offence. An operator's license may not be lawfully granted to her because of this conviction record.

### **§125.04(5) Licensing Requirements**

According to §125.04(5)(a)1, in order to be granted a license or permit under Wisconsin Statutes Chapter 125, the applicant may not have an arrest or conviction record. This prohibition is subject to the requirements of various statutes prohibiting certain types of employment discrimination, which will be discussed below. These statutes are §111.321, §111.322, §111.335 and §125.12 (1) (b).

§125.04(5)(b) states that "No license or permit related to alcohol beverages may, subject to §111.321, 111.322 and 111.335, be issued under this chapter to any person who has habitually been a law offender or has been convicted of a felony unless the person has been duly pardoned."

In summary, §125.04(5) prohibits the issuance of alcohol related licenses under chapter 125 to anybody with an arrest or conviction record, anybody with an unpardoned felony conviction, or anybody "who has habitually been a law offender," regardless of whether any arrests or convictions exist (see State ex rel. Smith v. City of Oak Creek, 139 Wis. 2d 788, 407 N.W.2d 901 (1987)), unless failing to grant that license would constitute prohibited discrimination.

## **Prohibited Discrimination**

### **§111.321 – Prohibited Bases of Discrimination**

Arrest or conviction (among other bases not relevant to consideration here) are not permitted to be used as a basis for employment discrimination by a licensing agency.

### **§111.322 – Discriminatory Actions Prohibited**

§111.322(1) specifies that refusal to license any individual on any of the bases listed in §111.321, which includes arrest and conviction history. This is subject to exceptions set forth in §111.33 to §111.365, neither of which apply to the instant circumstances.

### **§111.335 – Arrest or Conviction Record; Exceptions and Special Cases**

§111.335(3)(a)1 states that it is not employment discrimination because of a conviction record to refuse to license an individual where that person has been convicted of “any felony, misdemeanor, or other offense the circumstances of which substantially related to the circumstances of the particular job or licensed activity.” In evaluating the existence of a substantial relationship, it is the circumstances that provide the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the applicant that are the proper considerations. It is not relevant whether the applicant has the ability to perform the work to an employer’s standards. (See Milwaukee Cnty. v. Lab. & Indus. Rev. Comm'n, 139 Wis. 2d 805, 407 N.W.2d 908 (1987)).

Each offense must be evaluated under the above criteria for determination of whether or not it is substantially related to the activity for which a license is sought. Any arrest, conviction, or other offense which is substantially related to the licensed activity is to be considered in the licensing decision.

### **Exempt Offenses**

“Exempt Offenses” are defined by §111.335(1m)(b). Exempt offenses are those specified in Chapter 940 or §948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, or a violation of the law of another jurisdiction that would be a violation of one of the listed statutes if committed in Wisconsin.

§111.335(4)(c)2 indicates that the considerations of rehabilitation and the requirement to state the reasons for denial based upon §111.335(3)(a)1, including the substantial relationship, do not

apply to an “exempt offense.”<sup>1</sup> The allowance for demonstration of rehabilitation is only provided for by §111.335(4)(c)1.b, which does not apply to “exempt offenses.” Where a particular offense is considered “exempt,” its consideration stops at the existence of a “substantial relationship,” and does not progress to rehabilitation.

Chapter 940 offenses are crimes against life and bodily security. Homicide offenses, sexual offenses, various forms of battery and other more general violent offenses are contained within Chapter 940. Any offense in Chapter 940 is considered “exempt.” Chapter 948 addresses crimes against children. While only specified offenses within this chapter are considered “exempt,” the specified offenses are sexual offenses committed against children. While it is true that a licensing agency is statutorily much more restricted in how it may consider “exempt offenses,” those restrictions are reserved for a limited class of criminal offenses.

### **Applicability to Chelsey Strauch**

As noted by Lt. Goodin, the applicant was convicted of Battery, as a party to a crime in Outagamie County case 14CF804. This is a Chapter 940 offense and is therefore “exempt.” Additionally, the applicant was convicted of Burglary (a felony offense) as a party to the crime, as part of the same case. An additional charge of Armed Robbery as a party to the crime was dismissed and read in for sentencing purposes.

The conviction for Burglary is one for which the applicant may normally be permitted to demonstrate rehabilitation. Such a demonstration is moot because of the “exempt” nature of the Battery conviction which remains on her record.

The licensed activity of the commercial distribution of intoxicating beverages provides the opportunity for the criminal behavior of battery. The commercial sale of intoxicating beverages is inextricably intertwined with circumstances with increase risks to public safety, public order, Battery and disorderly conduct offenses. A person engaged in the licensed activity has elevated responsibility to The offenses in question are substantially related in that they indicate a negative reaction to the responsibility to not engage in, promote, aid, or abet offenses of violence and public disorder.

As one of these offenses is “exempt,” the inquiry does not include the opportunity for the applicant to provide evidence of rehabilitation. The Battery offense on its own leaves the applicant statutorily ineligible for the operator’s license sought.

This status does not prevent the applicant from working in a capacity where she is involved in the commercial distribution of intoxicating beverages. She may work in such a capacity so long

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<sup>1</sup> It is the advice of Legal Services that a substantial relationship must still exist between the circumstances of the offense and licensed activity, even though the licensing agency is statutorily relieved from documenting its nature in writing.

as she does so under the proper supervision of a properly licensed individual.

### **Conclusion**

The applicant is statutorily ineligible to be granted an operator's license based upon her conviction record, which includes a felony offense and an "exempt" offense. An operator's license may not be lawfully granted to her because of this conviction record.