



## LEGAL SERVICES DEPARTMENT

### Office of the City Attorney

100 North Appleton Street

Appleton, WI 54911

Phone: 920/832-6423

Fax: 920/832-5962

**TO:** Members of the Safety and Licensing Committee

**FROM:** Jim Walsh, City Attorney and Stacy Doucette, Assistant City Attorney

**DATE:** November 12, 2013

**RE:** New Procedural Recommendations for Operator Licenses

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Historically, when voting on an operator's license, this Committee has taken a separate vote on each felony on an applicant's record. Based upon the confusion created by this process, our office decided to review the current process. Our office is recommending a new procedure after consulting with other municipalities and reviewing the statutes. All of the municipalities that responded to our inquiry indicated that they do not separate the felonies when taking a vote; however, the substantially related analysis is still an important piece of the voting process. Below is the new recommended procedure:

- 1) A separate vote should no longer be taken on each felony offense. Instead, only one vote should be taken on the recommendation for approval or denial of each application.
- 2) When an applicant does have a felony conviction:
  - a. The members of the committee should still consider whether the felony is substantially related on their own. The statute states that a license shall not be granted if there is a felony that is substantially related to the license. The criteria for determining whether a felony is substantially related has not changed. Please review the memo on substantially related felonies previously distributed. If a committee member determines that the felony is substantially related, the committee member should be voting to recommend denial of the license.
  - b. If an applicant has a pattern of conduct that includes a felony, a committee member can also choose to recommend denial of the application based upon the pattern of behavior including the felony without specifically stating that the felony is substantially related. However, it is up to committee members individually to decide which offenses they believe are relevant to this consideration.
- 3) If an applicant does not have a felony on their record, the committee should continue to evaluate the application as they did in the past. An application can be recommended for denial if a committee member determines that any of the misdemeanor or ordinance convictions are related to the license or that the pattern of behavior is related to the license.

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James P. Walsh  
*City Attorney*

Ellen Totzke  
*Deputy City Attorney*

Christopher R. Behrens  
*Assistant City Attorney*

Stacy Doucette  
*Assistant City Attorney*

- 4) It is up to committee members individually to decide which offenses they determine are relevant to their consideration.
- 5) The committee members should continue to state on the record the reasons why they are voting to recommend approval or denial of the application. This committee has always done a good job of articulating reasons for recommending approval or denial of the application. The committee should continue to engage in that dialogue during the meeting so other members of the committee, the Common Council and the public understand why the license was recommended for denial or approval.

Please contact either one of us to discuss this memo if you have any questions.

## RELEVANT STATUTES

### **WSA 125.04 – General Licensing Requirements**

**(5) Qualifications for licenses and permits.** (a) *Natural persons.* Licenses and permits related to alcohol beverages, issued to natural persons under this chapter, may be issued only to persons who fulfill all of the following requirements:

1. Do not have an arrest or conviction record, subject to ss. 111.321, 111.322, 111.335 and 125.12(1)(b).
2. Have been residents of this state continuously for at least 90 days prior to the date of application.
3. Have attained the legal drinking age.
4. Have submitted proof under s. 77.61(11).
5. Have successfully completed within the 2 years prior to the date of application a responsible beverage server training course at any location that is offered by a technical college district and that conforms to curriculum guidelines specified by the technical college system board or a comparable training course that is approved by the department or the educational approval board. This subdivision does not apply to an applicant who held, or who was an agent appointed and approved under sub. (6) of a corporation or limited liability company that held, within the past 2 years, a Class "A", "Class A" or "Class C" license or a Class "B" or "Class B" license or permit or a manager's or operator's license.

(b) *Criminal offenders.* **No license or permit related to alcohol beverages may, subject to ss. 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.**

### **WSA 125.12 Revocations, suspensions, refusals to issue or renew**

#### **(2) Revocation or suspension of licenses by local authorities.**

(ag) *Complaint.* Any resident of a municipality issuing licenses under this chapter may file a sworn written complaint with the clerk of the municipality alleging one or more of the following about a person holding a license issued under this chapter by the municipality:

1. The person has violated this chapter or municipal regulations adopted under s. 125.10.
2. The person keeps or maintains a disorderly or riotous, indecent or improper house.
3. The person has sold or given away alcohol beverages to known habitual drunkards.
4. The person does not possess the qualifications required under this chapter to hold the license.
5. The person has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41(1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41(1m); or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.

5m. The person has been convicted of possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that subsection or under a federal law or a law of another state that is substantially similar to s. 961.65.

6. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog.

6m. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

7. The person received the benefit from an act prohibited under s. 125.33 (11).

### **WSA 111.335. Arrest or conviction record; exceptions and special cases**

(1)(a) Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer and the individual may not be bondable due to an arrest record.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

**(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:**

**1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or**

2. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer.

(cg)1. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to deny or refuse to renew a license or permit under s. 440.26 to a person who has been convicted of a felony and has not been pardoned for that felony.

2. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke a license or permit under s. 440.26(6)(b) if the person holding the license or permit has been convicted of a felony and has not been pardoned for that felony.

3. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ a person in a business licensed under s. 440.26 or as an employee specified in s. 440.26(5)(b) if the person has been convicted of a felony and has not been pardoned for that felony.

(cm) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ as an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned.

**(cs) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke, suspend or refuse to renew a license or permit under ch. 125 if the person holding or applying for the license or permit has been convicted of one or more of the following:**

**1. Manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41(1).**

**2. Possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41(1m).**

**3. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under a federal law that is substantially similar to s. 961.41(1) or (1m).**

**4. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under the law of another state that is substantially similar to s. 961.41(1) or (1m).**

**5. Possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.**

(cv) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ in a position in the classified service or in a position described in s. 230.08(2)(k) a person who has been convicted under 50 USC, Appendix, section 462 for refusing to register with the selective service system and who has not been pardoned.