



DEPARTMENT OF
**LEGAL AND
ADMINISTRATIVE
SERVICES**

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TO: Safety and Licensing Committee, Common Council

From: ACA Zak Buruin

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RE: Expungement and Licensing

In reviewing the consideration of expunged offenses in Chapter 125 licensing decisions, several key concepts can be identified. These important concepts are often in tension, if not seemingly incompatible. They are summarized as follows:

- Expungement does not invalidate the conviction; it merely eradicates the court's records of it.
- Expungement does not require the destruction of records other than the court's.
- The intent of expungement is to provide a "break" to young offenders who demonstrate the ability to comply with the law, and to do so in a way that does not harm society.
- Regardless of the ability to consider an expunged conviction, the conduct underlying that conviction is not shielded from lawful consideration by the expungement of the conviction.

It is highly likely that expunged convictions are subject to consideration under the licensing requirements. The relevant restrictions on considering convictions specifically exempt pardoned offenses but not expunged offenses. Caselaw indicates clearly that the conviction itself is not invalidated. However, eligibility criteria in §125.04(5)(a)1 refer to one's "conviction record." With the court record no longer in existence, another official record of the conviction would need to be relied upon as a basis for demonstrating ineligibility. I am aware of no such additional record with respect to Tammy Taylor. If additional official records of the conviction are made known to me, reevaluation of the situation would be appropriate.

The conduct underlying the expunged conviction would be a lawful consideration. In the present context, this would be most applicable under the "habitual law offender" disqualifier by §125.04(5)(b). I am aware of no additional instances of law violations which might support the conclusion that Ms. Taylor is a "habitual law offender."

I have located no authoritative guidance that indicates whether expunged convictions may

or may not be considered in the current context. Based upon the authoritative guidance that is currently available from the courts and the statues, **it is my recommendation that the Committee and Council decline to consider any criminal conviction which is expunged, and that the operator license application be approved.**

Should this license be granted and it later be determined that the applicant is not eligible for licensure, the license would be void and have no legal effect. At this time, I cannot advise that the defendant is ineligible for licensure to a sufficient degree of certainty to warrant denial of the application.