



License Committee

Regular Meeting

335 South Broadway
De Pere, WI 54115
<http://www.de-pere.org>

Agenda

Tuesday, August 7, 2018

6:45 PM

De Pere City Hall Riverview Room

Pursuant to Wisconsin Statutes 19.84, Notice is hereby given to the public that a meeting of the **License Committee** of the City of De Pere will be held on **August 7, 2018** at **6:45 PM** in the **De Pere City Hall Riverview Room, 335 S. Broadway, De Pere, WI 54115**.

Call to Order

1. Roll Call
2. Approval of the Minutes of the July 17, 2018 License Committee Meeting.
3. Public Comment Period and other Announcements.
4. Operator License Applications.*
5. Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for Ray Ray LLC (DBA Artless Bastard), 353 Main Av Suite A. Submitted by Ray Ray LLC, Agent: Timothy J. Jelinski, De Pere, WI.
6. Application for a Special Permit Allowing Consumption of Alcohol Beverages on Public Ways. Submitted by Definitely De Pere for Art Walk on Friday, August 10 from 4:00 p.m. - 8:00 p.m.*
7. Review Changes to State Law Concerning Use of Arrest and Conviction Records in Licensing Decisions (tabled at the July 17, 2018 License Committee Meeting).
8. Adjournment.

Respectfully Submitted,

Shana Ledvina, Clerk - Treasurer

Any person wishing to attend this meeting who, because of disability, requires special accommodations should contact the Clerk-Treasurer's office at 339-4050 by Noon, the previous day so that arrangements can be made.

***Items with an asterisk require City Council approval.**

Agenda Sent To:

Alderspersons
City Administrator
Mayor
Department Heads
TV, Newspapers & Radio Stations
Kress Family Library
De Pere Chamber of Commerce
Elizabeth R. Doro
Angel M. Duval
Richard L. Hendricks

Andrew W. Kane
Morgan R. Martens
Kaitlyn O. Morris
Amy C. Pagenkopf
Amanda K. Wydeven
John R. Calaway
Alec C. Fowler
Brenda L. Melnarik
Mark A. Nelsen
Amy S. Novak
Curt R. Caprario
Crystal J. Cordova
Tina M. Jaworski
Derek A. Lichtenegger
Noah M. Peters
Adam L. Robb
Meghan K. Bittner
Nichole E. Culp
Ellen M. Freward
Lynn M. Harju
Jessica V. Hockers
Charles P. Kline
Devion D. Mathis
Erin E. Morris
Jabesh N. Patel
Dennis J. Reckelberg
Gloria S. Rodriguez
Louella Rosario
Linda D. Sielck
Jessica R. Sisley
Alex R. Stensaas
Andrea J. Tindale
Brittany D. Victoria
Timothy J. Jelinski
Definitely De Pere

City of De Pere, Wisconsin



Request For License Committee Action

MEETING DATE: August 7, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Approval of the Minutes of the July 17, 2018 License Committee Meeting.

ATTACHMENTS:

- 7-17-18 License Committee Minutes (DOC)



License Committee

Regular Meeting

335 South Broadway
De Pere, WI 54115
<http://www.de-pere.org>

Draft Minutes

Tuesday, July 17, 2018

6:45 PM

De Pere City Hall Riverview Room

1. Call to Order! The meeting was called to order at 6:45 PM by Ald. Boyd

Attendee Name	Title	Status
James Boyd	Alderson	Present
Dan Carpenter	Alderson	Present
Jonathon Hansen	Alderson	Present

2. Approval of the Minutes of the July 3, 2018 License Committee Meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Dan Carpenter, Alderson
SECONDER:	James Boyd, Alderson
AYES:	James Boyd, Dan Carpenter, Jonathon Hansen

3. Public Comment Period and other Announcements.

4. Operator License Applications.*

Previously Tabled Operator License Application #2 for William F. Liberty was presented. Alderson Carpenter moved, seconded by Alderson Hansen to open the meeting. Upon vote, motion carried unanimously. The applicant answered the Committee's questions. Applicant #1, Melissa A. Heezen was present and answered the Committee's questions. Applicant #4, Sadie B. Stieglitz-Vanvonderen was present and answered the Committee's questions. Alderson Boyd moved, seconded by Alderson Carpenter to close the meeting. Upon vote, motion carried unanimously. Alderson Carpenter moved, seconded by Alderson Hansen to approve Previously Tabled Operator License Applications #1, 2 and 4. Upon vote, motion carried unanimously. Alderson Carpenter moved, seconded by Alderson Boyd to deny Previously Tabled Operator License Application #3. Upon vote, motion carried unanimously. Alderson Carpenter moved, seconded by Alderson Hansen to table Previously Tabled Operator License Application #5. Upon vote, motion carried unanimously.

Alderson Boyd moved, seconded by Alderson Carpenter to table Temporary Operator License Application #2 for Andrew W. Kane. Upon vote, motion carried unanimously. Alderson Boyd moved, seconded by Alderson Hansen to approve Temporary Operator License Application #1 for Robert A. Fruzen. Upon vote, motion carried unanimously.

Renewal Operator License Application #24 for Travis J. Lange was presented. Alderson Boyd moved, seconded by Alderson Carpenter to open the meeting. Upon vote, motion carried unanimously. The applicant answered the Committee's questions. Applicant #32, Amy C. Pagenkopf was present and answered the Committee's questions. Chief Beiderwieden explained that her probation officer directed the License Committee to deny the application. The applicant will contact her probation agent to contact Chief Beiderwieden if he decides to reverse his decision on her ability to be granted an operator license. Alderson Carpenter moved, seconded by Alderson Boyd to close the meeting. Upon vote, motion carried unanimously. Alderson Carpenter moved, seconded by Alderson Boyd to approve Renewal Operator License

Attachment: 7-17-18 License Committee Minutes (7234 : Approval of the Minutes of the July 17, 2018 License Committee Meeting.)

Applications #1-16, 18-29, 31, and 33-44. Upon vote, motion carried unanimously. Alderperson Carpenter moved, seconded by Alderperson Hansen to table Renewal Operator License Applications #17, 30 and 32. Upon vote, motion carried unanimously. New Operator License Application #3 for Elizabeth R. Doro was presented. Alderperson Boyd moved, seconded by Alderperson Hansen to open the meeting. Upon vote, motion carried unanimously. The applicant questioned the number of OWIs listed on her application by the police chief. The City Clerk's Office will have the background check redone to verify the applicant's record. Alderperson Boyd moved, seconded by Alderperson Carpenter to close the meeting. Upon vote, motion carried unanimously. Alderperson Carpenter moved, seconded by Alderperson Boyd to approve New Operator License Applications #1, 2, 5-7 and 9-14. Upon vote, motion carried unanimously. Alderperson Carpenter moved, seconded by Alderperson Hansen to table New Operator License Applications #3, 4 and 8. Upon vote, motion carried unanimously.

5. Consideration of Walmart's Request to Expand Licensed Premises to Allow for Curbside Pickup for Alcohol Sales.

Staff Attorney Kate Zuidmulder reviewed the Walmart request with the License Committee. She corrected the information in her memo regarding the Walmart request; they are only seeking to extend the malt beverage license, not liquor. Alderperson Boyd moved, seconded by Alderperson Carpenter to open the meeting. Upon vote, motion carried unanimously. Frank VanVonderen of Walmart explained that other municipalities in Wisconsin are allowing for this service, but the pick-up areas are all different, depending on the store. Staff Attorney Kate Zuidmulder explained her concerns with compliance in terms of ID check and records retention. Jeff Bunnell of Walmart explained that the handheld unit they use to process curbside pick-up sales requires an ID check before they can process the order and that every person processing curbside sales will have an operator license from the City of De Pere. Police Chief Derek Beiderwieden shared concerns with the ban on drive-through convenience stores from years ago and questioned how the "click and collect" provisions fit into the law with that current prohibition. Discussion followed. Staff Attorney Kate Zuidmulder will propose amendments to our ordinance to address "click and collect" sales and will look at additional conditions that other municipalities have included in their ordinance changes. She will review how other store exteriors are designed compared with De Pere Walmart's store. She will reach out to Walmart's counsel to review further and will come back to the License Committee with a rough draft of an ordinance in about a month or so. Alderperson Carpenter moved, seconded by Alderperson Boyd to close the meeting at 7:29 p.m. Upon vote, motion carried unanimously.

6. Review Changes to State Law Concerning Use of Arrest and Conviction Records in Licensing Decisions

Alderperson Boyd moved, seconded by Alderperson Carpenter to table the item. Upon vote, motion carried unanimously.

7. Adjournment. Alderperson Carpenter moved, seconded by Alderperson Hansen to adjourn the meeting at 7:30 p.m. Upon vote, motion carried unanimously.

Respectfully submitted,

Shana Ledvina, Clerk-Treasurer

City of De Pere, Wisconsin



Request For License Committee Action

MEETING DATE: August 7, 2018
DEPARTMENT: City Clerk-Treasurer
FROM: Shana Ledvina
SUBJECT: Operator License Applications.*

ATTACHMENTS:

- 08-07-18 (PDF)

CITY OF DE PERE
License Committee - August 7, 2018

Previously Tabled Operator License Applications	
1	DORO, ELIZABETH R.
2	DUVAL, ANGEL M.
3	HENDRICKS, RICHARD L.
4	KANE, ANDREW W.
5	MARTENS, MORGAN R.
6	MORRIS, KAITLYN O.
7	PAGENKOPF, AMY C.
8	WYDEVEN, AMANDA K.

Temporary Operator License Applications	
1	CALAWAY, JOHN R.
2	FOWLER, ALEC C.
3	MELNARIK, BRENDA L.
4	NELSEN, MARK A.
5	NOVAK, AMY S.

Renewal Operator License Applications	
1	CAPRARIO, CURT R.
2	CORDOVA, CRYSTAL J.
3	JAWORSKI, TINA M.
4	LICHTENEGGER, DEREK A.
5	PETERS, NOAH M.
6	ROBB, ADAM L.

New Operator License Applications	
1	BITTNER, MEGHAN K.
2	CULP, NICHOLE E.
3	FREWARD, ELLEN M.
4	HARJU, LYNN M.
5	HOCKERS, JESSICA V.
6	KLINE, CHARLES P.
7	MATHIS, DEVION D.
8	MORRIS, ERIN E.
9	PATEL, JABESH N.
10	RECKELBERG, DENNIS J.
11	RODRIGUEZ, GLORIA S.
12	ROSARIO, LOUELLA
13	SIELCK, LINDA D.
14	SISLEY, JESSICA R.
15	STENSAAS, ALEX R.
16	TINDALE, ANDREA J.
17	VICTORIA, BRITTANY D.

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 7, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for Ray Ray LLC (DBA Artless Bastard), 353 Main Av Suite A. Submitted by Ray Ray LLC, Agent: Timothy J. Jelinski, De Pere, WI.

ATTACHMENTS:

- Artless Bastard_7-3-18 (PDF)
- Artless Bastard_7-3-18_Correspondence (PDF)
- License Memo Recreation Premises (PDF)

Original Alcohol Beverage Retail License Application

Submit to municipal clerk.

For the license period beginning July 5 20 18 ;
ending June 30 20 19 ;TO THE GOVERNING BODY of the: ☐ Town of
☐ Village of } De Pere
☒ City ofCounty of BROWN Aldermanic Dist. No. _____ (if required by ordinance)

1. The named
- ☐
- INDIVIDUAL
- ☐
- PARTNERSHIP
- ☒
- LIMITED LIABILITY COMPANY
-
- ☐
- CORPORATION/NONPROFIT ORGANIZATION

hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individual/partners give last name, first, middle; corporations/limited liability companies give registered name):

RAY RAY LLC dba artlessbastard

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

Title	Name (Last, First, M.I.)	Home Address	Post Office & Zip Code
President/Member	<u>Sole member</u>	<u>JELINSKI, Timothy J.</u>	<u>De Pere 54115</u>
Vice President/Member			
Secretary/Member			
Treasurer/Member			
Agent	<u>Timothy J Jelinski</u>		
Directors/Managers			

3. Trade Name
- artlessbastard
- Business Phone Number
- 920-370-5221

4. Address of Premises
- 353 MAIN AVE, SUITE A, De Pere 54115
- Post Office & Zip Code
- De Pere 54115

5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period?
- Completed June 2018
- ☐
- Yes
- ☒
- No

6. Is the applicant an employee or agent of, or acting on behalf of anyone except the named applicant?
- ☐
- Yes
- ☒
- No

7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business?
- ☐
- Yes
- ☒
- No

8. (a) Corporate/limited liability company applicants only: Insert state
- WI
- and date
- 01-2018
- of registration.
- ☐
- Yes
- ☒
- No

- (b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company?
- ☐
- Yes
- ☒
- No

- (c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin?
- ☐
- Yes
- ☒
- No

(NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)

9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, consumption, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.)
- ART Gallery, one large open space, one floor, one big

10. Legal description (omit if street address is given above):
- STORAGE ROOM, BASEMENT

11. (a) Was this premises licensed for the sale of liquor or beer during the past license year?
- ☒
- Yes
- ☐
- No

- (b) If yes, under what name was license issued?
- GREEN ROOM THEATRE LLC

12. Does the applicant understand they must register as a Retail Beverage Alcohol Dealer with the federal government, Alcohol and Tobacco Tax and Trade Bureau (TTB) by filing (TTB form 5630.5d) before beginning business? [phone 1-800-937-8864]
- ☒
- Yes
- ☐
- No

13. Does the applicant understand they must hold a Wisconsin Seller's Permit? [phone (608) 266-2776]
- ☒
- Yes
- ☐
- No

14. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers, breweries and brewpubs?
- ☒
- Yes
- ☐
- No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.) Any lack access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

SUBSCRIBED AND SWORN TO BEFORE ME

this 11th day of June, 20 18Carey Don
(Clerk/Notary Public)My commission expires 4-30-21ARTLESS BASTARD
(Officer of Corporation/Member/Manager of Limited Liability Company/Partner/Individual)

(Officer of Corporation/Member/Manager of Limited Liability Company/Partner)

(Additional Partner(s)/Member/Manager of Limited Liability Company if Any)

TO BE COMPLETED BY CLERK

Date received and filed with municipal clerk	Date reported to council/board	Date provisional license issued	Signature of Clerk / Deputy Clerk
<u>6-11-18</u>			
Date license granted	Date license issued	License number issued	



www.artlessBastard.com
353 Main Ave, Suite A
DePere, WI 54115

June 20, 2018

Carey Danen
City of DePere
335 S Broadway
De Pere, WI 54115

Dear Carey,

Thank you for the information you've provided thus far in regards to obtaining a Class B license for our art gallery, artlessBastard, located at 353 Main Ave in DePere. Since I will be overseas during the July 3rd mtg date, I wanted to take a moment and share my background, why we are seeking the license, etc.

MY BACKGROUND:

My entire career before moving to DePere has been in the bar and restaurant industry. After many years of managing bars in the twin cities area, my family moved to McGregor, MN where I owned and operated my own bar & restaurant (Growlers on Lake Minnewawa) for a decade. Over the years, I've taken the responsibility and legality of serving alcohol seriously and have attended countless 'safe-serve' certification classes, including several by Bob Pomplun, a well-respected Alcohol-Awareness/Safety trainer who educates bar-owners and staff nationwide. Since my livelihood has always demanded I do things 'by the book' and use good judgment, I take all alcohol sales seriously and have earned the respect of past employers and my peers as someone who does not take unnecessary risks.

WHY WE ARE SEEKING THE CLASS B LICENSE AT OUR GALLERY:

1. Since opening, we've had to turn down several requests by local organizations to rent our space (and hire our team) for charitable fund-raisers, private corporate functions, etc because we were unable to offer them the chance to serve wine or beer. Being able to offer a licensed bartender and to legally serve beer/wine would greatly help our business succeed.
2. The public is accustomed to being able to have a class of wine or beer at artist-receptions. When we moved to Wisconsin, we quickly learned that many galleries are doing it, but NOT legally. So, everyone expects it since they are accustomed to it elsewhere, but no guests are concerned about the legality of it... and we refuse to break the rules and do this without the proper licensing. Also, we've had several customers say they are going down the street to find a drink somewhere while they think about their art purchase, and then they don't come back. We believe the ability to offer them a glass of wine while they review the art will greatly increase art-sales and help us stay in business.
3. We'd like to offer some evening classes similar to the 'Paint and Sip' events held in other communities. Our space is perfect for someone wanting to take an art class, but attendance will increase greatly if they can have an adult beverage along with their art-class.
4. This license will lead to immediate job-creation. If we secure this license, we will be increasing our business hours, our staff for special events, hiring local artists to teach the evening classes (while I serve the guests beverages, myself), hiring a local cleaner, and we'll need to hire waitresses for the private functions / fund-raisers that are held in our space when someone 'rents' it for the evening, etc.

Thank you for your consideration. I'll return from overseas by July 7 and can attend any future meetings if requested.

Timothy Jelinski
artlessBastard
920-370-5221
tim@artlessBastard.com

Attachment: Artless Bastard 7-3-18 Correspondence (7240 : Application for a Class "B"/"Class B" Artless Bastard)

CITY OF DE PERE

MEMO

To: Alderperson James Boyd, License Committee Chair
License Committee Members
From: Kate Zuidmulder, Staff Attorney
Judy Schmidt-Lehman, City Attorney
RE: License Applicant for Art Gallery
Date: August 7, 2018 (meeting date)

The City has received an application for Class B Combination (includes a “Class B” Intoxicating Liquor and a Class “B” Fermented Malt Beverage) liquor license for what has been described as an “Art Gallery.” State law¹ limits the types of businesses that can be operated in conjunction with selling beer for on-premise consumption (a Class “B” (beer) license). A “Class B” Intoxicating Liquor license may only be issued in conjunction with a Class “B” Beer license.²

Exceptions in state law to the rule prohibiting certain businesses are:

- hotel;
- restaurant;
- combination grocery store and tavern;
- combination sporting goods store and tavern;
- combination novelty store and tavern;
- bowling alley or recreation premises;
- club, society or lodge;
- movie theater; and
- painting studio³

In order for an art gallery to fall within the above exceptions, it would have to fit within the category of a “recreation premise.” Unfortunately, state statute does not define “recreation premise.”

An interpretation of the language of Wis. Stats. §125.32(3m)(i) would likely conclude that, when written, an art gallery was not intended to be included under the “recreation premise” exception.⁴ However, this specific issue appears not to have not been decided by a Wisconsin court. As such, since state law specifically allows municipalities to adopt

¹ Wis. Stats. §125.32(3m)(i)

² Wis. Stats. §125.51(3)(f)

³ Wis. Stats. §125.02(11m) defines painting studio as “...an establishment that is primarily engaged in the business of providing to customers instruction in the art of painting and that offers customers the opportunity to purchase food and beverages for consumption while they paint.”

⁴ Under standard rules of statutory construction, one rule instructs that the inclusion of one definition of “painting studio” in the statute would preclude interpreting that statute to include other definitions of that phrase. Another rule provides that where two or more subjects are included in the same phrase (i.e., “bowling alley or recreation premise”), the generic subject (recreation premise) is to be interpreted to be similar to the specific subject (bowling alley). Under this rule, a “recreation premise” would be interpreted to include sporting activities similar to bowling. Finally, another rule avoids interpretations that would allow the “exception to swallow the rule.”

“... additional regulations...not in conflict with this chapter,”⁵ the City arguably could consider enacting an ordinance incorporating the provisions of Wis. Stats. §125.32(3m)(i), including a definition of “recreation premise” that would consider an “art gallery” such a premise. The Village of Menomonee Falls has taken that approach. See attached.

If the Committee is interested in recommending to the Council that an ordinance be drafted to define ‘recreational premises’ locally for purposes of an exception to Wis. Stats. §125.32(3m)(i), we would suggest the following definitions for consideration:

- (a) Recreational premises means a premise in which an organized and regularly conducted recreational activity takes place.
- (b) Recreational activity means an activity primarily offered and undertaken for the purpose of exercise, relaxation, culture or education; including practice or instruction in any such activity.

Please let us know if you have any questions or concerns in advance of the August 7, 2018 License Committee meeting.

Attachment

J:\Law\Memos\2018\License Committee-Class B License for Art Gallery.docx

⁵ Wis. Stats. §125.10(1)

Village of Menomonie Falls Code of Ordinances

Chapter 6 – Alcohol Beverages

Sec. 6-1. - Definitions.

The definitions in Wis. Stats. ch. 125 apply to this chapter. In addition, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Immediate supervisor means the person supervising must be able to see at all times the activities of those persons serving alcohol beverages. It is not enough for the person supervising merely to be on the premises.

Recreation premises means a premises in which an organized and regularly conducted recreational activity takes place.

Recreational activity means an activity offered and undertaken for the purpose of exercise, relaxation, culture, diversion or education; including practice or instruction in any such activity.

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 7, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Application for a Special Permit Allowing Consumption of Alcohol Beverages on Public Ways. Submitted by Definitely De Pere for Art Walk on Friday, August 10 from 4:00 p.m. - 8:00 p.m.*

The requested street closure for the craft beer tent is the west half of the 400 block of George Street (between Broadway and the alley).

ATTACHMENTS:

- Art Walk Permit Request (PDF)



Thursday, August 2, 2018

City of De Pere
335 S Broadway
De Pere WI 54114

Dear Mayor Walsh, Members of the License Committee, and De Pere Alderpersons:

On behalf of Definitely De Pere, I am respectfully requesting that we be granted a special permit allowing consumption of beer and wine outdoors during the downtown Art Walk event on Friday, August 10 from 4:00 pm - 8:00 pm.

We have submitted the necessary special event permit and obtained a temporary liquor license for this event and are working with the Department of Public Works to coordinate the required street closure and site plan.

Art Walk features 30 businesses hosting over 40 artists exhibiting and selling their work. At the event over 1,000 visitors stroll through downtown De Pere, view artwork by local emerging and professional artists, listen to live music, and discover wonderful shops, galleries, and restaurants.

A highlight of this month's event will be the opportunity for patrons to enjoy samples of wine and small bites at select Art Walk stops. This is a fundraising component to Art Walk being organized to help support downtown art initiatives including public art, art and music events, and more. The cost to participate in the wine sampling is \$15.00 and includes 1 ½ ounce wine samples at 12 designated businesses participating in the event. 200 tickets will be sold. We will also be operating a craft beer tent and offering street food.

We look forward to the continued success of the Downtown De Pere Art Walk and our partnership with the City of De Pere. If you have any questions please do not hesitate to contact me.

Best Regards,

Tina Quigley, Executive Director

City of De Pere, Wisconsin



Request For License Committee Action

MEETING DATE: August 7, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Review Changes to State Law Concerning Use of Arrest and Conviction Records in Licensing Decisions (tabled at the July 17, 2018 License Committee Meeting).

ATTACHMENTS:

- Alder Boyd - CC Law Changes Arrest-Conviction Records (PDF)

MEMORANDUM

TO: James Boyd, Council President and Acting Mayor
Members of the Common Council

FROM: Judith Schmidt-Lehman, City Attorney 

DATE: July 17, 2018 (meeting date)

RE: State Law Changes Regarding Arrest/Conviction Records and Licensing Decisions

State law concerning the use of arrest and/or conviction records for licensing decisions changes August 1, 2018. The purpose of this memo is to outline those for the License Committee and Common Council.

2017 Wisconsin Act 278 imposes new standards to apply to all applications made for City licenses.¹ Since the License Committee typically deals with questions involving criminal backgrounds in connection with alcohol beverage licensing, the details of these new law changes are being discussed at the July 17, 2018 License Committee meeting. It should be remembered however that the new laws affect all licensing decisions made by the Council and its Boards and Departments.

Under current law [Wis. Stats. §111.335], it is not considered unlawful employment discrimination to make an adverse decision on granting a license to an individual if that individual has an arrest (pending) or conviction record which substantially relates to the licensed activity.² The new law provides different rules for pending arrests and convictions. Additionally, other than for persons convicted of specified offenses, people denied a license must be provided the reasons for the decision in writing and be allowed an opportunity to provide evidence of rehabilitation/fitness to perform the activity. Each new requirement is discussed below.

¹ Under Sections 106-3 and 106-4 De Pere Municipal Code (DPMC), over 14 different types of licenses are identified in addition to Food Code and weights and measures licenses. As such, these law changes could greatly affect many licensing determinations. Realistically however, other than alcohol licensing, criminal background checks are not routinely performed for many licenses.

² Note: arrests which are no longer pending cannot be used to make a licensing decision; rather if the arrest resulted in a conviction, the conviction record would be looked at to determine if the conviction substantially relates to the licensed activity. If the charge did not result in a conviction, it cannot be used to form the basis of a licensing decision.

A. Arrest Records

Effective August 1, 2018, arrest records related to a pending charge may only be used as the sole reason to refuse to license³ an applicant only if the charge substantially relates to the licensed activity **and** the charge is one involving bodily injury or death (a set of offenses classified as “exempt” under the new law) **or** a violent charge against a child.⁴ If a pending arrest for some offense **not** included in the list of either “exempt” or “violent crimes against children” offenses, that pending arrest cannot be used as the sole reason to deny the license without possibly subjecting the city to a claim of unlawful employment discrimination.

B. Conviction Records

The current rule on use of convictions in licensing determinations pretty much remains as is. Therefore, meaning that a conviction that substantially relates to a licensed activity can be the sole basis for a denial **except** if it relates to an adjudication of delinquency for an offense *other than an exempt offense*.

C. Written Determination and Chance to Show Rehabilitation/Fitness for Activity

Effective August 1, 2018, except for convictions for an “exempt” offense, the following are required:

1. *Written Determination.* The licensing entity must provide in writing the reasons for the adverse licensing decision, including a statement of how the circumstances of the offense substantially relate to the licensed activity. For initial City licensing decisions, these required findings can be made a part of the motion (and council record), which then could be reduced to writing by the City Clerk and sent to the applicant. The writing should also include the right, created by this new law, for the applicant to provide evidence of rehabilitation.
2. *Rehabilitation/Fitness for Activity.* The applicant must be allowed an opportunity to show they are rehabilitated and fit to engage in the licensed activity. The statute further provides that if the applicant shows “competent evidence” of sufficient rehabilitation and fitness to perform the activity the licensing entity **may not refuse to license** the person. The statute goes on to provide what is competent evidence of rehabilitation and fitness for duty, including:
 - Honorable military discharge paperwork for military service after the conviction without subsequent conviction

³ Any adverse licensing decision, including suspension, revocation or barring from licensure are covered by this new law. For simplicity sake, the memo refers to refusal to license, which should be read to include all forms of adverse license decisions.

⁴ Exempt Offenses: Chapter 940 (Crimes against Life and Bodily Security); 948.02 (Chapter 948 covers Crimes Against Children); 948.025; 948.03; 948.05; 948.051; 948.055; 948.06; 948.07; 948.075; 948.08; 948.085; 948.095
Violent Crimes Against a Child: 948.02(1) or (2); 948.025; 948.03(2)(a) or (c) or (5)(a)1., 2., 3., or 4; 948.05; 948.051; 948.055; 948.07; 948.08; 948.085; 948.095; 948.30

- Completion of probation/parole paperwork without subsequent conviction
- Individual recognition of seriousness of offense; age at time of offense; length of time elapsed; letters of reference.

Given the breadth of changes this new law imposes on licensing activities, it is recommended that changes to both Chapter 7 (Liquor Licensing) and Chapter 106 (General Licensing and Permitting) be adopted so that the revised processes are clear and in compliance with state law. The law department hopes to be able to have ordinance revisions adopted by the Council by the end of 2018.

If you have any questions or comments regarding these matters, please feel free to call me at 339-4042.

J:\Law\Memos\2018\Alder Boyd-CC Law Changes Arrest-Conviction Records.docx