



License Committee

Regular Meeting

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

Revised Agenda

Tuesday, July 17, 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 **July 17, 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 3, 2018 License Committee Meeting.
3. Public Comment Period and other Announcements.
4. Operator License Applications.*
5. Consideration of Walmart's Request to Expand Licensed Premises to Allow for Curbside Pickup for Alcohol Sales.
6. Review Changes to State Law Concerning Use of Arrest and Conviction Records in Licensing Decisions
7. 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
Mayor
TV, Newspapers & Radio Stations
De Pere Chamber of Commerce
William F. Liberty
Sadie B. Stieglitz-VanVonderen
Robert A. Fruzen
Hannah K. Blecha
Pamela S. Carter
Shannon M. Charles
Jessica E. Danen
Tanner J. Ehnerd
Katie M. Fisette

City Administrator
Department Heads
Kress Family Library
Melissa A. Heezen
Erika L. Skenandore
Amanda K. Wydeven
Andrew W. Kane
Amanda L. Boeder
Kelvin L. Charles
Jennifer L. Chevalier
Elizabeth H. David
Danielle D. Elwell
Terril S. Fisher

Hannah M. French
Paul L. Goodine
Richard L. Hendricks
Kasey J. Johnston
Dylan T. Kelly
Paul S. Kudirko
Matthew J. Layden
Cassandra R. Leurquin
Jill A. Lorenz
Ken R. Novak
Caitlin A. Pavlik
Danny K. Roberts
Holly L. Server
Samuel J. Smits
Marcie E. VanKauwenbergh
Beth A. Wettstein
Joseph P. Augustyn
Elizabeth R. Doro
Mary J. Ehnerd
Nadia Laid
Jami N. Nardi
Martina M. Quigley Donath
Jeremy D. Smeester

Paulette M. Geohegan
Rebekka L. Hartman
Travis L. Jarvais
Jonathon P. Karlin
Jennifer L. Korb
Travis J. Lange
Hannah M. LeCloux
David M. Limberger
Morgan R. Martens
Amy C. Pagenkopf
Janessa M. Raynier
Kristina M. Seefeldt
Desirae J. Showe
Andrew R. Spakowicz
Sheri L. Watermolen
Matthew J. Zeitler
Mackenzie V. Counard
Angel M. Duval
Mariah K. Kirchenwitz
Kaitlyn O. Morris
Jody G Needham
Annicka L. Rabida
Baseer Ullah

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

MEETING DATE: July 17, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

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

ATTACHMENTS:

- 7-3-18 License Committee Minutes (DOC)



License Committee

Regular Meeting

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

Draft Minutes

Tuesday, July 3, 2018

6:45 PM

De Pere City Hall Riverview Room

Call to Order

The meeting was called to order at 6:45 PM by Alderperson James Boyd.

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

2. Approval of the Minutes of the June 19, 2018 License Committee Meeting.

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

3. Public Comment Period and other Announcements.

None.

4. Operator License Applications.*

Alderperson Carpenter moved, seconded by Alderperson Hansen to open the meeting.

Upon vote, motion carried unanimously. Previously Tabled Operator License Applications #1-4 and 7 were presented. Each of the applicants answered the Committee's questions. Alderperson Carpenter moved, seconded by Alderperson Boyd to close the meeting. Upon vote, motion carried unanimously.

Alderperson Carpenter moved, seconded by Alderperson Hansen to approve Previously Tabled Operator License Applications #1-4 and 7. Upon vote, motion carried unanimously.

Alderperson Carpenter moved, seconded by Alderperson Hansen to table Previously Tabled Operator License Application #5. Upon vote, motion carried unanimously.

Alderperson Carpenter moved, seconded by Alderperson Boyd to deny Previously Tabled Operator License Application #6. Upon vote, motion carried unanimously.

Alderperson Boyd moved, seconded by Alderperson Carpenter to open the meeting.

Upon vote, motion carried unanimously. Renewal Operator License Applications #5 and 13 were presented. Each of the applicants answered the Committee's questions.

Alderperson Boyd moved, seconded by Alderperson Carpenter to close the meeting. Upon vote, motion carried unanimously.

Alderperson Boyd moved, seconded by Alderperson Hansen to table Renewal Operator License Applications #18, 27 and 37. Upon vote, motion carried unanimously.

Alderperson Carpenter moved, seconded by Alderperson Hansen to approve Renewal Operator License Applications #1-17, 19-26, 28-36 and 38-43. Upon vote, motion carried unanimously.

Alderperson Hansen moved, seconded by Alderperson Boyd to table New Operator License Application #7. Upon vote, motion carried unanimously.

Attachment: 7-3-18 License Committee Minutes (7170 : Approval of the Minutes of the July 3, 2018 License Committee Meeting.)

Alderson Hansen moved, seconded by Alderson Boyd to approve New Operator License Applications #1-6. Upon vote, motion carried unanimously.

5. Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for Re-Serve Capacity & Supply LLC (DBA The Longbranch), 334 Main Av. Submitted by Re-Serve Capacity & Supply LLC, Agent: Kevin Alan Bauer, De Pere, WI.*

Alderson Boyd moved, seconded by Alderson Carpenter to open the meeting. Applicant Kevin Bauer answered Committee members' questions.

Alderson Boyd moved, seconded by Alderson Carpenter to close the meeting. Upon vote, motion carried unanimously.

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

6. 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.*

City Attorney Judy Schmidt-Lehman reported that the Clerk's office needs to obtain additional information from applicant.

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

7. Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for SAKS Holdings LLC, 115 N. Broadway. Submitted by SAKS Holdings LLC, Agent: Andrew Krans, De Pere, WI.*

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

8. Adjournment.

Alderson Carpenter moved, seconded by Alderson Boyd to adjourn the meeting at 7:10 PM. Upon vote, motion carried unanimously.

Respectfully Submitted,

Carey Danen, Deputy Clerk - Treasurer

City of De Pere, Wisconsin



Request For License Committee Action

MEETING DATE: July 17, 2018
DEPARTMENT: City Clerk-Treasurer
FROM: Shana Ledvina
SUBJECT: Operator License Applications.*

ATTACHMENTS:

- 07-17-18 (PDF)

CITY OF DE PERE
License Committee - July 17, 2018

Previously Tabled Operator License Applications	
1	HEEZEN, MELISSA A.
2	LIBERTY, WILLIAM F.
3	SKENANDORE, ERIKA L.
4	STIEGLITZ-VANVONDEREN SADIE B.
5	WYDEVEN, AMANDA K.

Temporary Operator License Applications	
1	FRUZEN, ROBERT A.
2	KANE, ANDREW W.

Renewal Operator License Applications	
1	BLECHA, HANNAH K.
2	BOEDER, AMANDA L.
3	CARTER, PAMELA S.
4	CHARLES, KELIN L.
5	CHARLES, SHANNON M.
6	CHEVALIER, JENNIFER L.
7	DANEN, JESSICA E.
8	DAVID, ELIZABETH H.
9	EHNERD, TANNER J.
10	ELWELL, DANIELLE D.
11	FISSETTE, KATIE M.
12	FISHER, TERRIL S.
13	FRENCH, HANNAH M.
14	GEOHEGAN, PAULETTE M.
15	GOODINE, PAUL L.
16	HARTMAN, REBEKKA L.
17	HENDRICKS, RICHARD L.
18	JARVAIS, TRAVIS L.
19	JOHNSTON, KASEY J.
20	KARLIN, JONATHON P.
21	KELLY, DYLAN T.
22	KORB, JENNIFER L.
23	KUDIRKO, PAUL S.
24	LANGE, TRAVIS J.
25	LAYDEN, MATTHEW J.
26	LECLOUX, HANNAH M.
27	LEURQUIN, CASSANDRA R.
28	LIMBERGER, DAVID M.
29	LORENZ, JILL A.
30	MARTENS, MORGAN R.

Attachment: 07-17-18 (7171 : Operator License Applications.*)

31	NOVAK, KEN R.
32	PAGENKOPF, AMY C.
33	PAVLIK, CAITLIN A.
34	RAYNIER, JANESEA M.
35	ROBERTS, DANNY K.
36	SEEFELDT, KRISTINA M.
37	SERVER, HOLLY L.
38	SHOWE, DESIRAE J.
39	SMITS, SAMUEL J.
40	SPAKOWICZ, ANDREW R.
41	VANKAUWENBERGH, MARCIE E.
42	WATERMOLEN, SHERI L.
43	WETTSTEIN, BETH A.
44	ZEITLER, MATTHEW J.

New Operator License Applications	
1	AUGUSTYN, JOSEPH P.
2	COUNARD, MACKENZIE V.
3	DORO, ELIZABETH R.
4	DUVAL, ANGEL M.
5	EHNERD, MARY J.
6	KIRCHENWITZ, MARIAH K.
7	LAID, NADIA
8	MORRIS, KAITLYN O.
9	NARDI, JAMI N.
10	NEEDHAM, JODY G.
11	QUIGLEY DONATH, MARTINA M.
12	RABIDA, ANNICKA L.
13	SMEESTER, JEREMY D.
14	ULLAH, BASEER

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

MEETING DATE: July 17, 2018

DEPARTMENT: City Attorney

FROM: Angela Zills

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

ATTACHMENTS:

- License Committee - Walmart Request to Expand Licensed Premises (PDF)
- Walmart license amend clarification 7-17-18 (PDF)

CITY OF DE PERE

MEMO

To: License Committee
 From: Kate R. Zuidmulder, City Staff Attorney
 RE: Request of Walmart #5090 to expand License premises
 Date: June 14, 2018

The purpose of this Memo and included attachments is to provide information to assist in discussion regarding the request by Walmart #5090 to expand license premises for the purpose of launching an online grocery pickup service that would include alcohol sales at the De Pere location. This matter has been placed on the July 17, 2018 Committee meeting Agenda for discussion of above request.

1. Walmart's current Class A Retail license for the sale of Fermented Malt Beverages and Intoxicating Liquors premise description is as follows:

1415 LAWRENCE DR., DE PERE, WI 54115, 1 ROOM, 1 STORY,
 APPROXIMATELY **2,900 SQ. FT.** SEPARATE FROM THE ATTACHED
 WALMART SUPERCENTER WHICH HAS A SEPARATE ENTRANCE.

Walmart is seeking to amend the premises description as follows:

1415 LAWRENCE DR., DE PERE, WI 54115, 1 ROOM, 1 STORY BUILDING,
 APPROXIMATELY **186,215 SQ. FT.**, INCLUDING STALLS IN PARKING LOT
 DESIGNATED FOR ONLINE GROCERY PICKUP.

2. Walmart's request is to expand the licensed premises from the enclosed area with separate door currently required under the code to the entirety of the Walmart store and parking stalls. This would require amendment to Section 7-11 of the City of De Pere Municipal Code, Limitations on class "A" licenses. More specifically, to the following:

- a. Sec. 7-11(a)(1): "Intoxicating Liquor is displayed in a separate area of the establishment which is constructed with four solid walls and is capable of being locked and inaccessible to customers during those hours in which sales of intoxicating liquor are not permitted by law".

If, following discussion, the Committee requests the City Attorney's office to prepare proposed Ordinance amendments, additional language specifically addressing online ordering and curbside pickup of alcohol would be recommended consistent with State Law and to ensure compliance.

The following materials are attached to this Memo in order to provide more information regarding this request:

- “Municipal Regulation of “Click and Collect” Alcohol Sales, Claire Silverman, Legal Counsel for the League of Wisconsin Municipalities, The Municipality, March 2018.

- Example of Wisconsin Municipal Code that has been amended to address online ordering and pickup of alcohol: The City of Madison Municipal Code 38.07(4), “Online Ordering and Curbside Pickup of Alcohol Beverages” (pg. 2).

- Letter from Attorney Gregory T. Everts, QUARLES & BRADY LLP, Counsel for Walmart, regarding Walmart’s request, proposed site map and floor plan for the De Pere Walmart and the Walmart Online Grocery Pickup Procedure Guide.



Municipal Regulation of "Click and Collect" Alcohol Sales¹

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

"Click and Collect" describes a practice where consumers order online from a retailer's website and then pick up their orders at a local store. The use of Click and Collect has become increasingly popular as retailers in competitive markets look for innovative ways to serve customers, and customers have become accustomed to the comfort and convenience of ordering online.

Notably, many grocery stores and other similar retailers have begun offering Click and Collect and, for a small fee or free with a minimum order, will assemble the grocery order and deliver it curbside when the customer arrives to pick it up. It's not hard to imagine the convenience factor as being off the charts for, among others, persons with busy work schedules, persons with small children in tow, and those with limited mobility.

While Click and Collect sales do not typically require municipal oversight or approval, oversight and/or approval may be desirable and/or necessary when the online sale includes alcohol beverages and, in particular, when the sale involves curbside delivery. Recently, some retailers with alcohol licenses have sought municipal approval to expand the description of their premises to include designated parking stalls used for the Click and Collect deliveries. This is

necessary since state law requires the licensed premises to be "particularly described" and include all areas where alcohol is stored or sold.²

To amend described premises during the license year, the licensee must file a written request with the municipality. The governing body has discretion to approve or disapprove the change.³ Municipalities can impose conditions in connection with allowing amendment of the premises but are limited in imposing conditions once the request to amend the premises description has been granted.⁴

This legal comment briefly summarizes state law requirements that come into play when Click and Collect involves the sale of alcohol beverages.

Wisconsin law requires the following for alcohol sales:

1. Face-to-face sales to consumers at the licensed premises.⁵
2. Purchaser must be of legal drinking age (21 or older).
3. Seller must be a licensed operator or under the immediate supervision of a licensed operator.
4. No sales can be made to intoxicated persons.

In order to satisfy the requirement that the sale be face-to-face and that it take place on the licensed premises, an online order for alcohol beverages should not be consummated when the order is placed but, rather, when the order is picked up by the customer with the customer signing the credit card or paying at the retailer's licensed premises. If the customer is picking up curbside, those parking spaces must be included in the licensee's described premises since that is where the sale is taking place.

The requirement that all persons selling alcohol possess an operator's license or be under the immediate supervision of someone with an operator's license effectively means that those delivering alcohol curbside should have an operator's license. "Immediate supervision" has been interpreted to mean that the person supervising must be able to see those being supervised at all times.⁶

Municipalities that receive requests to amend premise descriptions to allow Click and Collect with curbside delivery of alcohol must decide whether such sales should be allowed and, if so, what conditions are appropriately imposed to ensure that any such sales are done lawfully.

► p.16

1. This article was inspired by a Nov. 7, 2017 memo on Click and Collect Alcohol Sales written by Julia Sherman at the Wisconsin Alcohol Policy Project.

2. Wis. Stat. §§ 125.25(3), 125.26(3), 125.28(3), 125.51(2)(c) and 125.51(3)(d).

3. *Alberti v. City of Whitewater*, 109 Wis.2d 592, 327 N.W.2d 150 (1982). See also Wis. Stat. sec. 125.04(3)(h).

4. *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76. The Wisconsin Alcohol Policy Project's Nov. 7, 2017 memo on Click and Collect Alcohol Sales mentioned a variety of conditions that municipalities were considering or had adopted.

5. Wis. Stat. §§ 125.272 and 125.51(6).

6. OAG 9-10-62 (informal opinion).

Legal

Municipalities should review a retailer's policies for the Click and Collect operation before granting an expansion of the licensed premises and may want to include those policies as license conditions. Municipalities that want to allow Click and Collect alcohol sales may want to also adopt an ordinance governing such sales. A Wisconsin Alcohol Policy Project memo on Click and Collect⁷ suggests that municipalities inquire about the following before granting an expansion of the licensed premises to allow Click and Collect alcohol sales:

- What hours will alcohol orders be allowed?
- How is an alcohol order assembled?
- Who assembles the entire order? Is an itemized tape prepared?
- When is the credit card charged for the order?
- Is the individual who delivers the order a licensed operator?
- What equipment is provided to staff (e.g., is ambient light sufficient or is a flashlight needed to read the ID, a scanner to record the credit card sale or ID)?

7. See footnote 1.

- Is the newly licensed area under video surveillance?
- When is the ID checked?
- Does the seller determine that the name on the order is the same name on the ID?

The memo notes that in addition to provisions relating to the above factors, some municipalities have adopted or considered the following provisions:

- A requirement that the system allow the purchase of alcohol to be denied without affecting the remainder of the purchase.
- Notification of police when an apparently underage person or intoxicated person attempts an alcohol purchase.
- Imposing a minimum waiting period between order time and pick-up time for alcohol and tobacco.
- Requiring that images of the transaction (purchaser, ID card, vehicle, license plate) be captured and retained for a minimum period of time.
- Prohibiting tasting events in the parking lot.

Although municipalities may differ regarding whether Click and Collect alcohol sales should be permitted, those municipalities that wish to allow it should take measures to ensure that such sales are in compliance with state law.

Intoxicating Liquors 955

About the author:

Claire Silverman is Legal Counsel for the League. Her responsibilities include supervising the legal services provided by the League, answering questions of a general nature for officials and employees of member municipalities, writing legal articles for the League's magazine and amicus briefs in appellate cases involving issues of statewide concern to municipalities, organizing an annual institute for municipal attorneys, and educating local officials on a variety of topics pertaining to their duties. In addition, she coordinates legal material for the League's web page. Claire joined the League staff in 1992. Contact Claire at cms@lwm-info.org

Editor's Note:

If you are generally interested in municipal responsibility/authority for handling local health matters, please request the Legal Comment "Health 65," authored by Claire Silverman, League Legal Counsel, and published in the June 1999 *The Municipality*.



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Municipal Code – City of Madison
 Alcohol Beverages Regulated, Chapter 38
 Section 38.07

• **38.07 - GENERAL RESTRICTIONS.**

(1) Public Place. No owner, lessee or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit. This subsection does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, churches, premises in a state fair park or clubs.

(2) Possession of Alcohol Beverages on School Grounds Prohibited. Pursuant to the provisions of Wis. Stat. § 125.10, the City of Madison does hereby adopt and incorporate into this Subsection the provisions of Wis. Stat. § 125.09(2), inclusive of all future amendments to any provisions of this section of the Wisconsin Statutes. (Am. by Ord. 11,624, 6-28-96; Rep. & Rec. by ORD-07-00118, 9-22-07)

(3) Restrictions on Delivery of Beer, Wine and Intoxicating Liquor.

(a) No person may peddle any alcohol beverage from house to house where the sale and delivery are made concurrently.

(b) For delivery of beer, wine, and intoxicating liquor, payment or payment arrangements shall be made in person at the licensed establishment prior to delivery. (Am. by ORD-10-00073, 8-12-10)

(c) The person paying for the keg/beer/wine coolers/intoxicating liquor must be at least 21 years of age and shall provide the licensed establishment with two forms of identification. The types of identification and identifying factors (e.g. driver's license number, physical descriptors, address, etc.) shall be recorded by the licensed establishment. The identifying information shall be retained by the retailer for at least two years from the date of sale and must be made available at the request of law enforcement or the Alcohol License Review Committee, pursuant to an active investigation by the Madison Police Department, City Attorney, or ALRC regarding alleged Chapter 38 MGO/ Wis. Stat. ch. 125 violation(s). (Am. by ORD-10-00073, 8-12-10)

(d) When purchasing kegs of beer, the person paying for the keg(s) must sign a receipt indicating how many kegs are being purchased and where they will be delivered.

(e) Delivery of any alcoholic beverage shall not be made unless the person who provided the identification is at the point of delivery and signs for receipt of the alcohol. The licensed establishment shall retain the signed delivery receipt for at least two years from the date of sale and make it available at the request of law enforcement or the Alcohol License Review Committee, pursuant to an active investigation by the Madison Police Department, City Attorney, or ALRC regarding alleged Chapter 38 MGO/ Wis. Stat. ch. 125 violation(s).

(f) Any person who violates this subsection is subject to a forfeiture of not more than \$1,000.

(g) Transactions under this subsection shall comply with Sec. 38.07(16), MGO. (Cr. by ORD-10-00073, 8-12-10)

(Sec. 38.07(3) Am. by Ord. 12,942, 12-24-01)

Municipal Code – City of Madison
 Alcohol Beverages Regulated, Chapter 38
 Section 38.07

(4) Online Ordering and Curbside Pickup of Alcohol Beverages .

(a) No establishment shall allow online purchase of alcohol beverages and curbside delivery of such purchases ("Click and Collect"), without first obtaining a "Change of Premises" from the Madison Common Council, upon recommendation of the Alcohol License Review Committee (ALRC) to license that portion of the establishment's parking lot that will allow vehicles to park for purposes of picking up their online order.

1. The licensed establishment shall file a detailed operation plan with their "Change of Premises" form that clearly details how their "Click and Collect" operation will function. The operation plan shall include the licensee's protocol for assuring that underage persons and intoxicated persons do not pick up alcohol via the "Click and Collect" program.

2. Failure of licensee to provide a detailed operation plan with their "Change of Premises" application shall result in the City of Madison Clerk's Office not forwarding the "Change of Premises" form to the ALRC for consideration.

(b) No establishment holding an alcohol beverage license shall allow online purchase and pick-up of alcohol beverages unless the sale is consummated on the licensed premises.

1. Payment for the purchase must be completed on premises and may not be completed until the purchaser is at the licensed premises and has presented valid photo identification that has been verified by a licensed operator employed by the premises.

2. The licensed operator must verify that the person placing the "Click and Collect" order is the same person picking up the order.

3. The sale and delivery of "Click and Collect" purchases shall be made only by a licensed operator.

4. No alcohol sales are permitted if the purchaser fails to present valid photo identification.

5. The "Click and Collect" system must allow the purchase of alcohol to be denied without affecting the remainder of the purchase.

(c) Each "Click and Collect" transaction must capture and retain an image of the vehicle into which the order is being loaded for thirty (30) days.

(d) Each "Click and Collect" transaction must record and retain the following information for thirty (30) days:

1. The name of the purchaser.
2. The type of identification card presented and the number and expiration date of that identification card.
3. The purchaser's date of birth.
4. The license plate of the vehicle into which the order is being loaded.

Municipal Code – City of Madison
Alcohol Beverages Regulated, Chapter 38
Section 38.07

- (e) Pick-up of "Click and Collect" orders shall be between the hours of 8:00 a.m. and 8:00 p.m.
- (f) There shall be a minimum four- (4) hour waiting period between order time and pick-up time.
- (g) Orders placed after 2:00 p.m. cannot be picked up until the following day.
- (h) If the "Click and Collect" purchaser is not the driver of the vehicle into which the order is being loaded, the licensed operator must verify that the driver is 21 years of age or older.
- (i) The licensed operator shall report to his or her manager any purchaser who shows signs of alcohol consumption, and in conjunction with the manager, shall assess sobriety for purposes of approving or denying the sale.
- (j) The pick- up area for "Click and Collect" purchases shall be clearly defined with visible markings, signs, and/or barriers.
- (k) No events other than the delivery of "Click and Collect" orders shall be allowed on the expanded premises.
- (l) Penalty. Any licensee or person who violates any provision of this subsection shall be subject to a forfeiture of not less than \$250, nor more than \$1000 plus court costs and fees. Licensees are also subject to demerit point assessment for violations of this subsection.



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June 12, 2018

VIA UPS OVERNIGHT

Attorney Kate Zuidmulder
City of De Pere
335 South Broadway
De Pere, WI 54115

**RE: Walmart #5090 - 1415 Lawrence Drive
Change of Premises for Alcohol Beverage License**

Dear Ms. Zuidmulder:

Quarles & Brady serves as legal counsel for Walmart with respect to alcohol beverage licensing in Wisconsin. Walmart is launching an online grocery pickup service in select stores in Wisconsin. Customers using this service will be able to place an order online and provide a credit card to hold the order. The customer will then come to their local Walmart store to complete the payment and pick up the order at either a pickup canopy or a dedicated parking space.

Walmart would like to offer customers who shop at their De Pere store the opportunity to include alcohol beverages in an online order. We have contacted the Department of Revenue, which has confirmed that this is permitted under Wisconsin law. Per Tyler Quam, Special Agent with the Department, an online grocery order may include alcohol beverages if payment is made at the store and the customer's age is verified by an employee licensed to sell alcohol beverages in a face-to-face transaction that occurs within the licensed premises. Walmart, therefore, is seeking to amend the premises description on its current license to include the pickup location (canopy or dedicated parking space), as follows:

One room, one story building, approximately 186,215 sq. ft.,
including stalls in parking lot specifically designated for online
grocery pickup.

We have enclosed a site map and floor plan for the De Pere Walmart store showing the location of the dedicated parking spaces. We have also included a copy of Walmart's Online Grocery Pickup Procedure Guide.

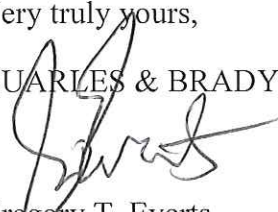
Shana Ledvina, City Clerk
June 12, 2018
Page 2

We are aware that this change will require approval of the License Committee and request that this proposed amendment be considered at their meeting on July 17th. Further, Store Manager, Frank Van Voderen, Jr., and eCommerce Assistant Manager, Jeff Bunnell, will be in attendance at such meeting and available to answer any questions regarding Walmart's online grocery pickup program.

Please let us know if you have questions or require additional information.

Very truly yours,

QUARLES & BRADY LLP

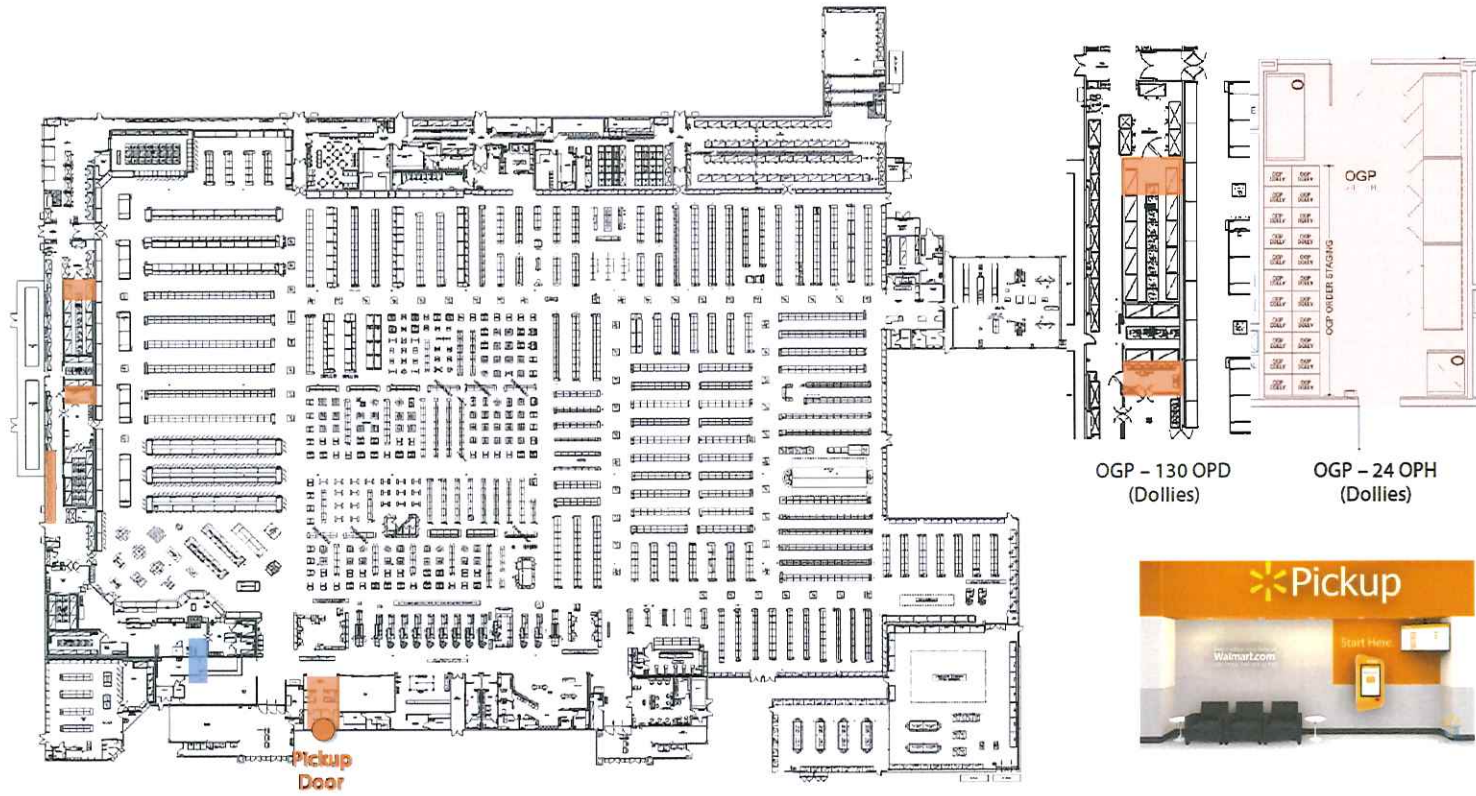


Gregory T. Everts

Enclosures
QB\52737988.1

Attachment: License Committee - Walmart Request to Expand Licensed Premises (7179 : Consideration of Walmart's Request to Expand

Walmart #5090 – De Pere, WI



Walmart #5090 – De Pere, WI



No Canopy



Compliance & Ethics

Online Grocery Pickup Procedure Guide

Placing Order

- Customer visits walmart.com/grocery and creates an account by providing applicable information such as phone #, zip code, email address, etc.
- Based on the customer's zip code, he or she will be provided with a list of the closest stores eligible for Walmart Online Grocery Pickup program
- Customer selects desired pickup store location and the pickup timeframe
- Customer completes the order by supplying Walmart with payment information
- Walmart authorizes and holds the card information but funds are not transferred from the card



- Where allowed by state and local law, customers can include alcoholic beverage product in their online grocery order through walmart.com/grocery.

- All alcoholic beverage product item pages are flagged with a notification explaining the restrictions around purchasing this product (pictured right)

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

The sale of alcohol to minors is prohibited.

At delivery or pickup, you must show a valid photo ID and provide a signature confirming that you are age 21 or over. Accepted forms of ID are: Driver's Licenses, State-issued Identification Cards, U.S. Passports, Military Identification Cards, U.S. Immigration Cards, or Tribal IDs in specific states, or other similar government issued IDs that are recognized within the state. Drivers will not deliver to anyone who appears to be intoxicated. No discounts, coupons or tax-exempt sales may be applied to alcohol. An order of alcohol totaling 20 gallons or more will not be allowed.

- If the customer checkouts with an alcoholic beverage product in their basket, another notification is displayed at checkout (pictured right) and an acknowledgement box must be checked by the customer (pictured below).

Alcohol Disclosure ⓘ

By checking this box, you confirm that you are at least 21 years old and will not resell any alcohol you purchase.

Alcohol Disclosure ⓘ

Your order contains alcohol. Please read our policy before purchase.

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

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Compliance & Ethics

Online Grocery Pickup Procedure Guide

Picking / Staging

- On the day a customer is scheduled to pickup an order, a Walmart associate, identified as a "Personal Shopper," will "shop" for the customer order in the store
- All shopping is completed on the pickup day to ensure customer receives the freshest products



- If a customer's order contains an alcohol beverage product, the product is assigned to a "Restricted" commodity group to ensure only personal shoppers that have taken the appropriate training and are of a legal age will pick the alcohol beverage product
- Only personal shoppers meeting the age requirements within the regulatory jurisdiction are allowed to handle and/or dispense orders with alcohol beverage products
- In Wisconsin**, Personal shoppers must hold an operator/bartender license issued by their local municipality
- The picking carts that our shoppers use to pick items, have a roll of stickers labeled with the word "alcohol"
- Orders containing alcohol beverage products are bagged and labeled with an alcohol sticker *(pictured right)*
- This sticker enables our personal shoppers to clearly identify items that are subject to additional regulatory restrictions
- All picked orders are kept in a secure backroom staging area, not open to the public, and only where Walmart employees are permitted to enter
- Online Grocery orders are staged separately than other online orders (Site to Store or Pickup Today programs)



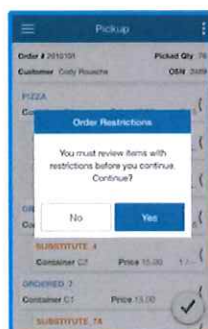
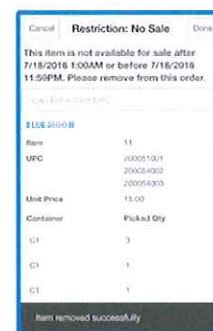
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Compliance & Ethics

Online Grocery Pickup Procedure Guide

Customer Pickup: Order Review

- Online Grocery Pickup is currently offered between 8am – 8pm, 7 days a week (except holidays or other store closures)
 - When the customer arrives, they notify our personal shoppers of their arrival by calling, using mobile check-in, or check-in via the pickup kiosk (options vary by location)
 - The personal shopper assigned to dispense the order uses the handheld device to identify the order number and pull the appropriate totes from the staging areas
 - Prior to putting the customer's order in their vehicle, the personal shopper uses their handheld device to review the order with the customer
 - The personal shopper will also review any substituted items, fragile items, out of stock items, and verify customer's identification if the customer purchased any age restricted items
 - This review allows the customer to ensure they are getting what they want and provides the customer an opportunity to return or reject any item
- Only personal shoppers meeting the age requirements within the regulatory jurisdiction are allowed to handle and/or dispense orders with alcohol beverage products
 - If a customer's order includes alcohol beverage product, the personal shopper is prompted by their handheld device that there are restricted items in their order
 - If alcohol is not allowed to be sold at the time of dispense, the associate is notified (via their handheld device) that sale of the product is currently restricted, the items are automatically removed from the customer's digital basket (the customer will not be charged), and the personal shopper will remove the physical product from the order (*pictured right*)
 - The personal shopper will request valid identification and enter the customer's date of birth from the identification into their handheld device (*pictured below*)



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Compliance & Ethics Online Grocery Pickup Procedure Guide

- If over 21, the customer can sign for the order, and the personal shopper can place the final order into the customer's vehicle
- If the customer is under 21 and/or cannot provide a valid ID, the alcohol beverage products are removed from the customer's order and the customer is not charged for these products. *(pictured right)*



Customer Pickup: Dispensing

- Once the customer and personal shopper have:
 - Reviewed any substituted items, fragile items, and out of stock items
 - Removed any rejected products that the customer no longer wants
 - Verified the customer's age and identification if the order contained any age restricted items (and if necessary, removed age restricted items)
- The customer signs the order, the customer's account is charged with the final order amount (after removing the cost of any products removed from the customer's order)
- The personal shopper places the final order in the customer's vehicle, and the transaction is considered complete



*red text indicates a control related to alcohol
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Judy Schmidt-Lehman

From: Diller, Becky A. <Becky.Diller@quarles.com>
Sent: Monday, July 16, 2018 9:47 AM
To: Kate Zuidmulder; Judy Schmidt-Lehman
Cc: Shana Ledvina; Everts, Gregory T.
Subject: RE: Walmart #5090 [QBLLP-ACTIVE.FID39340272]
Attachments: License Committee Agenda - 7-17-2018.pdf
Importance: High

Hello Kate,

My apologies for the delayed response and not connecting with you by phone last week. You are correct that Walmart would like to include in the online order program for their De Pere store sales of Fermented Malt Beverages ONLY, not any other type of intoxicating beverages. The online order program will be limited so customers would be permitted to only order items currently available in the Supercenter (not their liquor store), which would include, as far as alcohol beverages are concerned, Fermented Malt Beverages ONLY. Walmart is not requesting any type of expansion on the Class A Fermented Malt Beverages and Intoxicating Liquors License for their liquor store.

This morning I pulled from the City's website a copy of the agenda for the July 17th License Committee meeting. Unfortunately, the memo regarding Walmart's request for expansion of the license premises (page 10) does not correctly reflect the facts. The memo implies that Walmart is requesting expansion of the Class A Fermented Malt Beverages and Intoxicating Liquors License for their liquor store (2,900 sq. ft.). The operation of the liquor store will not be affected; no change to its license, size of the premises, or the conditions of that license would be made. Rather, Walmart is requesting expansion of the Class A Fermented Malt Beverages License for their Supercenter. Further, the size of the licensed premises is not affected by this expansion. All Walmart would like to do is expand the description on the license to include the approximately 10 parking stalls, near the pickup door, that are being designated for online grocery pickup. The language Walmart seeks to add to its current Class A Fermented Malt Beverages License for the Supercenter is: "... including stalls in parking lot designated for online grocery pickup." We kindly request that this be made clear to the members of the License Committee prior to their meeting tomorrow evening.

With respect to your second comment, we have made Walmart aware that their request for including alcohol beverages in their online ordering program for their De Pere store may require an amendment to the city's ordinances similar to the recently-enacting Madison ordinance addressing this same issue. We will keep you advised if they have any comments or would not be able to comply with these provisions.

Please let us know if you have further questions.

Regards,
 Becky



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 Office 813-387-0279 / [quarles.com](#)

From: Kate Zuidmulder [mailto:kzuidmulder@mail.de-pere.org]
Sent: Tuesday, July 10, 2018 4:00 PM
To: Everts, Gregory T. (MAD x2460) <gregory.everts@quarles.com>; Diller, Becky A. (TPA x5279) <Becky.Diller@quarles.com>
Subject: Walmart #5090

Dear Greg and Becky,

Thank you for the additional information. It was very helpful.

First, to again clarify, Walmart is asking that their online order services in De Pere *only* include sales of Fermented Malt Beverages? Not any other type of intoxicating beverage? If that is the case, it certainly simplifies this request.

Second, because we have to treat all of the City stores equally, if the Committee wants to go forward with approval of Walmart's request, this will involve amending the ordinance to specifically address the online sales issue so that any store wanting to offer this service is under the same restrictions. In the Agenda packet regarding this issue I provided the Committee with Madison's ordinance addressing this issue. Below is what I included. Should the Committee wish to pursue amending the ordinance to include the below language, would Walmart be able to comply with all of these provision? I'll be honest, I'm not crazy about just designating 10 pre-existing parking stalls without direct proximity to the pick-up door or without a canopy. It doesn't seem to encourage compliance especially during Wisconsin winter weather. But, then again, the committee may not share this concern. I just want to be clear on what Walmart is willing to put into place to comply with any ordinance changes. I did review their Online Procedure Guide again so I know they are prepared to have the appropriate employees handling these sales.

MADISON 38-07(4)

(a) No establishment shall allow online purchase of alcohol beverages and curbside delivery of such purchases ("Click and Collect"), without first obtaining a "Change of Premises" from the Madison Common Council, upon recommendation of the Alcohol License Review Committee (ALRC) to license that portion of the establishment's parking lot that will allow vehicles to park for purposes of picking up their online order.

1. The licensed establishment shall file a detailed operation plan with their "Change of Premises" form that clearly details how their "Click and Collect" operation will function. The operation plan shall include the licensee's protocol for assuring that underage persons and intoxicated persons do not pick up alcohol via the "Click and Collect" program.

2. Failure of licensee to provide a detailed operation plan with their "Change of Premises" application shall result in the City of Madison Clerk's Office not forwarding the "Change of Premises" form to the ALRC for consideration.

(b) No establishment holding an alcohol beverage license shall allow online purchase and pick-up of alcohol beverages unless the sale is consummated on the licensed premises.

1. Payment for the purchase must be completed on premises and may not be completed until the purchaser is at the licensed premises and has presented valid photo identification that has been verified by a licensed operator employed by the premises.

2. The licensed operator must verify that the person placing the "Click and Collect" order is the same person picking up the order.

3. The sale and delivery of "Click and Collect" purchases shall be made only by a licensed operator.

4. No alcohol sales are permitted if the purchaser fails to present valid photo identification.

5. The "Click and Collect" system must allow the purchase of alcohol to be denied without affecting the remainder of the purchase.

(c) Each "Click and Collect" transaction must capture and retain an image of the vehicle into which the order is being loaded for thirty (30) days.

(d) Each "Click and Collect" transaction must record and retain the following information for thirty (30) days:

1. The name of the purchaser.

2. The type of identification card presented and the number and expiration date of that identification card.

3. The purchaser's date of birth.

4. The license plate of the vehicle into which the order is being loaded.

(e) Pick-up of "Click and Collect" orders shall be between the hours of 8:00 a.m. and 8:00 p.m.

(f) There shall be a minimum four- (4) hour waiting period between order time and pick-up time.

(g) Orders placed after 2:00 p.m. cannot be picked up until the following day.

(h) If the "Click and Collect" purchaser is not the driver of the vehicle into which the order is being loaded, the licensed operator must verify that the driver is 21 years of age or older.

(i) The licensed operator shall report to his or her manager any purchaser who shows signs of alcohol consumption, and in conjunction with the manager, shall assess sobriety for purposes of approving or denying the sale.

(j) The pick- up area for "Click and Collect" purchases shall be clearly defined with visible markings, signs, and/or barriers.

(k) No events other than the delivery of "Click and Collect" orders shall be allowed on the expanded premises.

(l) Penalty. Any licensee or person who violates any provision of this subsection shall be subject to a forfeiture of not less than \$250, nor more than \$1000 plus court costs and fees. Licensees are also subject to demerit point assessment for violations of this subsection.

I'm just leaving for a meeting but wanted to get this over to you. Thanks!

-Kate

Kate R. Zuidmulder
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kzuidmulder@mail.de-pere.org

OFFICE HOURS: TUESDAY 8-4:30 PM & THURSDAY 8-4:30 PM
WEDNESDAY PRE-TRIAL HOURS: 5-8:00 PM

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Attachment: Walmart license amend clarification 7-17-18 (7179 : Consideration of Walmart's Request to Expand Licensed Premises Allowing

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

MEETING DATE: July 17, 2018

DEPARTMENT: City Attorney

FROM: Judith Schmidt-Lehman

SUBJECT: Review Changes to State Law Concerning Use of Arrest and
Conviction Records in Licensing Decisions

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.

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