

General Guidelines for Reviewing Operator's (bartender) Licenses

This document is a guide for the West Allis City Clerk's Office to assist in determining how to process certain Operator's Licenses. For specific issues or questions, please contact the City's legal department or consult the appropriate City Code (generally WARMC Sec. 9.02) or State Statutes (generally Wis. Chapter 111 or 125).

Statutory Guidelines – Arrest and Conviction

Operator's (bartender) licenses may be denied to applicants based upon arrest and conviction criteria outlined in Wisconsin State Statutes Chapters 111 and 125 and as further described in these guidelines.

The a license may be denied in following circumstances:

1. The applicant has a pending criminal charge that **substantially relates** to the circumstances of the licensed activity *and* is a violent crime against children or adults. (Wis. Stat. 111.335(4)(a).)
2. The applicant has been convicted of any felony, misdemeanor or other offense that **substantially relates** to the circumstances of the licensed activity. (Wis. Stat. Sec. 111.335(3)(a)1.) *See below.*
3. Applicants who are not at least eighteen years of age. (Wis. Stat. 125.04(5)(d)2.)
4. Applicants who have not been residents of the state for at least the last 90 days prior to the application. (Wis. Stat. 125.04(5)(a)2.)
5. POTENTIAL denial For Drug Offenses:

Please Note: There is an inconsistency in the law regarding the ability to deny a license for drug offenses under Wis. Stat. 111.335(4)(h). The actual language of the law allows for a licensing body to, "revoke, suspend or refuse to renew a license or permit under ch. 125." The current state of the law does not indicate that a *denial* is possible. The committee has two options and should apply their decision consistently:

- a. Follow the letter of the law, meaning the committee grants the license and then moves for revocation proceedings, creating an additional hearing/process.
- b. Follow what appears to be the intent of the law, skip the extra step of requiring a revocation hearing, and deny the license at the outset.
 - **Direction from the License and Health Committee is to proceed under this line of reasoning.**

The following drug offenses may result in a denial/revocation of the license:

- Manufacturing, distributing or delivering a controlled substance or controlled substance analog under 961.41(1)

- 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 961.41 (1) or (1m).
- 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 961.41 (1) or (1m)
- Possessing any of the materials listed in 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 961.65.

(961.41 (1) and (1m) include marijuana, LSD, cocaine, psilocybin [mushrooms], narcotics, amphetamines, methamphetamines

Types of Offenses that May Substantially Relate to the Licensing Activity:

- Violent Crimes
- Drug abuse or distribution/ manufacture
- Crimes against vulnerable parties or populations
- Offenses involving impairment or consumption of alcohol as an element or contributing factor to the offense
- Theft
- Offenses that involve lack of cooperation with law enforcement
- Offenses that relate to the sale or distribution of alcohol

*This is a non-exhaustive list. Contact the City Attorney's Office for further information or analysis.

** These types of offenses can be used by the Clerk's Office to determine how to process certain Operator's License Applications.

Requirement for Committee to Consider Rehabilitation if Denial Based on Applicant's Record:

Once an applicant is denied or revoked due to felony, misdemeanor, or other offenses that substantially relate to the circumstances of the licensed activity, the Committee shall:

- 1) State the reasons in writing, including a statement to how the offense(s) substantially relates to the licensed activity.
- 2) Allow the applicant to show "competent evidence of rehabilitation." This can be at the present hearing or after the application has been denied.

Competent Evidence of Rehabilitation includes:

- Honorable discharge from the military.

- A copy of local, state, or federal release documents showing completion of probation, extended supervision, or parole.
- Evidence that at least one year has elapsed since release from local, state, or federal correctional institutions without subsequent convictions and compliance with supervision.

The Committee “shall” also consider the following information if presented:

- The nature of the offense.
- Mitigating circumstances or social conditions surrounding the offense.
- Age of the applicant at the time of the offense.
- Length of time elapsed since the offense.
- Letters of reference.
- All other relevant evidence of rehabilitation.

If “competent evidence of rehabilitation” is presented by the applicant, the Committee “may not refuse to license the individual.” (Wis. Stat. 111.335(4)(c)1.b.)

Additional Consideration or Criteria

In addition to the above statutory guidelines, the City may elect deny licenses to applicants based on the following rationale:

1. Who falsify the application materially.
2. Who have an active warrant for his/her arrest.
3. Who has any outstanding unpaid fee, tax, judgment or assessment due the City of West Allis.

It is often a condition of release that a probationer or parolee not consume, sell, or generally have available to him or her alcohol or other drugs not prescribed by a physician. These applicants should be required to present documentation to the Common Council exhibiting the conditions of their probation and acknowledging that the issuance of the license is not in violation of the probation or parole terms.