



**CITY OF WAUSAU POLICY:
OPERATOR’S AND OTHER LICENSES**

Policy Source: Public Health & Safety Committee

Public Health & Safety Committee Approval:

Common Council Approval:

Effective Date:

I. PURPOSE:

On January 10, 2017, the City of Wausau adopted a policy concerning the issuance of operator’s licenses. The policy acted as a guide for decision-makers evaluating whether an applicant’s arrest or conviction record would preclude him/her from issuance of a license related to alcohol beverage service because he/she was an habitual offender, or the felony, misdemeanors, or other offenses were considered substantially related to the licensed activity for which that applicant has applied. The policy carefully considered application of the provisions of Chapter 125 of the Wisconsin Statutes, Wausau Municipal Code chapter 5.64 and the provisions of the Wisconsin Fair Employment Act (“WFEA”), relating to arrest and conviction records, Wis. Stat. ss. 111.335.

The Wisconsin State Legislature amended the WFEA effective August 1, 2018, through 2017 Wisconsin Act 278 (“Act 278”). Through the creation of statutory section 111.335(4), “Discrimination in Licensing,” the WFEA has changed the circumstances under which a licensing agency may base decisions to approve, deny, or revoke a license based upon an applicant’s criminal history. Effectively, section 111.335(4) adds greater protections for those with arrest or conviction records to obtain a license from a local licensing agency.

II. APPLICATION OF POLICY:

This Policy replaces the previous policy “Operator’s Licenses” adopted by the Common Council on January 10, 2017.

This Policy applies to all licenses granted and issued by the City of Wausau including licenses for the sale of fermented or intoxicating liquors under the provisions of Chapter 125 of the Wisconsin Statutes and Wausau Municipal Code chapter 5.64.

III. EXEMPT OFFENSES:

The following offenses are considered exempt offenses under this Policy and the WFEA:

Offenses set forth in ch. 940 (Crimes Against Life and Bodily Security, such as: homicide, battery, sexual assault, strangulation and suffocation, human trafficking, stalking, intimidation of witnesses or victims. See attached).

A violation of any of the following sections of the Wisconsin Statutes:

- 948.02 (Sexual assault of a child)
- 948.025 (Engaging in repeated acts of sexual assault of the same child)
- 948.03 (Physical abuse of a child)
- 948.05 (Sexual exploitation of a child)
- 948.051 (Trafficking of a child)
- 948.055 (Causing a child to view or listen to sexual activity)
- 948.06 (Incest with a child)
- 948.07 (Child enticement)
- 948.075 (Use of a computer to facilitate a child sex crime)
- 948.08 (Soliciting a child for prostitution)
- 948.085 (Sexual assault of a child placed in substitute care)
- 948.095 (Sexual assault of a child by a school staff person or a person who works or volunteers with children)

IV. POLICY:

LICENSES & ARREST RECORD/PENDING CRIMINAL CHARGES:

Pursuant to the WFEA, it is discrimination to refuse to license an individual, or to suspend or terminate an existing license, solely because of a pending criminal charge, unless the circumstances of the charge substantially relate to the circumstances of the particular licensed activity in question and the charge is an Exempt Offense or a violent crime against a child.

It is also discrimination because of arrest record to request an applicant or licensee, or other individual, to supply information regarding any arrest record of the individual except a record of a pending charge.

JUVENILE ADJUDICATED DELINQUENT:

It is discrimination to refuse to license an individual, or bar or terminate an individual from licensing because the individual was adjudicated delinquent of an offense under the Juvenile Justice Code, unless the offense is an Exempt Offense.

CRIMINAL CONVICTIONS:

It is discrimination to deny a license for a conviction of felony, misdemeanor or other offense unless the circumstances substantially relate to the circumstances of the licensed activity or the individual is not bondable where bondability is required by law.

Where a license is denied or proposed for denial and the conviction is for other than an Exempt Offense, the City must provide a written reason of the denial or proposed denial which includes a statement of how the circumstances of the offense relate to the particular licensed activity.

Where a license is denied or proposed for denial for other than an Exempt Offense, the City shall allow the individual to show evidence of rehabilitation and fitness to engage in the licensed activity. If the individual shows competent evidence of sufficient rehabilitation and fitness to perform the licensed activity, the license may not be refused based upon that conviction or convictions.

If a conviction(s) is for an Exempt Offense the licensing agency is not required to provide the written statement of how the circumstances of the conviction related to the particular licensed activity or permit the individual an opportunity to show evidence of rehabilitation and fitness to engage in the licensed activity.

REHABILITATION AND FITNESS FOR OTHER THAN EXEMPT OFFENSES:

The following evidence shall be considered by the City as evidence of rehabilitation and fitness:

- Evidence of the nature and seriousness of any offense of which he or she was convicted.
- Evidence of all circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense.
- The age of the individual at the time the offense was committed.
- The length of time that has elapsed since the offense was committed.
- Letters of reference by persons who have been in contact with the individual since the applicant's release from any local, state, or federal correctional institution.
- All other relevant evidence of rehabilitation and present fitness presented.

In addition, pursuant to Wis. Stat. s.111.335(4)(d)1.a. and b., either of the following must be accepted as competent evidence of sufficient rehabilitation and fitness:

- The individual's most recent certified copy of a federal department of defense form DD-214 showing the person's honorable discharge, or separation under honorable conditions, from the U.S. armed forces for military service rendered following conviction for any offense that would otherwise disqualify the individual from the license sought and the individual has had no subsequent criminal convictions.
- A copy of the local, state, or federal release document; and either a copy of the relevant department of corrections document showing completion of probation, extended supervision, or parole; or other evidence that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime along with evidence showing compliance with all terms and conditions of probation, extended supervision, or parole. [The Wisconsin Legislative Council Act Memo: 2017 Wisconsin Act 278 has described this provision as requiring "documentation showing that the person

completed his or her probation, extended release or parole and, if the person served time in a correctional institute, that one year has passed since his or her release without subsequent conviction of a crime.” Memo at p. 2].

The Applicant is responsible for providing the City Clerk with relevant evidence of rehabilitation and fitness. The City Clerk will forward the evidence to the Chief of Police or his/her designee for consideration and review. After review and evaluation of the evidence of rehabilitation and fitness, the Chief of Police or his/her designee will make a recommendation in accordance with this policy and the WFEA to the Public Health & Safety for its consideration with respect to the license application.

If the applicant shows competent evidence of sufficient rehabilitation and fitness to perform the licensed activity, the license may not be refused or terminated based upon that conviction or convictions.

If an applicant does not provide the City with competent evidence of sufficient rehabilitation and fitness to perform the licensed activity, it will be presumed that no evidence exists.

SPECIAL ALCOHOL PROVISIONS:

It is not employment discrimination because of conviction record to revoke, suspend or refuse to renew a license under ch. 125 if the person holding or applying for the license or permit has been **convicted** of one or more of the following (Wis. Stat s. 111.335(4)(h)1.- 5.):

- Manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1).
- Possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m).
- Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under a federal law that is substantially similar to s. 961.41 (1) or (1m).
- Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under the law of another state that is substantially similar to s. 961.41 (1) or (1m).
- Possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.

Mary A. Goede, Deputy City Clerk
Clerk/Customer Service



TEL: (715) 261-6621
FAX: (715) 261-6626

[DENIAL FOR AN EXEMPT OFFENSE]

April 16, 2019

Applicant
Address
City, State

Dear _____:

You recently applied for a _____ License with the City Clerk's Office. This letter is to inform you that your license application has been recommended for denial by Police Chief Bliven due to the following information found in your background check:

_____.

The Police Chief makes a recommendation of approval or denial to the Public Health & Safety Committee regarding all _____ license applications, if you wish to appeal this decision you may address the Public Health & Safety Committee on **Monday, _____, 2019 at 5:15 pm.**, in the **Council Chambers, City Hall**, 407 Grant Street. If you do not appear, the recommendation of denial will move forward to the full Council.

The license application fee is non-refundable. If you have any further questions of the Clerk's Office, call 261-6620.

Sincerely,

Mary A. Goede
Deputy City Clerk

cc:



[DENIAL FOR A NON EXEMPT OFFENSE]

April 16, 2019

Applicant
Address
City, State

Dear _____:

You recently applied for a _____ License with the City of Wausau at the City Clerk's Office. This letter is to inform you that your license application has been recommended for denial by Police Chief Bliven due to the following information found in your background check: [*Insert Conviction/s*]

Individuals who hold this type of license [*insert the qualities/characteristics expected or necessary for the performance of this licensed activity*]. The conviction of _____ demonstrates [*insert how the circumstances of the offense are substantially related to the licensing activity*].

Because the offense noted above is not considered an "exempt offense," Wis. Stat. s. 111.335(4) permits you to show evidence to this agency of rehabilitation and fitness to engage in this licensed activity. Evidence of rehabilitation and fitness can be established by production of documentation set forth on the attachment to this letter. A full list of "exempt offenses" for which the opportunity to show evidence of rehabilitation and fitness would not be available is provided in Wis. Stat. s. 111.335(1m)(b) and (4)(a)2.

The Police Chief makes a recommendation of approval or denial to the Public Health & Safety Committee regarding all _____ license applications. If you do not provide sufficient evidence of rehabilitation and fitness the Police Chief will make a recommendation of denial of your license application to the Public Health & Safety Committee. If you wish to appeal this decision you may address the Public Health & Safety Committee on **Monday, _____ at 5:15 pm.**, in the **Council Chambers, City Hall**, 407 Grant Street. If you do not appear, the recommendation of denial will move forward to the full Council.



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Sincerely,

Mary A. Goede
Deputy City Clerk

cc:



EVIDENCE OF REHABILITATION AND FITNESS

Evidence of rehabilitation and fitness can be established by production of documentation showing:

- (1) You were honorably discharged or separated under honorable conditions from the U.S. military and had no subsequent criminal convictions (certified copy); or
- (2) You completed probation, extended supervision, or parole or other documentation showing that at least one year has passed since your release without subsequent conviction of a crime and a copy of the local, state, or federal release document.

In addition to the documentary evidence above, the City will also consider evidence presented by you: (1) of the nature and seriousness of the offense; (2) all circumstances relative to the offense (including mitigating circumstances or social conditions); (3) your age at the time of the offense; (4) the length of time that has elapsed since commission of the offense; (5) letters of reference by persons who have been in contact with you since your release from any local, state, or federal correctional institution; (5) all other relevant evidence of rehabilitation and fitness.

Detailed information concerning demonstration of rehabilitation and fitness to engage in the licensed activity is provided in Wis. Stat. s. 111.335(4), which is part of the Wisconsin Fair Employment Act.