



CITY OF WAUWATOSA
COMMUNITY DEVELOPMENT COMMITTEE
MINUTES • JUNE 3, 2014

Special Meeting
Committee Room #1
6:30 PM

7725 West North Avenue, Wauwatosa, WI 53213

COMMUNITY DEVELOPMENT COMMITTEE ITEMS

Attendee Name	Title	Status	Arrived
Kathleen Causier	Aldерwoman	Present	
Craig Wilson	Alderman	Present	
Tim Hanson	Alderman	Absent	
Bobby Pantuso	Alderman	Present	
Cheryl Berdan	Aldерwoman	Present	
Matthew Stippich	Alderman	Present	
Michael Walsh	Alderman	Present	
Allison Byrne	Aldерwoman	Present	
Alan Kesner	City Attorney	Present	

1. Memo from City Attorney regarding criteria for City Clerk to administratively deny operator's license applications

The City Attorney reviewed with the committee the desire of the Common Council to have the City Clerk make administrative determinations regarding issuance or denial of operator's licenses. He explained that for many years, the clerk has been delegated the authority to issue such licenses when no concerns are revealed during the background investigations. He said that objective criteria must be established in order to delegate to the Clerk the authority to deny licenses administratively.

The City Attorney said he consulted with the Clerk's office in compiling the following criteria based on the different licensing factors that have been used over the years:

The City Clerk is delegated the authority to deny Operators' License applications based upon the following factors:

- Arrest or conviction record under circumstances which “substantially relate to the alcohol beverage licensing activity”, and most not be an “habitual law offender”. Alcohol or substance related offenses most commonly fit this category
- “Habitual Law Offender”. Two or more convictions or violations within a short period of time and recent. Should use the following guideline: Average more than one (minor) conviction per year for a period of up to five years in the immediate past. Example: Three convictions in the past two years, or five convictions in the past four years. Six convictions more than five years ago would not be grounds for administrative denial, but could be grounds for six-month review (see below)
- Felony conviction substantially related to licensed activity. [NOTE: one felony which substantially relates to the licensing activity could lead to nonlicensing, for convictions other than felonies, such as ordinance and misdemeanor convictions, there must be repeat offenses to make the person an “habitual law offender”. Similarly, for a pending charge (i.e., an arrest record) it appears that a license may not be denied for one pending charge unless that charge is for a felony]
- Failure to disclose any offenses on application form as requested, or failure to disclose offenses, which are of such significance as to result in administrative denial under the above criteria

Attorney Kesner discussed the issuance of an Operator's License, subject to a six-month review, under the following circumstances:

- Arrest or conviction record more remote in time or number. The following factors apply; minor convictions, fewer in number, more than five years old, less substantially related to licensed activity
- Background investigation reveals one single arrest or conviction for a violation of Chapter 125 or Section 346.63 (“Operating under influence of intoxicant or other drug”)
- Partial (but incomplete) disclosure of offenses on application form
- Failure to disclose any offenses on form if offenses are not substantially related to the licensed activity

Six Month Review: If a six-month review is granted under the above circumstances, the operator will be informed that they can conditionally hold the license for six months, and an additional background review will be conducted at that time. License will be considered for nonrenewal if any further convictions or arrests are revealed by the investigation. License will be switched to permanent status if no additional issues have arisen in that time period.

Communication to applicant: Any determination by the City Clerk for a six month review or denial of an operator’s license shall be communicated to the applicant, along with an explanation of the reason for the action taken. The letter shall be accompanied by an additional copy of the guidelines and shall specifically inform the applicant of the right to appeal to the appropriate committee of the Common Council.

Appeal: Any individual who is denied an operator’s license by the City Clerk shall be permitted to appeal to the appropriate committee of the Common Council, which shall conduct a *de novo* review of the application and shall determine whether to issue or deny the license.

The City Attorney responded to a question asked regarding the committee that would hear the appeal process. He said the Common Council has already delegated *the committee* to be the final authority on operator licenses in general.

The City Clerk responded to a question that she didn’t think feel the change would be very significant to the department workload by taking on these denials. She said the number of licenses that would fall under the denial category is quite small.

Ald. Wilson expressed concern of the written language on the first few bullet points. He questioned the reasoning used for the language chosen. It was mentioned that the Clerk’s office already has the authority to grant a license to an applicant with a clean record and a good application. In the last category Ald. Wilson talked about the six-month review criteria and that the Clerk’s office may issue a license subject to a six-month review. The denial criteria was read and the aldermen questioned the wording “delegate the authority to deny” Operators’ License and the reasoning that language was chosen. Ald. Wilson felt that bigger circumstances should be listed where the application would be expected to be denied.

The City Attorney explained that he used the wording, delegate authority, because the act of denial by statute, is an act that is specifically reserved for the Common Council. He said it could be phrased “delegate the authority and directed to deny” if the committee chose to do so. The City Attorney said he wanted to make sure in the denial category that authority is being delegated. The issuance of license has also been delegated previously. He said by approving this you would be delegating new power for denials.

Ald. Wilson said his preference would be “delegated and directed to deny” for specifics in disqualifications.

Ald. Wilson read from the first bullet point in the denial category questioning what “substantially related to the alcohol beverage licensing activity” meant. He noted that in the six-month review specific items are listed not a broad statement.

Alan said the term, substantially related, comes from the Fair Employment Law, Chapter 101, and is required under the statutes that you can only use the arrest or conviction on substantially related.

The City Attorney said the intent is to be broader and could also include controlled substance violations and things like that. Because alcohol is a substance as are other controlled substances.

The City Attorney explained that in Chapter 125 or Section 346.63 of the statute, the 6-month review criteria section are specifically delineated for denial. He said you could be on watch for those but you cannot deny an applicant because of them.

Further discussion continued on the first two bullet points of criteria changes.

Ald. Wilson questioned the clarity of the denial criteria. He wasn't convinced that there was clear guidance given on grounds for a license denial. The City Attorney suggested that the habitual law offender language could be removed from the first bullet point and separate it into a new bullet point combined with the second bullet point. Ald. Wilson felt that any record that doesn't fit in to the six-month review period could be denied and was still concerned that applicants could be denied when it might not necessarily relate to the alcohol beverage licensing activity.

Ald. Berdan asked whether Ald. Wilson was proposing changes to the criteria. He said he would like to see a few changes made. Ald. Berdan said she felt there was enough guidelines provided to deny with the knowledge that a committee would hear any appeals. Ald. Berdan questioned if this criteria is currently listed on the application. Ald. Berdan expressed concern that when applicants were previously called into the Legislation, Licensing, and Communications (LLC) committee meeting, they were not made aware of why they were being asked to attend. She also felt that the criteria information would never get read by the applicant. The City Attorney felt that was true, that the applicant did not know that they had failed to disclose something and were put on the spot when called into the LLC meeting.

The City Attorney said that the City Clerk's office is encouraged to discuss this criteria more fully in advance at the time an application is being submitted. He said that the current application is quite broad and the applicant still does not list all of the information for some reason or another.

Ms. Ledesma explained that the application form does encourage the applicant to disclose everything. She further explained that when an operator is sent a letter to come before the LLC committee, the letter says that they are being called in because of information that was found on their background check, so they shouldn't be entirely surprised.

Ms. Pelczynski also noted that when renewal letters are sent out to the business owners, it is emphasized to them, to have their employees fill out their application forms completely. She said that every effort is being made to make this clear to the applicant.

Moved by Ald. Berdan, seconded by Ald. Causier
to approve of the criteria to be adopted when delegating the
power to approve and deny operator's licenses to the City Clerk.

The City Attorney asked that the criteria language for denials be cleaned up per discussion on the following points:

- The City Clerk is "delegated the authority *and directed* to deny" Operator's License applications based upon the following factors
- The language in the first bullet point and must not be an "*habitual law offender*", to be removed and combined with the second bullet point, "*habitual law offender*"

The mover and seconder approved.

Ald. Pantuso also said his concern was not that the wrong person would be given a license, but of someone being denied. He felt with the appeal criteria included, there is a safety net in place for the applicant if they felt they were improperly denied and was supportive.

Vote on the motion - Ayes: 7

RESULT:	RECOMMENDED [UNANIMOUS]	Next: 6/3/2014 7:30 PM
TO:	Common Council	
MOVER:	Cheryl Berdan, Alderwoman	
SECONDER:	Kathleen Causier, Alderwoman	
AYES:	Causier, Wilson, Pantuso, Berdan, Stippich, Walsh, Byrne	
ABSENT:	Hanson	

Carla A. Ledesma, CMC, City Clerk