

# City of Wauwatosa

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## ALCOHOL LICENSE LAWS, POLICY AND PRACTICE PRESENTATION



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# Topics to Discuss

- GENERAL LICENSING CONCEPTS
  - Licensing philosophy
  - Granting, Denying, or Taking Action Against a Licensee
  - Making an appropriate record
- ALCOHOL LICENSES
  - Legal Authority
  - New License Applications
- STATE QUOTA AND WAUWATOSA LICENSE INFORMATION
  - Statutory Quota
  - Wauwatosha Licenses
- REVIEW KEY CONCEPTS
- QUESTIONS



# General Licensing Concepts



# Licensing Philosophy

- Public Trust
  - The activity being licensed is inherently something that is a unique concern to the public
  - Oversight prevents and corrects problems
- Licensure requires quality over quantity
  - The license exists because the licensed activity requires a qualified individual do the activity correctly and within the confines of the law
  - The authority that grants licenses must review an applicants qualifications for the license
- Getting a *new license* is a privilege
- An *existing license* is a due process right
- The Common Council sets the standard, within the boundaries of state law and the constitution
  - Whether a new license is issued
  - Whether an existing license is suspended/revoke/not renewed



# Granting, Denying, or Taking Action Against a Licensee

- When granting, denying, or taking action against a licensee it is important to be mindful of the record you make
- Absolutely cannot make a decision on any license based on discrimination
  - Age
  - Race
  - Creed
  - Color
  - Disability
  - Marital status
  - Sex
  - National origin
  - Ancestry
  - Arrest record
  - Conviction record
  - Military service
  - Use or nonuse of lawful products during nonworking hours
  - Participation or nonparticipation in any communication about religious matters or political matters
- How to avoid unintentional discrimination:
  - Be consistent in the reasons for denying a license
  - Avoid placing a condition on or denying a license for reasons that could impact a protected class with particularity



# Making a Record

- Common Council meetings are recorded and can be viewed on the Wauwatosa Meeting Portal
- It is important to make an appropriate record, especially in the following types of decisions:
  - Denying a new license for Class A/B/C
  - Granting a new Class A/B/C License with conditions to be placed on the license
  - Denying an Operator's License (particularly if based on conviction records)
  - When making a determination after a hearing
- Decisions by the Common Council may be subject to review by the court system
- Best practice is to make an appropriate record of your decisions and motion with a rational basis for your decision
  - Rational relation to a legitimate government interest



# Alcohol Licensing



# Legal Authority

## State law requires licenses to operate various alcohol-related businesses

- Class A – Liquor and/or beer store
  - Licensed as “Class A” Liquor /Class “A” Fermented Malt Beverage / Combination
  - Original packages or containers for off-premises consumption
- Class B – Bars, restaurants, etc.
  - Licensed as “Class B” Liquor/ Class “B” Fermented Malt Beverage/ Combination
  - Sale of open or closed containers for on or off premises consumption
- Class C Wine
  - Sale of open or closed containers for on or off premises consumption
- Statutes specifically say the common council “may issue” any Class A, B, or C licenses
  - §§ 125.25(1), 125.26(1), 125.51(1)
  - ~~Except: Class “A” has right to “Class A” cider~~
- Other licenses are “shall issue”:
  - For the city: Operator’s license (bartender/sales clerk)
  - For the state:
    - Alcohol warehouse, Class “B” permit (sports clubs, vessels, tribes), Brewpub, Alcohol Wholesaler, Liquor rectifier/manufacturer, winery





# New and Renewal License Applications – Class A/B/C

## GENERAL INFORMATION

- The Government Affairs Committee (GAC) is the body that reviews license applications
- Common Council is the granting authority. GAC recommends approval/denial to the full Common Council
- The City Clerk is the issuing authority
- License applications must be submitted to the Clerk's Office no sooner than 15 days prior granting
- City Clerk's Office conducts a criminal background check thru the WI DOJ
- Applications are sent to the following departments for review
  - Police Department: to determine if any violations of Wis. Stat. Ch. 125 have occurred
  - Fire Department: to determine fire code compliance
  - Health Department: to determine health code compliance
  - Planning Department: to determine zoning code compliance
  - Finance Department: to determine if there are any outstanding fees owed to the City
  - Attorney's Office: legal review



# New License Application – Class A/B/C

## QUALIFICATIONS

- **Step 1:** Council decides if applicant is qualified
  - The applicant does not have a arrest or conviction record \*\*
  - Has been a resident of Wisconsin continuously for at least 90 days
  - 21 years old
  - Has Wisconsin Seller's permit
  - Completed responsible server course or was recently a licensee or agent (within prior two years)
- \*\*Only consider conviction record if the charge substantially relates to licensed activity
  - Except: no discrimination if conviction is for drug manufacture or delivery or poss. w/intent
- Only consider an arrest record if the charge substantially relates to licensed activity and is:
  - A certain crime involving children
  - A crime under Ch. 940
- Before denying for conviction record other than drug manufacture or delivery:
  - Must allow applicant to show competent evidence of rehabilitation and fitness
  - Applicant has wide variety of ways to show it



# New License Application – Class A/B/C

## COUNCIL DISCRETION

- **Step 2:** Council decides whether to grant new license to a qualified person
  - If qualified applicant and denied:
    - Must have rational basis
    - Must be nondiscriminatory
  - This means that even if the applicant is qualified, the Council still has discretion to reject for a rational reason
- The ability to deny qualified applicants is unique to new applications:
  - Does not apply to renewal application
  - Does not apply to “shall issue” licenses (example: Operator’s Licenses)
- No need to state reasons for denial if evident from the record, but identifying reasons is helpful
- This is the only opportunity to place conditions upon a license. This should be done on the record and should appear on the license
- If unsure, it is okay to postpone consideration of an application to gather more information
- Once a license is granted, the applicant has a right to due process before it can be revoked, suspended, or not renewed



# New License Application – Class A/B/C

## RATIONAL BASIS

- Examples of when municipalities used discretion to deny new alcohol licenses:
  - Past problems with the applicant as licensee  
786 F.2d 338
  - Past problems with the landlord of applicant  
786 F.2d 338
  - Undesirable neighborhood problems either because of management or of location  
38 Wis. 2d 518
  - Moral character of the applicant  
38 Wis. 2d 518
  - Financial responsibility of the applicant  
38 Wis. 2d 518
  - Appropriateness of the location and of the premises proposed  
38 Wis. 2d 518, 220 Wis. 107
  - Don't want any bars in the area  
220 Wis. 107
  - Already too many bars in the area  
242 Wis. 632
  - False or incomplete information on application  
10 Wis. 2d 153
  - The sequence in which applications are received does not matter  
230 Wis. 543



# New License Application – Class A/B/C

## ADDING CONDITIONS TO A LICENSE

- Cities are allowed to place conditions upon the issuance of a new license  
2012 WI 76; 2008 WI 38; Wis. Stat. 125.10(1)
- The kinds of conditions must be:
  - Rationally related to license
  - Nondiscriminatory
  - Not in conflict with state laws
- The City can cite licensees for violating those regulations and suspend/revoke licenses, but the regulations must be adopted by ordinance
- Sample conditions that can be adopted by ordinance and MAY be placed on a license include:
  - Licensee conducting principal business as described
  - Maintaining property in accordance with landscape and architectural designs
  - Video surveillance requirements
  - Maintaining security measures
  - Maintaining a certain layout
  - Limitations on promotions or activities



# Renewal License Applications – Class A/B/C

- A license renewal request may be denied only for the causes specified in sec. 125.12(2)(ag) for revoking a license
  - The person has violated this chapter or municipal regulations adopted under sec. 125.10
  - The person keeps or maintains a disorderly or riotous, indecent or improper house
  - The person has sold or given away alcohol beverages to known habitual drunkards
  - The person does not possess the qualifications required under this chapter to hold the license
  - The person has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m); or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state
  - The person has been convicted of possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that subsection or under a federal law or a law of another state that is substantially similar to s. 961.65
  - The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog
  - The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.65 with the intent to manufacture methamphetamine
  - The person received the benefit from an act prohibited under s. 125.33 (11)



# Renewal License Applications – Class A/B/C

- More on refusal to renew a license:
  - Prior to the time for renewal of the license, the governing body must notify the licensee in writing of its intent to deny renewal of the license and the reason(s) for doing so
  - The licensee must be provided with an opportunity for a hearing
  - The hearing procedure for nonrenewal is the same as that for revocation or suspension under sec. 125.12(2)(b)

## Renewal process

- Notification of applications are sent to licensees in April
- The Clerk's Office verifies if licensees are still qualified to hold a license
- Applications are sent to the same departments to verify compliance with Wis. Stat. Ch. 125 and local ordinances
- Applications are then reviewed by GAC at the last meeting in May. Licenses are granted by the Council at the first meeting in June. Clerk's Office issues licenses following the Council meeting
- Straggler applications will be reviewed by GAC at their 1<sup>st</sup> meeting in June and granted by the Council at their 2<sup>nd</sup> meeting in June



# State Quota And Wauwatosa License Information





# Statutory Quota

- State quota on alcohol licenses applies only to “Class B” liquor licenses
- Based on # of licenses granted or issued on December 1, 1997
- Municipalities gain an additional reserve license when the population increases by a full 500
- Reserve Licenses
  - **Minimum** of \$10,000 initial issuance fee for Reserve licenses
  - May not rebate or refund the initial issuance fee – 2015 Wis Act 286
  - Reserve licensees are not eligible for premises-to-premises transfer
- Statutory quota exceptions:
  - A full-service restaurant that has a seating capacity (interior, permanent) of 300 or more persons
  - Hotel that has 50 or more rooms and either an attached restaurant with 150 or more seating capacity or a banquet room of 400 persons or more capacity
  - Opera House or theater for the performing arts operated by a nonprofit organization
  - Premier Economic Development District – 2015 Wis Act 286
  - Regional Transfer Option – 2023 Wis Act 73



# Wauwatosa Licenses

- State quota on Wauwatosa licenses:
  - Started with 45 regular licenses, 28 reserve licenses
  - 1997 Population: 49,335
  - 2023 Population: 48,836
  - As of today, we have 27 reserve licenses issued, leaving 1 available reserve license
- Premier Economic Development District (PEDD) licenses
  - In 2017, the City created a PEDD in the area of Mayfair Collections
  - This created 2 licenses to be issued above the statutory quota
  - As of today, only one license has been issued: Crafty Crab
- Hotel exceptions to quota
  - This exception can only be used when all reserve licenses have been exhausted
  - Currently, we have 1 eligible hotel with a reserve “Class B” license: Renaissance
- 300-seat restaurant exception to quota
  - We have one licensee with this exception: Texas de Brazil
- Conversions



# Wauwatosa Licenses

- Regular “Class B” Licenses: 44 licensees
- The City does not have a local quota on Class A, Class C, or Class B Beer licenses
- Class “B” Beer-Only: 2 licensees
- Class “B Beer and Class C Wine: 10 licensees
- Class C Wine-only: 1 licensees
- Class A Beer and Liquor: 20 licensees
- Class A Liquor-only: 1 licensee
- Brewery/Brewpub Permits
  - Breweries and brewpubs are permitted by the WI DOR
  - Breweries are not eligible for City licenses, and thus are not regulated by the City
  - Brewpubs are eligible for City licenses
  - There are 2 breweries in the City limits: Gathering Place Brewing and Big Head Brewing Company.
  - There are 2 brewpubs: Good City Brewing and Lion’s Tail Brewing Co.



# Important Considerations



# Biggest Takeaways

- The activity being licensed is inherently something that is a unique concern to the public
- Absolutely cannot make a decision on any license based on discrimination.
  - To protect against those types of allegations, best practice is to make an appropriate record of your decisions and motion with a rational basis for your decision
- New Class A/B/C licenses are discretionary
  - New licenses are a privilege, and discretion can be used in deciding whether to grant. Existing licenses require due process before they can be revoked, suspending, or not renewed
  - If a new Class A/B/C license is issued, you can add conditions to that license, but must have local ordinance in place
- City currently only has 1 available Reserve “Class B” liquor license



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# Discussion, Questions and Answers

