

TOWN OF LUCAS OPERATOR'S LICENSE REVIEW POLICY

(a) **Purpose.**

- (1) The Town Board of the Town of Lucas, Dunn County, Wisconsin is responsible for issuance of Operator's Licenses for the service of alcohol beverages. In order to provide for a consistent system of alcohol licensing that protects the public safety, provides consistency with the requirements of the Wisconsin Statutes and Town ordinances, and which is applied in a uniform and equitable manner, the Town Board has adopted this policy to provide guidance on the review and granting of Operator's Licenses ("bartender's licenses").
- (2) Persons who are issued an Operator's License are responsible for ensuring that alcohol beverages are not served or sold to underage or intoxicated persons. Licensed operators are expected to uphold all state laws and local ordinances relating to the sale and consumption of alcohol beverages on the premises they control or manage. Licensed operators are expected to actively discourage and minimize disturbances of the peace, strive to maintain community safety, discourage impaired driving, and work in cooperation with law enforcement authorities.
- (3) Before issuing an Operator's License to an individual, the Town Board must be reasonably satisfied that the applicant can be entrusted with these responsibilities. This policy is adopted to assist Town officials in evaluating applications for Operator's Licenses and in determining when an application may be either rejected or approved.
- (4) Due to the discretionary nature of the licensing process for the issuance of Operator's Licenses, it is not possible for this policy to set forth all possible reasons for denial of an application or what circumstances will result in approval of an Operator's License application. This policy is also not to be construed as a limit on the Town Board's ultimate discretion to issue a license or deny an application for any lawful reason.
- (5) If the Town Board denies an Operator's License application, the reasons for denial shall be clearly stated on the record and shall be consistent with the criteria outlined herein.

(b) **Arrest and Conviction Records.**

- (1) The Town Board, in cooperation with the Town Clerk, and appropriate law enforcement agencies, shall conduct a review of the arrest and conviction records of all applicants for an Operator's License and report the results to the Town Board. If necessary, the criminal and traffic records check may include an interview with the applicant or contact with other jurisdictions or third parties to verify information obtained in the records check. Arrest, conviction and habitual offender records are subject to Sections 111.321, 111.322 and 111.335, Wis. Stats. *Provided the*

circumstances of the offense substantially relate to the duties of the holder of an Operator's License and subject to the limitations in Subsection (b)(3) below, persons with arrest or conviction records revealing any of the following *may possibly not* be issued an Operator's License [Example: There is a substantial relationship between the illegal purchase, use or sale of a controlled substance and engaging in bartending, which involves the sale of a closely regulated substance]:

- a. Conviction of a felony, unless duly pardoned.
 - b. Conviction, or current charge pending, under a State Statute or local ordinance, for one (1) or more violent offenses (e.g. battery, disorderly conduct, sexual assault, etc.), offenses against government (e.g. resisting or obstructing an officer, perjury, bail jumping, intimidation of a witness, etc.) or drug offenses, not including simple possession, within five (5) years prior to the date of license application.
 - c. Conviction, or current charge pending, under a State Statute or local ordinance for two (2) or more violent offenses, offenses against government, or drug offenses, not including simple possession, arising out of separate incidents within the ten (10) years prior to the date of license application.
 - d. Conviction, or current charge pending, for two (2) or more offenses arising out of separate incidents within five (5) years prior to the date of application of any of the following offenses, whether under State Statute or similar local ordinance:
 - e. Disorderly conduct.
 - f. Criminal damage to property.
 - g. Solicitation of prostitution or other prostitution-related offenses.
 - h. Alcohol beverage offenses.
 - i. Manufacturing, distributing or possession of controlled substances, a controlled substance analog, or drug paraphernalia.
 - j. Operating a motor vehicle contrary to any offense under Section 346.63, Wis. Stats. (impaired driving law).
 - k. Open intoxicants violations - in motor vehicles or public places.
 - l. Resisting or obstructing a law enforcement officer, bribery of a public official, or bail jumping.
- (2) The person is a habitual law offender. The term "habitual" refers to multiple convictions or pending charges and could include an offender with two (2) or more

offenses occurring within a short period of time. The term "offender" refers to a person with civil violations such as ordinance convictions and/or misdemeanor convictions, or pending charges, which substantially relate to the licensed activity. The League of Wisconsin Municipalities has issued a legal opinion stating that a person with two (2) operating while intoxicated (OWI) driving convictions within recent years would be considered an habitual offender under Wisconsin alcohol beverage licensing laws. A person shall be considered an "habitual law offender" if the person has been convicted or has a current pending charge for:

- a. Two (2) or more offenses arising from separate incidents within the year immediately preceding the date of application;
 - b. Three (3) or more offenses arising from separate incidents within the five (5) years immediately preceding the date of application; or
 - c. Six (6) or more offenses arising from separate incidents within the ten (10) years immediately preceding the date of application.
- (3) If non-issuance of an Operator's License is being considered due to an applicant's actual criminal convictions for activity "substantially related" to being a licensed operator, the applicant is entitled to submit to the Town evidence of rehabilitation and fitness to engage in the licensed activity despite the earlier conviction(s). However, certain offenses do not qualify an applicant for this right (e.g. any offence to life or bodily security under Ch. 940, Wis. Stats., or crimes against children). In such applicable situations per Sec. 111.335(4)(d), Wis. Stats., such evidence of rehabilitation is: (i) proper documentation stating that the person was discharged or separated under honorable conditions from the military; or (ii) documentation indicating that the person has completed his/her probation, extended release, or parole, and, if the individual has been incarcerated, that a minimum of one (1) year has elapsed since his/her release without any subsequent conviction of a crime. Under such circumstances when the required documentation is provided, other valid grounds would need to be cited for not issuing an operator's license.
- (4) The Town can consider, and base its licensing determination on, pending criminal charges if the facts involved with the pending charge "substantially relate" to the licensed activity and the pending criminal charge is for certain specified crimes against a child, a violent crime against a child, or is a criminal charge involving life and bodily security. Other pending criminal charges not involving those specified crimes involving matters of life and bodily security or crimes against a child cannot be considered in making a determination on an Operator's License application.
- (c) **Truthful Application Requirement.** If the Town Board determines that the applicant has provided false information or intentionally omitted pertinent information, the application shall be denied and no new application from that person shall be approved for a period not less than one (1) year from the date of denial. If the Town Board determines that the information was omitted from an application due to mistake or excusable neglect, the Town Board shall allow the applicant to submit a corrected application.

(d) **Appeal Of Initial Determination.**

- (1) Any person denied an Operator's License may appeal the initial determination to the Town Board for reconsideration. Operator's Licenses will be granted on appeal only where extraordinary circumstances or significant new information exist to demonstrate that the person is capable of exercising the necessary judgment and responsibility to hold an Operator's License despite the evidence to the contrary contained in the person's arrest or conviction record.
- (2) Within thirty (30) days of receipt of the written initial determination by the Town Board to deny the Operator's License, an appeal may be filed by the applicant by submitting to the Town Clerk a detailed written explanation of the specific extraordinary circumstances or significant new information, along with any supporting documentation including, but not limited to, letters of recommendation from alcohol and other drug ("AODA") counselors, probation officers, relevant treatment centers and opinions of doctors or counselors. Any such letters shall be on the letterhead of the agency or professional offering the recommendation in order for the information to be considered credible evidence of rehabilitation. Simple expressions of remorse, unsubstantiated pledges of having changed one's ways, or statements of the applicant alone at the time of hearing unsupported by documentation do not constitute specific evidence of extraordinary or changed circumstances.
- (3) The appellant shall be given written notice by regular mail of the date and time the Town Board will hear and render a decision on appeal. Failure to appear will generally constitute grounds for denial of the appeal; however, a decision may be made based upon the written appeal application alone if the written materials, in the opinion of the Town Board, do not appear to set forth sufficient grounds to overturn the original denial of the Operator's License application. The appeal is normally heard within forty (40) days of the filing of the appeal.

Adopted this 14th day of July 2020

Eugene Koenig
Chair, Town of Lucas

7/14/2020

Stacey X. Simon
Town Clerk

7/14/2020