

Item 24-0035: Recommended Denial of an Operator License

Safety and Licensing Committee

Wed, Jan 10, 2024 5:30PM

Alderman Alex Schultz (District 9) 01:14

That brings us to public hearings and appearances which we have none. And then into action items, the first of which is 24-0035 recommended denial of an operator license for Andrew DeRuyter if I'm pronouncing that correctly. Do we have a motion?

Alderman Katie Van Zeeland (District 5) 01:36

I'll make a motion to deny.

Alderman Alex Schultz (District 9) 01:39

I will second. Have a motion to deny and a second. I guess I'd first like to turn this over to Legal or APD for some insight. District three.

Zak Buruin (Assistant City Attorney) 01:57

So, I'm certain the committee has had an opportunity to review the memorandum from Lieutenant Goodin from APD. One correction I want to make in there as I kind of outline things. It states in the second to last final paragraph that there's no requirement for the licensing agency to state its reasons for denial in writing. It's actually there's no requirement for the licensing agency to state the connection between, in this case, the offense and the licensed activity. There is a reason for the denial stated and that is the lack of meeting of the requirements of 1205.04 subsection five A one and specifically that is regarding—that's regarding the criminal record. There is also—it would qualify under the habitual offender as well, which I believe is a different subsection, although I don't have it in front of me unfortunately.

Zak Buruin (Assistant City Attorney) 02:58

The offenses noted within the memorandum, they're not exhaustive, but those are the what are called "exempt offenses" listed within the prior criminal history. And the issue with those or the significance of those is that those are not entitled to the same type of, so to speak, redemptive opportunities that typical offenses would be. Exempt offenses are anything in chapter 940. Those are criminal offenses against the body, personal security, so assault, sexual assault, strangulation. Those kinds of things would be in there. And then there's also crimes against children, other various sections, but primarily, we're looking at chapter 940 here.

Zak Buruin (Assistant City Attorney) 03:41

So, the offenses listed in there are presented. There's been no information provided within the memorandum regarding the specific circumstances of the offense, but there are elements to those offenses that in reviewing the case law seems pretty clear that they necessari—they, out of necessity, relate to the ability to safely undertake the responsibility of serving alcohol. If the committee has questions related to that, there's actually a case from last year remarkably on point with very similar criminal charges and dealing with very similar things. Looking at the relevant circumstances. So, I don't want to be exhaustive on it if the committee feels like it has enough information, but I certainly am willing to go into further detail if the committee wishes.

Alderman Katie Van Zeeland (District 5) 04:33

May I?

Wed, Jan 08, 2024

Aldersperson Alex Schultz (District 9) 04:35

Certainly.

Aldersperson Katie Van Zeeland (District 5) 04:37

Thank you. Could you just clarify, it says that the statute does not allow the issuance of a license. So, in this situation, if we were to allow the gentleman a license, we would be violating the state law?

Zak Buruin (Assistant City Attorney) 04:50

That is my reading of the state law. Yes.

Aldersperson Katie Van Zeeland (District 5) 04:53

Thank you.

Aldersperson Alex Schultz (District 9) 04:55

So, in essence this this committee has no power to move for approval of the license that the applicant has applied for without running into, essentially, legal jeopardy with the state statute.

Zak Buruin (Assistant City Attorney) 05:07

If the committee were to reach the conclusion that the offenses have no material connection to the licensed activity, then it could be approved. It is the position of the legal department that there is, by case law, and, frankly, by common sense as well, a more than material connection between the elements of the offense—of the of the offenses and the license activity. So that would be—it is my position, yes, the committee would be violating state statute by granting the license, but it is, obviously, the final decision rests with the committee and the Council.

Aldersperson Alex Schultz (District 9) 05:55

I see a couple of members in attendance here. Is the applicant in attendance, and would that applicant like to approach the microphone and address the committee?

Andrew D. (License Applicant) 06:04

Well, thanks for having me. But I've been doing the restaurant stuff for my whole life. And I mean, you've said, my, you know, what I have in the past. I have been eight years sober, haven't touched a drop of alcohol. I have all my paperwork discharged from probation, AODA completion, my domestic violence class. I mean, I have, you know, done a complete 180 since eight years ago when I was last in the system. And I mean, I just want to be given a chance. I mean, this man right here has been helping me out the last couple of years. I mean, the last year and a half, I've been working with him. And I mean, just, I want to help them out more. So, I mean, that's all I really got. But I've been, I've been doing really well.

Aldersperson Alex Schultz (District 9) 06:51

So, I'm going to just maybe just a little back and forth with you. I just want to understand, given the nature of these convictions, in that span, timespan that has elapsed since then, do you feel like you've done everything within your power to rehabilitate yourself and move on?

Andrew D. (License Applicant) 07:09

Absolutely.

Aldersperson Alex Schultz (District 9) 07:10

I guess that's my question.

Andrew D. (License Applicant) 07:11

Absolutely. Like I said, I haven't drank in eight years, that was a huge—a huge downfall. I mean, our police chief knows my family, but she—I grew up across the street from each other. And she knows that alcoholism runs in my family. So.

Alderman Alex Schultz (District 9) 07:26

Thank you.

Andrew D. (License Applicant) 07:26

I mean, and I just stopped doing—I just cut that out completely after—I mean, my charges alone that I had when I was drinking were absolutely terrible, and I'd need to do a 180 on that.

Alderman Katie Van Zeeland (District 5) 07:41

May I ask Legal?

Alderman Alex Schultz (District 9) 07:42

Sure, Van Zeeland.

Alderman Katie Van Zeeland (District 5) 07:44

I just want to ask a question of the attorney. It says here that we do not allow the individual an opportunity to show rehabilitation and fitness. Is there any point, given the state law, that if a certain amount of time were to pass where, an applicant with these types of offenses would be eligible for a license? Or are they just not eligible going forward?

Zak Buruin (Assistant City Attorney) 08:14

Where it comes to exempt offenses, I don't see anything that permits that. Obviously, there is the avenue of pardons and things of that nature. It also doesn't preclude him from working in that type of environment. It's the license that's the issue. So, if he's able to work in a capacity that doesn't require the license, there's nothing prohibiting that.

Zak Buruin (Assistant City Attorney) 08:34

I certainly commend you for the sobriety and the turnaround. I'm not trying to diminish that in any way, shape, or form. I'm just trying to make sure that we keep to what the legislature in Madison has made sure that our kind of our playing field, and that's what we're trying to do here. So, I don't see anything with regard to exempt offenses. Other types of offense, absolutely. But there's a very bright line distinction between those types of offenses in the statute.

Alderman Katie Van Zeeland (District 5) 08:59

I see. Thank you. May I address?

Alderman Alex Schultz (District 9) 09:03

Yes, go ahead.

Alderman Katie Van Zeeland (District 5) 09:05

I'm glad to hear that you're doing well. And I'm really impressed that you came here today. I wish that I could make a different decision.

Andrew D. (License Applicant) 09:12

Yeah.

Aldersperson Katie Van Zeeland (District 5) 09:12

I just hope that you know that the decision that we make here today is not because of you as a person, but just basically what we have in front of us is the state law.

Andrew D. (License Applicant) 09:21

Okay.

Aldersperson Katie Van Zeeland (District 5) 09:22

Thank you.

Aldersperson Alex Schultz (District 9) 09:24

I would echo those comments. I think, you know, whenever an individual from the community comes forward and finds themselves in a tough situation to get licensed for serving alcohol, it's, you know—most of the time the deference from this committee is to, you know, move that individual forward and do what we can to allow them that opportunity. Unfortunately, this one's a really challenging situation where we really can't make that decision without putting ourselves in legal jeopardy. So. Okay, one more—

Aldersperson William Siebers (District 1) 09:55

I'm gonna ask a question. Why—

Aldersperson Alex Schultz (District 9) 09:57

Alder Siebers.

Aldersperson William Siebers (District 1) 09:58

Why did we have this individual come here tonight, if there is nothing in our power to grant a license? I'm sorry to have to say this, but brings this person here with the hope that possibly we would approve his license. But if there's absolutely no way we can approve this license, why did we even give him an opportunity to come here?

Zak Buruin (Assistant City Attorney) 10:28

Is—

Aldersperson William Siebers (District 1) 10:28

I mean.

Zak Buruin (Assistant City Attorney) 10:28

—it's directed to me?

Aldersperson William Siebers (District 1) 10:29

Yeah.

Zak Buruin (Assistant City Attorney) 10:30

I think because we're required to by means of due process, first off. We need to allow—

Aldersperson William Siebers (District 1) 10:35

Due process? We don't have any due process.

Andrew D. (License Applicant) 10:37
[Indecipherable] in the email or anything else, too.

Zak Buruin (Assistant City Attorney) 10:39
We're required to handle it this way, and give him a chance to be heard on it as I understand it. Further, the committee could make a different decision and decide that the Legal Department's interpretation of the statutes is wrong, and it could do that. So, I'm not advising that, but it's not as though there's nothing that could be done here. It's just that from this perspective, it appears that there is a very clear path through the statutes. But ultimately, it is your decision. So, if—this isn't a decision that the Clerk's Office or the Legal Department is empowered to make, if that makes sense?

Aldersperson William Siebers (District 1) 11:16
No, does it make sense? But I mean, I respect—I mean, you got your education, and I don't and lost. But I mean, I feel for you, you know. You come here, you plead your case, and this committee can't do anything, supposedly. I mean.

Aldersperson Alex Schultz (District 9) 11:40
Well, yeah, the committee could do something, but this—we would be in no position to put ourselves there.

Aldersperson Nate Wolff (District 12) 11:46
Thank you, Chair. First, I'd like to commend you on your rehabilitation. I had an alcoholic father as well—or so from a personal standpoint, I really commend you for doing that—

Andrew D. (License Applicant) 12:03
Definitely. Thank you.

Aldersperson Nate Wolff (District 12) 12:04
—turning your life around. Like my colleagues have said, it is a tough spot for us to be in. We've kind of had our control taken away from us by the state, and that happens a lot in municipal government. But I do, again, appreciate you coming here tonight, and showing that you continue to care. Is there a way for this individual to get potentially something from the judge? Is there a way to petition the court? Question for the attorney.

Zak Buruin (Assistant City Attorney) 12:35
I would have to look further, but in reviewing in preparation for today, everything that I saw referred specifically to pardons.

Aldersperson Nate Wolff (District 12) 12:41
Okay. But I wish you the best, and I hope you keep working and staying strong.

Andrew D. (License Applicant) 12:49
Nothing's stopping me.

Aldersperson Nate Wolff (District 12) 12:51
—and taking your kid to the Building for Kids. [It sounded like maybe he was calling back to an interaction or discussion that had taken place prior to the meeting happening.]

Aldersperson Alex Schultz (District 9) 12:55

Anything else from committee at this point? hearing nothing else, we will take a vote on the motion on the table, which is a motion to deny. All those in favor say aye.

Alderspersons Van Zeeland, Schultz, and Wolff 13:06

Aye.

Aldersperson Alex Schultz (District 9) 13:07

Opposed?

Aldersperson William Siebers (District 1) 13:08

Nay.

Aldersperson Alex Schultz (District 9) 13:09

Motion carries three to one for the motion to deny. Thank you.

Unknown Person Off Microphone 13:15

I have a quick question for the attorney. Was the state statute 125.04? For the record?

Zak Buruin (Assistant City Attorney) 13:22

There's a number of them. That's one of them. 111.335 1 MB. Additional sections in there as well.

Unknown Person Off Microphone 13:32

All right. I just want to look at it [indecipherable]. If I may say something further, it would be nice when we apply if that information was listed on the application [saying that?] these types of crimes, your application is unable to be approved. That would be helpful. And I think the communication issue—so when these applications get reviewed by the police department, the police department just gives a recommendation. They don't necessarily know these statutes that [indecipherable] So I think to answer your question of why go through this extra [indecipherable] process is we're just clarifying [indecipherable]

Aldersperson Alex Schultz (District 9) 14:11

Thank you. We've already voted on this. So, let's make sure we're done with the discussion.

Aldersperson Katie Van Zeeland (District 5) 14:16

Chair, could we just make sure that the applicant gets a copy of the information that we had in our packet?

Aldersperson Alex Schultz (District 9) 14:22

Certainly.

Clerk Kami Lynch 14:30

It was already provided.

Aldersperson Katie Van Zeeland (District 5) 14:31

Oh, okay. All right. Thank you.