

Item 24-0327: Recommended Denial of an Operator License for Miguel H.

Safety and Licensing Committee

Wed, Apr 24, 2024 5:30PM

Alderman Alex Schultz (District 9) 00:55

We have no public hearing or appearances, and that brings us to our action items for the evening the first of which is the recommended denial of operator license from [Miguel H.]. This has been before us a couple of times now. So, there were some questions and we are kind of back to get some of those questions answered. The first person I'd like to get some feedback from would be the attorney to give us an update on, at least, the city stance.

Alderman Denise Fenton (District 6) 01:25

Do we need to get a motion on the floor?

Alderman Alex Schultz (District 9) 01:27

Thank you. Let's get a motion.

Alderman William Siebers (District 1) 01:32

How do we deny the denial?

Zak Buruin (Assistant City Attorney) 01:36

You can move to—

Alderman William Siebers (District 1) 01:39

I move that we approve the license.

Alderman Denise Fenton (District 6) 01:41

I second that.

Alderman Alex Schultz (District 9) 01:42

There's been a motion to approve the license and a second. We'll just consider that a motion notwithstanding so that we're actually approving the application to approve. Is that clear to the committee? Staff? Okay. So, could we hear from the attorney, please? District seven. There you go.

Zak Buruin (Assistant City Attorney) 02:07

Thank you. So, the—at the last meeting, the committee in its prior incarnation asked me to provide some written guidance regarding the lay of the land as far as the law goes on what is required and what this process looks like. I've provided that, and it's admittedly a somewhat lengthy memorandum kind of going through the statutes in somewhat exhausting detail. What it boils down to is this: there are, based on Lieutenant Goodin's memorandum and the investigation that he did, five offenses for [Mr. H.] that are under potential consideration. Two of those involve periods on which he was placed on probation, and he's provided documentation of those periods of probation being complete. He's submitted some additional documentation as well.

Zak Buruin (Assistant City Attorney) 02:55

By statute, I think I indicated in there, he's also required for the committee to consider that the—for the statute requiring the committee and Council to hold those offenses of having been rehabilitated, he's also required to provide documentation of his release. Obviously, he's been appearing before the committee. He's here again, this evening. He's been released, although technically the documentation hasn't been provided. But he is—I am aware that he has been legally released. So, the court can do—sorry, old habits, the committee can do with that information what it will in terms of whether it's going to consider that matter to be—that criteria to be fulfilled, or utilize its discretion that we'll talk about momentarily, to find that those offenses have been rehabilitated.

Zak Buruin (Assistant City Attorney) 03:51

So, for those two offenses, at best—or on one end of the possibility, if the committee finds that he's satisfied that statute, then those offenses are considered rehabilitated and they cannot be considered as part of the decision to deny or approve the license. Regardless of that, there are three prior offenses. I believe the dates on those are noted. Those are more dated, but there was no period of probation for which those—for those offenses—so that probation option to satisfy the statutes to require the committee to find him rehabilitated, cannot be matched. But there is, along with those same considerations, a number of additional criteria that the committee could utilize, and in fact is required to consider in making a discretionary determination of whether or not sufficient evidence of rehabilitation has been shown.

Zak Buruin (Assistant City Attorney) 04:51

The bottom line is this. It is within the committee's discretion to approve or deny the license with that explanation, and it all comes down to whether or not the committee finds that all of those offenses have been rehabilitated or whether they have not been. That is where things stand, and if there are specific questions—because I know this does represent somewhat of a change in the analysis from what I provided originally. If there are any questions, I'd be happy to entertain those. But like I said, ultimately, the committee has the discretion to handle this situation as it sees fit, including asking for more information if it believes that's appropriate.

Aldersperson Alex Schultz (District 9) 05:31

Thank you for that summary. I mean, I—from the chairman's standpoint and the committee's standpoint, we want to know where we stand and what our capabilities are, if we were to approve or deny. Just from a legal standpoint, it's good to have some clarification that we do have that discretion. Is there anything that APD would like to? Okay. So, yeah, we'll—let's move on to the committee members. Chris, would you like to chime in, Alderman Croatt?

Aldersperson Chris Croatt (District 14) 05:59

Yes, thank you very much, Chair Schultz. I appreciate the opportunity to participate remotely. Sorry, I could not be present. I'm on a business trip currently in Minneapolis. So sorry, I couldn't be there. Sorry, to the applicant for this process being extended. Thank you for coming to another meeting.

Aldersperson Chris Croatt (District 14) 06:18

I want to thank the attorney's office for the extra work that they put in to address the questions and concerns that we had at the last meeting. I know it's a five-page long memo, but I think it provided some real good information and some clarity for me. I want to—I just want to thank everybody involved in the process, I understand that, you know, the motion's on the table and the direction the committee is going. I'm not looking to change anybody anybody's mind, but I do—I do want to say that I have a pretty high bar for responsible beverage service. And in this case, I'm not gonna be able to vote for this license, just because of the—just because of the conviction record or the record. I'm concerned. I hope that, you know, everything is fine, and

rehabilitation has occurred, but I just have a really high bar for responsible beverage service, I'm not gonna be able to approve the license.

Alderson Alex Schultz (District 9) 07:15

I appreciate that. Thank you. Alderman Fenton.

Alderson Denise Fenton (District 6) 07:19

Thank you, Chair. May I direct a question to the attorney? So, thank you for the very detailed memorandum, and I confess that not having a law degree so that that I may be a little less clear on it. But am I understanding correctly that they're—the first offenses that we're noting here were misdemeanor. The first one was non-criminal, the standard for OWI in the state of Wisconsin, and then two subsequent misdemeanors? Would there be any type of probation release for a misdemeanor? Or...?

Zak Buruin (Assistant City Attorney) 08:05

So, this comes down to a combination of local practice and individual sentencing discretion with the judges. What I can tell the committee is that in my prior work, I was the primary felony OWI prosecutor for the county, and in my experience, it was very unusual for any of the local judges to order probation on misdemeanor OWIs. That was a, frankly, a point of frustration for me in that role. But it's not at all uncommon for there to just be straight jail sentences on second and third offense OWIs, and even before that fourth offenses that they were misdemeanors. It was only in the last decade or so that fourth offenses were made automatically felonies. So that's not at all uncommon, and I don't think it's a commentary on the circumstances at all that there wasn't a probation period.

Alderson Denise Fenton (District 6) 09:01

Could I continue?

Alderson Denise Fenton (District 6) 09:02

Thank you, Chair. And so, when we talk about being released from probation, we're talking for the two—the last—the two most recent offenses. So those would be the only two where there would be a need to be released. Am I correct? Since there was no probation or...?

Alderson Alex Schultz (District 9) 09:02

Sure.

Zak Buruin (Assistant City Attorney) 09:23

So, the default is, is that with a conviction record of concern, depending on what—if the statutory criteria for conviction records or offenses or habitual offender status are met, the default is that they cannot be issued a license, a license can't be issued. The exception to that is if they're able to show that rehabilitation, and there's a couple of ways the statute provides for that to happen, and probation is one of those ways that is provided for in a way that, if the criteria is met, the licensing agency is required to accept that as rehabilitation. They can demonstrate it other ways and otherwise with criteria, but under those other circumstances, it's going to be within the licensing agency's discretion—your discretion. The probation simply provides them an opportunity to meet some criteria that the licensing agency has to accept.

Alderson Denise Fenton (District 6) 10:28

Thank you. That clarifies that for me. Can I con—? Thank you, Chair, for your indulgence. I've—I move to approve this license because although there is a long history, and we're being asked to approve a license for a job that is related to alcohol abuse, just from looking at dates, we're talking at—the vast, you know, the majority

of these offenses happen before, when our applicant was 25 years old or younger. And the last one for which he has been released from probation and has submitted documentation of completing a treatment program—the last one was five years ago. We've had the applicant come twice with his employer as—who has spoken on his behalf about—and when I'm talking about demonstrating—to me, that goes a long way in demonstrating rehabilitation when we have the owner of a restaurant which serves alcohol coming not once but twice to vouch for somebody to get this license. So, I am going to—and I see no offenses since then. So, if we—I know that I would hate to be penalized for the rest of my life for some things that I did when I was 21. And I am going to vote for granting this license and hope that my colleagues will do so as well.

Alderman Alex Schultz (District 9) 12:21
Alder Siebers, please.

Alderman William Siebers (District 1) 12:22
Chair, could we ask the applicant to address the question in regards to whether or not he's rehabilitated?

Alderman Alex Schultz (District 9) 12:30
Certainly.

Alderman William Siebers (District 1) 12:31
Or what he has done to rehabilitate himself?

Alderman Denise Fenton (District 6) 12:34
Are we in—

Alderman Alex Schultz (District 9) 12:34
[Mr. H.], could you—sure, we could do that. Would you like to come up and say a few words about—you've done this in the past and you're trying to show us that you rehabilitated? What would you say to the history of the offenses and how you feeling today related to I guess the two most recent would be my question to you.

Miguel H. (Applicant) 12:49
I mean, shameful. I mean, that I had to get to the point of my life to understand me. As I explained it before, a lot of had to do with my mental health and it's just something I've been going on for about three years now. I've been various things of treatment. I'm in a space of my life where I can say I'm stable financially, emotionally sometimes. But it just makes me who I am as a person now to gone to all the struggles that I have gone.

Miguel H. (Applicant) 13:41
Now, because I committed certain crimes, it doesn't define who I am as a person, who I am as a worker. I have always been—I've just will say, I feel like I have been a very hardworking person at anywhere I have worked at, and I have always worked in the service industry. So, this is just my livelihood. As part of my treatment and where I am, I still continuing to go to my AAA meetings. Just because of time and I explained that before, I was doing community service too, but I kind of stop that for a little bit to take some time for myself. But, like I said, again, what I committed, it's gone and it's in my past. I don't want it to keep moving in my life. I just—I've done it. I hate—I'm still working on my mental health and I just want it to be there. I don't want it to continue to remind me or define me who I am as a person.

Alderman Alex Schultz (District 9) 14:45
Thank you. We appreciate that. Would the employer like to say anything this evening? I know you've spoken in the past as well.

Sarah G. (Sangria's - Owner) 14:52

Yeah, I do have one little thing I'd like to add to it. My name is Sarah by the way. I've had the pleasure of knowing Miguel. He's worked for us for over a decade. I mean, he worked at Mojitos when it was on the south side. So, it's interesting to see some of the employees and the choices that they make, and it's really tough in this industry, because a lot of them have quick money, and they go out at night, and they party, and it's just what they do. But I've seen him grow so much over the last 10 years that if you told me he was the same person, I would be shocked. I think he was—I don't want to say—more reckless, but when you're younger, naturally, you kind of are, right? But the amount of growth that he's had, the amount of hours he's picking up now, the amount of shifts. And I say "now" meaning like this last two years. He's been extremely crucial for the business. So, it's kind of fun in that aspect to see these guys grow and start to take the right decisions, and now he's a role model for some of the younger kids that are coming in and, and maybe seeing that quick cash lifestyle and being like, look, like he has a savings that he's built up that he never had 10-12 years ago when he was working for us. And it's kind of exciting to see, and it's empowering to the rest of the staff that are going to be going through the same issues and have a have a fine example to look and to train them. So.

Alderman Alex Schultz (District 9) 16:12

Thank you for that. Is there anybody? Any other comments from committee? Oh, we got a couple over here. Alder Hartzheim, you want to chime in? What number are you? Okay, sorry. I asked you that earlier.

Alderman Sheri Hartzheim (District 13) 16:28

Thank you, chair. I very much appreciate the efforts of the applicant, and I very much appreciate the efforts of the employer as well to come forward. I feel conflicted and I feel very much the same as Alder Croatt as he stated earlier. I have friends who are alcoholics, and when you are an alcoholic, you will be one forever. And I know that [Mr. H.] knows this, and I'm sure that he's having to deal with that on a regular basis as well. But putting the temptation of the thing that you are addicted to in front of you every day is also very difficult, and I'm very concerned about those things.

Alderman Sheri Hartzheim (District 13) 17:11

And what really is the kicker for me is the information from the Appleton Police Department, which states sort of what I'm feeling, even though I'm conflicted. The information provided shows that this person made some bad decisions. Should we be stuck with those bad decisions forever? No. But should we as a city and we as Council members be concerned about the potential for a slip? Yes. And those are the things that I would have to sleep with at night. I would have to think to myself is—am I allowing this person to have this license and then something happens? And I think the risk is too great for my conscience.

Alderman Sheri Hartzheim (District 13) 18:04

Again, I very much appreciate the rehabilitation. I very much appreciate that an alcoholic has to deal with being an alcoholic forever. Again, I have friends who are dealing with this directly. So, I know how difficult that can be. But I still feel that the risk is too great for us as a city. Thank you.

Alderman Alex Schultz (District 9) 18:23

Thank you. Alder Wolff.

Alderman Nate Wolff (District 12) 18:27

Thank you, chair. As you can see, I'm over here this week, we did have a—we do change things up after the election and the assignment of committees. So just want to clear that up if there are questions about that. As I have in the past, I would support this next week, and I would ask this committee to support this license being

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passed. I think that we have not only the proof of rehabilitation, but also the promise from the owner of the establishment that this person will be responsible not once but twice. I think that that's important too that, you know, this person's boss is saying they're going to keep an eye on them as well. And so, I think that in this particular instance, this person is in good hands.

Aldersperson Alex Schultz (District 9) 19:23

Thank you. Alder Croatt.

Aldersperson Chris Croatt (District 14) 19:28

Thank you Chair. Just want to say that I—very well said, Alder Hartzheim. I agree with you, and I share your concern. I also placed a lot of value and weight on the recommendation from the police department. And that's the part that I'm—that's the part that is making me not supportive of this license. Also, I did want to just remind everyone that the license can be taken anywhere. This person with a license can work anywhere. So, the current arrangement could change. It probably won't, but—and I appreciate all the comments from the applicant and from the establishment owner. Sounds like things are going great, but just wanted to remind everyone that the license can be taken to any establishment, and the arrangement might be quite different.

Aldersperson Alex Schultz (District 9) 20:17

Thank you, Alder Croatt. Alder Siebers.

Aldersperson William Siebers (District 1) 20:20

The one thing that helps me vote for this license, you're still going to meetings, and having a support system is extremely important. So, there's one support system. There's another support system. So, you know, with those two things, you know, I feel comfortable in terms of voting for this license. But could you answer the question why would somebody with your record, which suggests you have issues with alcohol—I'm not saying you do, but it suggests—would want to work in a situation where you're constantly dealing with alcohol? As Aldersperson Hartzheim says, where the temptation is great. Why would you want to do that?

Miguel H. (Applicant) 21:14

So, like I said, earlier, I have always worked in the service industry since I was 16 years old. So, it's all I've been working on. It's—it hasn't been an issue for me to like, drink at work, or just get drunk at work. I have never mixed any of that. When I'm at work I'm at work. And my shifts are always open to close, and I'm always there at 100%. When it came to that drinking, it was more of after work or in a social aspect. I have never drunk alone. It was always on that setting where, like, I was going out with friends.

Aldersperson William Siebers (District 1) 22:00

Okay.

Aldersperson Alex Schultz (District 9) 22:01

Thank you. Anything else?

Sarah G. (Sangria's - Owner) 22:03

Can I piggyback off that?

Aldersperson Alex Schultz (District 9) 22:04

Sure, certainly.

Sarah G. (Sangria's - Owner) 22:07

I think just from watching his patterns over the last decade too, I think alcohol is one of those substances that is a release or many people, right? They're trying to forget something, have fun, whatever their reasons are. And some people unfortunately become very addicted, right? But in this industry, I think that he's kind of shifted his focus into alcohol is something that drives his ticket sales; he's actually going to make more money if he sells more. So, it's not necessarily a release for him to see other people enjoying cocktails, because that's the goal for us—right?—at the end of the day is to see other people responsibly having fun and with their families and whatnot. But let's not forget that it does drive those ticket sales, and he's going to make more money. So, I think it's more of that's his drive and that's kind of been his drive, then "I can't wait to get out of here to go, you know, get hammered myself" type of mentality.

Alderson William Siebers (District 1) 23:02

Now you scared me.

Alderson Alex Schultz (District 9) 23:04

Alderson Siebers.

Alderson William Siebers (District 1) 23:06

Because that's one of the concerns that we have.

Sarah G. (Sangria's - Owner) 23:10

Yeah.

Alderson William Siebers (District 1) 23:10

Does he have the wherewithal to know when not to serve somebody in your establishment because they are on the brink of being drunk?

Sarah G. (Sangria's - Owner) 23:23

Absolutely.

Alderson William Siebers (District 1) 23:24

Does he know, you know, when not—

Sarah G. (Sangria's - Owner) 23:25

Well, we have policies in place ourselves. They have to sign handbooks. Just a little tidbit, my mom actually worked in probation and parole since I was two years old. We've been raised in a court system. She's always worked in law, and we always took it really serious as kids. That's why we never really experimented with anything. So, we're kind of straight shooters in general. I've always kept that mentality in the restaurant too. Every staff member, day one they know, these are the laws; this is the repercussions of what happens if you know, serve an underage or if you serve someone intoxicated, or there's many times—someone can work for me for 10 years and I'll still go behind their back and say "Did you card that person? Did you card that person?" because, yes, I'm confident in their ability but we're still doing checks ourselves. We're very very strict about it.

Sarah G. (Sangria's - Owner) 24:15

So that's part of the reason why we have policies for it and are constantly doing little checks along the way. You don't just give someone a license, just like I don't just give him a job serving alcohol and then expect him because he has experience to you know to continually follow through. No, we're watching daily. I mean I'm on the floor daily. These guys I'm sure they get annoyed. I'm constantly "Did you card this person?" and you're not

allowed to serve someone if they're here with their child. Even though that's legal, we don't do it. We have very strict rules that are actually a little bit more strict than the city when it comes to serving alcohol. It's not worth the risk.

Aldersperson William Siebers (District 1) 24:48

Thank you.

Aldersperson Alex Schultz (District 9) 24:49

Thank you. Alder Hartzheim, one more.

Aldersperson Sheri Hartzheim (District 13) 24:57

Thank you, chair. As—and I appreciate that from the establishment owner. As Alder Croatt mentioned earlier, this license can be taken anywhere. So, this establishment owner will not always have her hand on this applicant's shoulder. So that is a very—that's still a concern for me. Thank you.

Aldersperson Alex Schultz (District 9) 25:21

I would suggest that if the employee's been there for over a decade that that might not be, at least for me, as much of a concern that, you know, next year, he's gonna find himself in a different work environment. I certainly think with the support structure he has here and the history as with this business that's multiplying and now has a couple of operations, he'll probably be there for a while.

Aldersperson Alex Schultz (District 9) 25:46

The concern is always, you know—again, what I stated at the outset—is the authority that this committee has in approving the license, and that puts us in a position where we're all supposed to feel comfortable in knowing that you are rehabilitated. That's sort of our call right now. Do we feel that is that has happened or has it not happened? You know, I'm looking at some of the older three, which were over a decade ago. I don't feel overly concerned about those early ones. The last one being 29—2019, five years ago.

Aldersperson Alex Schultz (District 9) 26:20

You know, at some point, we have to give individuals a chance, and it is a question about how long of a period does someone you know, show us that they're doing the right thing, and an upstanding citizen? Is three years, is it five years, is 20 years? And in this case, given the testimony, the fact that you have appeared several times now before us and every time with your employer who is standing by you and has nothing but praise, I would certainly encourage us to move this to Council, and I think if there are more discussions to happen there, that's I think, okay, but at least in this committee standpoint, I hope we approve it, give you that chance, because I personally feel like you've shown us, you've provided us documentation, even though we're waiting on one, that I feel confident voting in favor of it. And again, it's on you at that point. So, I'd like us to move this to Council as an approval.

Aldersperson Alex Schultz (District 9) 27:19

And if there's nothing else to say, I'd like to call the vote on this one. Okay, all those in favor of approval, say aye. Aye. Opposed? The ayes have it. Vote is three to one with Alder Croatt a nay.

Aldersperson Alex Schultz (District 9) 27:38

Okay. Thank you for appearing. This will come before Council next week. If you feel like appearing, you can certainly do that. And we probably will have a little bit of a discussion again, because obviously, we're all engaged in this conversation. Thank you.