



DEPARTMENT OF
**LEGAL AND
ADMINISTRATIVE
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TO: Safety and Licensing Committee, Common Council

From: ACA Zak Buruin

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RE: Retail Alcohol License Discretion

This memorandum is intended to serve as a general outline of the City's authority to approve or deny new retail alcohol license. This process is distinct from both the evaluation of operator's (bartender) licenses and from decisions to non-renew, revoke, or suspend retail alcohol licenses. Operator licenses denials, and non-renewals, revocation, and suspensions of retail alcohol licenses require specific statutory basis.

§125.51 indicates that municipal authorities "may" grant licenses for the retail sales of intoxicating liquor from premises within its borders to eligible persons "as the issuing municipal governing body deems proper..." There is no right to an alcohol beverage license created by one's ability to meet the minimum statutory criteria contained within Chapter 125. "(T)he ultimate question of whether to issue such a license to a particular applicant is a matter of local concern." State ex rel. Smith v. City of Oak Creek, 139 Wis. 2d 788, 801, (1987). A municipality must: (1) act within its jurisdiction; (2) act according to law; (3) act in a way that is not arbitrary, oppressive or unreasonable, and that represents judgement as opposed to its will; and (4) act in a manner that is **reasonably supported by the available evidence**. A court's review of a municipality's retail alcohol licensing decision is limited to this scope. A court may not substitute its policy judgement for that of the municipality.

The Safety and Licensing Committee is charged with weighing the evidence before it. It is not required to accept an applicant's contention that it has undertaken adequate measures to alleviate concern over potential issues that could be caused by the granting of a sought license. Buena Vista Hall, LLC v. City of Milwaukee, 2018 WI App 66, ¶ 24, 384 Wis. 2d 415, 921 N.W.2d 528. The Committee and Council must determine how persuasive they find any such contentions and supporting evidence to be. The evidence must be "substantial" in that it is of **sufficient power that a reasonable person could reach the same decision, even if there is substantial evidence in the opposite direction**. Buena Vista Hall, LLC v. City of Milwaukee, 2018 WI App 66, ¶ 35. This standard is "**less than a preponderance of the evidence, but more than a mere scintilla**." Buena Vista Hall, LLC v. City of Milwaukee, 2018 WI App 66, ¶ 35. **Questions of credibility and the weight afforded to evidence is to be determined by the Committee and Council**, with a reviewing court only reviewing whether the evidence reasonably supports the decision made. Buena Vista Hall, LLC v. City of Milwaukee, 2018 WI App 66, ¶ 35.

§62.11(5) provides for the Common Council to have the power to act for the city's government and good

order of the city, its commercial benefit, its health, safety and for the welfare of the public, including in licensing decisions. Additional possible reasons for denial include adverse impact upon traffic, adverse impact upon peace, quiet and cleanliness of the surrounding neighborhood, lack of sufficient parking, proximity to other licensed establishments, residential areas, schools, churches, or hospitals, and the ability or inability for the police to provide sufficient law enforcement services to the new establishment, the impact upon the ability to provide services to the balance of the community at all times and other rational considerations tied to the Council's responsibility to act in the City's interests under §62.11(5). The closer and more rationally tied to one or more of these proper considerations, the more likely it will be that a decision will withstand judicial challenge.

While there are "guardrails" to guide the decision-making process and ensure that it is fair, the decision to grant or deny a new retail alcohol license ultimately rests upon the judgement of the Committee and Council. The Committee and Council have broad discretion to grant or deny a new retail alcohol license application based upon their rational judgement of what is in the best interests of the City of Appleton.