

2020 Town Law Conference

Alcohol License Revocation/Non-renewal

Presented by: Rick Manthe, Stafford Rosenbaum LLP

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Liquor Licenses Generally

- ▶ Liquor licenses permit the sale of alcohol either on or off premises.
- ▶ Granting a liquor license is a discretionary municipal decision.
- ▶ Once granted, municipalities must follow specific procedures to take a license away.

Grounds for Revocation

- ▶ 1. The person has violated chapter 125 or municipal regulations adopted under s. 125.10.
- ▶ 2. The person keeps or maintains a disorderly or riotous, indecent or improper house.
- ▶ 3. The person has sold or given away alcohol beverages to known habitual drunkards.
- ▶ 4. The person does not possess the qualifications to hold the license.
- ▶ 5. The person has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog, or of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog or of possessing.



Grounds for Revocation



- ▶ 6. 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.
- ▶ 7. 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.
- ▶ 8. 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.
- ▶ 9. The person received the benefit from an act prohibited under s. 125.33(11).



Violation of Chapter 125 or Municipal Regulation

- ▶ Numerous rules in liquor licensing statute.
- ▶ Municipalities have authority to enact their own regulations pursuant to Wis. Stat. Section 125.10.
 - ▶ Municipal ordinances cannot conflict with state law.
 - ▶ Municipal regulation could include minimum amount of days tavern is open.
 - ▶ Require payment of all property taxes or outstanding local fines.
- ▶ Will need to have documentation or witness testimony to prove violation.



Disorderly or Riotous, Indecent or Improper House.

- ▶ Nudity and lewd behavior, numerous police service calls to the premises, failed compliance checks, and the failure to implement the action steps put in place after an earlier suspension provided basis for non-renewal. *Nowell v. City of Wausau*, 2013 WI 88.
- ▶ Not unconstitutionally vague. *Hegwood v. City of Eau Claire*, 676 F.3d 600, 604 (7th Cir. 2012) (also finding that employees fighting with patrons; brawls spilling onto the streets; underaged girls hiding in the basement to escape police detection; and a patron requiring detoxification satisfied statute)
- ▶ Public displays of sexual acts and prostitution on the premises supported revocation. *Schultz v. City of Cumberland*, 196 Wis. 2d 373, 539 N.W.2d 135 (Ct. App. 1995).
- ▶ Behavior of patrons after leaving bar can be a factor. *State ex rel. Ruffalo v. Common Council of City of Kenosha*, 38 Wis. 2d 518, 525, 157 N.W.2d 568, 571 (1968).



Disorderly or Riotous, Indecent or Improper House.

- ▶ Unclear whether one occurrence is enough to satisfy this ground for revocation.
- ▶ Could institute points system for violations.



Person Does not Possess License Qualifications

- ▶ Main issue stems from criminal or arrest record.
 - ▶ Arrest Record.
 - ▶ Arrest record must substantially relate to licensed activity; and
 - ▶ Offense is violent or sexual crime against a child.
 - ▶ Convictions
 - ▶ Any misdemeanor or felony conviction that substantially relates to the licensed activity.
 - ▶ Must state in writing how conviction(s) relate licensed activity.
 - ▶ Licensee can then provide evidence of rehabilitation and fitness.
- ▶ Habitual law offender uncertain.
- ▶ Local policy can serve as guide.

Controlled Substances

- ▶ Can revoke for delivery or intent to deliver any controlled substance.
- ▶ Also applies if licensee allows another person on premises to deliver or intend to deliver a controlled substance.
 - ▶ This does not require a conviction.
 - ▶ Intent determined by value, amount, or other acts.
 - ▶ What if it is the “other person” who is the registered agent or company owner?



Procedure for Revocation

- ▶ Non-renewal and revocation process is almost identical.
- ▶ Governed by Wis. Stat. 125.12.
- ▶ Limited procedural flexibility.

Procedure for Revocation

- ▶ Process begins with complaint. Wis. Stat. 125.12(2)(ag)
 - ▶ Must be made by a resident of the municipality.
 - ▶ Complaint must be sworn to.
 - ▶ Must allege licensee violated one or more of the listed grounds for revocation.
 - ▶ Deliver sworn complaint to municipal Clerk.
- ▶ After filing complaint, municipality issues a summons signed by clerk. Wis. Stat. 125.12(2)(ar).

Procedure for Revocation

- ▶ After filing complaint, municipality issues a summons signed by clerk. Wis. Stat. 125.12(2)(ar).
- ▶ Hearing held not less than 3 days and not more than 10 days from the date of summons issuance.
- ▶ Summons must establish date, time, and location of revocation hearing.
- ▶ Summons must command licensee to attend and show cause why his or her license should not be revoked or suspended.
- ▶ The summons and a copy of the complaint shall be served on the licensee at least 3 days before the time at which the licensee is commanded to appear.



Revocation Hearing



- ▶ If the licensee does not appear, the complaint shall be taken as true.
 - ▶ If the governing body finds the allegations sufficient, the license shall be revoked.
- ▶ If the licensee appears and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel.
 - ▶ If the hearing is held before the governing body and the complaint is found to be true, the license **shall either be suspended for not less than 10 days nor more than 90 days, or revoked.**
- ▶ If the hearing is held before a committee, the committee shall submit a report to the governing body, including findings of fact, conclusions of law and a recommendation.
 - ▶ Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection.
 - ▶ If the governing body, after considering the committee's report and any arguments presented, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked.



Revocation Hearing

- ▶ Quasi-judicial proceeding.
- ▶ Rules of evidence do not apply.
 - ▶ Wis. Stat. 227.45 is good guide:
 - ▶ Admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence.
- ▶ Can establish hearing procedures.
- ▶ Functions like a trial.
- ▶ Governing body can ask questions of witnesses.
- ▶ Hearing must be recorded or transcribed.

Quasi-Judicial Bodies

- ▶ When the board acts in a quasi-judicial manner, its decision-making is guided by applicable state law or local ordinances.
- ▶ The Board acts in a quasi-judicial manner when it must apply facts to a set of state or local standards.
- ▶ Decision-maker must remain fair and impartial in revocation proceeding. *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 25, (1993).
 - ▶ Chair stated during a hearing that the committee should “get” a zoning permit applicant, compared the applicant to a convicted felon, and stated that the applicant’s position was a “loophole” in need of closing. Those statements constituted impermissible bias.
 - ▶ Advocating for one side is also impermissible. *Keen v. Dane Cty. Bd. of Supervisors*, 2004 WI App 26, ¶ 15.

Quasi-Judicial Bodies

- ▶ Board should be counseled to remain impartial.
- ▶ Comments made prior to hearing or during hearing can establish impermissible bias.
- ▶ Town attorney cannot represent the board and prosecute the complaint.
 - ▶ Creates a conflict.
 - ▶ Deprives licensee of impartial proceeding.

Negotiating Settlement

- ▶ Board's options are limited.
- ▶ Complainant and licensee are the adversarial parties able to negotiate.
 - ▶ Agreement subject to board approval.
- ▶ Wis. Stat. 125.10 arguably grants board authority to exercise greater powers under revocation/non-renewal.
 - ▶ Could grant further punishment options upon conviction.
 - ▶ Establish license conditions.
 - ▶ Impose and stay suspension.
 - ▶ Cannot impose forfeiture; would need to be contractual payment.

Judicial Review

- ▶ *Nowell v. City of Wausau* establishes certiorari review applies.
 - ▶ (1) whether the municipality kept within its jurisdiction;
 - ▶ (2) whether it acted according to law;
 - ▶ (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and
 - ▶ (4) whether the evidence was such that it might reasonably make the order or determination in question.
- ▶ Important to establish a record for court to review.
- ▶ Circuit court may, in its discretion, accept additional evidence.

Judicial Review

- ▶ Whether the municipality kept within its jurisdiction.
 - ▶ Does an ordinance or statute grant the municipal body the authority to take the action it took?
 - ▶ Body has those powers that are expressly conferred or that are necessarily implied by the ordinances or statutes under which it operates. *AllEnergy Corp. v. Trempealeau Cty. Env't & Land Use Comm.*, 2017 WI 52, ¶ 37, 375 Wis. 2d 329, 895 N.W.2d 368.

Judicial Review

- ▶ Whether the body acted according to law.
 - ▶ Was there a legal basis for the action? i.e. did the body use a valid statutory ground for revocation?
- ▶ Whether the body's action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment.
 - ▶ An agency does not act in an arbitrary manner if it acts on a rational basis. Arbitrary action is the result of an unconsidered, willful or irrational choice, and not the result of the sifting and winnowing process. *Smith v. City of Milwaukee*, 2014 WI App 95, ¶ 21, 356 Wis. 2d 779, 854 N.W.2d 857.

Judicial Review

- ▶ Whether the evidence was such that it might reasonably make the order or determination in question.
 - ▶ Quantitatively, substantial evidence is less than a preponderance of the evidence, but more than a mere scintilla of evidence.
 - ▶ Substantial evidence is evidence of such convincing power that reasonable persons could reach the same decision as the local governmental entity, even if there is also substantial evidence to support the opposite decision.
 - ▶ If credible, relevant and probative evidence upon which reasonable persons could rely to reach a decision supports the, the court will uphold the decision. *AllEnergy Corp. v. Trempealeau Cty. Env't & Land Use Comm.*, 2017 WI 52, ¶ 75-76, 375 Wis. 2d 329, 895 N.W.2d 368.



Potential Policies

- ▶ Establish a person as the prosecuting agent for the municipality.
 - ▶ Can negotiate with licensee prior to bringing action.
 - ▶ Establish guidelines for which types of violations to pursue.
- ▶ Establish conviction criteria.
- ▶ Establish points system.
- ▶ Define what convictions disqualify from holding a license.



Contact Information



- ▶ Rick Manthe
Stafford Rosenbaum
- ▶ rmanthe@staffordlaw.com
- ▶ (608)259-2684



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StaffordRosenbaumLLP
Attorneys