



# Village of Ashwaubenon

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## OPERATOR LICENSE APPROVAL POLICY

Approved – August 22, 2023

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### SECTION 1: Policy Purpose.

In order to provide for an effective and consistent system of alcohol licensing that protects the public safety and is applied in a uniform and equitable manner, the Village Board has adopted the following written policy to govern the granting of operators' licenses pursuant to Chapter 125 of the Wisconsin Statutes, and Chapter 3, Article 2 of the Village's Municipal Code.

### SECTION 2: Acknowledgment of Duties.

The Village of Ashwaubenon acknowledges and recognizes the responsibility operators have to keep the public safe in their duties. An operator's license will enable operators to sell alcohol on a Class A premise (alcohol is carried off the premise. Examples include: a gas station, liquor store, or grocery store.) or a Class B premise (alcohol consumed on the property such as a tavern or bar). A liquor license holder, an agent, or a licensed operator must be on the premises at all times the business is open and alcohol is being sold. The licensed operator is in charge of the premise, and has certain responsibilities that include, but are not limited to:

- A. Preventing the sale of alcohol to minors. The legal drinking age is 21, and sales of alcohol to underage patrons is prohibited.
- B. Prohibiting the service or sale of alcohol to a person who is intoxicated. Operators are legally entitled, and required, to refuse to serve or sell to any person whom they feel has had too much to drink.
- C. Ensuring open intoxicants do not leave the property.
- D. Class "B" premises must be closed between 2:00 am and 6:00 am Mon-Friday, and 2:30 am and 6:00 am Sat. & Sun. No beer carry-out between 12:00 am and 6:00 am. No liquor carry-out between 9 pm and 8 am. Everyone except employees on duty must be out of the store or bar by closing time. Private parties, friends, or spouses are not allowed to stay on the premises while staff completes cleaning duties.
- E. Class "A" premises may not sell fermented malt beverages between the hours of 10:00 pm and 8:00 am Mon-Thursday, and 12:00 am and 8:00 am Friday-Sunday.
- F. "Class A" premises may not sell intoxicating liquors between the hours of 9:00 pm and 8:00 am.

### **SECTION 3: Process.**

- A. The Village Clerk's office shall take the application and fee. The office shall do an initial review of the application to ensure the application is complete pursuant to the requirements in Chapter 3 of the Municipal Code. The fee collected is non-refundable. Incomplete applications will not be accepted.

The Public Safety Department will conduct a records check, including criminal and traffic, of all applicants for operators' licenses. If necessary, the records check may include an interview with the applicant or contact with other jurisdictions or third parties to verify or investigate information obtained in the records check. Applicants must provide all requested information on the operator license application. Applications with missing or incomplete information regarding arrests and convictions in accordance with Section 4 shall be denied in accordance with guideline 5 of section 4. Corrected applications shall be re-assessed the application fee if the Committee allows the applicant to submit a corrected application and recommend granting of the license if the applicant is otherwise qualified under guideline 5 (C) of section 4.

- B. The Chief of Public Safety, or the Public Safety Chief's designee, shall provide a recommendation for approval or denial using the criteria listed in section 4.
- C. All recommendations for approval will be routed back to the administration office to be issued by the Village Clerk.
- D. All applicants recommended for denial shall be provided with written notice from the Village Clerk's office stating the reasons for denial and a copy of Municipal Code 3-2-130 (C). The notice shall also indicate the applicant may appeal the denial to the Public Works & Protection Committee in writing.
- E. Upon written notice of appeal, the Village Clerk shall forward the license application and any related materials to the Committee. The Public Works & Protection Committee shall provide a review of the application as listed in Section 5.
- F. The committee shall, after interview of the applicant, make a recommendation to either grant or deny an operator's license to the Village Board.
- G. The Village Board shall review the application and recommendation from the Public Works & Protection Committee and make a final determination to grant or deny the license.
- H. An applicant who is denied any license may apply to the circuit court pursuant to WI Statutes 125.12(2)(D).

## **SECTION 4: Criteria for Denial.**

The Chief of Public Safety, or designee, shall provide a review of the criminal history of the applicant, and refer the arrest and conviction record of the applicant, subject to the limitations imposed by Wis. Stats. §§ 111.321, 111.322, and 111.335, and Wis. Stats. § 125.12(1)(b) to the Public Works & Protection Committee for further review and possible recommendation for denial. Due to the discretionary nature of the alcohol beverage license process, it is not possible to state every circumstance that may result in denial of a license application and what circumstances will result in approval of a license application. However, it is possible to enumerate what the Committee will consider in making its recommendation and what circumstances are more likely to result in a denial of a license application. It is also important to note denying an operator's license does not prohibit the employee from serving/selling alcohol; however, it does require that they serve/sell with a licensed operator on the premise.

**Guideline 1:** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has been convicted of a felony, unless duly pardoned, does not qualify for an operator's license. Sec. 125.04(5)(b), Wis. Stats. (To the extent the other guidelines reference a specific offense, this guideline shall apply if the offense constitutes a felony.).

**Guideline 2:** If a licensee is convicted of an offense substantially related to the licensed activity.

Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has been convicted of or has a current charge pending, for (1) or more offenses within the last five (5) years or for two (2) or more offenses, arising out of separate incidents, within the last ten (10) years in the following subcategories, does not qualify for an operator's license:

- (a) Violent crimes against the person of another, including but not limited to battery, disorderly conduct, sexual assault, injury by negligent use of a vehicle, intimidation of victim or witness.
- (b) Crimes involving cooperation (or lack thereof) with law enforcement officials, including but not limited to, resisting or obstructing a Public Safety officer, bribery of public officers/employees, eluding Public Safety, bail jumping, hit and run, perjury, or acts/threats of terrorism.
- (c) Manufacturing, distributing, delivering a controlled substance or a controlled substance analog; maintaining a drug trafficking place; possessing with intent to manufacture, distribute, or deliver a controlled substance or a controlled substance analog. Sec. 111.335(1)(cs), Wis. Stats.

**Guideline 3:** Provided the circumstances substantially relate to the circumstances of the job, any person who has been convicted of or has a current charge pending, for one (1) or more offenses, arising out of separate incidents, within the last two (2) years immediately preceding the license application in the following subcategories does not qualify for an operator’s license:

- (a) Alcohol beverage offenses (under Wis. Stat. Ch. 125 or Ashwaubenon Municipal Code Ch. 3 - excluding administrative violations such as “failure to post license under glass”).
- (b) Operating a motor vehicle with a prohibited alcohol concentration (PAC) in excess of .08% by weight.
- (c) Open intoxicants in public places or in a motor vehicle.
- (d) Possessing a controlled substance, controlled substance analog without a valid prescription, or possessing drug paraphernalia.
- (e) Operating a motor vehicle while under the influence of intoxicants or drugs.
- (f) Disorderly conduct, criminal damage to property, solicitation of prostitution, or other prostitution-related offenses, wherein the offense involves an incident at a place that is, or should have been licensed under Wis. Stat. Ch. 125.

**Guideline 4:** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who is a habitual law offender does not qualify for an operator’s license. Sec. 125.04(5)(b), Wis. Stats.

**What is a “habitual law offender?”** The term “habitual” refers to multiple convictions or pending charges and could include an offender with two (2) offenses occurring within a relatively 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 licensing activity.

For purposes of these guidelines, a habitual offender includes, but is not limited to a person who has committed:

- (a) Two (2) or more offenses, each a separate incident, within the immediately preceding one (1) year.
- (b) Three (3) or more offenses, each a separate incident, within the immediately preceding five (5) years.
- (c) Four (4) or more offenses, each a separate incident, within the preceding ten (10) years.

**Guideline 5:** Applicants must truthfully and completely fill out applications.

- (a) If an applicant who knowingly provides material false information on an application, that application shall be denied and the applicant shall not be eligible to reapply for an operator license for a period of one (1) year from the date of denial of such application.
- (b) If the Committee determines that information was intentionally omitted from an application, the application shall be denied and the applicant shall not be eligible to reapply for an operator license for a period of one (1) year from the date of denial of such application.
- (c) If the Committee determines that information was omitted from an application due to inadvertence, mistake, or excusable neglect, the Committee may allow the applicant to submit a corrected application and recommend granting of the license if the applicant is otherwise qualified.

Additionally, because a license is a privilege, the issuance of which is a right granted solely to the Village Board, the Village Board reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Village Board, at its discretion, may, based upon an arrest or conviction record of two or more offenses that are substantially related to the licensed activity within the five years immediately preceding, act to suspend such license for a period of one year or more.

#### **SECTION 5: Public Works & Protection Committee Review of Applications.**

The Public Works & Protection Committee shall be responsible for conducting further review of operator's license applications that have criteria from Section 4 as recommended for denial. The committee shall be expected to thoroughly and conscientiously review license applications and consistently apply pertinent laws and ordinances.

The Public Works & Protection Committee may recommend approval of an operator's license application if the applicant presents the Committee with substantial evidence in the form of credible documentation of rehabilitation. Such evidence could include letters of recommendation from Alcohol and Other Drug ("AODA") counselors, probation agents, or other relevant service providers, other professional counselors, certificates and/or letters confirming satisfactory completion of an AODA or other relevant counseling program. Any such letters shall be on the letterhead of the agency offering the recommendation in order for the letter to be considered credible evidence of rehabilitation.

Pursuant to Wis. Stats. § 111.335(4)(d), competent evidence of rehabilitation and fitness to perform the licensed activity may be established by production of any of the following:

- (a) The individual's most recent certified copy of a Federal Department of Defense form DD-214 showing the person's honorable discharge, or separation under honorable conditions, from the U.S. armed forces for military service rendered following conviction for any offense that would otherwise disqualify the individual from the license sought, except that the discharge form is not competent evidence of sufficient rehabilitation and fitness to perform the licensed activity if the individual was convicted of any misdemeanor or felony

subsequent to the date of the honorable discharge or separation from military service.

- (b) A copy of the local, state, or federal release document; and either a copy of the relevant department of corrections document showing completion of probation, extended supervision, or parole; or other evidence that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime along with evidence showing compliance with all terms and conditions of probation, extended supervision, or parole.

In addition to the documentary evidence that may be provided above to show sufficient rehabilitation and fitness to perform the licensed activity, the Committee shall consider any of the following evidence presented by the applicant:

- (a) Evidence of the nature and seriousness of any offense of which he or she was convicted.
- (b) Evidence of all circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense.
- (c) The age of the individual at the time the offense was committed.
- (d) The length of time that has elapsed since the offense was committed.
- (e) Letters of reference by persons who have been in contact with the individual since the applicant's release from any local, state, or federal correctional institution.
- (f) All other relevant evidence of rehabilitation and present fitness presented.

The Committee shall decide how much weight and credibility to assign to any evidence of rehabilitation, including but not limited to, whether a record is certified, whether evidence has been corroborated or verified, documentary proof of completion of any counseling or other relevant treatment, and the credibility of statements by the applicant or any witness. In determining the credibility of any statement made by the applicant or any witness, the Committee should consider, among other things, the reasonableness of the statement, possible motives for providing false statements or withholding information, the applicant or witness's conduct and demeanor, the clearness or lack of clearness of the statement, and the cooperation of the applicant or witness in answering any questions posed by the Committee or Village Staff.

For license renewals, a previous determination by the Committee that an applicant has been rehabilitated from certain offenses carries forward; however, these offenses may be re-considered if the applicant has also committed a new offense substantially related to the licensed activity during the current license period.

The Committee shall state reasons for approval or denial for the record.

Possible outcomes include but are not limited to:

1. Recommend approval of the license based on the applicant providing credible evidence of rehabilitation.
2. Recommend application be tabled for a period of 31 days. The Committee will re-review application at that time. Applicant should be prepared to provide substantial evidence of rehabilitation.
3. Recommend application be denied based on violation of guideline (insert relevant guideline and corresponding ordinance reference).
4. If the applicant fails to appear without notice: recommend the application be placed on file without prejudice (meaning the application can be brought back at any time before the expiration of the license period).