

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEON
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
JARELY M. RUIZ
ROBIN A. PEDERSON
DANIELLE M. BERGNER
Assistant City Attorneys

May 19, 2009

Honorable Common Council
City Hall, Room 205

Re: File No. 081454

An ordinance declaring that individuals who have been convicted of an offense for driving while intoxicated or for prohibited blood alcohol content are ineligible for a Class "B" Manager's License or a Class "D" Bartender's License

Dear Council Members:

We have had a chance to review the above-referenced file, and will approve it as to legality and enforceability. In so doing we have some concerns and wish to advise you of those concerns.

First, it is our understanding that in the case of some out of state bartender applicants, the states will not always share information on operating while intoxicated convictions with other police agencies. We are informed that the State of Minnesota is one such state. In such a case the individual could obtain a bartender's license or a manager's license and nonetheless have such a conviction. A partial cure for that possibility is having the License Office require disclosure of such information on the application. The penalty for a false or misleading application would be revocation of the license. However getting the correct information might not always be a certainty, with the result that some individuals would get a bartender's license or a manager's license notwithstanding such a conviction.

Second, by the terms of the proposal, someone applying for a new Class "B" Manager's license or a Class "D" Operator's [bartender's] license will be found to be unqualified for the license if they have a conviction for operating while intoxicated or prohibited blood alcohol content within one year predating the date of application for the license. Under its terms if one has such a conviction, the person cannot obtain the license in question for one year following conviction.

A Class "B" Manager's license and a Class "D" Operator's license (bartender's license) are two-year licenses. (Wis. Stat. §§ 125.17(3) (operator's) and 125.18(3) (manager's)).

OFFICE OF THE CITY ATTORNEY

Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551 • Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550


If, for example, an applicant applied for such a license and between the time of application and actual issuance they obtained a citation for operating while intoxicated, that fact would probably not be picked up on the police check prior to the grant by the Common Council and issuance by the License Division. That individual would have his or her Class "B" Manager's license or Class "D" Bartender's license for a period of two years before the renewal of the license and by then the license could be renewed even under this proposal. Yet, the individual who happened to have an operating while intoxicated citation *and a conviction* occurring immediately before the application for a Class "B" Manager's license or a Class "D" Bartender's license would have to wait a year before being able to apply for and be granted and issued such a license. A similar example is an individual who obtains a Class "D" Bartender's license or Class "B" Manager's license and has a conviction for OWI immediately after having obtained the license. The same result would occur, the applicant would have the license for nearly two years before the fact of the conviction would show up in the police check for the renewal of the license.

The difference between the two individuals in the example above is the happenstance of the date of violation, date of conviction, and timing of the initial application for the licenses. It is possible that the proposal would be challenged based on the difference in the treatment of the two individuals posited in the foregoing example. In the example above we would defend the proposal based on the fact that in one case there was an actual conviction and in the other case there was not.

Please let us know if you have any additional questions or concerns.

Very truly yours,


GRANT F. MANGLEY
City Attorney


BRUCE D. SCHRIMPF
Assistant City Attorney

BDS:wt:143831

c: Ronald D. Leonhardt, City Clerk

1033-2009-583