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ORDINANCE NO. 781 - 2015

CITY OF ALGOMA
COUNTY OF KEWAUNEE
STATE OF WISCONSIN

AN ORDINANCE AMENDMENT RELATING TO THE GRANTING OF LICENSES
FOR INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES
IN THE CITY OF ALGOMA, WISCONSIN

WHEREAS: The Common Council of the City of Algoma has the authority to promote the public health, safety and welfare pursuant to the general grant of authority to the city according to Wisconsin Statutes, Section 62.11 (5), and

WHEREAS: The Common Council finds that it is necessary to provide a framework for the granting of licenses for intoxicating liquor and fermented malt beverages, as well as the grounds for denial, and a framework for suspension, revocation or non-renewal.

NOW, THEREFORE the Common Council of the City of Algoma does ordain that:

- I. Chapter 9.0 of the Algoma Code of Ordinances, and entitled "LICENSES AND PERMITS," is amended as follows:

At Section 9.01 INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES,
(4) License Applications add sub-section:

"(d) Denying, non-renewing or revoking an alcohol beverage license

Intent. As it is the responsibility of the Person Property and Protection Committee, hereafter referred to as the "Committee," of the Algoma Common Council to screen applications for alcohol beverage licenses within the City of Algoma under licensing authority granted by Chapter 125 of the Wisconsin Statutes and Chapter 9.01 of the Algoma Ordinances, the Committee adopts the following guidelines in order to specify the reasons for denying, non-renewing or revoking an alcohol beverage license. If a decision is made to deny, revoke, suspend or non-renew a license the Committee is require to provide that person with a written reason for the denial. These guidelines are adopted to meet that requirement.

The following guidelines are established by the Committee to provide a framework for which persons are eligible for issuance of an alcohol beverage license (*i.e.* grounds for denial) and a framework for suspension, revocation or non-renewal.

Since alcohol beverage license holders must act in cooperation with law enforcement to enforce the alcohol beverage laws, drunk driving laws and assist with minimizing disturbances of the peace and maintaining the safety of the community, individuals with a past history of negative or uncooperative contacts with police agencies should be scrutinized; provided, however, that the Committee shall not discriminate against such applicants based on a prior arrest or conviction record, pursuant to Wis Stat. 111.321, 111.322, 111.335 and 125.12(1)(b), unless said arrest or conviction record substantially relates to the circumstances of the particular licensed activity. It is with these goals in mind, as well, that these guidelines are adopted.

For purposes of these guidelines an "alcohol beverage license," "license" or "permit" constitutes a retail license or an operator's license. Additionally, the definition of

55 "person" shall be as defined in Chapter 9.01 of the Algoma Ordinances. Therefore,
56 these guidelines also apply to corporations, limited liability companies, agents and
57 partnerships. A corporation or limited liability company with an arrest or conviction
58 record may be issued a license if the corporation or limited liability company has
59 terminated its relationship with all the individuals whose actions directly contributed to
60 the conviction [Sec. 125.04(5) (c)]. **Furthermore, to the extent Wis Stat. Ch. 125 or**
61 **Algoma Ordinances provide additional grounds for denial, suspension, revocation**
62 **or non-renewal, the Committee may also rely on such provisions.**

63
64 **The Committee will only deny renewal of, suspend or revoke a current alcohol**
65 **beverage license under these guidelines, or other justification provided by law, if**
66 **the person committed an offense substantially related to the licensed activity**
67 **within the license year period immediately preceding the year for which the**
68 **person is seeking renewal or within the license year period in which suspension**
69 **or revocation is sought, unless the police chief and/or police administrator**
70 **demonstrates that previous offenses were not considered in the approval of the**
71 **current license.** In the event the person is considered for non-renewal, suspension or
72 revocation as the result of such an offense, the Committee shall consider all offenses,
73 regardless of when they occurred, to determine application of these guidelines.

74
75 Additionally, with respect to a non-natural person, such person's license may be
76 revoked, suspended or non-renewed in the event a new officer, director, member or
77 manager is named and such person does not qualify under these guidelines; with the
78 exception that a corporation or limited liability company may retain its license if it
79 terminates its relationship with all the individuals whose actions directly contributed to
80 the conviction. With respect to successors agents, see Wis. Stat. 125.04(6).

81
82 Notwithstanding the above, the following violations may not be used as grounds for
83 suspension, revocation or non-renewal of an existing license:

- 84 1. Furnishing alcohol beverages to underage persons unless the licensee has
85 committed two (2) violations within a one (1) year period, or
- 86 2. Violations punishable under Wis. Stat. 945.03(2m), 945.04(2m) or 945.05(1m)
87 (relating to commercial gambling and gambling devices).

88
89 **A copy of these Guidelines shall be provided to each person who applies for a**
90 **license.**

91 (e) Guidelines

92
93
94 **Guideline 1.** Provided the offense is **substantially related to the circumstances of**
95 **the licensed activity**, any person who has been convicted of any felony, unless duly
96 pardoned, does not qualify for an alcohol beverage license. (To the extent the other
97 guidelines reference a specific offense; this guideline shall apply if the offense
98 constitutes a felony.)

99
100 **Guideline 2.** Provided the offense is **substantially related to the circumstances of**
101 **the licensed activity**, any person who has been convicted of, released from
102 incarceration in a State or Federal Prison System, or a county jail for, or released from
103 parole or probation status, or has a current charge pending, for any of the following
104 offenses in the last two (2) years, or two (2) or more offenses **arising out of separate**
105 **incidents** within the last ten (10) years in the following subcategories, does not qualify
106 for an alcohol beverage license:

- 107 (a) Violent crimes against the person of another, including but not limited to
108 homicide, aggravated battery, sexual assault, injury by negligent use of a weapon, injury
109 by negligent use of a vehicle, or injury by intoxicated use of a vehicle.
110 (b) Crimes involving cooperation (or lack thereof) with law enforcement officials,
111 including but not limited to obstructing a police officer, resisting arrest, bribery of public
112 officers or employees, misconduct in public office, bomb scares, or acts or threats of
113 terrorism.
114 (c) Manufacturing, distributing, delivering a controlled substance or a controlled
115 substance analog; possessing with intent to manufacture, distribute or deliver, a control
116 substance or a controlled substance analog.
117

118 **Guideline 3.** Provided the offense is **substantially related to the circumstances of**
119 **the licensed activity**, any person who has been convicted of, released from
120 incarceration in a State or Federal Prison System, or a county jail for, or released from
121 parole or probation status, or has a current charge pending, for any of the following
122 offenses in the last year, or two (2) or more offenses **arising out of separate incidents**
123 within the last three (3) years in the following subcategories, does not qualify for an
124 alcohol beverage license:

- 125 (a) Disorderly conduct, criminal damage to property, solicitation of prostitution or
126 other prostitution related offenses, wherein the offense involved an incident at a place
127 that is, or should have been licensed under Wis. Stat. Ch. 125.
128 (b) Alcohol beverage offenses (under Wis. Stat. Ch. 125 or Algoma Ordinance Ch.
129 9.01 – excluding administrative violations such as “failure to post license under glass”)
130 (furnishing alcohol beverages to underage persons shall not be used as grounds for
131 suspension, revocation or non-renewal of an existing license unless the licensee has
132 committed two (2) violations within a one (1) year period).
133 (c) Perjury or false swearing, wherein the offense involves an incident at a place that
134 is, or should have been licensed under Wis. Stat. Ch. 125.
135 (d) Possessing a controlled substance, controlled substance analog or drug
136 paraphernalia.
137 (e) Operating a motor vehicle while under the influence of intoxicants or drugs.
138 (f) Operating a motor vehicle with a BAC in excess of 0.08% by weight.
139 (g) Open intoxicants in public places or in a motor vehicle.
140

141 **Guideline 4.** Provided the offense is **substantially related to the circumstances of**
142 **the licensed activity**, any person who is a habitual law offender does not qualify for an
143 alcohol beverage license. To constitute a habitual law offender there need not have
144 been a trial or conviction for each or any offense. What is required is that the offenses
145 were committed, that the law has been violated and that the fact of such violations can
146 be shown. See *Smith v. City of Oak Creek*, 139 Wis. 2d 788 (1987). For purposes of
147 these guidelines, a habitual offender includes, but is not limited to a person who has
148 committed:

- 149 (a) Two (2) or more offenses, each a separate incident, within the immediately
150 preceding six (6) months.
151 (b) Three (3) or more offenses, each a separate incident, within the immediately
152 preceding two (2) years.
153 (c) Six (6) or more offenses, each a separate incident, within the immediately
154 preceding ten (10) years.
155

156 **Guideline 5.** Any person who materially falsifies an application for an alcohol beverage
157 license will not be eligible to re-apply for an alcohol beverage license for a period of six
158 (6) months from the **date of denial** of such application. The Committee may waive the
159 provisions of this paragraph, allow the applicant to submit a corrected application with
160 the appropriate fee and grant an alcohol beverage license to the person, if it appears to

161 the Committee that any falsifications on the application were the result of inadvertence,
162 excusable neglect or mistake.

163
164 **Guideline 6.** Recommending approval of an operator's license application for an
165 applicant who would otherwise be denied under these policy guidelines.

166 (a) The Committee may recommend approval of an operator's license application if the
167 application would otherwise be denied under this policy if the applicant presents the
168 Committee with substantial, credible evidence of rehabilitation. Such evidence includes
169 letters of recommendation from Alcohol and Other Drug ("AODA") counselors, probation
170 agents or other relevant service providers, other professional counselors, certificates
171 and/or letters confirming satisfactory completion of an AODA or other relevant
172 counseling program. Any such letters shall be on the letterhead of the agency offering
173 the recommendation in order for the letter to be considered credible evidence of
174 rehabilitation. Any evidence must be in the form of documents submitted to the
175 Committee and may not be statements of the applicant at the time of hearing.

176 (b) The reasons for any recommendation of approval of an operator's license application
177 under this paragraph must be clearly stated in the record.

178
179 **Guideline 7.** If the Committee recommends denial of an operator's license application,
180 the reasons for denial must be clearly stated on the record and shall be consistent with
181 the criteria outlined above.

182
183 (f) **APPEAL PROCESS FOR DENIED LICENSE APPLICATION**

184 If the Committee recommends denial of an operator's license application, the applicant
185 has the right to file an appeal with the City Clerk within thirty (30) days, and appear and
186 be represented before the Common Council, to be heard, to present evidence in favor of
187 the granting of the license, and to rebut the evidence presented in opposition to the
188 granting of the license, at a hearing held within forty (40) days of the filing of such
189 appeal.

190
191 II. **Severability.** If any section, subsection, sentence or phrase of this Policy is for any
192 reason held to be invalid or unconstitutional by reason of a decision of any court of
193 competent jurisdiction, such decision shall not affect the validity of any other section,
194 subsection, sentence, clause or phrase.

195
196 III. **Conflict.** Any conflict between Wis. Stat. Ch. 125, Algoma Ordinance 9.01 and this
197 policy shall be decided on the order of precedence which shall be the order listed in this
198 sentence.

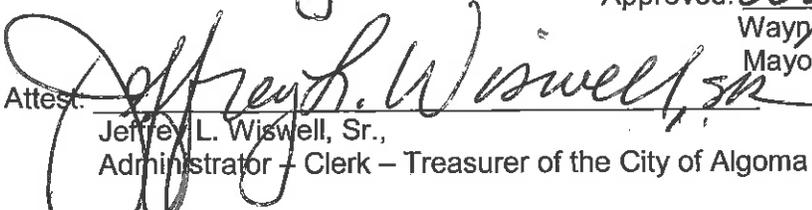
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200 IV. **This ordinance amendment shall apply to all licenses issued in the City of**
201 **Algoma, and**

202
203 V. **This ordinance amendment shall take effect upon passage and publication as**
204 **provided by law.**

205
206 Adopted by the Common Council of the City of Algoma, Wisconsin at a regular meeting thereof
207 on the 4th day of May, 2015, by a vote of 8 for and 0 opposed.

208
209 Approved: 

Wayne R. Schmidt,
Mayor of the City of Algoma

210
211 Attest: 

Jeffrey L. Wiswell, Sr.,
Administrator - Clerk - Treasurer of the City of Algoma