

CITY OF MADISON, WISCONSIN

A SUBSTITUTE ORDINANCE _____
Amending Section 38.02, creating Section 38.031, repealing Section 38.04(1), renumbering Sections 38.04(2) and (3) to Sections 38.04(1) and (2), respectively, amending Renumbered Section 38.04(2)(b), repealing Sections 38.04(4) and (5), renumbering Sections 38.04(6) through (8) to Sections 38.04(3) through (5), respectively, amending Renumbered Sections 38.04(3) and (4), amending Section 38.05(13) to clarify that the penalties listed therein apply only to that subsection, repealing and recreating Section 38.07(2) to adopt and incorporate into the Ordinances the Wisconsin State Statutes relating to regulation of underage persons, creating Section 38.07(14) prohibiting consumption or possession of alcohol on public library property, and amending Section 1.08(3)(a) of the Madison General Ordinances to modify, repeal and recreate bail deposit amounts for various ordinance violations.

PRESENTED May 1, 2007
REFERRED Alcohol License Review Board;
Library Board
RULES SUSPENSION _____
PUBLIC HEARING _____

Drafted by: Jaime Staffaroni
Steve Brist

Date: August 31, 2007

SPONSORS: Ald Verveer

DRAFTER'S ANALYSIS: This ordinance repeals various parts of Chapter 38 that the City is required to be in strict conformity with State Statute, under Wis. Stats. Sec. 125.10. It creates Section 38.031 which adopts the Chapter 125, to insure that the ordinances are in compliance with the required state statute sections. This creates a subsection that prohibits the consumption or possession of alcohol beverages on property owned or operated by the public library and creates an exception if said consumption or possession has been approved by the library board. It also amends bail deposits to insure uniformity with state statute and establishes bail deposits for violations that occur on public library or city owned property.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 38.02 entitled "Definitions" of the Madison General Ordinances is amended by amending or adding therein the following:

"Public Library" shall mean any library established under the regulations of Madison General Ordinances Section 8.12."

2. Section 38.031 entitled "Wisconsin Statutes, Chapter 125 Incorporated by Reference" of the Madison General Ordinances is hereby created as follows:

"38.031 WISCONSIN STATUTES, CHAPTER 125 INCORPORATED BY REFERENCE.

Chapter 125 of the Wisconsin Statutes is hereby adopted and incorporated by reference in Chapter 38, Madison General Ordinances, so far as applicable, except as otherwise provided by

Approved as to form:

this Section. Any future amendments, revisions or modifications of Chapter 125, Wis. Stats., incorporated herein by reference, are intended to be made a part of this chapter in order to secure uniform statewide regulation of the sale of alcoholic beverages. Provisions of Chapter 38, Madison General Ordinances, that are not contained in Chapter 125, Wis. Stats., are intended as additional regulations for the sale of alcohol beverages, not in conflict with Chapter 125, Wis. Stats."

3. Subsection (1) entitled "Sale of Alcohol Beverages to Underage Persons of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances is hereby repealed.

4. Subsections (2) and (3) of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances are hereby renumbered to Subsections (1) and (2), respectively.

5. Subdivision (b) entitled "Penalties" of Renumbered Subsection (2) of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances is amended to read as follows:

"(b) Penalties.

1. A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premise in violation of subdivision (a) is subject to a forfeiture of not more than \$500.
2. Any person who engages in activity which requires a license or permit pursuant to Chap. 125, Wis. Stats., and who permits directly or indirectly an underaged person onto the premises where said activity is occurring is subject to a forfeiture of not more than \$500. This prohibition is subject to the exceptions contained in Sec. 38.04~~(3)~~(2)(a) above."

6. Subsection (4) entitled "Reserved for Future Use" of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances is hereby repealed.

7. Subsection (5) entitled "Underage Persons; Prohibitions; Penalties" of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances is hereby repealed.

8. Subsections (6) through (8) of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances are hereby renumbered to Subsections (3) through (5), respectively.

9. Renumbered Subsection (3) entitled "Defenses" of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances is amended to read as follows:

"(3) Defenses. In determining whether or not a licensee or permittee has violated Sub~~s~~~~(1)(a) and~~~~(3)(2)(a)~~, all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages may be considered, including any circumstance under Subdiv. (a) to (d). In addition, proof of all of the following facts by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this section.

- (a) That the purchaser falsely represented that she or he had attained the legal drinking age.
- (b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.
- (c) That the sale was made in good faith and in reliance on the representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.
- (d) That the underage person supported the representation under Subdiv. (a) with documentation that she or he had attained the legal drinking age."

10. Renumbered Subsection (4) entitled "Book Kept by Licensees and Permittees" of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on License Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances is amended to read as follows:

"(4) Book Kept by Licensees and Permittees.

- (a) Every retail alcohol beverage licensee or permittee may keep a book for the purposes of Subsection ~~(6)~~(3). The licensee or permittee or her or his employee may require any of the following persons to sign the book:
 - 1. A person who has shown documentary proof that she or he has attained the legal drinking age if the person's age is in question.
 - 2. A person who alleges that she or he is the underage person's parent, guardian or spouse and that she or he has attained the legal drinking age, if the licensee or permittee or her or his employee suspects that she or he is not the underage person's parent, guardian or spouse or that she or he has not attained the legal drinking age.
- (b) The book may show the date of the purchase of the alcohol beverages, the identification used in making the purchase or the identification used to establish that a person is an underage person's parent, guardian or spouse and has attained the legal drinking age, the address of the purchaser and the purchaser's signature."

11. Subsection (13) entitled "Video Surveillance Equipment" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is amended to read as follows:

"(13) Video Surveillance Equipment. Video surveillance equipment in licensed establishments shall be subject to the following restrictions:

- (a) The ALRC may impose video surveillance as a condition on a new license if the nature of the license proposal or the character of the immediate area in which the establishment will be located clearly demonstrates that video surveillance is consistent with maintaining the health, safety and welfare of the community. Factors which would support the ALRC's imposing this condition would include, but are not limited to: physical layout of the establishment, capacity, venue, history of the applicant in operating previous licensed establishments, history of the establishment itself and character of the surrounding area of the establishment.
- (b) If a licensed establishment has video surveillance imposed as a license condition, the ALRC record shall clearly state the basis for imposing the condition.
- (c) Any video surveillance license condition imposed by the Common Council, Alcohol License Review Committee or Madison Police Department shall be limited to two (2) years, after which time such condition may be reviewed at the request of the licensee.
- (d) All licensed establishments having video surveillance in use at their establishment shall post the following signage:

VIDEO SURVEILLANCE EQUIPMENT IN USE
YOU MAY BE RECORDED

Such signage shall be conspicuously posted at all entrances/exits (excluding emergency exits and employee-only entrances). The signage lettering shall be in bold and the lettering shall be a minimum of two (2) inches in height.

- (e) All tapes/discs used to record and/or store video as part of a license condition shall be kept for at least thirty (30) days.
- (f) Any video surveillance equipment installed as a license condition shall be in operation during normal business hours.
- (g) Any licensed establishment voluntarily implementing video surveillance shall notify the City Clerk's Office of such use and shall comply with the requirements of Subdivision (c).

Violation of any provision of this subsection shall result in a forfeiture of not less than \$25 nor more than \$100 plus court costs and fees. This section will become effective July 1, 2004."

12. Subsection (2) entitled "Possession of Alcohol Beverages on School Grounds Prohibited" of Section 38.07 entitled "General Restrictions" of the Madison General Ordinances is hereby repealed and recreated to read as follows:

"(2) Possession of Alcohol Beverages on School Grounds Prohibited. Pursuant to the provisions of Wis. Stat. Sec. 125.10, the City of Madison does hereby adopt and incorporate into this Subsection the provisions of Wis. Stat. Sec. 125.09(2), inclusive of all future amendments to any provisions of this section of the Wisconsin Statutes."

13. Subsection (14) entitled "Public Library" of Section 38.07 entitled "General Restrictions" of the Madison General Ordinances is created to read as follows:

"(14) Public Library. It shall be unlawful for any person to possess an open container which contains alcohol beverages or consume any alcohol beverages upon any property owned or operated by a public library except when said possession or consumption has been authorized by the Madison Public Library Board."

14. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating, amending or repealing therein the following:

<u>"Offense</u>	<u>Ord. No.</u>	<u>Deposit</u>
Procuring for or furnishing alcohol beverages to underage person.	38.04(1)(a)1.	\$250, 1st \$300, 2nd \$500, 3rd \$750, 4th/subsequent
Permit underage person on premises where activity requires alcohol beverage license.	38.04(3)(b)2. 38.04(2)	\$200, 1 st \$300, 2nd/subsequent
Underage person procures or attempts to procure from licensee.	38.04(5)(a)1.	\$250, 1st \$300, 2nd \$500, 3rd \$750, 4th/subsequent
Underage person possesses or consumes on licensed premises.	38.04(5)(a)2.	\$250, 1st \$300, 2nd \$500, 3rd \$750, 4th, subsequent
Underage person enters or attempts to enter licensed premises.	38.04(5)(a)3.	\$250, 1st \$300, 2nd \$500, 3rd \$750, 4th, sub.
Underage person falsely represents age for purpose of receiving alcohol from licensee.	38.04(5)(a)4.	\$250, 1st \$300, 2nd \$500, 3rd \$750, 4th, sub.
Underage identification card violations.	38.04(5)(a)5-8.	\$300
Underage person provides official identification card to another underage person	38.04(5)(a)9.	\$100, 1 st \$200, 2 nd \$300, 3 rd \$500, 4th, sub.

Underage person possesses or consumes (off licensed premises):	38.04(5)(b)	\$100, 1st \$200, 2nd \$300, 3rd \$500, 4th, sub.
Person of legal age providing false I.D. to underage person.	38.04(85)	\$400 <u>500</u>
No person to possess or consume alcohol beverages on school premises <u>or while participating in school-sponsored activity</u> without permission of school administrator.	38.07(2)(b)1.	\$200 <u>100</u>
No person may possess or consume an alcohol beverage in a motor vehicle on school premises.	38.07(2)(b)2.	\$200
No person to possess or consume alcohol beverages while participating in school-sponsored activity.	38.07(2)(b)3.	\$200
<u>Unlawful to possess or consume from open container of alcohol beverage on public library property.</u>	<u>38.07(14)</u>	<u>\$200</u>
<u>Unlawful to possess or consume from open container of alcohol beverage on city owned or operated property."</u>	<u>38.07(15)</u>	<u>\$200</u>

EDITOR'S NOTE:

1. New or amended bail deposits must be approved by Municipal Judge prior to adoption. These deposits have been so approved.

2. Sections 38.04(1), (4), and (5) of the Madison General Ordinances currently read as follows:

"(1) Sale of Alcohol Beverages to Underage Persons.

(a) Restrictions.

1. No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This paragraph does not apply to alcohol beverages used exclusively as part of a religious service.
4. No adult may intentionally encourage or contribute to a violation of Sec. 38.04(1)(a) or (b).

(b) Penalties and License Suspension for Sale to Underage Person.

1. A person who commits a violation is subject to a forfeiture of:
 - a. Not more than \$500 if the person has not committed a previous violation within 30 months of the violation.
 - b. Not more than \$500 if the person has committed a previous violation within 30 months of the violation.
 - c. Not more than \$1,000 if the person has committed two previous violations within 30 months of the violation.
 - d. Not more than \$10,000 if the person has committed three or more previous violations within 30 months of the violation.

2. A court shall suspend any license or permit issued under this chapter to a person for:
 - a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation; or
 - b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or
 - c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 other violations.
3. The court shall promptly mail notice of a suspension under this paragraph to the department and to the clerk of each municipality which has issued a license or permit to the person.
4. For purposes of determining whether or not a previous violation has occurred, if more than one violation occurs at the same time all those violations shall be counted as one violation."

"(4) Reserved for Future Use."

"(5) Underage Persons; Prohibitions; Penalties.

- (a) Any underage person who does any of the following is guilty of a violation:
 1. Procures or attempts to procure alcohol beverages from a licensee or permittee.
 2. Unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.
 3. Enters, knowingly attempts to enter, or is on licensed premises in violation of Section 38.04(3)(a).
 4. Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.
 5. Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information.
 6. Makes, alters or duplicates an official identification card purporting to show that she or he has attained the legal drinking age.
 7. Presents false information to an issuing officer in applying for an official identification.
 8. Intentionally carries an identification card or other documentation showing that the person has attained the legal drinking age, with knowledge that the documentation is false.
 9. Provides to another underage person an official identification card or other documentation purporting to show that the other underage person has attained the legal drinking age, with knowledge that the documentation is false.
- (b) Any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes alcohol beverages is guilty of a violation.
 1. Any person violating Subdivision (b) is subject to the following penalties:
 - a. For a first violation, a forfeiture of not less than \$100 nor more than \$200, suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)1., Wis. Stats., participation in a supervised work program under Sec. 125.07(4)(cg), Wis. Stats., or any combination of these penalties. (Am. by Ord. 11,330, 8-11-95)
 - b. For a violation committed within 12 months of a previous violation, either a forfeiture of not less than \$200 nor more than \$300, suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)2., Wis. Stats., participation in a supervised work program under Sec. 125.07(4)(cg), Wis. Stats., or any combination of these penalties.
 - c. For a violation committed within 12 months of two previous violations, either a forfeiture of not less than \$300 nor more than \$500, revocation

- of the persons's operating privilege under Sec. 343.30(6)(b)3., Wis. Stats., participation in a supervised work program under Sec. 125.07(4)(cg), Wis. Stats., or any combination of these penalties.
- d. For a violation committed within 12 months of three or more previous violations, either a forfeiture of not less than \$500 nor more than \$1,000, revocation of the person's operating privilege under Sec. 343.30(6)(b)3., Wis. Stats., participation in a supervised work program under Sec. 125.07(4)(cg), Wis. Stats., or any combination of these penalties.
- (c) Confiscation of Card. A law enforcement officer investigating an alleged violation of Sec. 38.04(5)(a)5., 6., 7. or 8. above shall confiscate any identification card or other documentation that constitutes evidence of the violation.
- (d) Any underage person violating subdivisions (a)1. through 4. is subject to the following penalties:
1. For a first violation, a forfeiture of not less than \$250 nor more than \$500, suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)1., Wis. Stats., participation in a supervised work program under Sec. 125.07(4)(cg), Wis. Stats., or any combination of these penalties.
 2. For a violation committed within 12 months of a previous violation, either a forfeiture of not less than \$300 nor more than \$500, suspension of the person's operating privilege as provided under §343.30(6)(b)2., Wis. Stats., participation in a supervised work program under §125.07(4)(cg), Wis. Stats., or any combination of these penalties.
 3. For a violation committed within 12 months of 2 previous violations, either a forfeiture of not less than \$500 nor more than \$750, revocation of the person's operating privilege under §343.30(6)(b)3., Wis. Stats., participation in a supervised work program under §125.07(4)(cg), Wis. Stats., or any combination of these penalties.
 4. For a violation committed within 12 months of three or more previous violations, either a forfeiture of not less than \$750 nor more than \$1,000, revocation of the person's operating privilege under §343.40(6)(b)3., Wis. Stats., participation in a supervised work program under §125.07(4)(cg), Wis. Stats., or any combination of these penalties.
 5. When a court revokes or suspends a person's operating privilege under Subsection (5), the department of transportation may not disclose information concerning or relating to the revocation or suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency or the person whose operating privilege is revoked or suspended. A person entitled to receive information under this paragraph may not disclose the information to any other person or agency.
- (e) Any underage person violating paragraphs (a)5. through 9. is subject to the following penalties:
1. For a violation of paragraphs (a)5. through 8., a forfeiture of not less than \$300 nor more than \$1,250, participation in a supervised work program under Sec. 125.07(4)(g), Wis. Stats., suspension of the person's operating privileges as provided under Sec. 343.30(6)(b)1., Wis. Stats., or any combination of these penalties.
 2. For a violation of paragraph (a)9., a forfeiture of not less than \$100 nor more than \$500.
- (f) A person who is under 18 years of age on the date of disposition is subject to Sec. 938.344, Wis. Stats., unless proceedings have been instituted against the person in a court of civil or criminal jurisdiction after dismissal of the citation under Sec. 938.344(3).
- (g) An underage person may possess alcohol beverages in the course of employment during her or is working hours if employed by any of the following:
1. A brewer.
 2. A fermented malt beverages wholesaler.
 3. A permittee other than a Class "B" or "Class B" permittee.
 4. A facility for the production of alcohol fuel.

5. A retail licensee or permittee under the conditions specified in §125.32(2) or §125.68(2), Wis. Stats., or for delivery of unopened containers to the home or vehicle of a customer.
6. A campus, if the underage person is at least 18 years of age and is under the immediate supervision of a person who has attained the legal drinking age."

3. Section 38.07(2) of the Madison General Ordinances currently reads as follows:

"(2) Possession of Alcohol Beverages on School Grounds Prohibited.

- (a) In this subsection:
 1. 'Motor vehicle' means a motor vehicle owned, rented or consigned to a school.
 2. 'School' means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.
 3. 'School administrator' means the person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.
 4. 'School premises' means premises owned, rented or under the control of a school.
- (b) Except as provided by subdivision (c) no person may possess or consume alcohol beverages:
 1. On school premises;
 2. In a motor vehicle, if a pupil attending the school is in the motor vehicle; or
 3. While participating in a school-sponsored activity.
- (c) Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws and ordinances.
- (d) A person who violates this subsection is subject to a forfeiture of not more than \$200, except that Secs. 125.07(4)(c) and (d) and 938.344, Wis. Stats., provide the penalties applicable to underage persons."