

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: February 3, 2009

MEMORANDUM

TO: Members of the Alcohol License Review Committee

FROM: Steve Brist, Assistant City Attorney

RE: Alcohol License Disciplinary Procedures

In response to recent discussions on alcohol licensing disciplinary procedures, I have examined Chapter 38 of Madison General Ordinances and have compared them to both Chapter 125, Wisconsin Statutes, and Chapter 90, Liquor and Tavern Regulations, Milwaukee General Ordinances. The purpose of this examination was to seek ways that Madison might reduce procedural obstacles in the license suspension/revocation process, while still retaining due process rights guaranteed to alcohol beverage licensees. Additionally, I have examined materials from the Wisconsin League of Municipalities and the limited amount of case law that is available in this area. I have also been in contact with Milwaukee Assistant City Attorney assigned to their licensing committee.

I have identified a number of issues that could be addressed in Madison's process:

1. Streamline Start of Proceedings. Permit the commencement of a license disciplinary action before the ALRC and the issuance of a summons without having to seek advance approval from the Common Council. This formal requirement adds weeks to the disciplinary process, but it is unlikely that the underlying resolution will not be adopted or even be controversial (the ultimate discipline might be controversial, but the issuance of a summons is generally a ministerial act). The current process involves introduction of a resolution to be considered by the Common Council, seeking specific authorization to proceed and authorizing the City Clerk to issue a summons. In a recent instance, the Council referred such a resolution to the ALRC, which added further time to the process. When this delay is combined with the fact that the ALRC only meets once a month, this can add significant time to the process. This delay could be resolved by providing specific authority that when the OCA commences a complaint under Chapter 38, then the City Clerk is authorized to issue a summons. This appears to be currently permitted in the nonrenewal process (as opposed to the suspension/revocation process) under Madison ordinances. This also would be consistent with prosecutions in Municipal Court, where the Office of the City Attorney may commence a prosecution and obtain a summons without any Council action. This change would have to be done by an amendment to the ordinances. I would propose Section 38.10, Madison General Ordinances be amended to authorized the Office of the City Attorney to initiate suspension or revocation hearings before the ALRC, and that the Common Council be provided notice that a complaint has been initiated under that Section.

2. Place time limits on hearings before the ALRC by ALRC rule. Under its past practices, the ALRC has allowed parties appearing in a license discipline case to have an unlimited amount of time to

present their case. There are times when past hearings have extended over several days or weeks. Given the size and the volunteer membership of the ALRC, it is often difficult to obtain a quorum for special meetings. The ALRC could tell each side that they have a certain amount of time available to present their side of their case. For example, each party could be limited to, say, two or three hours or one day, or some longer but specific period, that would preserve due process rights but permit the hearing to be completed in a reasonable amount of time. This could be done by the ALRC at the start of a particular hearing process, as part of an order regarding the general hearing process. Of course, such a rule should permit the parties to reasonably request more time for cause.

3. Surrender of License. Milwaukee has an ordinance provision that allows a licensee to surrender the license rather than proceed with the hearing. According to the Milwaukee Assistant Attorney who handles these matters, this provision has led some licensees surrendering their license rather than contesting the hearing. I am not sure that this would have a significant effect in Madison, but it may provide a licensee a clear path if they wish to avoid a hearing.
4. Criteria for License. Milwaukee has additional criteria for refusing to grant or for revoking licenses that seem appropriate and consistent with state law, including: making false material statements in the application process, keeping a gambling house or house of prostitution, failure to operate in accord with the submitted floor plan, and, failure to comply with federal and state excise tax laws and operating as a public or private nuisance.
5. Nonrenewal Hearings. Milwaukee actually uses nonrenewal more than revocation. This is done by holding marathon, all day hearings, and by limiting the amount of time that each case takes up through the methods outlined above, and also by: having a sworn complaint for nonrenewal be done by the Milwaukee Police Department; considering police reports as evidence, and not presenting witnesses to prove that which is in the police report unless it is contested. In practice most licenses that come before the Milwaukee committee are renewed outright or with warning letters, or with only 5 to 10 having suspension.

It appears that there are a number of options that could be considered in Madison to simplify disciplinary proceedings, yet comply with state law. As outlined here, this can be done by placing limits on the process, and permitting the admissibility and reliability of evidence, such as police reports and the testimony of the supervising officer. Madison could also proceed more quickly if Common Council authorization was not required for a summons to appear before the ALRC or to commence the action. I request that this issue be place on a future ALRC meeting agenda for discussion.

SCB:MPM:jmb

cc: Michael P. May, City Attorney
MaryBeth Witzel-Behl, City Clerk
Katherine Plominski
Capt. Carl Gloede