

DRAFTER'S ANALYSIS: This amendment puts demerit point assessment in the hands of the Alcohol License Review Committee ("Committee") after a licensee has been convicted of the underlying offenses in a court of law. Guidelines provide when point assessment and suspension/revocation is appropriate. Formal Expression of Concern is added back into the ordinance as a disciplinary tool for use in the demerit point assessment process. This ordinance also codifies the concept of progressive discipline in liquor establishment enforcement. The ordinance requires the City Attorney's office to forward a report to the Committee by March 1 of each year with detail regarding any informal as well as formal disciplinary action that has occurred against a licensed establishment in the current licensing year so that separation of renewal applications is the result of an evidence-based process. The ordinance does not in any way affect the City's ability to bring a suspension or revocation action under Wisconsin Statutes § 125.12.

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

Subsection (4) entitled "Point Values for Alcohol Beverage Violations and Revocations and Suspensions" of Section 38.10 entitled "Revocation, Suspension or Nonrenewal Of License" is hereby repealed and recreated to read as follows:

"(4) Alcohol Beverage License Demerit Point System.

- (a) Purpose. The purpose of this subsection is to provide an alcohol license demerit point system as a nonexclusive method of identifying habitually troublesome liquor licensees who repeatedly violate state statutes and/or the Madison General Ordinances ("MGO") and to take consistent action against such licensees. The number of demerit points is assigned according to the type of violation. This point system shall serve as a guide to the Alcohol License Review Committee ("Committee") in determining when suspension and/or revocation of a liquor license is warranted.
- (b) The City uses a system of progressive discipline when dealing with law violations and disorderly house issues associated with liquor license establishments. When an establishment has issues which pose an immediate and substantial risk to the health, safety and welfare of the immediate neighborhood and/or community, the progressive discipline system may not be utilized because of the need to take more immediate action. The goal of the City in dealing with law violations and operational issues associated with licensed establishments is first and foremost to abate the issues and the City attempts to do this through a series of efforts. The first step is informal counseling by the Madison Police Department and/or the City Attorney's Office. If issues continue, an ALERT ("Alcohol License Emergency Response Team) meeting will be scheduled. The goal of the ALERT meeting is to efficiently and proactively resolve problems and issues in an informal setting before the problems and issues become chronic. The informal counseling and the ALERT meeting do not preclude prosecution in court for alcohol code violations nor does it preclude the Committee from assessing demerit points for violations for which a licensee has been convicted. If problems and issues become chronic, the City will evaluate the situation and determine the most appropriate disciplinary action which may include imposition of a Chief of Police Security Plan, separation of a license at renewal for placement of conditions, and/or suspension or revocation.
- (c) Demerit Point System. Use of the following demerit point schedule by the City is not an exclusive remedy and does not preclude the City from seeking other remedies, including immediate suspension, revocation or nonrenewal of a license pursuant to Chapter 38, MGO. The City may seek such suspension, revocation or nonrenewal notwithstanding the fact that the licensee has accumulated less than one hundred (100) demerit points.

Ordinance Section Number	Type of Violation	Point Value
24.04(2)	Unreasonable Noise	5
38.04(2)(a-d)	Traffic to Underage Person	25
38.04(3)(b)1.	Permit Underage Person on Premise	10
38.04(1)(a)2.	Traffic to Intoxicated Person	25
38.04(1)(a)3.	Permit Intoxicated Person On Premise	10

38.04(2)(a)9.	No Alcohol Night Violations (Underage)	25
38.05(1)	Failure to be Licensed	100
38.05(3)(a)1.	Altering Premises or Changing Location without Permission	50
38.05(3)(11); 38.13(1)(a)	False Statement on Application (Class B)	200
38.05(5)(a-f)	Corporation and Agent Responsibility Violations	20
38.05(7)	Failure to Frame and Post License	10
38.05(9)	Failure to Maintain Wisconsin Residency (Class A)	20
38.05(9)(d)7.	Conducting Unlawful Business	50
38.05(9)(o)	Violation of Alcohol License Density Plan	50
38.05(10)	Failure to Permit Inspection of Licensed Premises and/or Financial Audit	50
38.05(12)	Catering Service Violations	25
38.06(2)	No Licensed Bartender	50
38.06(6)(a), (7)(a)	Sell or Dispense After Hours	50
38.06(6)(a), (7)(b)	Open After Hours	50
38.06(6)(b), (7)(d)	Regulation of Closed Retail Space	50
38.06(6)(e), (7)(g)	No Carryout After Hours	25
38.06(6)(f)	On-premise Consumption – Class A	20
38.06(7)(h)	After Hours Consumption – Class B	50
38.06(8)	Intoxicated Employee or Licensee	50
38.07(3)	Delivery Violations	25
38.07(5)	Permit or Fail to Prevent Patron Leaving with Open Container	10
38.07(6)	Sell or Serve on Public Street	25
38.07(8)	Unlawful Sale Device (Amplification)	10
38.07(11)	Gambling	10
38.07(12)	Illegal Postering	10
38.07(13)	Violate Chief's Security Plan	50
38.07(17)	Failure to Comply with Lawful Order of MPD, MFD or Building Inspection	100
38.07(18)	Failure to Purchase From Licensed Wholesaler	50
38.07(20)	Failure to Meet Restaurant Condition	25
38.07(21)	Exceeding Lawful Occupancy	25
	Exceeding Lawful Occupancy by more than 30%	50
38.08(2)	Wholesalers Restrictions	25
38.08(3)(a)	One Room Only and Booths	25
38.10	Failure to Comply with any Condition Imposed as Part of License Suspension, Revocation or Nonrenewal Action	100
38.11	Violation of Adult Entertainment Tavern Ordinance	25
38.13(1)(a)	Violation of License Condition other than Restaurant Status	25
Chapter 39, MGO	Ordinance Violation for Public Accommodation Violation	100
Chapter 34, MGO	Fire Code Violations Dealing with Health, Safety or Welfare	50
Chapter 29, MGO	Building Code Violations Dealing with Health, Safety or Welfare	50
Chapter 7, MGO	Health Code Violations—Critical	25
Chapter 39, MGO	Commission Finding of Public Accommodation Discrimination	100
Chapter 39, MGO	Failure to Comply with Lawful Order of the EOC	100
	Any Other Non-enumerated Violations of Chapter 38, MGO	25
	Penalty Enhancer For Severe Offenses Enhanced penalty for conduct which: 1. Results in bodily harm to any individual; 2. Creates a substantial risk of death or serious bodily harm; 3. Involves the use of a firearm or other dangerous weapon; or 4. Demonstrates an ongoing disregard for the requirements of state law and municipal ordinances.	100

(d) Calculating Violations.

1. In determining the accumulated demerit points against a licensee, the points shall be counted within a twelve-(12) month period. The date of the violation shall be used as the basis for assigning demerit points. For violations continuing for more than one calendar day, each day shall constitute a separate violation. Points shall be assigned only after conviction in a court of law for such violations.
2. Demerit points may not be assessed for multiple ordinance and/or statute violations resulting from a single incident. For violations that are contrary to more than one ordinance section or statute, penalty shall be based only upon the ordinance or statute violation that carries the higher demerit point assessment.
3. Demerit points shall be assessed after entry of a judgment of conviction in a federal, state or municipal court for violation of any statute or ordinance provision listed under the types of violations in Section 38.10(1)(b), above. The Committee may take notice of any such conviction without the need for further evidence to establish the violation.

(e) Suspension and Revocation of License. The City Attorney's office shall notify the Committee of any conviction for violations which may result in the assessment of demerit points against any licensee. The Committee shall have the discretion under the demerit point system to suspend or revoke the liquor license of any licensee based upon a notice of conviction without holding an evidentiary hearing to further establish the underlying violations. Prior to suspension or revocation the Committee shall give the licensee at least ten (10) days written notice of its intent to suspend or revoke and the licensee's opportunity for a hearing before the ALRC Hearing Subcommittee. The notice shall include the conviction report and demerit points the Committee has assessed based upon the conviction report. The licensee shall have twenty (20) days from the date of the Notice to file a request for a hearing. If the licensee fails to timely file a hearing request, the Committee may take the underlying charges in the conviction report as true and suspend or revoke the license. Notice of the suspension or revocation shall be provided to the licensee within five (5) days of the determination. If a hearing is timely requested, a hearing shall be held within ten (10) days of the request before the ALRC Hearing Subcommittee. If the Committee chooses to have an evidentiary hearing based upon the conviction report, the Subcommittee shall use the hearing procedure found in Section 38.10(2), MGO.

1. The Committee shall use (1) through (3) below as a guide to determine the appropriate sanction for the license holder who has accumulated demerit point violations:
 - a. For demerit points totaling fifty (50) to one hundred fifty (150) within a twelve-(12) month period, the Committee may mail a notice by First Class Mail to the licensee commanding licensee to appear before the Committee for a Formal Expression of Concern. In the alternative, the Committee may issue a formal written warning to the licensee of the consequences of additional violations. The warning letter shall be signed by the Committee Chairperson.
 - i. If the licensee appears for the Formal Expression of Concern, no discussion of the alleged facts may be permitted unless the licensee requests such discussion and only after the licensee has been advised that any statements made by him or her and/or his or her representatives regarding the alleged underlying facts may be considered by the Committee in any subsequent suspension/revocation hearing which may result from the alleged violations which are the subject of the Formal Expression of Concern.
 - ii. The Notice shall be mailed via First Class Mail to the licensee if an individual, any partner if the licensee is a partnership or to the liquor/beer agent if the licensee is a corporation. If the notice is returned as "undeliverable", the notice may be left with any employee found on the licensed establishment at least twenty-four (24) hours before the date and time for the scheduled appearance before the Committee.
 - iii. If the licensee appears for the Formal Expression of Concern, the Committee shall have the discretion to not assess points for the alleged violations that triggered the Formal Expression of Concern,

up to one hundred (100) points. Waiver of a demerit point assessment may only occur once within a one year period.

- iv. If the licensee fails to appear for the Formal Expression of Concern, the matter shall be scheduled for a suspension/revocation hearing.
 - b. For demerit points totaling one hundred fifty (150) to two hundred fifty (250) within a twelve- (12) month period, suspension of the license for a period of not less than ten (10) days nor more than ninety (90) days.
 - c. For demerit points totaling two hundred fifty (250) or more within an 18-month period, revocation of the license. Whenever any license is revoked, no other license shall be granted to such licensee for a period of twelve (12) months from the date of revocation and no other license shall be granted to the same premises for a period of six (6) months from the date of revocation. Any suspension or revocation recommendation by the ALRC Hearing Subcommittee pursuant to this subsection shall be forwarded to the Committee and the Committee's recommendation shall then be forwarded to the Common Council.
2. The Committee shall have the discretion to reduce a demerit point assessment in circumstances where the licensee has cooperated with the City in addressing the violations associated with his or her establishment. Evidence of such cooperation includes, but is not limited to:
 - a. Licensee and all staff attending Tavern Safety Training.
 - b. Participating in a responsible retailer training or other program/initiative that evidences an intent to be a responsible liquor establishment.
 3. Judicial Review. The decision of the Common Council shall be a final determination and shall be subject to review in court as may be provided by law. Any person aggrieved by the decision may seek review thereof within twenty (20) days after the date of the final determination.
- (f) Demerit Points and License Renewal. The City Attorney's Office shall forward a report to the Committee by March 1 of each year listing all licensees who have received demerit points in the current licensing year. The report will include the liquor/beer agent's name, the name of the licensed establishment, a list of the point violations by title and the point value of each violation, and whether there had been an ALERT meeting during the current licensing year. The Committee shall evaluate this report to determine whether an application for a renewal alcohol beverage license should be separated out for the following potential actions:
1. Nonrenewal hearing;
 2. Placement of conditions;
 3. Expression of concern.
- If a license is separated for nonrenewal, the procedure set forth in Sec. 38.10(1)(e), MGO shall be followed.
- (g) Scope. Nothing in this section shall be construed to conflict with, abridge or modify, the rights or procedures established for revocation or suspension of licenses in W.S.A. § 125.12. Notwithstanding the requirements of this section, the Alcohol License Review Committee may require the appearance before it of any licensee at any time.
- (h) Transfer or Sale of Licensed Business. Upon the transfer or sale of the licensed business, all accumulated demerit points shall be canceled unless any of the following apply:
1. The new licensee is related to the former licensee by blood, adoption or marriage;
 2. The new licensee held a business interest in the previous licensed business, real estate or equipment;
 3. The former licensee or an individual related to the former licensee by blood, adoption or marriage retains an interest in the business, real estate or equipment used by the business;
 4. The new licensee's acquisition of the business did not involve an arm's length transaction consisting of an open market sale in which the owner is willing, but not obligated to sell, and the buyer is willing, but not obligated to buy.
- If any of the above apply, the new licensee shall inherit the demerit points previously assessed and be subject to the penalties set forth in this subsection."

EDITOR'S NOTE:

Current Section 38.010(4) reads as follows:

“(4) Point Values for Alcohol Beverage Violations and Revocations and Suspensions.(a) Purpose and Definitions.

1. The purpose of this subsection is to administratively interpret those portions of Chapter 38, Madison General Ordinances, relating to establishing an alcohol beverage demerit point system as a nonexclusive method of determining which licenseholders should be subject to suspension or revocation procedures.
2. ALRC means Alcohol License Review Committee of the City of Madison Common Council.

- (b) Point Schedule. The scale of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome licenseholders who have repeatedly violated state statutes and Madison General Ordinances, for the purpose of recommending suspension or revocation of their alcohol beverage licenses. Use of this point schedule by the City is not an exclusive remedy and does not preclude the City from seeking other remedies, including immediately seeking suspension, revocation, or nonrenewal of a license pursuant to Sec. 38.10, MGO. The City, may, in its judgment, seek such suspension, revocation or nonrenewal, notwithstanding the fact that the licensee has accumulated less than one hundred (100) demerit points as provided in Sec. 38.10(4)(d), MGO.

Ordinance Section Number	Type of Violation	Point Value
3.16	Failure to Comply with Conditions Imposed as Part of Court Judgment	100
Chapter 6	Any Violation of the Fire Code in Chapter 6, MGO Dealing with Public Health, Safety or Welfare	25
Chapter 29	Any Violation of the Building Code in Chapter 29, MGO Dealing with Public Health, Safety or Welfare	25
34.01(12)(a)	Capacity Violation	50
38.02	Federal or state public accommodation discrimination	100
38.04(1)(a)2.	Traffic to Underaged Person	50
38.04(2)(a)2.	Traffic to Intoxicated Person	50
38.04(3)(a)	Underaged Person on Premises	25
38.04(3)(a)9.	No-Alcohol Night Violations	25
38.04(7)	Failure to Keep Proper Book	25
38.05(1)	Failure to Be Licensed	100
38.05(3)(a)1.; 38.05(9)(j)	Altering Premises or Changing Location Without Permission	50
38.05(3)(a) & (g)	False Statement on Application	50
38.05(3)(h); 38.05(8)	Transfer of License Without Permission	50
38.05(5)(a)-(f)	Corporation and Agent Responsibility Violations	25
38.05(7)	Failure to Frame & Post License	25
38.05(9)	Failure to Maintain Residence - Class A	50
38.04(2)(a)3.	Permitting Intoxicated Persons to Be on Licensed Premises	25
38.05(9)(d)7.;	Conducting Unlawful Business	50
38.05(9)(d)8. & 9.	Failure to File Performance Bond	25
38.05(10)	Search of Licensed Premises	100
38.05(12)	Catering Service Violations	25
38.06(2)	No Licensed Bartender	25
38.06(4);	Licensed Premises to be Sanitary	25
38.09(3)(b)	Sign to Be Posted	25
38.06(5)		
38.06(6)(a), (7)(a)	Sell Or Dispense After Hours	50
38.06(6)(a), (7)(b)	Open After Hours	50
38.06(6)(b), (7)(d)	Regulation of Closed Retail Spaced	25
38.06(6)(e), (7)(g)	No Carryout After Hours	25

38.06(6)(f)	On-premise consumption - Class A	50
38.06(7)(h)	After-Hours Consumption - Class B	50
38.06(8)	Intoxicated Employee	50
38.07(3)	Place-to-Place Deliveries	25

In construing the number of points to be assessed for an alleged violation, it is "ordinance section number" rather than the "type of violation" which shall control.

- (c) Violations, How Calculated. In determining the accumulated demerit points against a license within twelve (12) months, the City shall use the date each violation was committed as the basis for the determination.
- (d) Suspension or Revocation of License.
 1. The ALRC shall call before it for purposes of a revocation or suspension hearing all licensees who have accumulated 100 points in a twelve-month period as a result of court imposed convictions or who have had referred to it reports from the City Attorney which, if believed, would result in 100 demerit points in twelve (12) months.
 2. If the demerit point accumulation, calculated from the date of violation, meets or exceeds 100 points in a 12-month period, the suspension shall be for not less than three (3) days nor more than ninety (90). If the license(s) is revoked, no other license shall be granted to such licensee for a period of twelve (12) months from the date of revocation. (Am. by Ord. 9837, 9-14-89)
 3. The procedure to be used for suspension or revocation shall be that found in Section 38.10(1)(a) and (b).
 4. For violations that continue for more than one calendar day, each day shall constitute a separate violation."