

CITY OF MADISON,
Complainant,

Revocation of “Class A” Combination
Alcohol Beverage License

v.

FUSION SMOKE & SPIRITS, LLC
d/b/a Fusion

Jacob McRoberts, Liquor/Beer Agent
Respondent.

REPORT OF THE HEARINGS SUBCOMMITTEE TO THE
ALCOHOL LICENSE REVIEW COMMITTEE OF THE CITY OF MADISON

INTRODUCTION

On January 13, 2026, the City of Madison (Complainant), represented by Assistant City Attorney Jennifer Zilavy, filed a Summons and Complaint with the City Clerk alleging that the Fusion Smoke & Spirits, LLC (Respondent) had violated City ordinances and state statutes related to Fusion’s alcohol license. The City submitted an amended complaint on January 21, 2026 (Complaint). In the Complaint, the City requested that the Common Council revoke the “Class A” Combination Alcohol Beverage License issued to Fusion Smoke & Spirits pursuant to Madison General Ordinance 38.10. The Complaint contained three counts which for the purposes of this report are labelled as “Count A”, “Count B-1” and “Count B-2” which read as follows:

Count A: Violation of Chapter 38 of the Madison General Ordinances within the meaning of MGO § 38.10(1)(a)(12), the licensed premises has been operated in such a manner that constitutes a public or private nuisance, specifically, a violation of § 823.113(1), Wis. Stat.

Count B-1: Violation of Chapter 38 of the Madison General Ordinances within the meaning of MGO §38.10(1)(a)(1) failed to have a licensed operator/bartender on site during business hours in violation of MGO §38.06(2)..[O]n October 8, 2025.

Count B-2: Violation of Chapter 38 of the Madison General Ordinances within the meaning of MGO §38.10(1)(a)(1) failed to have a licensed operator/bartender on site during business hours in violation of MGO §38.06(2)..[O]n October 8, 2025.

On January 21, 2026, the Respondent appeared by its attorney, Anthony Delyea, in front of the Alcohol License Review Committee (ALRC) and denied the allegations in the Complaint. The ALRC then followed the procedures in MGO 38.10 and created a three member Hearings Subcommittee to conduct an evidentiary hearing to make a recommendation to the ALRC. On April 9, 2026, the Subcommittee held the evidentiary hearing. The Subcommittee notes that any delay in holding the evidentiary hearing was caused by rescheduling requests from the Respondent.

After the parties presented evidence and closing arguments, the Subcommittee deliberated and determined that the City had proven two counts in the complaint by a preponderance of the evidence.

The Hearings Subcommittee recommends that the license be REVOKED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Respondent was properly and timely served with the Summons and Complaint. The Hearings Subcommittee held an evidentiary hearing on April 9, 2026 at which the parties presented evidence including sworn witness testimony and documentary exhibits.

The Hearings Subcommittee heard the following testimony from Special Agent Nicole Zautner with the Division of Alcohol Beverages: She explained that she and another Special Agent went to Fusion on October 8, 2025 to complete an inspection based on complaints about the establishment. She stated that when she arrived, she contacted and identified the sole employee present, Jerome Luhv-Starr. Luhv-Starr confirmed to the Special Agent that he was the only employee present and the only employee working at that time. Luhv-Starr informed the Special Agent that he did not have an operator's license and that he knew he should not have been working at the store by himself. Special Agent Zautner explained that they closed down the store until the agent, Jacob McRoberts, arrived. McRoberts acknowledged that he knew he was supposed to have a licensed operator on the premise.

Next, Special Agent Zautner described asking McRoberts for clarification of the "personal office" listed on the premise description on the license. McRoberts showed her a back room which he referred to as the "high-roller lounge". The Special Agent then described the inspection of the premise where she saw "copious amounts of green, leafy substance" and paraphernalia such as pipes, scales, and packaging. From her experience on the Dane County Narcotics Task Force and as a drug recognition expert, Special Agent Zautner recognized a substance in vacuum-sealed bags consistent with psilocybin mushrooms. She testified that psilocybin mushrooms are a controlled substance and they

are not legal to possess, sell, or use in the State of Wisconsin. When the Special Agent asked McRoberts about the mushrooms he stated he did not know where they came from or how they ended up in his store. Around the same time, McRoberts stated that he did all product ordering for the store and that he was present at the store at all times. Special Agent Zautner testified that after finding evidence of possible drugs, she stopped the alcohol inspection and contacted the Madison Police Department.

Later that day, Special Agent Zautner stated she assisted in executing the search warrant which revealed drug paraphernalia, large amounts of currency, a firearm, large amounts of leafy green substance believed to be either hemp or marijuana, a vacuum sealer, and vacuum-sealed bags of psilocybin mushrooms.

Next, the Hearings Subcommittee heard the testimony of Detective Adam Kneubuhler, a Madison Police Department detective assigned to the Dane County Narcotics Task Force. Detective Kneubuhler testified about going to Fusion on October 8, 2025. The Detective drafted and obtained the search warrant for Fusion and McRoberts' residence. He explained the process for determining whether a substance is an illegal substance which includes a field test followed by a test by the Wisconsin State Crime Lab, and in the case of suspected marijuana, a further test done at a specialized lab called NMS Labs to determine whether the amount of delta-9 THC is lower or higher than 0.3%. He explained that if the substance is below 0.3%, it is classified as hemp and is currently legal in Wisconsin, but if the substance is above 0.3% delta-9 THC, it is illegal in Wisconsin. When asked about "certificates of analysis" supplied by hemp vendors, Detective Kneubuhler testified that they are not a reliable way to verify the delta-9 THC content of a product.

The Detective noted that the amount of suspected psilocybin at the store was one of the largest quantities he had ever seen, an amount that indicated an organized distribution of large quantities of psilocybin. He testified that the mushrooms were field tested as positive for psilocybin and that testing at the State of Wisconsin Crime Lab also confirmed psilocybin. The seized mushrooms weighed approximately 2,000 grams which he estimated could be anywhere from 600 to 4,000 doses of psilocybin based on the user. The Detective stated that this amount would not be consistent with personal psilocybin use, but would instead be for distribution purposes.

The Detective described City Exhibits 1 through 12, photos taken at the search, as follows:

Exhibit 1: a leafy green substance labelled as THC 23.34%, but the Detective explained that the only way to determine the percentage of THC is through testing at NMS labs.

Exhibit 2: a storage area with containers with "nuggets" or "chunks" of leafy green substance.

Exhibit 3: Vacuum sealed bags of a substance which later tested positive for controlled substances psilocin and psilocybin located in what McRoberts described as the “high roller room”

Exhibit 4: Vacuum sealed mushrooms which later tested positive for psilocin and psilocybin

Exhibit 5: cartridges that contain a liquid often used in vape devices which when tested at NMS labs showed a THC level above the Wisconsin legal limit.

Exhibit 6: packaging typical of commercial marijuana

Exhibit 7: additional cartridges, leafy green “nuggets” in the container, a vacuum sealer, and a money counter

Exhibit 8: the front counter with jars of “wax” or “batter” that when tested by NMS labs showed a THC level above the Wisconsin legal limit

Exhibit 9: the front counter with substances that were later tested by NMS labs and showed a THC level above the Wisconsin legal limit

Exhibit 10: Bags of psilocybin on the right and left and bags of flower in the middle which when tested by NMS labs and showed a THC level above the Wisconsin legal limit

Exhibit 11: a photo of the same thing in Exhibit 10 from a different angle.

Exhibit 12: commercial packaging and labels

The Detective described City Exhibits 13 and 14 as follows:

Exhibit 13: report authored by the Wisconsin State Crime Lab showing the mushroom material seized from Fusion tested positive for psilocin and psilocybin. The report also shows that the plant material tested positive for THC

Exhibit 14: report authored by NMS Labs showing that all samples submitted tested positive for delta-9 THC in amounts that were over 5.0%, making them illegal in Wisconsin

Complainant exhibits 1 through 14 were moved and received into the record.

The Detective then described the search of McRoberts residence which revealed numerous “high-end assets” which he stated were not commensurate with his reported

earnings. Detective Kneubuhler testified about the interview of Luhv-Starr where he confirmed that McRoberts did all the ordering for the store and that Luhv-Starr was paid in cash. He also testified that cash in brown bags labeled with days and names was recovered from the store.

The Detective explained that when drug-related search warrants are executed on a premises, the City begins a nuisance abatement process and sends a Notice of Public Nuisance to the property owner for the landlord to remedy the issue. A Notice of Public Nuisance was sent on October 24, 2025 to Dave Keller, the property owner of 36 South Bassett Street, regarding the drug activity at Fusion Smoke & Spirits (Complaint, Exhibit A).

Detective Kneubuhler told the Subcommittee that in his opinion as a detective, it was obvious that McRoberts was trafficking illegal Schedule 1 controlled substances out of Fusion at 36 South Bassett Street and that as a business owner on the premises, McRoberts could not have missed the sheer amount of psilocybin at the store.

Jacob McRoberts, the liquor/beer agent for Fusion, testified that he is the sole proprietor of Fusion. He confirmed that he is responsible for obtaining the products that are sold at Fusion. McRoberts stated that he thought the products he was selling were legal. He said that he never noticed people selling things he had not purchased. He explained that he relied on a variety of hemp dealers who provided a “certificate of analysis” with their hemp products. McRoberts stated that he was unaware that there were mushrooms in his store. During his testimony, Mr. McRoberts said he “owned up to” leaving the business without a licensed operator on October 8, 2025. However, Mr. McRoberts testified that he was present as a licensed operator at Fusion on January 15, 2026. The Subcommittee next heard testimony from Jerome Luhv-Starr, an employee of Fusion. Luhv-Starr also stated that he knew nothing about the mushrooms located at the store. Luhv-Starr confirmed that he does not have an operator’s license.

After the parties presented their cases, the Subcommittee went into closed session for deliberations. The Subcommittee returned to open session and voted on each count in the Complaint. The Subcommittee voted that Count A and Count B-1 were proven by a preponderance of the evidence, thus sustaining those charges. The Subcommittee voted to not sustain Count B-2. The Subcommittee recognized that one of the Respondent’s primary arguments for Count A is that McRoberts believed the substance he was selling was legal hemp. However, *even if* Fusion was selling some legal hemp or *even if* McRoberts sincerely believed that all the THC products he sold were legal, Count A would still be sustained due to the large, distribution-level, amounts of psilocybin mushrooms, a controlled substance, in the premises under his control. Based on the two sustained charges, the Subcommittee voted to recommend revoking the license.

CONCLUSION AND RECOMMENDATION

The Hearings Subcommittee carefully considered the evidence presented during the April 9, 2026 hearing and based its decision on the totality of the circumstances, not solely on one piece of evidence. MGO 38.10 (1)(b)2.a. requires the Complainant to prove charges by a preponderance of the evidence. The Subcommittee voted that the City had proven two charges by a preponderance of the evidence, sustaining Counts A and B-1.

Count A: the Subcommittee found that the Respondent operated the licensed premise in a manner which constitutes a public or private nuisance, specifically a violation of Wis. Stat. 823.113(1)¹ which violates MGO 38.10(1)(a)(12).²

Count B-1, the Subcommittee found that the Respondent violated MGO 38.06(2) by failing to have a licensed operator/bartender on site during business hours on October 8, 2025, a violation of MGO 38.10(1)(a)(1).

Count B-2: The Subcommittee voted not to sustain Count B-2 related to having a licensed operator on site during January 15, 2026.

THEREFORE, it is the recommendation of the ALRC Hearings Subcommittee that the ALRC adopt the Subcommittee's report and recommendation to revoke the Respondent's "Class A" Combination Alcohol Beverage License and forward such report and recommendation to the Common Council.

¹ Wis. Stat. 823.113(1) defines a "drug house" public nuisance as "Any building or structure that is used to facilitate the delivery, distribution or manufacture...of a controlled substance...or a controlled substance analog...and any building or structure where those acts take place, is a public nuisance and may be proceeded against under this section."

² MGO 38.10(1)(a) lists reasons a revocation complaint may be filed and (12) reads: "The licensed premises has been operated in such a manner that it constitutes a public or private nuisance or that conduct on the licensed premises, including but not limited to raucous noise, has had a substantial adverse effect upon the health and safety of the immediate neighborhood."

RESPECTFULLY SUBMITTED,

/s/ Carmela Glenn
Carmella Glenn
Member of ALRC Hearings Subcommittee

April 29, 2026
Date

/s/ Yannette Figueroa Cole
Yannette Figueroa Cole
Member of ALRC Hearings Subcommittee

April 29, 2026
Date

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