

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

October 20, 2009
ALRC _____

Creating new Section 38.12 and renumbering current Section 38.12 to Section 38.13 to prohibit the sale of alcohol to habitually intoxicated persons; amending Section 24.02 relating to disorderly conduct in a public place while under the influence of alcohol; and amending Sec. 1.08(3) of the Madison General Ordinances to establish a bail deposit for a violation.

Drafted by: Steven Brist and Marci Paulsen

Date: October 13, 2009

SPONSORS: Ald. Schumacher and Mayor Cieslewicz

DRAFTER'S ANALYSIS: Current state law and City ordinances prohibit the sale of alcohol beverages to "habitual drunkards." This proposal uses the term "habitually intoxicated persons." This proposal creates a list, to be maintained by the Madison Police Department, of Known Habitually Intoxicated Persons, who may not be sold carry out alcohol by an alcohol beverage licensee. The Madison Police Department will place a person on the list who has been arrested and convicted at least six times in the prior 180 days, when the arrested person was under the influence of alcohol at the time of the commission of the offense, or where the person has been transported and admitted to an approved alcohol treatment facility under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment at least six times in the prior 180 days, or any combination of at least six arrests and convictions or admissions. If a person receives both an arrest and an involuntary admission to a treatment facility from the same incident, both count separately in the calculation. The proposal provides for an appeal procedure for the person who objects to their name being initially placed on the list, or remaining on the list after 180 days if they have had no relevant convictions or admissions. The Chair of the Alcohol Licensing Review Board or his or her designee will act as the hearing officer under this proposal. An appeal from the decision of the hearing officer may be made to circuit court. The proposal also provides for the Madison Police Department to annually remove the names of persons from the list who have not had relevant convictions or admissions for a minimum of one year. The penalty for violation by a licensee is provided in the current Sec. 38.12, MGO, of not more than \$1,000. The bail amount for this offense is to be \$500. This proposal also creates a new subsection of Sec. 24.02, MGO, relating to disorderly conduct in a public place when the individual is disorderly and also under the influence of alcohol. The proposal does not prohibit the sale of alcohol by the glass, to those on the list of Known Habitually Intoxicated Persons, on the premises of a Class "B" beer or "Class B" combination retail alcohol licensee. This proposal results from the request of the City's Alcohol Policy Coordinator.

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

- 1. New Section 38.12 entitled "Habitually Intoxicated Persons" of the Madison General Ordinances is created to read as follows:

Approved as to form:

“38.12 HABITUALLY INTOXICATED PERSONS.

- (1) Declaration of Policy. Wis. Stat. § 125.12(2)3. provides procedures for the suspension, revocation or nonrenewal of a retail alcohol beverage license, when the licensee “has sold or given away alcohol beverages to known habitual drunkards.” A person who is habitually intoxicated may lack self -control as to the use of alcohol beverages and use such beverages to the extent that their health is substantially impaired or endangered and their social or economic functioning is substantially disrupted. Such conduct is dangerous to the individual and to others. It is in the interest of the health, welfare and safety of the citizens of the City of Madison to prohibit the harmful conduct of habitually intoxicated persons, and it is a reasonable exercise of the City’s police powers to enforce those provisions of state law that prohibit a retailer from selling alcohol beverages to these habitually intoxicated persons.
- (2) Definition of a Known Habitually Intoxicated Person. A Known Habitually Intoxicated Person is a person who, within the past one hundred eighty (180) days:
 - (a) Has been convicted of six (6) or more civil or criminal offenses, in which the police reports or other evidence indicate that the police officer who made the arrest determined, based upon the training and experience of the officer, that the person was under the influence of alcohol at the time of the commission of the offense, or
 - (b) Has been transported and admitted six (6) or more times to an approved public treatment facility under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment, or
 - (c) Has been subject to any combination of arrests and convictions under sub. (1) and admissions to an approved public alcohol treatment facility under sub. (2), that equals or exceeds six (6) times.
 - (d) Where a person from the same incident has been both convicted of a civil or criminal offense, as defined in sub. a., and has been admitted to an approved public alcohol treatment facility under sub. b., both the arrest and the admission may be counted separately for the calculation provided in sub c.
 - (e) A person may voluntarily request that their name be added to the list of Known Habitually Intoxicated Persons. Such a request shall be made in writing and shall be submitted to the Madison Police Department.
- (3) Maintenance of List.
 - (a) The Madison Police Department shall maintain a list of Known Habitually Intoxicated Persons and shall, in its judgment, determine the format and content of the list. Whenever the Department determines that a person meets the definition of a Known Habitually Intoxicated Person, as provided in sub. (2), the Department shall cause the name of that person to be placed on said list, as provided in this Section.
 - (b) Petition for Removal. If one hundred and eighty (180) days have passed from the time the name of a person has been placed on the list, and the person has not either been convicted of an offense under sub. (2)(a), or has not been admitted to an approved public alcohol treatment facility during that one hundred eighty (180) day period, that person may petition the Madison Police Department to remove their name from the list, pursuant to this Section, by filing a written request with the City Clerk, stating that they qualify for removal from the list. Upon verification that within the past one hundred eighty (180) days the person has not either been convicted of an offense under sub. (2)(a), or has not been admitted to an approved public alcohol treatment facility during that one hundred eighty (180) day period, the Madison Police Department shall remove the name of the person from the list.
 - (c) Removal by Police Department. On or about January 1 of each year, the Madison Police Department shall review the list of Known Habitually Intoxicated Persons and shall remove the names of all persons who during the prior calendar year, has not been convicted of an offense under sub. (2)(a) and who has not been transmitted to an approved public alcohol treatment facility by the Department.

- (4) Notice. When the Madison Police Department determines that a person meets the definition of a Known Habitually Intoxicated Person, the Department shall provide the person with a written notice, prepared by the Department, that their name will be placed on the list of Known Habitually Intoxicated Persons. The notice shall inform the person of their right to appeal the determination of the Department as provided in sub. (5). The Department shall keep a record of the date and time that the person was provided with such written notice.
- (5) Appeals.
- (a) A person who has been informed in writing by the Madison Police Department that their name will be placed on the list of Known Habitually Intoxicated Persons, may appeal the determination of the Department by filing a written objection with the City Clerk within 5 (five) business days of receiving the notice from the Department. The content of an appeal shall be liberally construed so that, as long as the person appealing provides timely written notice that states that he or she objects to being placed on the list of Known Habitually Intoxicated Persons, the appeal shall be deemed to be in proper form.
 - (b) Hearing Examiner. The Chair of the Alcohol License Review Committee, or his or her designee, shall serve as Hearing Examiner for Appeals under this Section, and shall have the authority to conduct hearings upon the filing of a written objection as provided under sub. (5)(a).
 - (c) Authority of Hearing Examiner. The hearing examiner shall have the authority to administer oaths and shall be responsible for the fair, orderly and impartial conduct of the hearing and the preservation of the exhibits and record therein.
 - (d) Procedure. All proceedings and testimony shall be recorded on tape. A copy of the tape recordings shall be supplied to anyone requesting the same at the requester's expense. If either party requests a stenographic recording and transcription, the hearing examiner shall make the necessary arrangements, but the expense shall be borne by the requesting party.
 - (e) Standard of Proof. In the hearing, the Madison Police Department shall have the burden of proving to a reasonable certainty by the greater weight of the credible evidence, i.e. by the preponderance of the evidence, that the person has been convicted of six (6) or more civil or criminal offenses, where the police reports or other evidence indicate that the person was under the influence of alcohol at the time of the commission of the offense; or that the person has been transported and admitted six (6) or more times to an approved public treatment facility under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment; or has been subject to any combination of convictions and admissions that equals or exceeds six (6) times. If after the hearing, the hearing examiner finds that there is not a preponderance of evidence of any combination of six (6) convictions or admissions, as provided in sub. (2), the hearing examiner shall enter an order granting the appeal and the Department shall remove the person's name from the list of Known Habitually Intoxicated Persons. If after the hearing, the hearing examiner finds that there is a preponderance of the evidence that the person has been subject to any combination of six (6) or more convictions or admissions, the hearing examiner shall deny the appeal and the Department shall retain the person's name on the list of Known Habitually Intoxicated Persons.
 - (f) Finality of Appeal. All orders of the Hearing Examiner shall be final administrative determinations and shall be subject to review in court as by law may be provided. Any party to the proceeding may seek review thereof within thirty (30) days of service by mail of the final determination of the Hearing Examiner. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding before the Hearing Examiner, with said notice to be sent by first class mail to each party's last known address. The institution of the proceeding for judicial review shall not stay the decision and order of the Hearing Examiner; however, the reviewing court may order a stay upon such terms as it deems proper.
- (6) Distribution of List. The Madison Police Department shall transmit the list of Known Habitually Intoxicated Persons to each retail alcohol beverage licensee in the City on a

monthly basis. The Madison Police Department shall determine the method of transmitting the list, which in its judgment is the most effective method of transmittal. Transmittal may include the making of the list available by electronic means, including the downloading of the list by the licensee.

- (7) Retailers Prohibited. No Class "A" or "Class A" retail establishment may sell, dispense or give away alcohol beverages to a person whose name appears on the list of Known Habitually Intoxicated Persons. No Class "B" or "Class B" retail establishment may sell, dispense or give away alcohol beverages for consumption off the premises where sold, to a person whose name appears on the list of Known Habitually Intoxicated Persons. If the Madison Police Department has made the list available to licensees at each Police District office or by electronic means, including requiring the licensee to electronically download the list, it shall not be a defense that the licensee did not have a copy of the most current list.
- (8) Nothing in this section shall be construed to limit a licensee's or permittee's duties under Sec. 38.04(1), MGO."

2. Current Section 38.12 entitled "Enforcement" of the Madison General Ordinances is renumbered to Section 38.13.

3. Section 24.02 entitled "Disorderly Conduct" of the Madison General Ordinances is amended by creating and amending therein the following:

"24.02 DISORDERLY CONDUCT. Whoever does any of the following within the limits of the City of Madison shall be subject to a forfeiture of not more than five hundred dollars (\$500).

- (1) In a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance; or
- (2) With intent to annoy another, makes a telephone call, whether or not conversation ensues; or
- (3) While under the influence of alcohol, in a public place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance."

4. 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 therein the following:

<u>"Disorderly conduct while under the influence of alcohol</u>	<u>24.02(3)</u>	<u>\$300</u>
<u>Sale of alcohol to Known Habitually Intoxicated Person</u>	<u>38.12</u>	<u>\$500"</u>

EDITOR'S NOTE: New bail deposits must be approved by the Municipal Judge prior to adoption. This deposit has been so approved.