Plan Commission
Meeting of June 9, 2025
Agenda #8, Legistar 88319

The Zoning Code is a permissive code – it permits only those principal and accessory uses that are specifically enumerated in the ordinance.

> MGO 28.004(1): "This ordinance should be interpreted as a permissive zoning ordinance, which means that the ordinance permits only those principal and accessory uses and structures that are specifically enumerated in the ordinance. In the absence of a variance or special exception, any uses or structures not specifically permitted by the ordinance are prohibited."

If all references to an entertainment license in the zoning code were to be removed, would any authority exist for the offering of entertainment? After all, if keeping of honeybees is listed as an accessory use, shouldn't there be some authority in the zoning code for entertainment?

The Drafter's Analysis states: "The zoning code change will have the effect of removing the duplicative Plan Commission review of conditional uses associated with entertainment licenses. Entertainment licenses will continue to be approved by the ALRC, which may put conditions on the license."

Plan Commission review is not duplicative. Plan Commission looks at whether the use is appropriate at that particular location. It makes a judgement call, looking at the "impact on neighboring land or public facilities, and of the public need for the particular use at a particular location." MGO 28.183(1). This is not a duty of the ALRC, nor can the ALRC take on this duty. https://madison.legistar.com/View.ashx?M=F&ID=2979169&GUID=C93CA8A6-BAA7-464A-8279-F336DB3FBCBC (2014 memorandum from the City Attorney)

By allowing entertainment in any establishment with a Class B license, the Plan Commission would essentially be saying entertainment is an allowed use anywhere in the City. For example, would Jenifer Street Market be an appropriate place for entertainment (being surrounded on three sides by residential)? Yet this proposed change would be saying that it is an appropriate place for entertainment if the ALRC and Council decide to issue a Class B and an entertainment license – that there is nothing inherently wrong with entertainment at this location.

Processes differ between ALRC and Plan Commission.

- An entertainment license can be decided 15 days after the application is filed (though most take longer). In contrast, Plan Commission review is 6 weeks after application submission.
- Plan Commission has continuing jurisdiction and can thus modify the existing conditions and impose additional reasonable conditions (or revoke if no reasonable modification of the conditional use can be made that is consistent with the standards of approval). In contrast, the ALRC is much more formalized (a hearing that is tape-recorded; parties can produce witnesses, cross-examine witnesses and be represented by counsel; the ALC issues a written decision).

The Drafter's Analysis states the ALRC can impose conditions on the entertainment license. For entertainment licenses applied for along with a Class B license, the ALRC generally imposes the

same conditions on the entertainment license that are imposed on the Class B license. However, it is worth looking at the actual authority granted by the ordinance, which, on its face, restricts conditions to hours of operation:

> MGO 38.06(11)(j): The ALRC may recommend, and the Common Council may impose, restrictions *on the entertainment license hours* relating to presentation of live entertainment if the information or evidence available to and considered by the ARLC and/or Common Council reasonably establish that such restriction is necessary to protect the health, safety and welfare of the designated neighborhood or necessary to prevent underage patrons from purchasing, possessing or consuming alcohol beverages on the licensed premise. (emphasis added)

Restaurants and brewpubs would have capacity limited to seats/staff/reasonable number of people waiting for seats. That means taverns are the only place where what one typically thinks of as a nightclub could operate (primarily standing room with 5 sq.ft. allocated per person). Any tavern could get an entertainment license under this proposed language. Yet, as of this moment, taverns have been barred from obtaining an entertainment license. Thus, neighbors who may not have objected to a local bar could now have a bar with entertainment and all of the issues entertainment can create.

These issues were in mind when the concept of a nightclub was created in 2014. As said in the staff memo, in discussing the problems Plan B posed to the surrounding neighborhood:

> "The larger issue remains: the greater impact of a nightclub concept should have been addressed in the beginning as a part of land use approvals. Under the new ordinance, this proposal would be a Conditional Use, and presumably, those impact issues would be aired before the Plan Commission when considering the land use impact of that concept."
> https://madison.legistar.com/View.ashx?M=F&ID=2979177&GUID=91ABA5EE-5B38-4D05-B0CE-E398B5F4AB06

Nightclub uses have not received much scrutiny from Plan Commission in recent years. Perhaps that is due to establishments not applying because they do not think Plan Commission would approve the conditional use (e.g., located in a residential area). In the past it was not unusual for Plan Commission to impose additional conditions (e.g., for the Bur Oaks Plan Commission set a capacity of 130 persons in addition to ALRC's conditions on entertainment hours and decibel level). As of this year's renewals, there were 114 entertainment licenses and 509 Class B licenses. That gives a lot of opportunity for more entertainment licenses if Plan Commission will not be considering the land use impact.

Respectfully Submitted,
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