

REVISED ALRC HEARING PROCEDURES §38.10(1), MGO

(ar) Summons. Upon the filing of the complaint, the Common Council or the Alcohol License Review Committee shall issue a summons, signed by the Clerk and directed to any peace officer in the municipality. If the complaint is filed by the ~~Office of the City Attorney~~City Attorney, the City Clerk is authorized to and shall issue and sign a summons, on behalf of the Common Council, directed to any peace officer in the municipality. The Clerk shall notify the Common Council and the Alcohol License Review Committee of the filing of a complaint under this section by the ~~Office of the City Attorney~~City Attorney and the issuance of any summons pursuant to it. The summons shall command the licensee complained of to appear before the Alcohol License Review Committee or a special committee designated by the Common Council on a day and time and at a place named in the summons, not less than three (3) days and not more than ten (10) days from the date of issuance, and show cause why the license should not be revoked or suspended. The City and the licensee may mutually agree to waive the time limits relating to the date and time of the initial hearing, except that such waiver shall not delay the initial hearing more than thirty (30) days, without the consent of the Alcohol License Review Committee. The summons and a copy of the complaint shall be served on the licensee at least three (3) days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under Wis. Stat. ch. 801, for service in civil actions in circuit court. (Cr. by Ord. 10,883, Adopted 4-5-94; Am. by ORD-09-00097, 6-20-09)

(b) Procedure on Hearing.

1. The Alcohol License Review Committee (hereinafter Committee) shall serve as the hearing agency for the Common Council. The Initial Appearance on the Complaint shall be before the Committee.

a. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the Committee finds the allegations sufficient, the license shall be revoked. The Clerk shall give notice of the revocation to the person whose license is revoked.

b. If the licensee appears as required by the summons and denies the complaint then the Committee shall appoint a three member ad hoc subcommittee, hereinafter referred to as the Hearings Subcommittee, to conduct the evidentiary hearing and to make a licensing recommendation to the Committee. The Committee shall also schedule such dates for the conduct of the evidentiary hearings as it sees fit. To the extent possible these hearings should be held in as expedient a fashion as is practicable. Whenever possible the hearing should be conducted on a single date.

~~1. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the Committee finds the allegations sufficient, the license shall be revoked. The Clerk shall give notice of the revocation to the person whose license is revoked.~~

~~2. The Alcohol License Review Committee (hereinafter Committee) shall serve as the hearing agency for the Common Council. The Alcohol License Review Committee shall appoint~~ The chair of the Hearings

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~~Subcommittee, or the chair's designee~~ shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in Wis. Stat. § 227.45, shall be followed. The complainant shall have the burden of proving the charges by a preponderance of the evidence.

~~If the licensee appears as required by the summons and denies the complaint,~~ Both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. All proceedings and testimony shall be recorded on tape and transcribed unless waived by both the complainant and licensee. If either party requests a stenographic recording and transcription, City staff shall make the necessary arrangements, but the expense shall be borne by the requesting party. The secretary to the Committee shall mark and receive all exhibits admitted into the record.

Within twenty (20) days of the completion of the hearing, the ~~Hearings Subcommittee~~ shall submit a report, ~~accompanied by the complete record of the evidentiary hearings,~~ to the ~~Committee~~ ~~Common Council~~, including recommended findings of fact, conclusions of law and a recommendation as to what action, if any, the Common Council should take with respect to the license. The ~~Hearings Sub-~~Committee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the ~~Committee, Common Council.~~ The ~~Common Council Committee~~ shall determine whether the arguments shall be represented orally or in writing or both.

If the ~~Committee~~ ~~Common Council~~, after considering the Hearing Subcommittee's report, its recommendations, the record of the evidentiary and ~~hearings and~~ any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the Committee shall within twenty (20) days of the completion of the hearing shall either return the matter to the Hearings Subcommittee for further evidentiary hearings as specified by the Committee or the Committee shall either adopt or amend the Subcommittee's report and forward such report to the Common Council. Such report shall include findings of fact, conclusions of law and a recommendation as to what action, if any, the Common Council should take with respect to the license. The Committee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Common Council. The Common Council shall determine whether the arguments shall be represented orally or in writing or both.

~~license shall be suspended or revoked as provided below. If the City Council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to the report recommending suspension or revocation, the license shall be suspended for not less than three (3) days nor more than ninety (90) days or~~

revoked, except that, if a complaint under Subdivision (a)6., above, is found to be true with respect to a license issued under Wis. Stat. § 125.51(4)(v), the license shall be revoked.

If the Common Council rejects or modifies the report, the Common Council shall adopt appropriate findings of fact and conclusions of law. If the recommendation of the Alcohol License Review Committee is based upon a stipulation of the parties, the Common Council may accept or reject the recommendation by a simple majority vote. If the Common Council rejects the recommendation, the matter shall be referred back to the Committee for a full fact-finding hearing. If the recommendation is based upon a full fact-finding hearing, the recommendation shall become the decision of the Common Council unless reversed or modified by a simple majority vote. No further evidence shall be allowed before the Common Council.

~~If the City Council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to the report recommending suspension or revocation, the license shall be suspended for not less than three (3) days nor more than ninety (90) days or revoked, except that, if a complaint under Subdivision (a)6. is found to be true with respect to a license issued under Wis. Stat. § 125.51(4)(v), the license shall be revoked.~~

The decision of the Common Council shall be a final determination for purposes of judicial review. If the complaint is found to be true, the licensee shall pay to the City the actual cost of the proceedings.

(Sec. 38.10(1)(b)2. Am. by Ord. 12,068, 3-27-98)

3. The City Clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.
4. If the Common Council finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Common Council finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Common Council or committee may require the complainant to provide security for such costs before issuing the summons under Section 38.10(1)(ar). (Am. by Ord. 10,883, Adopted 4-5-94)

(Sec. 38.10(1)(b) R. & Re-Cr. by Ord. 9242, 8-14-87)

- (c) Effect of Revocation. When a license is revoked under this subsection, the revocation shall be recorded by the City Clerk and no other license issued under this chapter shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of the revocation. (Cr. by Ord. 9242, 8-14-87)
- (d) Judicial Review. The action of the Common Council in granting or failing to grant, suspending or revoking any license, or the failure of the Common Council to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the city. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the Common Council in the manner provided in Wis. Stat. ch. 801, for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The Common Council, applicant or licensee

shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed within 10 days after the hearing and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals. (Cr. by Ord. 9242, 8-14-87)

- (e) Nonrenewal of License. The City Attorney may, after investigation, commence an action before the Alcohol License and Review Committee to hear evidence and make a recommendation to the Common Council that a license issued pursuant to this chapter not be renewed. The Chairperson shall, in writing, notify the licensee of the consideration of nonrenewal. Such notification shall be in the form of and shall serve as the summons and complaint and shall include a statement of the reasons for the consideration of the nonrenewal of the license in the same specificity required for a summons and complaint for revocation or suspension. If the license is recommended for nonrenewal, costs may be assessed against the licensee and any renewal application fee shall be forfeited. In all other respects, the provisions of Subdivisions (a) and (b) shall apply. The commencement of this action shall stay action by the Common Council on the licensee's application until the Committee makes its recommendation, notwithstanding Sec. 38.05(11). (Renumbered from (c) to (e) by Ord. 9242, 8-14-87)
- (f) Unused Licenses. Notwithstanding Sec. 38.10, MGO, the City may revoke, suspend or refuse to renew a license authorized under this Chapter that has not been issued, a license whose usage has been discontinued for at least fifteen (15) days or where the licensee does not own or lease a premises from which business may be conducted, pursuant to the procedures in Wis. Stat. § 125.12. Prior to the time for renewal of the license, the City Clerk on behalf of the Alcohol License Review Committee, shall notify the licensee in writing of the City's intention not to renew the license and the Alcohol License Review Committee shall provide the licensee with the opportunity for a hearing. The notice shall state the reasons for the intended action. The Alcohol License Review Committee shall be authorized to issue the notice under this subsection. The hearing shall be conducted as provided in Wis. Stat. § 125.12(2)(b), and judicial review shall be as provided in Wis. Stat. § 125.12(2)(d). The hearing shall be held before the Alcohol License Review Committee and the Committee shall make a report and recommendation as provided in Wis. Stat. § 125.12(2)(b)3, and the Common Council shall follow the procedure specified under that subdivision in making its determination. (Cr. by ORD-08-00137, 12-23-08; Am. by ORD-09-00134, 10-01-09; ORD-09-00147, 11-6-09)
- (g) Other Provisions. Any license issued pursuant to Chapter 38 of the Madison General Ordinances shall be subject to such further regulations and restrictions as may be imposed by the Common Council of the City of Madison by amendment to this section or by the enactment of new ordinances. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations her/his license may be revoked in accordance with this section. In case of revocation of any license or any violation of any provision of this ordinance in accordance with this section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be

made of any part of the license fee. (Renum. from (d) to (f) by Ord. 9242, 8-14-87; Am. and Renum. from (f) to (g) by ORD-08-00137, 12-23-08)

- (h) Display of Sign. When a license is suspended, revoked or nonrenewed under this section, the licensee shall post at each entrance to the licensed premise, a sign or signs, obtained from the City Clerk, that inform the public that the establishment has been closed as a result of a license suspension, revocation or nonrenewal. A licensee who fails to post or maintain a sign in a manner consistent with the requirements of this subdivision shall be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than (\$200) per day, for each day of violation. (Cr. by ORD-10-00008, 2-4-10)

(2) Search Warrants.

- (a) When complaint shall be made to the judge of the Circuit Court that alcohol beverages are being sold or kept for sale in any particular building or premises in the City of Madison in violation of this section, said judge, if s/he be satisfied that there is reasonable cause for such belief, shall issue her/his warrant to search for such alcohol beverage.
- (b) Such warrants shall be directed to any police officer of the City of Madison commanding such officer to search the building or premises designated and described therein, and to bring before the said judge of the County Court any such alcohol beverages, found being kept, sold, or kept for sale in violation of the provisions of this section, and the person in whose possession the same are found.
- (c) When any officer, in the execution of a search warrant shall seize any alcohol beverages for which a search is authorized by this subsection, all such property or things shall be safely kept by the direction of the court so long as shall be necessary for the purpose of being produced as evidence on any trial and as soon as may be afterward returned to the owner, destroyed, or otherwise disposed of as the judge of said court may direct.

(Am. by ORD-09-00169, 12-31-09)

(3) Exceptions.

- (a) No license shall be required for the use of intoxicating liquor in hospitals or in bona fide institutions for the aged and infirm where such liquor is used for medicinal, mechanical, or scientific purposes only, or for one licensed to practice surgery or medicine in using alcohol in any form in the bona fide treatment of the sick or in using or prescribing such alcohol for such bona fide treatment.
- (b) No provision of this chapter shall apply to alcohol intended for use and used in the manufacture and sale of any of the following when unfit for beverage purposes, namely:
 - 1. Denatured alcohol produced and used pursuant to acts of Congress and regulations promulgated thereunder;
 - 2. Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;
 - 3. Flavoring extracts, syrups, and food products;
 - 4. Scientific chemical, mechanical and industrial products.
- (c) Any person who shall knowingly sell any of the products enumerated in the preceding subdivision for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be guilty of a violation of this section.

- (d) Nothing in this section shall be construed to prevent any person from manufacturing wine or beer of any alcoholic content at his home or place of residence to be consumed by himself, his family, and guests without compensation.
- (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. (Am. by ORD-09-00143, 12-22-09)
 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 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.;	Altering Premises or Changing Location Without	50
38.05(9)(j)	Permission	
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.; 38.09(2)(b)	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); 38.09(3)(b)	Licensed Premises to be Sanitary	25
38.06(5)	Sign to Be Posted	25
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

Ordinance Section Number	Type of Violation	Point Value
38.07(5)	Leaving with Open Container	25
38.07(6)	Sell or Serve on Public Street	25
38.07(8)	Unlawful Sale Device	25
38.07(9)	Inadequate Parking Provided	25
38.07(10)	Inadequate Lighting	25
38.07(11)	Gambling	25
38.07(12)	Postering	25
38.07(18)	Alcohol Beverages on Premises Procured from other than a Licensed Wholesaler	25
38.08(1); 38.09(2), (3)(a)	Unlawful Quantities on Containers	25
38.08(2)	Wholesalers Restrictions	50
38.08(3)(a)	One Room Only and Booths	25
38.08(3)(b)	Sale or Dispensing in Building - Off Premises	25
38.08(3)(c)	Brand Disclosure on Tap	25
38.10	Failure to Comply with any Condition Imposed as Part of License Suspension, Revocation or Nonrenewal Action	100
38.10(1)(h)	Failure to Post Sign after Suspension, Revocation or Nonrenewal	100
38.11(1)	Adult Entertainment Without Permit	50
38.11(3)(a)	Nude or Semi-Nude Entertainer or Employee Visible Outside	50
38.11(3)(b)	Violation of adult entertainment tavern sign requirement	25

38.11(3)(c)	Indecent Photographs	25
38.11(3)(d)	Oral Solicitation	25
38.11(3)(e)	Failure to Display Permit	25
38.11(3)(f)	Allowing Patron to Touch	50
38.11(3)(g)	Indecent Acts	50
38.11(3)(h)	Improper Advertising	25
	Any other nonenumerated violations of Ch. 38	25
38.17	Failure to Comply with Lawful Order of MPD, MFD or Building Inspection Unit	100
38.19	Violation of License Condition, other than Restaurant Status	25
38.20	Failure to Meet Definition of Restaurant, as a Condition of License	75
39.03(9)(c)2.b.	Commission Finding of Public Accommodation Discrimination	100
39.03 (14)(a)	Ordinance Violation for Public Accommodation Violation	50
39.03 (14)(b)	Failure to Comply with a Lawful Order of the EOC	100

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.

(Sec. 38.10(4)(b) Am. by Ord. 11,627, 6-28-96; ORD-09-00143, 10-22-09; ORD-10-00008, 2-4-10; ORD-10-00044, 5-12-10)

(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.

(Am. by Ord. 11,183, Adopted 2-21-95; Sec. 38.10(4)(d)1.a. R. by ORD-10-00044, 5-12-10)

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. (Cr. by ORD-10-00044, 5-12-10)

(Sec. 38.10(4) Cr. by Ord. 8894, 6-12-86)

(5) ~~Severability. The several terms and provisions of this section shall be deemed severable, and if any provision hereof or the application hereof to any person or circumstances is held invalid, the remainder of the section and the applicability of such provisions to other persons and circumstances shall not be affected thereby. (Renumbered by Ord. 8894, 6-12-86)~~

Comment [RAA1]: Section 1.12, MGO provides a severability clause that is applicable to all ordinances. This is thus redundant and unnecessary.