

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: June 27, 2013

**MEMORANDUM**

TO: Mayor & Members of the Common Council

FROM: Roger A. Allen, Assistant City Attorney

RE: Goodman Center Application for Modification of Alcohol Licensed Premises

Issue

The Goodman Center has applied for modification of its licensed premise so that it may serve alcohol not in a limited area, but throughout its entire premises. The Center wishes to do so only during special events when underage persons would not be present upon the premises. However, a liquor license cannot be turned on and off at will. State and local laws dictate that unaccompanied under age persons may not be upon a licensed premise at any time, regardless of whether the premise is actually engaged in the sale of alcohol. None of the limited exceptions to this rule appear to apply to the Goodman Center. If this application is granted it will amount to a significant departure from long-standing interpretations of law and may have unforeseen consequences for the City. We recommend denial of this change.

Discussion

On June 19, 2013 the Goodman Center's application for modification of their current Class B alcohol licensed premise came before the Alcohol License Review Committee (ALRC). The Center seeks to expand its premise from the currently defined area within the Goodman Center so as "...to include the entire property." The ALRC voted to approve the application with conditions as recommended by Alder Rummel and the Schenk-Atwood-Starkweather-Yahara Neighborhood Association.

The Office of the City Attorney was not involved in any of the discussions resulting in these conditions nor was it advised that there were any problematic applications coming before the ALRC during its June meeting.

The Center's request is problematic. With few exceptions, underage persons are not

permitted upon Class B alcohol licensed premise unless they are accompanied by their parent, guardian or spouse of lawful drinking age. See, sec. 38.04(2), MGO and sec. 125.07(3), Wis. Stats. This application is problematic because we presume the Goodman Center intends to continue its well recognized youth programs and thus, to allow unaccompanied underage persons upon its licensed premises.

It appears that the additional conditions recommended by the ALRC attempt to confront this problem. These conditions appear premised upon the belief that when the Goodman Center is not dispensing alcohol beverages it is not a licensed premise. However, the applicable statutes, as interpreted by both the City of Madison and the State of Wisconsin, provide that a licensed premise is such at all times and does not cease to be a licensed premise because it is not at the time dispensing alcohol beverages. To interpret otherwise would open a Pandora's box of problems and severely complicate enforcement of a comprehensive scheme of alcohol regulation.

So, the question is whether the Goodman Center can take advantage of any of the statutory exceptions that permit the presence of unaccompanied underage persons upon their premises. This same discussion has been held with other entities interested in obtaining alcohol licenses such as the Madison Children's Museum and the Madison Public Library.

The Common Council should consider whether it is provident to grant the application given the likelihood that the licensee's intended operations may be unlawful. It is to this end that the following legal analysis is provided.

Sec. 38.04(2), MGO, which is substantially the same as sec. 125.07(3), Wis. Stats., provides as follows:

- (a) Restrictions. An underage person, not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age, may not enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This paragraph does not apply to:
  - 1. An underage person who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.
  - 2. An underage person who enters or is on a Class "A" or "Class A" premises for the purpose of purchasing items other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.
  - 3. Hotels, drug stores, grocery stores, bowling centers, billiards centers having on the premises 12 or more billiard tables that are not designed for coin operation and that are 8 feet or longer in

length, indoor golf simulator facilities, service stations, vessels, cars operated by any railroad, regularly established athletic fields, outdoor volleyball courts that are contiguous to a licensed premises, stadiums, public facilities as defined in Wis. Stats. 125.51(5)(b)1.d. which are owned by a county or municipality, or centers for the visual or performing arts. (Am. by Ord. 12,143, 6-1-98)

4. Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in Chapters 27 and 28, Wis. Stats., and parks owned or operated by agricultural societies.
5. Ski chalets, golf courses and golf clubhouses, racetracks licensed under Ch. 562, Wis. Stats., curling clubs, private soccer clubs, and private tennis clubs.
6. Premises operated under both a Class ‘B’ or ‘Class B’ license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a Class ‘B’ or ‘Class B’ license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.
7. An underage person who enters or remains on a Class ‘B’ or ‘Class B’ premises for the purpose of transacting business at an auction or market if the person does not enter or remain in a room where alcohol beverages are sold, furnished, or possessed.
8. A person who is at least eighteen (18) years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.
9. An underage person who enters or remains on Class “B” or “Class B” licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license if the licensee is a corporation or a limited liability company, or a person who has an operator’s license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the local law enforcement agency, in advance, of the times underage persons will be allowed on the premises under this subdivision. Such notification shall be in writing and must be received in the office of the Chief of Police not less than 48 hours prior to the start of the scheduled nonalcohol event.
10. An underage person who enters or remains in a dance hall attached to Class “B” or “Class B” licensed premises if the dance hall is separate from any room where alcohol beverages are sold, if there is a separate entrance to the dance hall, and if no alcohol beverages are furnished or consumed by any person in the dance hall where the underage person is present. When such a dance

hall is designated or used so as to lawfully allow the presence of underaged persons, notification in writing must be received by the Chief of Police at least 48 hours prior to the use.

The only exceptions that arguably apply are subsections 6, the exception for restaurants, and subsection 9, the exception for special events. However, it is unlikely that the Goodman Center qualifies as a restaurant under either sec. 38.02, MGO or sec. 254.61(5), Wis. Stats. Thus, subsection 6 is of no relief for the Center. The clear language of subsection 9 anticipates that the presence of underage persons will be the exception and not the rule. The requirement that the licensee provide not less than 48 hours notice of "the event" where underage persons will be present assumes that such events will occur at discrete times and not be an everyday occurrence. To read it otherwise would be inconsistent with the statutory scheme of these statutes. Thus, this subsection does not provide any relief either.

Indeed, subsection 10 of the ordinance was enacted consistent with the statutory authority set forth in sec. 125.07(8), Wis. Stats., that provides as follows:

8. An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served, if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this subdivision. An underage person may enter and remain on Class "B" or "Class B" premises under this subdivision only if the municipality which issued the Class "B" or "Class B" license adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this subdivision and the law enforcement agency responsible for enforcing the ordinance issues to the Class "B" or "Class B" licensee a written authorization permitting underage persons to be present under this subdivision on the date specified in the authorization. Before issuing the authorization, the law enforcement agency shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.

The statutory provision and the ordinance section adopted thereunder allow underage persons to be upon a licensed premise even when alcohol is being dispensed upon that premise. However, no alcohol may be dispensed or consumed in the rooms where such underage persons are allowed and other conditions must be met as well. The City chose to limit subsection 10 specifically to dance halls and did not open this provision to all Class B licensees.

Furthermore, the statute once again contemplates that the presence of underage persons upon the licensed premises will be the exception and not the rule. This is evident from the statutory requirement of separate applications, premise inspections and

authorizations “...for each date on which underage persons will be present on the premises.” The statute also commands that unaccompanied underage persons may only be upon the licensed premise “...on the date specified in the authorization.” (emphasis added). The statute unambiguously uses the singular term of “date” as opposed to the plural term “dates” thus underscoring its application to singular events and not to events spanning more than a single day or date. Our ordinances mirror the state law in that both subsections 9 and 10 use singular terms to describe the times that unaccompanied underage persons may be present upon a licensed premise. For example, subsection 9 requires that the licensee provide written notification and that such notification “...must be received in the Office of the Chief of Police not less than 48 hours prior to the start of the scheduled nonalcohol event.” (emphasis added).

Subsection 10 similarly requires that “...notification in writing must be received by the Chief of Police at least 48 hours prior to the use.” (emphasis added).

There does not appear to be any statutory authority for licensed premises to routinely permit unaccompanied underage persons upon their property. While sec. 38.04(2)(a)10. could be amended so as to remove the dance hall limitation and thus, open the exception to all Class B alcohol licensed premises, the statutory scheme clearly does not sanction the regular presence of underage persons upon such premises. In alcohol regulations the City may be more restrictive than the statutes, but it may not be more permissive.

### Alternatives

The Goodman Center faces the same challenge that has faced similar facilities such as the Madison Children’s Museum and the Madison Public Library’s Central Library: How to host events with alcohol in a facility that’s core mission is to serve the youth of our community?

Three alternatives exist: 1. The Goodman Center can maintain its current status where only a limited area is licensed and that area is off-limits to unaccompanied underage persons; 2. The Goodman Center could serve alcohol at catered events by a licensed caterer and; 3. The Goodman Center could obtain Temporary Class B licenses for special events where alcohol is dispensed. Each of these approaches has their own drawbacks, such as cash bar is prohibited at the catered events and temporary Class B licenses may only be issued to bona fide clubs, churches, lodges, societies and veterans organizations. However, each of these approaches make the presence of alcohol, not the presence of underage persons, the exception rather than the rule for the applicant’s/licensee’s facility.

### Conclusion

The Office of the City Attorney recommends that the Goodman Center’s application to modify its licensed premise so as to extend its license to cover the entire property be denied. The mission of the Goodman Center inherently involves providing

services to area youth and there is no manner in which it can lawfully have unaccompanied underage persons upon its licensed premises on a regular basis.

CC: Michael P. May, City Attorney  
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CPT Richard Bach, MPD  
Eric Christianson, City Clerk's Office  
Becky Steinhoff, Executive Director Goodman Center  
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