

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED March 16, 2010

REFERRED ALRC

Creating Sections 38.07(17), (18), (19) and (20); amending Secs. 38.10(2) and 38.10(4)(b); repealing Sec. 38.10(4)(d)1.a.; and creating Secs. 38.10(4)(d)4. and 38.12(1)(c) of the Madison General Ordinances making modifications of the alcohol demerit point system.

RULES SUSPENSION _____

PUBLIC HEARING _____

Drafted by: Steven Brist

Date: March 10, 2010

SPONSORS: Ald. Verveer

DRAFTER'S ANALYSIS: This proposal modifies the current point system for retail alcohol beverage licensees. It establishes certain new categories for which points can be assessed, including failure to comply with a lawful order of the Madison Police Department, Madison Fire Department, or Building Inspection Unit regarding any immediate threat involving death or great bodily harm. It adopts state law provisions that retailers may sell alcohol beverages that they have obtained from a wholesaler and permits an assessment of points for such a violation. It provides that a retail licensee may be assessed points for failure to comply with license conditions, including the assessment of points if a licensee fails to maintain its status as a restaurant. It provides that points may be assessed for failure to comply with conditions imposed as part of a court judgment or license suspension, revocation or nonrenewal action. The proposal also repeals the current "Formal Expression of Concern" ordinance provision, the repeal of which means that a licensee may be subject to suspension, revocation or nonrenewal procedure when a licensee accumulates 100 demerit points.

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

1. Subsection (17) entitled "Failure to Comply With a Lawful Order of the Madison Police Department, Fire Department or Building Inspection Unit of Section 38.07 entitled "General Restrictions" of the Madison General Ordinances is created to read as follows:

"(17) Failure to Comply With a Lawful Order of the Madison Police Department, Fire Department or Building Inspection Unit.

- (a) A licensee shall immediately comply with all lawful orders of the Madison Police Department, Madison Fire Department or the Building Inspection Unit regarding any immediate threat involving death or great bodily harm.
- (b) Police Orders. If, in the determination of the police department, the number of persons on the premises exceeds the limitations set on the official placard, the police department shall order the number reduced to the permitted number. The police department may also order the establishment closed until it complies with this section.
- (c) The Madison Police Department shall have to power to order closure of a licensed establishment, when such closure is necessary because of an immediate threat involving death or great bodily harm."

Approved as to form:

2. Subsection (18) of Section 38.07 entitled "General Restrictions" of the Madison General Ordinances is created to read as follows:

"(18) No retail licensee shall purchase alcohol beverages from any source other than a licensed wholesaler, except as permitted by state law."

3. Subsection (19) entitled "Conditions on License" of Section 38.07 entitled "General Restrictions" of the Madison General Ordinances is created to read as follows:

"(19) Conditions on License. A licensee shall comply with all conditions placed upon its license by action of the Common Council."

4. Subsection (20) entitled "Restaurant Condition" of Section 38.07 entitled "General Restrictions" of the Madison General Ordinances is created to read as follows:

"(20) Restaurant Condition. A license that is required as a condition of its license to operate and maintain its business as a restaurant shall meet the definition of a restaurant contained in Sec. 38.02."

5. Subdivision (b) entitled "Point Schedule" of Subsection (4) entitled "Point Values for Alcohol Beverage Violations and Revocations and Suspensions" of Section 38.10 entitled "Revocation, Suspension or Nonrenewal of License" of the Madison General Ordinances is amended by creating and amending therein the following:

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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(14)	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.; 38.05(9)(j)	Altering Premises or Changing Location Without Permission	50
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.;	Conducting Unlawful Business	50
38.09(2)(b)		
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

Ordinance Section Number	Type of Violation	Point Value
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
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
<u>38.07(16)</u>	<u>Alcohol Beverages on Premises Procured from other than a Licensed Wholesaler</u>	<u>25</u>
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
<u>38.10</u>	<u>Failure to Comply with any Condition Imposed as part of License Suspension, Revocation or Nonrenewal Action</u>	<u>100</u>
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
<u>38.17</u>	<u>Failure to Comply with Lawful Order of MPD, MFD or Building Inspection Unit</u>	<u>100</u>
<u>38.19</u>	<u>Violation of License Condition, other than Restaurant Status</u>	<u>25</u>
<u>38.20</u>	<u>Failure to Meet Definition of Restaurant, as a Condition of License</u>	<u>75</u>

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

6. Subparagraph a. entitled "Formal Expression of Concern" of Paragraph 1. of Subdivision (d) entitled "Suspension or Revocation of License" of Subsection (4) entitled "Point Values for Alcohol Beverage Violations and Revocations and Suspensions" of Section 38.10 entitled "Revocation, Suspension or Nonrenewal of License" of the Madison General Ordinances is hereby repealed.

7. Paragraph 4. of Subdivision (d) entitled "Suspension or Revocation of License" of Subsection (4) entitled "Point Values for Alcohol Beverage Violations and Revocations and Suspensions" of Section 38.10 entitled "Revocation, Suspension or Nonrenewal of License" of the Madison General Ordinances is created to read as follows:

"4. For violations that continue for more than one calendar day, each day shall constitute a separate violation."

8. Subdivision (c) of Subsection (1) entitled "Penalty" of Section 38.12 entitled "Enforcement" of the Madison General Ordinances is created to read as follows:

"(c) When a license is held in the name of a partnership, corporation, limited liability company, association or the owner of a single owner entity that is disregarded as a separate entity under Chapter 71m Wis. Stats., the City may also jointly cite or bring an action against the registered agent of the license holder."

EDITOR'S NOTE: Section 38.10(4)(d)1.a. currently reads as follows:

"a. Formal Expression of Concern. In those instances in which a licensee has accumulated less than 100 demerit points as determined by the City Attorney, and additional violations on one date would result in the accumulation of at least 100 points but not more than 200 points, the ALRC shall call before it the licensee for purposes of a formal expression of concern. Formal expression of concern shall not apply to cases of failure to comply with an order pursuant to Sec. 3.23(14)(b) of these ordinances. If the licensee appears, no discussion of the alleged facts underlying the assessment of demerit points shall be permitted unless the licensee requests such discussion but only if the licensee is advised that any statements made by the licensee and/or her/his representatives regarding the alleged facts may be considered by the ALRC in any subsequent suspension/revocation hearing which may result from the alleged violations which are the subject of the formal expression of concern. If the licensee appears, no points shall be assessed for the alleged violations which triggered the formal expression of concern. If the licensee fails to appear after service of the notice to appear, the matter shall be scheduled for a suspension/revocation hearing. Service of the notice to appear shall be by first class mail sent to the agent, if the licensee is a corporation or a limited liability company, to the licensee if an individual, or to any partner if the licensee is a partnership. If the notice is returned by the Post Office as undeliverable, the notice may be left with any employee found on the licensed establishment at least 24 hours before the date and time of the scheduled appearance before the ALRC. A formal expression of concern in lieu of the assessment of demerit points may only occur once within a one-year period.

This ordinance amendment shall apply only to violations that would trigger a formal expression of concern which occur after this ordinance is adopted."