

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED _____
 REFERRED _____

Repealing and recreating Section 38.10(4) of the
 Madison General Ordinances to

DRAFT

Drafted by: Jennifer Zilavy

Date: September 18, 2013

SPONSOR:

DRAFTER'S ANALYSIS:

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

Subsection (4) entitled "Point Values for Alcohol Beverage Violations and Revocations and Suspensions" of Section 38.10 entitled "Revocation, Suspension or Nonrenewal Of License" is hereby repealed and recreated to read as follows:

"(4) Alcohol Beverage License Demerit Point System.

- (a) Purpose. The purpose of this subsection is to provide an alcohol license demerit point system as a nonexclusive method of identifying habitually troublesome liquor licensees who repeatedly violate state statutes and/or the Madison General Ordinances ("MGO") and to take consistent action against such licensees. The number of demerit points is assigned according to the type of violation. This point system shall serve as a guide to the Alcohol License Review Committee ("Committee") in determining when suspension and/or revocation of a liquor license is warranted.
- (b) Demerit Point System. Use of the following demerit point schedule by the City is not an exclusive remedy and does not preclude the City from seeking other remedies, including immediate suspension, revocation or nonrenewal of a license pursuant to Chapter 38, MGO. The City may seek such suspension, revocation or nonrenewal notwithstanding the fact that the licensee has accumulated less than one hundred (100) demerit points.

| Ordinance Section Number | Type of Violation | Point Value |
|------------------------------|---|-------------|
| 24.04(2) | Unreasonable Noise | 5 |
| 38.04(2)(a-d) | Traffic to Underage Person | 25 |
| 38.04(3)(b)1. | Permit Underage Person on Premise | 10 |
| 38.04(1)(a)2. | Traffic to Intoxicated Person | 25 |
| 38.04(1)(a)3. | Permit Intoxicated Person On Premise | 10 |
| 38.04(2)(a)9. | No Alcohol Night Violations (Underage) | 25 |
| 38.05(1) | Failure to be Licensed | 100 |
| 38.05(3)(a)1. | Altering Premises or Changing Location without Permission | 50 |
| 38.05(3)(11); 38.13(1)(a) | False Statement on Application (Class B) | 200 |

Approved as to form:

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|---------------------|--|-----|
| 38.05(5)(a-f) | Corporation and Agent Responsibility Violations | 20 |
| 38.05(7) | Failure to Frame and Post License | 10 |
| 38.05(9) | Failure to Maintain Wisconsin Residency (Class A) | 20 |
| 38.05(9)(d)7. | Conducting Unlawful Business | 50 |
| 38.05(9)(o) | Violation of Alcohol License Density Plan | 50 |
| 38.05(10) | Failure to Permit Inspection of Licensed Premises and/or Financial Audit | 50 |
| 38.05(12) | Catering Service Violations | 25 |
| 38.06(2) | No Licensed Bartender | 50 |
| 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 Space | 50 |
| 38.06(6)(e), (7)(g) | No Carryout After Hours | 25 |
| 38.06(6)(f) | On-premise Consumption – Class A | 20 |
| 38.06(7)(h) | After Hours Consumption – Class B | 50 |
| 38.06(8) | Intoxicated Employee or Licensee | 50 |
| 38.07(3) | Delivery Violations | 25 |
| 38.07(5) | Permit or Fail to Prevent Patron Leaving with Open Container | 10 |
| 38.07(6) | Sell or Serve on Public Street | 25 |
| 38.07(8) | Unlawful Sale Device (Amplification) | 10 |
| 38.07(11) | Gambling | 10 |
| 38.07(12) | Illegal Postering | 10 |
| 38.07(13) | Violate Chief's Security Plan | 50 |
| 38.07(17) | Failure to Comply with Lawful Order of MPD, MFD or Building Inspection | 100 |
| 38.07(18) | Failure to Purchase From Licensed Wholesaler | 50 |
| 38.07(20) | Failure to Meet Restaurant Condition | 25 |
| 38.07(21) | Exceeding Lawful Occupancy | 25 |
| | Exceeding Lawful Occupancy by more than 30% | 50 |
| 38.08(2) | Wholesalers Restrictions | 25 |
| 38.08(3)(a) | One Room Only and Booths | 25 |
| 38.10 | Failure to Comply with any Condition Imposed as Part of License Suspension, Revocation or Nonrenewal Action | 100 |
| 38.11 | Violation of Adult Entertainment Tavern Ordinance | 25 |
| 38.13(1)(a) | Violation of License Condition other than Restaurant Status | 25 |
| Chapter 39, MGO | Ordinance Violation for Public Accommodation Violation | 100 |
| Chapter 34, MGO | Fire Code Violations Dealing with Health, Safety or Welfare | 50 |
| Chapter 29, MGO | Building Code Violations Dealing with Health, Safety or Welfare | 50 |
| Chapter 7, MGO | Health Code Violations—Critical | 25 |
| Chapter 39, MGO | Commission Finding of Public Accommodation Discrimination | 100 |
| Chapter 39, MGO | Failure to Comply with Lawful Order of the EOC | 100 |
| | Any Other Non-enumerated Violations of Chapter 38, MGO | 25 |
| | Penalty Enhancer For Severe Offenses Enhanced penalty for conduct which: 1. Results in bodily harm to any individual; 2. Creates a substantial risk of death or serious bodily harm; 3. Involves the use of a firearm or other dangerous weapon; or 4. Demonstrates an ongoing disregard for the requirements of state law and municipal ordinances. | 100 |

(c) Calculating Violations.

1. In determining the accumulated demerit points against a licensee, the points shall be counted within a twelve-(12) month period. The date of the violation shall be used as the basis for assigning demerit points. For violations continuing for more than one

calendar day, each day shall constitute a separate violation. Points shall be assigned only after conviction in a court of law for such violations.

2. Demerit points shall be assessed after entry of a judgment of conviction in a federal, state or municipal court for violation of any statute or ordinance provision listed under the types of violations in Section 38.10(1)(b), above. The Committee may take notice of any such conviction without the need for further evidence to establish the violation.

- (d) Suspension and Revocation of License. The City Attorney's office shall notify the Committee of any conviction for violations which may result in the assessment of demerit points against any licensee. The Committee shall have the discretion under the demerit point system to suspend or revoke the liquor license of any licensee based upon a notice of conviction without holding an evidentiary hearing to further establish the underlying violations. Prior to suspension or revocation the Committee shall give the licensee at least ten (10) days written notice of its intent to suspend or revoke and the licensee's opportunity for a hearing before the ALRC Hearing Subcommittee. The notice shall include the conviction report and demerit points the Committee has assessed based upon the conviction report. The licensee shall have twenty (20) days from the date of the Notice to file a request for a hearing. If the licensee fails to timely file a hearing request, the Committee may take the underlying charges in the conviction report as true and suspend or revoke the license. Notice of the suspension or revocation shall be provided to the licensee within five (5) days of the determination. If a hearing is timely requested, a hearing shall be held within ten (10) days of the request before the ALRC Hearing Subcommittee. If the Committee chooses to have an evidentiary hearing based upon the conviction report, the Subcommittee shall use the hearing procedure found in Section 38.10(2), MGO.

The Committee shall use (1) through (3) below as a guide to determine the appropriate sanction for the license holder who has accumulated demerit point violations:

1. For demerit points totaling fifty (50) to one hundred fifty (150) within a twelve- (12) month period, a formal written warning to the licensee of the consequences of additional violations. This warning shall be signed by the ALRC chairperson.
2. For demerit points totaling fifty (50) to two hundred fifty (250) within a twelve- (12) month period, suspension of the license for a period of not less than ten (10) days nor more than ninety (90) days.
3. For demerit points totaling two hundred fifty (250) or more within an 18-month period, revocation of the license. Whenever any license is revoked, no other license shall be granted to such licensee for a period of twelve (12) months from the date of revocation and no other license shall be granted to the same premises for a period of six (6) months from the date of revocation.

Any suspension or revocation recommendation by the ALRC Hearing Subcommittee pursuant to this subsection shall be forwarded to the Committee and the Committee's recommendation shall then be forwarded to the Common Council.

- (e) Judicial Review. The decision of the Common Council shall be a final determination and shall be subject to review in court as may be provided by law. Any person aggrieved by the decision may seek review thereof within twenty (20) days after the date of the final determination.

- (f) Demerit Points and License Renewal. The City Attorney's Office shall forward a report to the Committee by March 1 of each year listing all licensees who have received demerit points in the current licensing year. The report will include the liquor/beer agent's name, the name of the licensed establishment, a list of the point violations by title and the point value of each violation, and whether there had been an ALERT meeting during the current licensing year. The Committee shall evaluate this report to determine whether an application for a renewal alcohol beverage license should be separated out for the following potential actions:

1. Nonrenewal hearing;
2. Placement of conditions;
3. Expression of concern.

If a license is separated for nonrenewal, the procedure set forth in Sec. 38.10(1)(e), MGO shall be followed.

- (g) Scope. Nothing in this section shall be construed to conflict with, abridge or modify, the rights or procedures established for revocation or suspension of licenses in W.S.A. § 125.12. Notwithstanding the requirements of this section, the Alcohol License Review Committee may require the appearance before it of any licensee at any time.

- (h) Transfer or Sale of Licensed Business. Upon the transfer or sale of the licensed business, all accumulated demerit points shall be canceled unless any of the following apply:
1. The new licensee is related to the former licensee by blood, adoption or marriage;
 2. The new licensee held a business interest in the previous licensed business, real estate or equipment;
 3. The former licensee or an individual related to the former licensee by blood, adoption or marriage retains an interest in the business, real estate or equipment used by the business;
 4. The new licensee's acquisition of the business did not involve an arm's length transaction consisting of an open market sale in which the owner is willing, but not obligated to sell, and the buyer is willing, but not obligated to buy.
- If any of the above apply, the new licensee shall inherit the demerit points previously assessed and be subject to the penalties set forth in this subsection."

EDITOR'S NOTE:

Current Section 38.010(4) reads as follows:

"(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.
 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 one hundred (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.; 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 |

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| 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 |
| 38.05(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); | Licensed Premises to be Sanitary | 25 |
| 38.09(3)(b) | Sign to Be Posted | 25 |
| 38.06(5) | | |
| 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 |

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.

- (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.
 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."