

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

November 19, 2013
ALRC

Repealing Section 38.06(11) and amending Section 38.06(12) of the Madison General Ordinances eliminate the 21+ entertainment license and create a single entertainment license that will be called a Visual and Performing Arts license and creating Section 38.04(6) to provide requirements for identifying patrons over the age of twenty-one (21) at times when patrons under the age of twenty-one (21) are allowed on a licensed premise.

Drafted by: Jennifer Zilavy

Date: November 11, 2013

SPONSOR:

DRAFTER'S ANALYSIS: This ordinance amendment is in response to the Alcohol License Density Ordinance ("ALDO") Staff Team Recommendations. It creates a single entertainment license, Visual and Performing Arts License, for all establishments offering live entertainment. This license allows any licensed establishment that offers live entertainment to allow patrons ages 18 and up on the premise for purposes of enjoying live entertainment.

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

1. Subsection (11) entitled "21+ Entertainment License" of Section 38.06 entitled "General Provisions and Hours" of the Madison General Ordinances is hereby repealed.
2. Subsection (12) entitled "18+ Centers For Visual And Performing Arts" of Section 38.06 entitled "General Provisions and Hours" of the Madison General Ordinances is amended to read as follows:

"(12) ~~18+ Centers For Visual And Performing Arts.~~

- (a) Findings. The Wisconsin state statutes create the designation "centers for the visual and performing arts" and exempts them from certain restrictions relating to the presence of underage persons on licensed Class B alcohol beverage premises. The statutes do not define "centers for visual and performing arts." The Common Council recognizes the importance of preventing the underage consumption of alcohol by underage persons. The Common Council also recognizes that due to the statutory restrictions regarding underage persons not being allowed on a licensed premise, the City of Madison has few venues available to underage patrons in which they can enjoy live music performances. In the interest of providing safe, supervised opportunities for underage patrons to enjoy live music events, the Common Council finds it necessary to define "centers for the visual and performing arts." The intent is that a "visual and performing arts" designation will be given only after careful consideration, review and deliberation and only upon a licensed establishment meeting all the criteria set forth in the ordinance. Although this license permits

Approved as to form:

the presence of such underage persons upon a licensed premise, this license is also required to provide the listed entertainment to persons twenty-one (21) years of age and older irrespective of the presence of underage persons.

(b) License Required.

1. No premise shall be deemed a Center For Visual and Performing Arts without first obtaining a license as required in this section. Premises designated as Centers For Visual and Performing Arts prior to the effective date of this ordinance shall comply with the terms and conditions of this section within ninety (90) days of the effective date.
2. Exceptions. Performance venues holding theater licenses pursuant to Section 9.04 of the Madison General Ordinances shall not be required to obtain a center for the visual and performing arts license.
3. Any establishment that holds a license under Chapter 38, MGO, must obtain a "Center for Visual and Performing Arts license (Visual and Performing Arts license)" in order to provide live entertainment. A Visual and Performing Arts license may allow, but does not require, a licensee to open such live entertainment performances to unaccompanied underage persons.
4. Regular Visual and Performing Arts License. A regular Visual and Performing Arts license shall be issued by the Common Council at its discretion and upon recommendation of the Alcohol License Review Committee. The license shall run contemporaneous with the establishments existing "Class B" and/or Class "B" license.
5. Temporary Visual and Performing Arts License.
 - a. A licensed establishment may obtain an entertainment license on an event basis. Such license shall authorize live entertainment during a particular twenty-four (24) hour period. No such license shall be required for New Year's Eve and live entertainment will be permitted in all licensed establishments on New Year's Eve, however, no underage persons may be upon any licensed premise on such dates unless the premise has been issued a regular Visual and Performing Arts license. No more than five (5) temporary entertainment licenses shall be issued for the same premises in any license year.
 - b. The issuance and review provisions contained in Sec. 38.05(9)(e) shall govern the issuance and review of this temporary Visual and Performing Arts license. Temporary licenses shall be issued by the City Clerk whenever the applicant has not been convicted of any violation of Chapter 38 within one (1) year of the date of the application. The Clerk shall not issue a license to any applicant that has been convicted of any violation of Chapter 38 within one (1) year of the date of the application, but instead, shall refer such application to the Alcohol License Review Committee.
6. The license issued under this subsection shall be known as a "Visual and Performing Arts license."

(c) Definitions.

"Center For Visual and Performing Arts" means a licensed premises that meets all of the following criteria and will be allowed to have patrons eighteen (18) years of age and older on the premises during live entertainment performances only in accordance with provisions of this section:

1. Pays a fee to performers or an agreed-upon designee.
2. The premise has a designated dance floor area of at least two hundred (200) square feet that is devoted to dancing at all times when entertainment is the principal business of the licensed premise. No dancing shall be permitted upon the top of a bar at which patrons are directly served;

23. Provides live entertainment as that term is defined in this subsection.

~~Patrons eighteen (18) years of age and older may be allowed onto the premises one half hour before the scheduled performance time and must be off the premises within one half hour after the performance ends.~~

"Live Entertainment" means a live music or disc jockey performance being heard and/or viewed at the time of performance and in the physical presence of a live audience. Live entertainment does not include non-amplified or acoustic music

performed by a single artist, or performances where an uncompensated patron sings along with a machine that plays pre-recorded music, commonly known as “karaoke.”

~~3. The license issued under this subsection shall be known as an “18+ Center for the Visual and Performing Arts license.”~~

(d) License Required. Any establishment that holds a license under Chapter 38, MGO, must obtain a “Visual and Performing Arts license” in order to provide live entertainment. A “Visual and Performing Arts license” may allow, but does not require, a licensee to open such live entertainment performances to unaccompanied underage persons.

(de) Application.

1. Application for a Visual and Performing Arts license shall be filed with the City Clerk. The application shall be signed by the applicant, if an individual, or by a duly authorized agent or officer of a corporation or limited liability corporation, and sworn to by the applicant. The application shall require:
 - a. The name and permanent address of the applicant.
 - b. The name and address of the premise for which the license is to be granted, including the aldermanic district in which it is situated.
 - c. If the applicant is a corporation, the name of the corporation shall be set forth exactly as it is set forth in its articles of incorporation, together with the names and address of each of its officers, directors and designated managers, if any.
 - d. If the applicant is a partnership, the application shall set forth the name and resident address of each of the partners, including limited partners, and each partner shall verify the application. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partners.
 - e. All convictions, including ordinance violations with a brief statement of the nature of the convictions and the jurisdiction in which the conviction occurred.
 - f. Applicant's date of birth.
 - g. A completed plan of operation which shall include: planned hours of operation for the premises; legal occupancy limit of the premises; the number of off-street parking spaces available at the premise; whether or not the premises will make use of sound amplification equipment and, if so, what kind; a written, detailed security plan for the premises, which includes: the number of security personnel the applicant will employ and how they will be utilized; detail regarding how the applicant will handle issues regarding control and clearance of the parking lot during hours of operation and at closing time; unruly patrons; patrons who are intoxicated; patrons presenting false ID's; control and supervision of patrons under the age of twenty-one (21) (if applicable); the circumstances under which police should be called and how physical disturbances, including fights, will be handled; the security plan shall also identify by name and date of birth, individuals who are employed by the establishment in a management capacity; how applicant will maintain the orderly appearance and operation of the premises with respect to litter and noise; any other licenses held by the applicant or attached to the premises; such other reasonable and pertinent information the ALRC or common council may from time to time require.
 - h. If the ALRC denies a ~~18+ Center For~~ Visual and Performing Arts license application, the applicant is prohibited from reapplying for another ~~entertainment~~ such license for a period of twelve (12) months from the date the application is denied.
2. Applications for a regular Visual and Performing Arts license shall be referred to the ALRC for a public hearing in accordance with Madison General Ordinance Section 38.05(3)(c). The recommendation of the committee shall be based upon information presented at the public hearing and contained in the application and accompanying documents. The ALRC shall also consider the following factors in making its recommendation:
 - a. Whether the applicant meets the criteria set forth in Subdivision (c);

- b. The appropriateness of the location and premises where the ~~Center For~~ Visual and Performing Arts venue is to be located and whether the location will create undesirable neighborhood problems.
 - c. Applicants record in operating similarly licensed premises.
 - d. Whether the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the licensed activity.
 - e. Any other factors which reasonably relate to the public health, safety and welfare.
- (e) Fee. The annual fee for a regular ~~Center For~~ Visual and Performing Arts license shall be three hundred dollars (\$300.00). The fee for each Temporary Visual and Performing Arts license shall be one hundred fifty dollars (\$150.00). Late filing shall result in a fee of fifteen percent (15%) of the license fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to obtain the license.
- (f) Renewal. ~~Centers For~~ Visual and Performing Arts regular licenses shall be renewed annually following the same procedure as liquor license renewals in Sec. 38.05(3)(f), MGO. Late filing shall result in a fee of fifteen percent (15%) of the license fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to obtain the license.
- (g) Patron Regulations. Any establishment with a Visual and Performing Arts license which admits patrons under the age of twenty-one (21) years of age on the premises of the establishment when alcoholic beverages are being sold, served or permitted on the premises shall, during the time the patrons are permitted on the premises:
- 1. Require one form of identification. The identification shall contain the bearer's photograph and must be one of the following: state driver's license, US military identification, state issued identification card, or passport, from every person claiming to be twenty-one (21) years of age or older;
 - 2. Identify patrons over twenty-one (21) years of age with both an identifiable hand stamp and a bracelet and shall require every patron to show both hand stamp and bracelet before purchasing an alcoholic beverage;
 - 3. Sell not more than one alcoholic beverage to an eligible patron in a single transaction, and shall prohibit a patron from carrying more than one alcoholic beverage from a bar or drink dispensing location;
- (h) Control of Premises.
- 1. At no time may licensee relinquish control of the licensed premises or the service of alcohol to any other person or entity. The licensee must remain in control of the premises and must continue to be in control of the alcohol and service thereof through the licensee's own employees, including but not limited to checking identification of patrons, providing security within the licensed premises and at the door, collecting money or tickets from patrons for food, drinks, or for charges for entry to the establishment or any area within the establishment, during all events, including private parties.
 - 2. Patrons eighteen (18) years of age and older may be allowed onto the premises one half hour before the scheduled performance time and must be off the premises within one half hour after the performance ends.
 - 3. The licensee shall provide thirty (30) days written notice to the Madison Police Department of any live entertainment event where patrons eighteen (18) years of age or older may be allowed onto the premises.
 - 3. The licensee and its employees will be held responsible for all conduct taking place on its premises at all times including conduct taking place during private parties. Notwithstanding the limitations of this subdivision, a licensee may contract with an agency that is licensed by the State of Wisconsin as a supplier of uniformed private security personnel to engage in private security activities.
- (i) Restaurants. An establishment holding a Class "B" and/or "Class B" license and a restaurant permit and who meets the definition of a "restaurant" in Sec. 38.02, MGO, shall, for times when its primary business is entertainment, submit a plan to the Madison Police Department and the Alcohol License Review Committee that details

the establishment's plan for identifying patrons under the age of twenty-one (21) and a specific plan as to how they will enforce drinking-age requirements. When the establishment's principal business, as that term is defined in Wis. Stat. § 125.02(15m), is entertainment, no patrons under the age of eighteen (18) shall be allowed on the licensed premises unless they are accompanied by a parent, legal guardian, or spouse who is of legal drinking age.

- (j) Change In Operation. If, after the license has been granted or issued, the licensee wishes to make any substantial deviations from its original plan of operation, the licensee shall file a written request with the City Clerk which states the nature of the change. No change shall take place until the request has been considered by the ALRC and approved by the Common Council.
- (hk) Revocation/Suspension or Non-renewal. A Complaint for revocation, suspension or non-renewal of a ~~Center For~~ Visual and Performing Arts license may be made by; An Alderperson; The Police Chief; The City Attorney; and/or any resident of the City of Madison. Complaints shall be made in writing and filed with the City Clerk who shall then refer the Complaint to the ALRC for a hearing. The ALRC may recommend to the Common Council that a ~~Center For~~ Visual and Performing Arts license be suspended for cause after notice to the licensee and a hearing. If a ~~Center For~~ Visual and Performing Arts license is revoked, no other ~~Center For~~ Visual and Performing Arts license shall be issued to the same person for the same premises for at least twelve (12) months. ~~Center For~~ Visual and Performing Arts licenses may be suspended or revoked for any of the following causes:
1. Violation of any conditions or restrictions placed on the license by the Common Council;
 2. Repeated violations of any provisions of Chapter 38 of the Madison General Ordinances;
 3. The licensed premises is operated in such a manner that it has a substantial adverse effect upon the health, safety and welfare of the immediate neighborhood;
 4. Any other reasonable cause which shall be in the best interests and good order of the City.
- The licensee shall be notified in writing of the charges against her or him at least ten (10) days prior to the hearing. At the hearing, the complainant and the licensee will have an opportunity to produce witnesses, cross-examine witnesses and be represented by counsel. The proceedings shall be tape-recorded. Within ten (10) days of the hearing, the ALRC shall issue a written decision and recommendation stating the reasons therefor and forward such decision to the Common Council. If the Common Council rejects the recommendation of the ALRC, the matter shall be dismissed without costs to either party. If ordered, suspension shall be for a period not to exceed six (6) months; revocation shall be for a period of one (1) year.
- (il) 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 thirty (30) days after the date of the final determination.
- (jm) Penalty. In addition to suspension, revocation or non-renewal of the ~~Center For~~ Visual and Performing Arts license, licensee may be subject to a forfeiture of not less than \$500 nor more than \$1,000 plus costs for violation of any provision of this section. Prosecution under this section shall not bar nor prohibit prosecution for these same violations under any other provision of law."

3. Subsection (6) entitled "Identification of Patrons 21 Years of Age and Older" of Section 38.04 entitled "Underage and Intoxicated Persons, Presence on Licensed Premises; Possession; Misuse of Identification; Penalties" of the Madison General Ordinances is created to read as follows:

- "(6) Identification of Patrons 21 Years of Age and Older. Any licensed establishment that meets the exceptions contained in Wis. Stat. § 125, and Chapter 38, MGO, for allowing underage patrons on the licensed premise, must have a means of visually and conspicuously identifying patrons who are twenty-one (21) years of age and older. It shall be the sole responsibility of the license holder to determine whether any of the exceptions contained in Wis. Stat. § 125, and Chapter 38, MGO, apply

to their establishment. An establishment whose principal business is that of a tavern may not have underage patrons on the premise at any time unless an exception contained in Wis. Stat. § 125 and/or Chapter 38, MGO, applies to their situation.”

EDITOR’S NOTE:

Sec. 38.06(11) reads as follows:

“(11) 21 + Entertainment License.

- (a) Entertainment License Required. No holder of a “Class B” and/or Class “B” intoxicating liquor or fermented malt beverage license shall offer or allow live entertainment without first obtaining an Entertainment License from the City Clerk.
- (b) Temporary Entertainment License. A licensed establishment may obtain an entertainment license on an event basis. Such license shall authorize live entertainment during a particular 24 hour period. No such license shall be required for New Year’s Eve and live entertainment will be permitted in all licensed establishments on New Year’s Eve. No more than five (5) Temporary Entertainment Licenses shall be issued for the same premises in any license year.
 - 1. Temporary Entertainment licenses shall be issued by the City Clerk. The issuance and review provisions contained in Sec. 38.05(9)(e) shall govern the issuance and review of this event entertainment license.
 - 2. The fee for each Temporary Entertainment license shall be fifty dollars (\$50.00).
- (c) Live Entertainment Defined. A licensed establishment shall be deemed to offer or allow live entertainment if any of the following activities are offered, permitted or allowed:
 - 1. live music performances;
 - 2. disc jockeys;
 - 3. the establishment has a designated dance floor area.
Live entertainment does not include non amplified or acoustic music performed by a single artist, or performances where an uncompensated patron sings along with a machine that plays pre recorded music, commonly known as “karaoke.
- (d) Designated Dance Area Defined. An identified area of at least 200 square feet that is devoted to dancing at times when entertainment is the principal business of the establishment. No dancing shall be permitted on top of a bar at which patrons are directly served.
- (e) Under Age On Premise. An establishment that does not meet the definition of a restaurant as defined in Sec. 38.02, MGO, may not allow patrons under the age of 21 on their premise unless they do so pursuant to any of the circumstances enumerated in Sec. 38.04(2) & (3), MGO. An establishment holding a Class “B” and/or “Class B” license and a restaurant permit and who meets the definition of a “restaurant” in Sec. 38.02, Madison General Ordinances, shall, for times when its primary business is entertainment, submit a plan to the Madison Police Department and the Alcohol License Review Committee that details the establishments plan for identifying patrons under the age of twenty-one (21) and a specific plan as to how they will enforce drinking-age requirements. When the establishment’s principal business, as that term is defined in Wis. Stat. § 125.02(15m), is entertainment, no patrons under the age of eighteen (18) shall be allowed on the licensed premises unless they are accompanied by a parent, legal guardian, or spouse who is of legal drinking age.
- (f) Identification of Patrons 21 Years Of Age And Older. Any licensed establishment that meets the exceptions contained in Section 125, Wisconsin Statutes and Chapter 38 of the Madison General Ordinances for allowing underage patrons on the licensed premise, must have a means of visually and conspicuously identifying patrons who are twenty-one (21) years of age and older. It shall be the sole responsibility of the license holder to determine whether any of the exceptions contained in Wis. Stat. § 125, and Chapter 38 MGO, apply to their establishment. An establishment whose principal business is that of a tavern may not have underage patrons on the premise at any time unless an exception contained in Wis. Stat. § 125 and/or Chapter 38 MGO applies to their situation.
- (g) Security and Door Personnel. All security personnel and door personnel (e.g. ID checkers) shall wear clothing that readily identifies them as security personnel or door personnel.
- (h) Security/Operational Plan. All entertainment license applicants shall submit a security/operational plan at the time of application. The plan shall indicate what type of live entertainment the establishment will offer. The plan shall indicate the number of security

personnel the applicant will employ and how they will be utilized. The security plan shall also set forth how the applicant will handle issues regarding: control and clearance of the parking lot during hours of operation and at closing time; unruly patrons; patrons who are intoxicated; patrons presenting false ID's; control and supervision of patrons under the age of twenty-one (21); the circumstances under which the police should be called and how physical disturbances (including fights) will be handled. The security plan shall also identify by name and date of birth, individuals who are employed by the establishment in a management capacity.

- (i) Control of Premises. At no time may licensee relinquish control of the licensed premises or the service of alcohol to any other person or entity. The licensee must remain in control of the premises and must continue to be in control of the alcohol and service thereof through the licensee's own employees, including but not limited to checking identification of patrons, providing security within the licensed premises and at the door, collecting money or tickets from patrons for food, drinks, or for charges for entry to the establishment or any area within the establishment, during all events, including private parties. The licensee and its employees will be held responsible for all conduct taking place on its premises at all times including conduct taking place during private parties. Notwithstanding the limitations of this subdivision, a licensee may contract with an agency that is licensed by the State of Wisconsin as a supplier of uniformed private security personnel to engage in private security activities.
- (j) Application. Upon application to the City Clerk, the City Clerk shall refer the entertainment license application to the ALRC for a public hearing pursuant to Madison General Ordinance Section 38.05(3)(c). The ALRC shall make a determination and recommendation to the Common Council regarding the issuance of the entertainment license. 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 ALRC 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.
 - 1. If the ALRC denies a 21+ Entertainment License application, the applicant is prohibited from reapplying for another entertainment license for a period of twelve (12) months from the date the application is denied.
- (k) Fee. The annual license fee shall be three hundred dollars (\$300.00) and the license shall expire on June 30 following its issuance.
- (l) Renewal. Entertainment licenses shall be obtained on or before June 30 of each year or be subject to a late filing of fifteen percent (15%) of the license fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to obtain the license.
- (m) Change In Operation. If, after the license has been granted or issued, the licensee wishes to make any substantial deviations from its original plan of operation, the licensee shall file a written request with the City Clerk which states the nature of the change. No change shall take place until the request has been considered by the ALRC and approved by the Common Council.
- (n) Revocation/Suspension or Non-renewal. A Complaint for revocation, suspension or non-renewal of an entertainment license may be made by; An Alderperson; The Police Chief; The City Attorney; and/or any resident of the City of Madison. Complaints shall be made in writing and filed with the City Clerk who shall then refer the Complaint to the ALRC for a hearing. The ALRC may recommend to the Common Council that an entertainment license be suspended for cause after notice to the licensee and a hearing. If an entertainment license is revoked, no other entertainment license shall be issued to the same person for the same premises for at least twelve (12) months. Entertainment licenses may be suspended or revoked for any of the following causes:
 - 1. Violation of any conditions or restrictions placed on the license by the Common Council;
 - 2. Repeated violations of any provisions of Chapter 38, MGO;
 - 3. The licensed premises is operated in such a manner that it has a substantial adverse effect upon the health, safety and welfare of the immediate neighborhood;

4. Any other reasonable cause which shall be in the best interests and good order of the City.

The licensee shall be notified in writing of the charges against her or him at least ten (10) days prior to the hearing. At the hearing, the complainant and the licensee will have an opportunity to produce witnesses, cross-examine witnesses and be represented by counsel. The proceedings shall be tape-recorded. Within ten (10) days of the hearing, the ALRC shall issue a written decision and recommendation stating the reasons therefor and forward such decision to the Common Council. If the Common Council rejects the recommendation of the ALRC, the matter shall be dismissed without costs to either party. If ordered, suspension shall be for a period not to exceed six (6) months; revocation shall be for a period of one (1) year.

- (o) 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 thirty (30) days after the date of the final determination.
- (p) Penalty. In addition to suspension, revocation or non-renewal of the entertainment license, licensee may be subject to a forfeiture of not less than \$500 nor more than \$1,000 plus costs for violation of any provision of this section.
- (q) This section shall become effective on June 30, 2005."

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