

LEGISTAR #40166 – Version 1 Body

DRAFTER'S ANALYSIS: This revision removes the Alcohol License Density Ordinance (ALDO) which is no longer operational as it has reached its sunset date and was not extended. This revision also addresses a concern raised by the Wisconsin Department of Revenue that the City's publication fees exceed that which is allowed by statute. However, the City's fees include the costs of signage and mailings that are not limited by the state statute. This revision clarifies that Madison's publication fees, now renamed as a "Public Notification Fee" includes these additional costs which are not limited by state statute. This revision also incorporates recent changes in state statutes that permit the issuance of alcohol licenses to business operating as movie theaters and painting studios as well as incorporates the requirements for the new Class A Cider license.

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

1. Section 38.02 entitled "Definitions" of the Madison General Ordinances is amended by creating therein the following:

"Painting studio" means an establishment that is primarily engaged in the business of providing to customers instruction in the art of painting and that offers customers the opportunity to purchase food and beverages for consumption while they paint."

2. Subdivision (b) entitled "Public Notification Fee" of Subsection (3) entitled "Application for Licenses" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is created to read as follows:

"(b) Public Notification Fee. The applicant for a license shall, at the time of filing the application with the City Clerk, deposit a fee of one hundred dollars (\$100), for a new license application or forty dollars (\$40.00) for a renewal application. This fee shall cover the costs of publication as required by sub. (c) as such fee is set forth in Wis. Stats. §§ 125.04(3)(g) and 985.08. This fee shall also include the costs of providing further public notification as set forth in subs. (d), (f) and (g) below. If the costs of providing the public notification required under subs. (c), (d), (f) and/or (g) exceeds one hundred dollars (\$100), the City Clerk shall bill the applicant for that portion of the cost that is in excess of one hundred dollars (\$100). No application may be processed unless such fee has been posted with the City Clerk and such fee is non-refundable."

3. Subdivision (c) entitled "Publication of Alcohol Beverage Application" of Subsection (3) entitled "Application for Licenses" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is amended to read as follows:

"(c) Publication of Alcohol Beverage Application. No license to sell alcohol beverages except Class B picnic beer and wine licenses shall be granted until after the expiration of fifteen (15) days from the filing of the application therefor and before any such license may be granted there shall be published in the official paper at least three (3) times successively a notice of such application, containing the name and address of the applicant, the kind of license applied for, and the location of the premises to be licensed. ~~The applicant for license shall deposit a fee of one hundred dollars (\$100), for a new license application or forty dollars (\$40.00) for a renewal application for such publication with the City Clerk at the time of filing the application, and the City Clerk shall thereupon cause such publication to be made.~~

4. Paragraph 3. of Subdivision (f) entitled "Public Hearings Required" of Subsection (3) entitled "Application for Licenses" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is hereby repealed.

5. Subsubparagraphs vii. and viii. of Subparagraph a. entitled "Limitations on Other Business; Class B Premises" of Paragraph 7. of Subdivision (d) entitled "Class B" License" of Subsection (9) entitled "Limitation Upon Issuance of Licenses" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances are created to read as follows:

- vii. A movie theater.
- viii. A painting studio.”

6. Subdivision (o) entitled “Alcohol Beverage License Density Plan” of Subsection (9) entitled “Limitation Upon Issuance of Licenses” of Section 38.05 entitled “General Licensing Requirements” of the Madison General Ordinances is hereby repealed.

7. Paragraphs 1. through 4. of Subdivision (a) of Subsection (5) entitled “Fees” of Section 38.09 entitled “Intoxicating Liquor” of the Madison General Ordinances are created to read as follows:

- “1. Notwithstanding sub. (a), there is no annual fee or initial issuance fee for a “Class A” license issued under par. 2. a.
- 2. In this paragraph, “cider” means any alcohol beverage that is obtained from the fermentation of the juice of apples or pears and that contains not less than one-half (½) of one percent (1%) alcohol by volume and not more than seven percent (7%) alcohol by volume. “Cider” includes flavored, sparkling, and carbonated cider.
 - a. Notwithstanding Wis. Stat. § 125.68(3), upon application and public hearing, the City governing body shall grant and issue a “Class A” license to the applicant if all of the following apply:
 - i. The application is made for a “Class A” license containing the condition that retail sales of intoxicating liquor are limited to cider.
 - ii. The applicant holds a Class “A” license issued by the City for the same premises for which the “Class A” license application is made.
- 3. Notwithstanding sub. (a) and Wis. Stat. § 125.06(13), a person issued a “Class A” license under sub. 2. may not make retail sales, or provide taste samples, of any intoxicating liquor other than cider. Wis. Stat. § 125.51(2) (am) does not apply to a person issued a “Class A” license under sub. 2.a.
- 4. Notwithstanding that the State has removed the City’s discretion over whether to issue licenses under sub. 2.a., no such license may be issued without complying with Chapter 38’s public notice requirements, public hearing provisions and Common Council approval of said application.”

EDITOR’S NOTE:

1. Sec. 938.05(3)(f)3. currently reads as follows:

“3. If the costs of notice under this sub. (f) exceeds one hundred dollars (\$100), the City Clerk shall bill the applicant for that portion of the cost that is in excess of one hundred dollars (\$100).”

2. Sec. 38.05(9)(o) currently reads as follows:

“(o) Alcohol Beverage License Density Plan.

- 1. Purpose. The Central Commercial District currently contains at least twenty-seven percent (27%) of all alcohol beverage licenses issued by the City of Madison (“City”) and at least thirty-four percent (34%) of all ‘Class B’ Combination alcohol beverage licenses issued by the City. Between 1997 and 2006, this area experienced an increase of 125% in the total number of alcohol beverage licenses and an increase of 128% in the number of ‘Class B’ Combination alcohol beverage licenses. Not coincidentally, this area experiences a high volume of alcohol-related problems, as detailed in the Madison Police Department’s 2005 report, “Alcohol-Related Violence in Downtown Madison.” As part of the ongoing comprehensive efforts to decrease the incidence of alcohol-related problems in the downtown area, the City seeks to maintain or gradually reduce the number and capacity of certain types of alcohol beverage licenses in the identified Alcohol License Density Plan area. This maintenance and/or reduction will be achieved through the licensing powers of the Alcohol License Review Committee (“ALRC”) and the Common Council. Additionally, the City seeks to decrease the strain on public resources caused by a high density of alcohol-related businesses while simultaneously providing opportunities in the downtown area for businesses that are either not associated with the sale of alcohol or that sell alcohol incidental to their principal business.
- 2. Density Plan Area. Any property located within the Central Commercial District of the City of Madison. The Central Commercial District is defined as the area enclosed by the following boundaries: Lake Mendota shoreline between N. Park Street and Blair Street, Blair Street

from Lake Mendota shoreline south/southeast to Lake Monona Shoreline, Lake Monona shoreline south/southwest from Blair Street to Monona Bay shoreline, Monona Bay shoreline from Lake Monona shoreline south/southwest to Proudfit Street, Proudfit Street from Monona Bay shoreline north/northwest to Regent Street, Regent Street west to Park Street, Park Street north to Lake Mendota shoreline. The Common Council, upon recommendation of the ALRC, may add additional areas within the City of Madison to this Plan at any time based upon the criteria and analysis used in the Madison Police Department's 2005 report, "Alcohol-Related Violence in Downtown Madison."

3. Procedure.

- a. When an application related to an alcohol beverage licensed premise within the Density Plan Area is submitted to the City Clerk, the City Clerk will mark the application "DPA" prior to placing the application on the next available ALRC agenda. This subsection applies to all applications related to an alcohol beverage licensed premise within the Density Plan Area (e.g., new license applications, changes to a licensed premise, transfer of a license, etc.) with the exception of renewal applications.
- b. The Alcohol License Review Committee will review all applications and make recommendations to the Common Council based on the criteria and guidelines contained within this subsection specifically and within Ch. 38, MGO, generally.

4. Definitions.

- a. Bona Fide Restaurant means the establishment's principal business is that of a restaurant.
 - i. Principal Business as a Restaurant is determined by the Common Council, upon recommendation of the ALRC, based on an analysis of the following factors:
 - A. The amount of capital, labor, time, attention and floor space devoted to each business activity; and
 - B. The sources of net income and gross income (i.e., revenues generated from food, alcohol, and other items); and
 - C. The name, appearance, and advertising of the establishment, the hours of operation, the frequency, duration, timing and magnitude of entertainment, staff scheduling, and the use of security staff. Less, but not inconsequential, weight is given to these ten factors.
 - ii. An establishment holding a 'Class B' Combination alcohol beverage license is presumed to be a tavern. This presumption may be rebutted by competent evidence. The burden is on the license holder to provide this evidence.
 - iii. Generally, an establishment licensed as a restaurant that generates fifty (50) percent or less of its annual gross revenues from the sale of alcohol is considered a restaurant.
 - iv. Any establishment representing itself as a bona fide restaurant will be required to maintain that status throughout the existence of its alcohol beverage license and may be required to provide evidence substantiating its status as a bona fide restaurant upon request of the City pursuant to Sec. 38.05(10), MGO.
 - v. Being classified as a bona fide restaurant does not mean that an establishment is prohibited from operating a bar that serves alcohol beverages to patrons.
- b. Ceased Regular Operations.
 - i. An establishment is deemed to have ceased regular operations when any of the following occurs:
 - A. The alcohol beverage license is surrendered to the City Clerk absent the issuance of a newly-granted license; or
 - B. The establishment is no longer open to the public; or
 - C. The establishment is open to the public only intermittently in an attempt to circumvent the provisions of this subsection; or
 - D. The establishment fails to maintain open and active accounts with its food and/or alcohol distributors; or
 - E. The alcohol beverage license holder fails to submit a renewal application to the City Clerk before the last possible submittal date.

- F. The alcohol beverage license is cancelled pursuant to Sec. 38.10(1)(f), MGO.
- ii. An establishment is not deemed to have ceased regular operations if it is temporarily closed due to remodeling or any type of license suspension.
- iii. Decisions regarding whether an establishment has ceased regular operations will be made by the Common Council upon a recommendation by the ALRC.
- c. Exceptional Circumstance.
 - i. An establishment may be considered an exceptional circumstance if it is not a tavern, restaurant, liquor store, convenience store, full-service grocery store, drug store, or hotel and it generated no more than fifty percent (50%) of its annual gross revenues from the sale of alcohol.
 - ii. Applications relying on classification as an exceptional circumstance must provide evidence therein that no more than fifty percent (50%) of the establishment's annual gross revenues will come from the sale of alcohol.
 - iii. Any establishment representing itself as an exceptional circumstance will be required to maintain that status throughout the existence of its alcohol beverage license and may be required to provide evidence substantiating its status as an exceptional circumstance upon request of the City pursuant to Sec. 38.05(10), MGO.
 - iv. Decisions regarding an establishment's status as an exceptional circumstance will be made by the Common Council upon a recommendation by the ALRC.
- d. Entertainment Venue.
 - i. An establishment may be considered an entertainment venue if it is not a tavern, restaurant, liquor store, convenience store, full-service grocery store, drug store, or hotel and it generated no more than seventy percent (70%) of its annual gross revenues from the sale of alcohol, and voluntarily accepts the following conditions to its alcohol beverage license;
 - A. The establishment shall provide any of the following activities or performances during its hours of operation:
 - 1) Movies or live theatrical performances;
 - 2) Live sports, magic, comedy, poetry, prose, musical or theatrical performances;
 - 3) Bowling;
 - 4) Gaming such as board games, shuffleboard, volleyball or electronic/internet gaming;
 - 5) Or any activity that is substantially similar or related to any of the activities set forth in sub. 1) through 4) above.
 - B. The establishment's business is primarily focused upon delivery of the entertainment component or activity as determined by an analysis of the establishment's:
 - 1) Capital, labor and floor space dedicated to the entertainment component or activity;
 - 2) The name, identity, appearance and advertising of the establishment, and;
 - 3) The frequency, duration, timing and magnitude of the entertainment component or activity of the establishment in relation to the overall business activities of the establishment.
 - C. The establishment shall be open for business no more than two hours prior to any event or activity qualifying the establishment as an entertainment venue and shall close its business no more than one hour following such an event or activity. However, an establishment may be open during other hours so long as its operations during such hours would meet the definition of a bona fide restaurant pursuant to Sec. 38.05(9)(o)4.a., MGO.
 - D. The establishment, as part of its application, shall file a detailed business plan with the ALRC that establishes the business will

conform to all the requirements of an entertainment venue. However, the establishment may elect to withhold, redact or obliterate from such business plan any information that it considers to be a trade secret as defined by Wis. Stat. § 134.90(1)(c), or proprietary information, or that would give its competitors an undue competitive advantage. The establishment shall state, in its application, the reasons for withholding, redacting or obliterating any such information from the business plan.

- E. The establishment shall file an annual report with the ALRC establishing that no more than seventy percent (70%) of gross revenues were obtained from the sale of alcohol.
- F. Notwithstanding any requirements herein the establishment shall comply with all licensing requirements and conditions and all laws, regulations and rules applicable to the establishment. The establishment shall have installed such materials or equipment necessary to minimize any noise emanating from the establishment and to ensure that the establishment complies with Chapter 24 of the Madison General Ordinances.
- G. Any establishment representing itself as an entertainment venue will be required to maintain that status throughout the existence of its alcohol beverage license and may be required to provide evidence substantiating its status as an entertainment venue upon request of the City pursuant to Sec. 38.05(10), MGO.
- H. Decisions regarding an establishment's status as an entertainment venue will be made by the Common Council upon a recommendation by the ALRC.
- I. Any establishment licensed as an Adult Entertainment Tavern pursuant to Sec. 38.11 is not an entertainment venue for the purposes of the Alcohol Beverage License Density Plan.
- J. No more than seven (7) entertainment venue licenses may be issued and in effect under this ordinance at any time.

5. Restrictions.

- a. 'Class A' Alcohol Beverage Licenses. The ALRC may recommend approval of applications for new 'Class A' alcohol beverage licenses intended to be located in the Density Plan Area only under the following circumstances:
 - i. The sale of an existing business that holds a valid 'Class A' alcohol beverage license and is operating as a 'Class A' licensed establishment at the time of the sale; or
 - ii. Any of the circumstances provided for in Sec. 38.05(8)(b)1, MGO. (i.e., death of the original licensee, bankruptcy, assignment for the benefit of creditors, or disability of the original licensee); or
 - iii. The proposed establishment is a full-service grocery store; or
 - iv. The proposed establishment qualifies as an exceptional circumstance; or
 - v. The proposed establishment is intended to replace a former 'Class A' alcohol beverage license that ceased regular operations no more than seven hundred thirty (730) days prior to the filing date of the new alcohol beverage license application. In the case of leased property, this seven hundred thirty (730) day grace period begins tolling on the first day that the property owner regains full possession and control of the affected property, as evidenced by competent evidence provided by the property owner.
 - vi. Notwithstanding the seven hundred thirty (730) day restriction contained in Sec. 38.05(9)(o)5.a.v., MGO, the ALRC may recommend approval of applications for 'Class A' alcohol beverage licenses intended to be located in the Density Plan area, so long as the application is filed on or before August 1, 2011, and the proposed establishment is intended to replace a former "Class A" alcohol beverage license that has ceased regular operations at the same premise and no other business has occupied the premise since the closing of the former licensed establishment.

- b. Class 'B' Beer, Class 'C' Wine, or 'Class B' Combination Alcohol Beverage Licenses. The ALRC may recommend approval of applications for new Class 'B' Beer, Class 'C' Wine, and/or 'Class B' Combination alcohol beverage licenses intended to be located in the Density Plan Area only under the following circumstances:
- i. The sale of an existing business that holds a valid Class 'B' Beer, Class 'C' Wine or 'Class B' combination alcohol beverage license and is operating as a Class 'B' Beer, Class 'C' Wine or 'Class B' combination licensed establishment at the time of sale; or
 - ii. Any of the circumstances provided for in Sec. 38.05(8)(b)1, MGO. (i.e., death of the original licensee, bankruptcy, assignment for the benefit of creditors, or disability of the original licensee); or
 - iii. The proposed establishment is a bona fide restaurant; or
 - iv. The proposed establishment is a new hotel; or
 - v. The proposed establishment is part of an existing hotel wishing to expand or modify its licensed premise; or
 - vi. The proposed establishment qualifies as an exceptional circumstance or as an entertainment venue; or
 - vii. The proposed establishment is intended to replace a former Class 'B' Beer, Class 'C' Wine, or 'Class B' Combination alcohol beverage license that ceased regular operations no more than seven hundred thirty (730) days prior to the filing date of the new alcohol beverage license application. In the case of leased property, this seven hundred thirty (730) day grace period begins tolling on the first day that the property owner regains full possession and control of the affected property, as evidenced by competent evidence provided by the property owner.
 - viii. Notwithstanding the seven hundred thirty (730) day restriction contained in Sec. 38.05(9)(o)5.b.vii., MGO, the ALRC may recommend approval of applications for Class 'B' Beer, Class 'C' Wine or 'Class B' Combination alcohol beverage licenses so long as the application is filed on or before August 1, 2011, and the proposed establishment is intended to replace a former "Class 'B' Beer, Class 'C' Wine or 'Class B' Combination alcohol beverage license that has ceased regular operations at the same premise and no other business has occupied the premise since the closing of the former licensed establishment.

6. Capacity.

- a. Any new licenses granted pursuant to the sale of an existing and operational business or under the seven hundred thirty (730) day window or replacing a former licensee that ceased regular operations as described in Sections 5.a. and b. above will be eligible for a licensed capacity no greater than the licensed capacity of the former business at the time that regular operations were ceased.
- b. The ALRC may recommend approval of a request to increased capacity for existing alcohol beverage licenses within the Density Plan Area only if:
 - i. the establishment is a hotel or a bona fide restaurant or qualifies as an exceptional circumstance or as an entertainment venue, or:
 - ii. A change in fire or building codes or physical improvements to the licensed premises have resulted in a higher physical capacity limit for the licensed premises as determined by the Fire Marshal and the Building Inspection Division.

7. Surrender of Existing Alcohol Licenses. If an existing alcohol beverage license for an establishment located within the Density Plan Area is surrendered for a reason other than the sale of an existing and operational business or transfer within the Density Plan Area under Sec. 38.05(8), MGO, the ALRC may recommend approval of a new alcohol beverage license application for that location only if the proposed established is a bona fide restaurant, qualifies as an exceptional circumstance or as an entertainment venue, or falls within the seven hundred thirty (730) day window described in Sections 5.a. and b. above.

8. Transfer of Existing Alcohol Beverage Licenses.

- a. The ALRC may recommend approval of an application to transfer an existing alcohol beverage license from outside the Density Plan Area to a location within the Density

Plan Area only if the proposed establishment is a bona fide restaurant or qualifies as an exceptional circumstance or as an entertainment venue.

- b. The ALRC may recommend approval of an application to transfer an existing alcohol beverage license from within the Density Plan Area to another location within the Density Plan Area.
9. Pending Prosecutions. This subsection shall not supercede the provisions of Sec. 38.06(1), MGO, pertaining to restrictions on the issuance of new Class A or Class B alcohol beverage licenses pursuant to the sale or transfer of a business while there is pending against the current licensee any proceedings related to violations of the Madison General Ordinances conviction of which would result in automatic forfeiture of said license.
10. Renewals. This subsection shall not prohibit the renewal of any alcohol beverage license existing within the Density Plan Area.
11. Annual Review. The effect of this ordinance shall be reviewed annually. In addition to any public feedback, a report shall be prepared by City staff, including the Alcohol Policy Coordinator and shared with the following committees: the Alcohol License Review Committee; Downtown Coordinating Committee; Public Safety Review Committee; Central Business Improvement District (BID) Board; Economic Development Committee; and Common Council. This annual review will be due March 15th of each year and include the following: 1) The number of licensed establishments within the density plan area; 2) The ALRC approved licensed capacity of each such establishment and the total aggregate licensed capacity of the density plan area; 3) The number of calls for police and EMS services within the density plan area broken down by time of day and further reporting separately those numbers for major special events such as Freakfest, Mifflin Street Block Party, etc.; 4) Maps that display the calls for police services as set forth under sub. 3; 5) An analysis of police and EMS calls for service showing any clustering or "hot spots" for such calls; 6) And such additional information as city staff may believe of benefit to the ALRC and the community.
12. Sunset. This subsection shall expire on July 1, 2014, unless extended by the Common Council prior to the expiration date."