

File

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

Date: October 14, 2013

MEMORANDUM

TO:

FROM: Jennifer Zilavy, Assistant City Attorney

RE:

You asked for staff to “further explore” the recommendations that were set forth in the staff report on alcohol license management and business development. We have reviewed the many different recommendations that suggest an ordinance change is necessary for implementation of the staff report recommendations. Below is the opinion of the Office of The City Attorney (“OCA”) regarding those recommendations which are inherently tied to the Alcohol License Density Ordinance (ALDO), set to expire January 1, 2014.

The recommendation under examination in this memorandum:

- 1) **Adopt new, revised definitions of types of alcohol licenses.** *Create definitions, within MGO Chapter 38, of different types of alcohol licenses (see attached matrix); create specific criteria that applicants must meet as a condition of license approval; and, set up formal enforcement process based on violations of said definitions. Definitions would be applicable city-wide.*

Staff's recommendation is to create several different categories of alcohol licenses within Chapter 38, Madison General Ordinance (“MGO”), the City's alcohol beverage regulation chapter. Chapter 125 of the Wisconsin State Statutes (“Wis. Stat.”) grants municipalities limited authority to regulate alcohol. That Chapter defines several different types of alcohol licenses: "Class A", "Class B" Combination, Class "B" Beer and Class C Wine. The statute also defines things such as “brewpub premises”, “Club”, “Hotel”, “Restaurant” and so on.

The Alcohol License Density Ordinance, adopted in 2007, prohibits new taverns from locating within the density area. In 2011, the ordinance was amended to create another category of license for "entertainment venues" that allowed concepts with up to 70% gross annual revenue derived from alcohol to be considered for an alcohol license within the density area. While limited in scope, the creation of a special category, not defined within Section 125, is on legal thin ice at best. At worst, the concept of creating categories of alcohol licenses is in direct conflict with state statutes. The OCA has reviewed the staff recommendations and recommends and advises that the definitions associated with alcohol uses not be defined within MGO Chapter 38. Many of the terms contained in the staff recommendation are already defined in Chapter 125 and the City is without authority to revise those definitions or create new definitions for the same terms. Any regulations the City enacts pursuant to

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alcohol may not be in conflict with Chapter 125. If we redefined terms that are currently defined in Chapter 125, that would be a regulation in conflict with Chapter 125.

The City does have the ability to define types and/or places as “uses” for alcohol, but not within Chapter 38, MGO. The more appropriate place for the City to regulate uses by location is within the zoning code. In fact, Chapter 125 specifically mentions municipalities’ ability to use zoning authority in the regulation of alcohol. Therefore, the most legally sound option for the City to explore defining the uses of alcohol licenses is to define such uses within the zoning code. The Plan Commission often hears issues related to noise, parking, and other impacts of land use. The definitions would be related to that impact of use at that location, not the merits of the liquor license itself. The Alcohol License Review Committee would still have authority of over determining the appropriateness of an alcohol license based on the health, safety, and welfare of the community.

Attached is a draft of definitions of alcohol uses, as closely mirroring the recommendations as legally possible.