

REPORT OF:
ALCOHOL LICENSE REVIEW COMMITTEE
OF THE CITY OF MADISON

CITY OF MADISON

ID# 52038

vs.

LAURA GARDEN, LLC
D/B/A "Koi Sushi"
502 State Street
Madison, WI 53719

Renewal Hearing

INTRODUCTION

On June 6, 2018, the City of Madison filed a three-count complaint (Exhibit A) with the City Clerk alleging that the above-named licensee had engaged in various violations of the Alcohol Beverages regulations (Chapter 38, Madison General Ordinances) of the City of Madison.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On June 13, 2018, the licensee, by its sole member and agent, Ms. Xi Wang Filion, and by its attorney, David F. Grams, appeared before the City of Madison Alcohol License Review Committee (hereinafter referred to as "ALRC") for the purpose of answering the Complaint. The licensee entered a denial to all charges alleged in the Amended Complaint. The ALRC then proceeded to conduct an evidentiary hearing regarding the charges. The licensee testified that her landlord modified her restaurant by removing a wall that separated her premise from that of a former business establishment. She admitted to having placed tables and chairs in that adjoining space. Further, she admitted to having conducted her restaurant/alcohol business in that space. Finally, she admitted that she had not applied to the City for building permits nor for a change of her licensed premises. The City presented the testimony of Madison Building Inspector Jim Sjolander who testified, in pertinent part, that the licensed premise had been modified, without the appropriate permits, by the removal of a wall between the licensee's premise and an adjoining business premise. Indeed, during closing arguments the licensee, through its attorney, again admitted to and apologized to the ALRC for these violations.

At the close of the hearing the City moved to amend the complaint to reflect that the licensee holds a Class B (fermented malt beverages) and a Class C (wine) license. The complaint had erroneously alleged that the licensee held a Class "B" Combination (fermented malt beverages, wine, liquor) license. The licensee did not object to the amendment and the ALRC granted the motion.

Following closing arguments from the parties, the ALRC deliberated in closed session. The ALRC determined that the uncontroverted evidence established that the wall between the licensee's premise and that of an unrelated and closed business had been removed in violation of City of Madison building codes. Furthermore, the uncontroverted evidence established that the licensee had occupied this other space as an annex to her business and thus, had modified her licensed premise from that which appeared on her original floorplan that she had filed with the City when applying for her alcohol licenses. Finally, the uncontroverted evidence established that the licensee had not applied to the City for a change of her licensed premises in accordance with the requirements of §38.05(3)(a)(1).

During its deliberations, the ALRC unanimously voted to sustain the first two counts of the complaint and did not sustain the third count. The ALRC also unanimously voted to recommend that the Common Council not renew the license.

Following the closed session, the ALRC immediately reconvened in open session. Deputy City Clerk Jim Verbick announced the decision of the ALRC. ALRC Chairperson Tom Landgraf explained to the licensee that Common Council would consider the ALRC's recommendation at the Council's June 19, 2018, meeting. The licensee was encouraged to attend that meeting and to present her arguments to the Common Council should she desire.

CONCLUSIONS AND RECOMMENDATION

The ALRC unanimously voted to sustain Counts one and two of the complaint which read as follows:

Violation of Chapter 38 of the Madison General Ordinances Within the Meaning of § 38.05(3)(a)(1), Madison General Ordinances, Expanding or Changing the Licensed Premises Without Common Council Approval

Violation Of Chapter 38 of the Madison General Ordinances Within the Meaning of § 38.19(1)(a)(11) Madison General Ordinances, Failed to Operate the Licensed Establishment In Accordance With the Floorplan and Plan of Operation Submitted to the City

The ALRC found the evidence insufficient as to the third count and did not sustain the following charge:

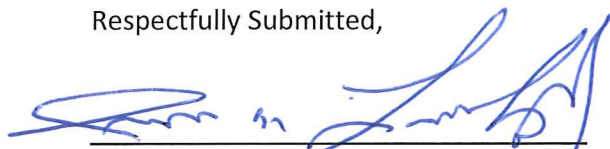
Violation of Chapter 38 of the Madison General Ordinances Within the Meaning of § 38.10(1)(a)(12) Madison General Ordinances, Operated the Licensed Premises in a Manner That Constitutes a Public Nuisance

THEREFORE, it is the unanimous recommendation of the ALRC that the Common Council for the City of Madison should not renew the Class B (fermented malt beverages) and Class C

(wine) licenses of the licensee, Laura Garden, LLC, d/b/a Koi Sushi.

The undersigned Committee Members were present and participated in this hearing. By affixing our signatures, we attest that the forgoing is a true and accurate account of the matters reported herein. The City Clerk shall send a copy of this report, by regular mail and electronic mail, to the licensee and to the licensee's attorney.

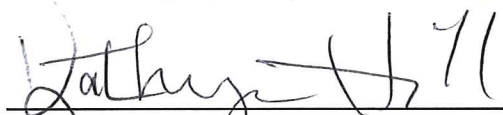
Respectfully Submitted,



Tom A. Landgraf, Chairperson

6-14-2018

Date



Kathryn D, Hill, Member

6-14-18


Date



Michael E. Verveer, Alder Member

6.14.18

Date



Patrick J. Grady, Member

06-14-18

Date



Stefan J. Fletcher, Member

6/14/18.

Date

Drafted by Roger Allen, Assistant City Attorney



City of Madison

CODE ENFORCEMENT

Worksheet

DUE DATE

01/18/2018

REVIEW DATE

06/06/2018

0709-144-2023-0

254 W Gilman ST Madison, WI 53703		INSP Sjolander, James	CASE NBR CB2018-005-00076	CASE TYPE Complaint
NAME OF PERSON TO CONTACT, ETC.			EMP	DATE
h:			ACTIVITY	
REMARKS ILLEGAL UPSTAIRS APARTMENT			Inspections 01/05/2018 - Open Status JES - 01/03/2018 - Official Notice JES - 02/02/2018 - CA Referral JES - 06/04/2018 - Reinspection	
OWNER	ORIGINAL TO:			
502 STATE ST LLC 916 EMERALD ST MADISON, WI 53715	502 STATE ST LLC 916 EMERALD ST MADISON, WI 53715			
CC 1:	CC 2:			
NOTES			Workflow 01/05/2018 - Open Status	
01/03/2018	Date: 01/04/2018 05:38:46 Upstairs womens bathroom has been locked off and being used for an illegal apartment.		AJK - 01/10/2018 - Issued Due Date - 01/18/2018	
02/02/2018	CA Processing Review		JES - 02/02/2018 - CA Referral Due Date -	
02/02/2018	no contact from the violator has been made and the violation still exists		KKD - 02/14/2018 - Processed Due Date - No Date Necessary	
06/04/2018	stopped by due to a complaint that lumber and sheetrock was being hauled into the building and construction sounds were heard on the 2nd floor.		KPB - 03/04/2018 - Initial Appearance Due Date -	
	it appears that the 2nd floor bathroom had a door removed and the wall infilled and the 1st floor dining room hole thru the wall was also infilled		KPB - 04/06/2018 - Initial Appearance Due Date -	
			KPB - 05/08/2018 - Initial Appearance Due Date -	

Printed 6/5/2018 12:41:45 PM

From: Building Inspection Division
126 S. Hamilton St.
P.O. Box 2984
Madison, Wisconsin 53701-2984

City of Madison
OFFICIAL NOTICE

Notice: An inspection discloses that certain sections of the City Ordinances are being violated.

Property Located At:
502 STATE STREET

OWNER:
502 STATE ST LLC
916 EMERALD ST
MADISON WI 53715

Item No.	Violating Section No.	CORRECTIONS REQUIRED
1. MGO 29.05(1)	No person shall erect or construct any building or structure whatever, or add to, enlarge, move, improve, alter, convert, extend or demolish any building or structure, or cause the same to be done, or commence any work covered by this code on any structure without first obtaining a permit.	Please obtain a permit and the required inspections for converting the store to a dining room project.
NOTE:	A permit may be obtained in person at the permit counter at: 126 South Hamilton Street.	
2. MGO 29.06(2)	A set of approved plans and specifications shall be kept at the site of such work at all times until the work authorized thereby is completed and shall be available for inspection by any public official. Such approved plans and specifications shall not be changed, modified, or altered.	
3. MGO 29.08 (1)	No portion of any building framework shall be covered or concealed in any manner without first obtaining an inspection.	
4. MGO 29.08(2)	No work shall be done on any part of the building beyond the point of each required inspection. The required inspections are footing, foundation, framing, insulation, and final.	
5. MGO 29.08(3)	It is unlawful to occupy or permit any one to occupy a building until all final inspections have been made and a Certificate of Occupancy has been issued.	

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Item No.	Violating Section No.	CORRECTIONS REQUIRED
6.	SPS 361.31	As this building contains over 50,000 cubic feet, total volume, the plans must be signed and sealed by a Wisconsin registered architect or engineer. Please submit at least two sets of plans or indexed title sheets bearing the seal and signature of the registrant.
7.	SPS 362.1101.2	Buildings and facilities shall be accessible and designed in accordance with this code and with ANSI A117.1.
8.	MGO 18.07	No alterations or additional plumbing work shall be done without being done by a licensed plumber.
9.	MGO 18.09	It is unlawful to do any plumbing alterations without first obtaining a plumbing permit. Make sure that your licensed plumber obtains a plumbing permit.
10.	MGO 18.11	It is unlawful to cover any new plumbing work without first obtaining an inspection. The drywall will need to be removed from the walls and the piping under the concrete floor will need to be exposed in order for the plumbing inspection to be done.
11.	MGO 19.09	No electrical wiring shall be done without being done by a licensed electrical contractor. The contractor shall be licensed in accordance with this section and bonded in accordance with MGO 19.09(2).

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Item No.	Violating Section No.	CORRECTIONS REQUIRED
12.	MGO 19.10	It is unlawful to do any electrical alterations or wiring without first obtaining an electrical permit. Make sure that your licensed electrical contractor obtains an electrical permit and obtains an inspection.
13.	MGO 19.12	It is unlawful to cover any new electrical wiring without first obtaining an inspection. The drywall will need to be removed from the walls, in order for the electrical inspection to be done.
14.	SPS 364.403	Provide heat and ventilation per table 364.0403.
15.	MGO 30.01(9)	It is unlawful to do any HVAC alterations without first obtaining a HVAC permit. Make sure that your licensed HVAC contractor obtains a permit.
16.	MGO 30.01(11)	It is unlawful to cover any new HVAC without first obtaining an inspection. Please obtain a HVAC inspection.

This notice does not start any legal action. However, if the violations are not corrected by the due date listed, the Building Inspection Division may issue citation(s), and/or refer the situation to the situation to the City Attorney's Office.

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Item No.	Violating Section No.	CORRECTIONS REQUIRED
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The Building Inspection Division is willing to answer questions pertaining to this official notice in order to assist you in correcting the violations. If you have questions or problems, it is important to contact me before the due date at the number listed below.

THE MADISON GENERAL ORDINANCES REQUIRE THAT A FEE OF \$75.00 BE CHARGED FOR REINSPECTIONS THAT DO NOT RESULT IN FULL COMPLIANCE, INCLUDING REINSPECTIONS RESULTING IN AN EXTENDED DUE DATE. ATTEMPTED REINSPECTIONS (NO ENTRY) ARE BILLED AT \$35.00 EACH.

The inspector can be contacted by phone at 608-266-4557 or by email at jsjolander@cityofmadison.com
Inspected by: James Sjolander On: 05/17/2018 Date Issued: 05/21/2018
The violations shall be corrected on or before: June 8, 2018

Code Enforcement Officer: _____

Any person violating any provision of the City Ordinances enforced by the Building Inspection Division is subject to the penalties provided by the appropriate Ordinance violated. ALL APPLICATIONS FOR APPEAL OF CHAPTERS 17, 18, 19, 27, 28, 29, 30 and 31 SHALL BE SUBMITTED TO THE BUILDING INSPECTION DIRECTOR IN WRITING WITHIN FIFTEEN (15) DAYS OF POSTMARK ON OFFICIAL NOTICE ENVELOPE. Appeal information may be obtained by calling 266-4551.

STATE OF WISCONSIN BEFORE THE ALCOHOL DANE COUNTY
LICENSE REVIEW COMMITTEE
OF THE CITY OF MADISON

CITY OF MADISON
210 Martin Luther King Jr. Blvd. #401
Madison WI 53703

Complainant,

v.

COMPLAINT
Non-renewal of Class B”
Combination Alcohol Beverage
License

LAURA GARDEN LLC
d/b/a Koi Sushi
XI Wang Filion, liquor/beer agent
502 State Street
Madison, WI 53703

Respondent.

NOW COMES the City of Madison by Assistant City Attorney Jennifer Zilavy,
and alleges as follows, that:

1. The Complainant, Jennifer Zilavy, is an adult resident of the City of Madison, with a business address of 210 Martin Luther King Jr. Blvd., Madison, WI, and at all times material to this action, she was and is a member of the Office of the City Attorney, in her official capacity.
2. The respondent herein, Laura Garden LLC, Xi Wang Filion, agent, is the alcohol beverage licensee doing business as Koi Sushi at 502 State Street, Madison, Wisconsin, according to documents filed with the City Clerk of the City of Madison.

3. The City of Madison Common Council granted Respondent' a "Class B" Combination Alcohol Beverage License for the period July 1, 2017 through June 30, 2018. At all times alleged in this complaint, respondent was the holder of a "Class B" Combination Alcohol Beverage License issued by the City of Madison.

4. Respondent submitted a renewal application for its "Class B" Combination Alcohol Beverage license for the period July 1, 2018 through June 30, 2019.

5. On information and belief, the licensee, under the City of Madison "Class B" Combination Alcohol Beverage License for the retail sale of those beverages at the premises known as Koi Sushi, Madison, Wisconsin, has violated Sec. 38.10(1)(a) of the Madison General Ordinances, to wit:

VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES WITHIN THE MEANING OF § 38.05(3) (a)(1), MADISON GENERAL ORDINANCES, EXPANDING OR CHANGING THE LICENSED PREMISES WITHOUT COMMON COUNCIL APPROVAL

1. On May 16, 2018, Madison Building Inspector Jim Sjolander responded to Koi Sushi at 502 State Street in response to a complaint he received regarding the owner of Koi Sushi making changes to the establishment in violation of the building code. Inspector Sjolander observed that Koi Sushi had remodeled the dining room by cutting a hole in a structural wall, and altered the building without securing the necessary permits to do the work. Sjolander informed Koi Sushi that they were over capacity and did not have a sprinklered building and had altered a structural

wall without getting the necessary permits. Inspector Sjolander informed Koi Sushi that these were serious violations. Koi Sushi made these changes to their licensed premise without first applying for a change in licensed premise as required by Madison General Ordinance § 38.05(3)(a)(1). (May 30, 2018 and June 1, 2018 email communications from City of Madison Building Inspector James Sjolander).

VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES WITHIN THE MEANING OF § 38.10(1)(a)(11) MADISON GENERAL ORDINANCES, FAILED TO OPERATE THE LICENSED ESTABLISHMENT IN ACCORDANCE WITH THE FLOOR PLAN AND PLAN OF OPERATION SUBMITTED TO THE CITY

2. Koi Sushi submitted a plan of operation and floor plan to the Alcohol License Review Committee when it applied for its liquor license. That floor plan did not include the space that became included in the licensed premise when Koi Sushi illegally knocked out the wall to expand the dining room. Koi Sushi did not operate the establishment in accordance with its originally submitted floor plan in violation of Madison General Ordinance § 38.10(1)(a)(11). (May 30, 2018 and June 1, 2018 email communications from City of Madison Building Inspector James Sjolander).

VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES WITHIN THE MEANING OF § 38.10(1)(a)(12) MADISON GENERAL ORDINANCES, OPERATED THE LICENSED PREMISES IN A MANNER THAT CONSTITUTES A PUBLIC NUISANCE


3. On January 5, 2018, Madison Building Inspector James Sjolander received a complaint that Koi Sushi had made significant alterations to the

upstairs of the building the licensed premise is located in without first submitting plans and obtaining the necessary permits. Inspector Sjolander spoke with the owner of Koi Sushi and told her that they were in violation of the Madison General Ordinances for doing the work without first getting plan approval and permits. On January 5, 2018, Inspector Sjolander wrote Official Orders to the building owner identifying sixteen (16) ordinance violations with a due date for correction of January 18, 2018, and never heard anything from the owner so he forwarded the case to the Madison City Attorney's Office. On May 17, 2018, Inspector Sjolander received another complaint regarding Koi Sushi, this time the complaint was that they cut a large opening in the demising wall to create a new dining room area for the restaurant. Inspector Sjolander observed the cut in the wall and again had a conversation with Koi Sushi about making alterations without approved plans or permits. According to Inspector Sjolander, Koi Sushi has been told on several occasions that they need to have approved plans and permits before they do any work and they have continually ignored this direction. On May 17, 2018, Inspector Sjolander issued another Official Notice with the same sixteen (16) ordinance violations with a due date for corrections of June 8 2018. Repeated violations of an ordinance are a nuisance per se which is a violation of Madison General Ordinance § 3810(1)(a)12). (May 30, June 1 and June 5 emails from Inspector Sjolander and Building Inspection Case No. CB2018-005-00076 and CB2018-123-04339).

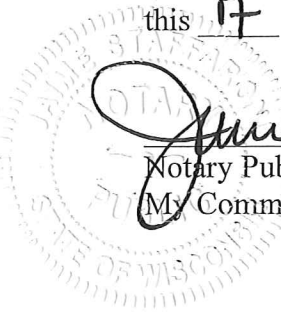

NOW, THEREFORE, for all the above stated reasons and pursuant to § 38.10(1)(e), Madison General Ordinances, the Complainant requests that the Common Council of the City of Madison non-renew the “Class B” Combination Alcohol Beverage License for the premises known as, Laura Garden LLC, d/b/a Koi Sushi, 502 State Street, Madison, Wisconsin.

STATE OF WISCONSIN)
) ss.
 COUNTY OF DANE)

Madison Assistant City Attorney Jennifer Zilavy, being duly sworn on oath, states that she has read the foregoing Complaint against Laura Garden LLC, d/b/a Koi Sushi, and that the statements are true of her own knowledge, except those which are stated upon information and belief, and as to such matters, she believes them to be true as they are based upon communications with staff from the City of Madison Building Inspection Division acting in their official capacity and pursuant to their official duties.


 Jennifer Zilavy
 Assistant City Attorney

Subscribed and sworn to before me
 this 17 day of June 2018.



 Notary Public, Dane County, Wis.
 My Commission expires: permanent