

(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. (Am. by ORD-09-00165, 12-31-09)
 - 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. (Cr. by ORD-10-00045, 5-12-10; Am. by ORD-10-00095, 9-27-10; ORD-11-00035, 3-8-11)
- 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. (Cr. by ORD-10-00045, 5-12-10; Am. by ORD-10-00095, 9-27-10; ORD-11-00035, 3-8-11)
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. (Am. by ORD-10-00045, 5-12-10)
- 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. (Am. by ORD-09-00052, Pub. 4-2-09, Eff. 8-1-09)
12. Sunset. This subsection shall expire on August 1, 2013, unless extended by the Common Council prior to the expiration date. (Am. by ORD-10-00095, 9-27-10; ORD-11-00035, 3-8-11)

(Sec. 38.05(9)(o) Cr. by ORD-07-00126, 10-5-07; Am. by ORD-11-00096, 7-13-11)

- (10) Inspections and Financial Audits of Licensed Premises. Application for a license hereunder shall be deemed as consent to this provision. Any refusal to permit such inspection or financial audit shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this section. In addition to the foregoing remedies, any person who violates any provision of this section shall be subject to a penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000).

- (a) Premises Inspections. It shall be a condition of any license issued hereunder that the licensed premises, delivery vehicles and any of the business’ books of account, bank statements, billings, invoices and any other documents relating specifically to the licensed business may be entered and inspected at any reasonable hour by any police officer of the City of Madison without any warrant for the purpose of determining whether the taxes imposed by Wis. Stat. §§ 139.01 to 139.25, has been fully paid and whether Wis. Stat. ch. 125 and Chapter 38, MGO, are being complied with.
- (b) Financial Audits. It shall be a condition hereunder of any license issued to a licensee whose operations must qualify as a “restaurant” as that term is defined in Sec. 38.05(9)(o)4., MGO, that the Alcohol License Review Committee or the Common Council may order the Finance Department to conduct a financial audit to determine whether a licensee is in fact operating as a “restaurant.” Such order may issue upon either sworn oral testimony, affidavit or complaint establishing a reasonable basis to believe that the licensee’s operations do not qualify as a “restaurant” as that term is defined in Sec. 38.05(9)(o)4., MGO. The following factors, without limitation by enumeration, may be considered in determining whether to order an audit:
 1. Observations that patrons are consuming mostly alcohol with little or no food consumption;
 2. Capacity or large crowds on the premises at or near the closing time for non-restaurant Class B premises;
 3. Menus, literature, signage or advertising that promotes the alcoholic beverages more so than food offerings;
 4. A food menu that contains exclusively traditional bar fare or frozen “heat and eat” foods;
 5. Bar space that is significantly larger in square footage than the kitchen/ food preparation area;

6. A disproportionate number of calls for police/fire services than other restaurants;
7. The use of security officers/ bouncers/ door checkers;
8. The advertising, promotion or sale of “drink specials”;
9. Any other factors reasonably indicative of the status of the licensed premises.

The licensee shall cooperate fully with the Finance Department and shall provide access, without delay, to any of the business’ books of account, bank statements, billings, invoices and any other documents relating specifically to the licensed business as may be requested by the Finance Department. The Finance Department shall promptly report the results of such an audit to the body that ordered the audit and to the Office of the City Attorney. If the audit establishes that the licensee’s operations are not those of a restaurant, the Office of the City Attorney may, within forty-five (45) days of the receipt of the audit results, file a complaint with the Alcohol License Review Committee seeking suspension or revocation of the license.

(Sec. 38.05(10) Am. by ORD-12-00125, 10-10-12)

- (11) Time of Granting Licenses. No licenses shall be granted hereunder until and unless the Common Council shall by a vote of the majority of the members elect of the Council have authorized the same. The Common Council shall meet not later than May 15 of each year and be in session from day to day thereafter, so long as it may be necessary for the purpose of acting upon such applications for licenses as may be presented to them on or before April 15 and all applications for licenses so filed shall be granted or denied not later than June 15 for the ensuing license year. (Am. by Ord. 9431, 3-11-88)

- (12) Catering Service Requirements. In any case where the licensee operates or conducts a business in which the licensee provides food for consumption off the licensed premises, commonly known as a catering service, the following shall apply to the providing of alcohol beverages as part of the catering services, in addition to all other laws:

- (a) The licensee shall deliver alcohol beverages to an event only when licensee supplies full food catering service for all guests of or participants in the event. No licensee shall deliver alcohol beverages for an event that is held on the premise of another alcohol beverage licensee, including the premise of a temporary Class “B” Beer (picnic) license or a temporary “Class B” Wine “picnic” license.
- (b) No licensee shall sell, deal or traffic in alcohol beverages except on the licensed premises of the licensee. This provision shall not prevent nor prohibit the licensee from delivering goods to the buyer as accommodation.
- (c) The licensee may supply personnel to dispense alcohol beverages at a catered event. No person shall engage in the individual sale of alcohol beverages to be consumed by the glass at a catered event (“cash bar”), when the alcohol beverages have been supplied by a retail licensee.

(Section 38.05(12) Cr. by Ord. 9171, 5-6-87; Am. by ORD-10-00074, 8-12-10)

- (13) Video Surveillance Equipment. Video surveillance equipment in licensed establishments shall be subject to the following restrictions:

- (a) The ALRC may impose video surveillance as a condition on a new license if the nature of the license proposal or the character of the immediate area in which the establishment will be located clearly demonstrates that video surveillance is consistent with maintaining the health, safety and welfare of the community. Factors which would support the ALRC’s imposing this condition would include, but are not limited to: physical layout of the establishment, capacity, venue, history of the applicant in operating previous licensed establishments, history of the establishment itself and character of the surrounding area of the establishment.
- (b) If a licensed establishment has video surveillance imposed as a license condition, the ALRC record shall clearly state the basis for imposing the condition.
- (c) Any video surveillance license condition imposed by the Common Council, Alcohol License Review Committee or Madison Police Department shall be limited to two (2) years, after which time such condition may be reviewed at the request of the licensee.
- (d) All licensed establishments having video surveillance in use at their establishment shall post the following signage:

VIDEO SURVEILLANCE EQUIPMENT IN USE
YOU MAY BE RECORDED

Such signage shall be conspicuously posted at all entrances/exits (excluding emergency exits and employee-only entrances). The signage lettering shall be in bold and the lettering shall be a minimum of two (2) inches in height.

- (e) All tapes/discs used to record and/or store video as part of a license condition shall be kept for at least thirty (30) days.
- (f) Any video surveillance equipment installed as a license condition shall be in operation during normal business hours.
- (g) Any licensed establishment voluntarily implementing video surveillance shall notify the City Clerk's Office of such use and shall comply with the requirements of Subdivision (c).

Violation of any provision of this subsection shall result in a forfeiture of not less than \$25 nor more than \$100 plus court costs and fees. This section will become effective July 1, 2004. (Cr. by Ord. 13,564, 4-21-04; Am. by ORD-07-00118, 9-22-07)