

Staff Recommendations

Re: Alcohol License Management and Business Development

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Ordinances and Budgetary Items

Recommendation: 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.**

Background: The city currently has only two definitions of types of licensed establishments: entertainment venues and restaurants. A restaurant is defined as an establishment “whose sale of alcohol beverages accounts for 50% or less of the establishment’s gross receipts.” All establishments are either licensed as a “tavern premises” or a “premises”; the latter considered a restaurant under our ordinances. The entertainment venue definition only applies to the ALDO area, allows up to 70% annual revenue derived from alcohol, and only seven licenses are available at any one time. The city’s only enforcement tool to ensure an establishment is meeting the definition of a restaurant is through an audit. An audit request of an establishment must be approved by the ALRC. Upon ALRC approval, the Finance Department is directed to audit the establishment by looking at their monthly receipts over a one year period. The results of their food versus alcohol revenue are reported back to the ALRC. If the results indicate the establishment is over the 50% alcohol mark, the City Attorney’s office will determine whether to pursue a complaint for suspension or revocation.

There have been many issues with the audit process over the past several years. Perhaps the biggest is the inordinate amount of staff time it requires to conduct an audit. If an establishment is corporative, the process may not be lengthy. However, many times it requires our finance staff to go to the business itself and verify the monthly receipts. Especially during the busy budget season, it is unreasonable to ask out finance staff to spend a great amount of time on this task. The other major issue is with how audit requests are initiated. The vast majority of the time the city, in some form, is the requesting party. However, the general public is able to make such requests and has done so in the past. Almost in every case with the city requesting an audit, there have been other issues with management of the establishment, including a high level of police calls for service. This raises a question, if an establishment is failing to meet the 50% alcohol mark and, say, is at 55% alcohol for the year, but is otherwise quiet in terms of police calls for service, should it be considered a problem for the city? Staff does not directly answers this question, but acknowledges that the city can do better in defining and regulating these situations.

Justification: The existence of only two definitions of licensed establishments within our ordinances has presented many challenges, both within and beyond the ALDO borders. Within the ALDO borders, the challenge is preventing the types of concepts

that alcohol-centric (i.e. taverns), while allowing the types that provide a utility to the downtown, but still sell alcohol (i.e. entertainment venues). The bottom line is that by grouping all establishments into two categories, restaurant or tavern, we miss the ability to simultaneously attract new, exciting types of businesses, and regulate the types that would have an adverse impact on the health, safety, and welfare of the community.

The concept is that applicants will essentially choose which definition their establishment will fit into by ordinance. Take the restaurant category as an example: An applicant would choose whether they fit into one of the specific concepts, and thus, are limited in their hours of operation, or if not, they would choose the "standard" restaurant concept, and so, be restricted by percentage of sales. Accordingly, a condition on every new restaurant alcohol license in the city would be "establishment will close by a certain time" or "establishment will derive no more than 50% of its gross annual revenue from alcohol". This way, the city is regulating restaurants by sales or by hours, with the caveat under State Statutes that the establishment must devote its "primary business" to existing as a restaurant in order to qualify within the category.

The definitions also get at a rising city-wide concern of density of Class A Establishments, or full-service liquor stores. The definitions suggest a distance requirement of one-half mile for all full-service liquor stores from one another, and suggest percentage of sales limitations of those other Class A concepts.

We would be remiss to acknowledge at this point that any major changes to our ordinances must be enforceable. Two other recommendations within this package aim to improve our enforcement; extra staff to assist in monitoring establishments, and improving and expediting ALRC enforcement of violations.

Implementation: Ordinance change required.

Recommendation: *Improve and simplify the liquor license point system. Amend Chapter 38 to make point system on a 10-point scale; establish "credit" for participating in responsible service trainings; and, track accumulated points in a visible, electronic system.*

Background: Currently, Chapter 38 of Madison General Ordinances outlines a point system to monitor liquor law violations by establishments with alcohol beverage licenses. The point system is currently used as a nonexclusive method of determining habitually troublesome license holders, for the purpose of recommending sanctions. By ordinance, if a licensee accumulates 100 or more points within a licensing year, the ALRC has the authority to call the licensee in front of the committee for suspension or revocation. In practice, after 100 accumulated points, the licensee is summons in front of the committee for a formal expression of concern in front of the ALRC. After 200 accumulated points within one licensing year, the prosecuting city attorney drafts a complaint for suspension or revocation.

Justification: The current system is difficult for licensees, committee members, and the public to understand and navigate. The point system itself can be an extremely effective tool to monitor potential problems and allow the ALRC the flexibility to intervene when necessary. By simplifying the point system, the public will also have a better understanding of the process, and be able to inform the license renewal process more easily. Often times, the public is not aware of when points are assessed against a liquor license; and thus, not aware of when an establishment is consistently causing issues. An online system that tracked the accumulated points would be of benefit to both the ALRC and the community.

The concept is similar to points on a drivers' license. Once a licensee reaches a certain threshold (our suggestion is 10), they would be required to appear before the ALRC Hearing Subcommittee. Following that appearance, the licensee would essentially be put on a probationary period where if certain violations occurred during that time period, they could face suspension or revocation. Also, there is not currently a method to reward licensees for attending the city's Tavern Safety Training or participating in the Responsible Retailing Forum. This would create point "credit" for licensees; a carrot built into our stick ordinance.

Implementation: Ordinance change required.

Recommendation: Create a “State Street Overlay District (SSOD)” to restrict certain types of alcohol beverage licenses. *The overlay district would define permitted, conditional, and prohibited use within the area (see map attached) based on the previously stated alcohol license definitions.*

Background: Overlay regulations provide restrictions or additional requirements for all development within a geographic area, irrespective of the basic zone standards. These regulations “overlay” basic zone standards, creating an additional layer of scrutiny and review for the outlined uses. We know the State Street corridor to be unique in several ways. One, in many ways, it is the heartbeat of the city with retail shops, restaurants and bars, and live entertainment. It also contains areas that continue to generate a high density of alcohol-related calls-for-service during the late-night hours. The issues that ALDO set out to solve still remain; however, they are concentrated in a smaller area. In a very basic way, the overlay district suggestion, aims to replace a blunt-force object where a scalpel is necessary.

This does not mean that areas immediately outside of the overlay district are not impacted by alcohol. What it does mean is that through staff’s analysis of the ALDO area, the proposed overlay district area is the only area where we can justify an outright prohibition on certain types of alcohol beverage licenses. We believe that through the entire package of recommendations, including a large increase in funding for the safety initiative, neighborhoods will not feel an adverse impact from these changes.

Justification: We believe it be in our best interest as a city to treat this area uniquely for several reasons. First, there is a concentration of alcohol-related calls-for-service in the 500 block of State Street and the 600 block of University Avenue that inevitably have a relationship to the high capacity bars and restaurants in the immediate area. State Street has continued to be one of the most revered streets in the country in large part because of the diversity of shops. This proposal acknowledges several key factors: the importance of retail on State Street, the concern of a high number of alcohol licensed establishments, and the lack of diversity of late-night entertainment venues. The recommendation as a whole seeks to address all of these factors. One, it maintains the prohibition on new taverns within this area. Two, it allows the possibility of new types of entertainment that may sell more than 50% alcohol annually. And, for those concepts, it creates an extra layer of review in front of the Plan Commission, so land use impact can be considered. The attached matrix recommends the types of concepts in three categories for the State Street area; permitted, conditional, and not allowed. Through this method, we hope we are both able to preserve retail, while also allowing the possibility of new, exciting types of entertainment in the heart of our entertainment district.

The other important aspect of using land use to regulate alcohol is, simply, the city has more outright authority to use our zoning power than our alcohol licensing power. More important, we believe this to be the blueprint for how neighborhoods will approach alcohol licensing into the future. This issue of defining types of establishments

and attracting positive businesses are not issues unique to the downtown. Many neighborhoods are reaching the point of saturation in terms of alcohol licenses. Using land use regulations, alongside of new definitions of alcohol licenses, will go a long way to giving all neighborhoods the tools to plan for types of business that will not adversely impact their environments.

Implementation: Requires ordinance change in both zoning code and Chap. 38.

Recommendation: **Expand the façade improvement grant program.** *Expand the façade improvement grant program to include interior build out of retail spaces. If and when appropriate, city should consider funding all façade grants with Tax Incremental Financing (TIF).*

Background: Downtown and neighborhood shopping districts benefit from a mix of eating and drinking establishments, along with retailers. Non-food and beverage retailers in neighborhoods and downtown face increased competition from shopping centers, malls, big box chains, and the internet. The older structures found within downtown Madison and our traditional neighborhood shopping districts often require significant exterior and interior improvements to be suitable for a retail use. Madison currently makes façade improvement grants out of the Capital Revolving Loan Fund to assist in exterior improvements. However, interior improvements are generally not currently eligible.

Justification: Although Madison’s downtown and neighborhood commercial districts currently maintain a healthy mix of retail, along with eating and drinking establishments, there is legitimate concern that the balance is leaning in favor of eating and drinking establishments. Eating and drinking establishments can often pay higher rents, and cover higher build-out costs, than retailers. The cost of building-out these retail spaces can be prohibitive for a potential entrepreneur. A desire to maintain this balance was one justification for the downtown Alcohol License Density Ordinance. By expanding the façade grant program to include interior build-outs for eligible businesses, Madison will strengthen the ability of non-food and beverage retailers to compete for space and assist landlords in attracting retail tenants. Because the ability to make façade grants is limited by the size and limited revenues of the Capital Revolving Loan Fund, substituting the TIF funds can facilitate this program expansion and preserve funds for other targeted façade areas outside of TIDs.

Implementation: Modify the façade grant program in the 2014 budget and permit TIF funding where a TID exists and incorporates/amends retail grants into its project plan.

Recommendation: Increase funding of the City of Madison Safety Initiative. Increase the funding in the Madison Police Department for the City of Madison Safety Initiative.

Background: The City of Madison Safety Initiative, originally the Downtown Safety Initiative (DSI), was launched in 2007; \$100,000 was appropriated to fund the Central District (MPD) for overtime costs, purchasing cameras, and other safety-related items.

DSI had three stated goals:

1. Work to reduce violent street level crime, especially from approximately 11 p.m. to 3 a.m. for the Central District.
2. Enhance district-wide community policing efforts and engage the community in crime reduction efforts and reduce levels of fear from crime.
3. Improve voluntary compliance with alcohol-related ordinances in licensed and unlicensed establishments.

In 2010, DSI funding was reduced to \$50,000. The funding for the program was restored to \$100,000 in July 2012. Most recently, in 2013, DSI was reformed into a city-wide safety initiative; \$50,000 available for Central, \$50,000 available city-wide.

Justification: Since its inception, DSI has arguably been the most important policing tool in place to combat violent crime in the downtown area. By allowing police the budget flexibility to prepare for especially busy weekends, MPD has done an outstanding job of staying a step ahead of violent crime. In recent years, we have seen an emerging trend of aggressive, violent behavior concentrated on nights where downtown has been traditionally less busy, especially during the summer. The additional strain on police resources led to the decision to restore funding for this program to the original amount. Part of this decision included a new emphasis on neighborhoods city-wide to proactively monitor potential origins of conflict that end up downtown. It is well documented that the high visibility of police has a great impact on deterring violent crime. This proposal would give MPD the budget flexibility to respond in all necessary scenarios without the constraint of trying to make the funding last through the year. Funding should also focus on lighting and security camera improvements.

Implementation: Budget allocation may be required.

Recommendation: Improve quality assurance, responsiveness, and enforcement agility for alcohol beverage licensing. *Devote a staff position to liquor licensing and enforcement monitoring, including, but not limited to, license application assistance and intake, point system management, and general licensing audits.*

Background: The city of Madison currently has one-half of one staff person devoted to alcohol policy; a rotating clerk devoted to alcohol licensing and auditing; and one-half of one prosecuting attorney devoted to alcohol license enforcement. We are stretched remarkably thin in terms of managing licensed establishments and rely on an informal system to ensure police reports that deserve the attention of the ALRC receive it.

Justification: While the major changes in policy and ordinance can be managed in the short-term, we have serious doubts that the overhaul to the licensing system, both in terms of enforcement and application, would be of the benefit to the community should it be without additional staff. Our vision is to have someone work directly with the clerk's office to assist in alcohol beverage license intake, support the public with questions related to the alcohol licensing process, and manage the city webpage for alcohol licensing. This staff person would also be responsible for managing a file that collected all police reports from alcohol licensed establishments and making sure the prosecuting city attorney and ALRC has the necessary information to assess points against the alcohol license. The staffer would keep a record of all accumulated points and notify the licensee, the alderperson, and the ALRC when they had reached 10 points. The staffer would also be responsible for managing the alcohol license renewal process, including auditing the applications to look for inconsistencies and errors. The staff could also be authorized to conduct audits of establishments that must meet the definition of a restaurant, if requested by the ALRC.

While we will not go as far to say the changes could not be carried out by current staff, the quality of the product and the effectiveness of future alcohol license enforcement would benefit greatly from an extra staff person.

Implementation: Budget allocation may be required.

Recommendation: Create a city-funded wayfinding program.

Background: There has been much attention on the issue of signage in the downtown area over the past year. Many businesses utilize sandwich boards and other signs to attract visitors to their business. There is a great interest of the city to both have an aesthetically enjoyable downtown and easily accessible retail. The Madison Business Improvement District currently produces a downtown map and stations two downtown ambassador booths to help visitors navigate the area. These initiatives catch many people, but there are still gaps in ensuring visitors are aware of the many different types of shops and restaurant on and around State Street.

Justification: Many cities have developed uniform signage called wayfinding. The basic premise is to have a city-developed program that would place signs on every block or half-block directing people to various businesses in the immediate area. This would go a long way to support some of the shops and restaurants that are just off of State Street, as well as help strike a balance between aesthetics and advertising.

Implementation: Amendment to Operating budget required.

Recommendation: Increase funding for mall maintenance.

Background: Environmental design is important to the aesthetics and perception of our downtown. The city has outstanding mall maintenance staff that manages various plantings, clean-up, and trash pick-up among other duties.

Justification: Increasing funding for mall maintenance would help support more hours of maintenance staff on State Street and continue to support our city's commitment to environmental design.

Implementation: Amendment to Operating budget required.

Policies and Programs

Recommendation: **Improve enforcement process and reporting of violations to ALRC.** *Hold regularly scheduled meetings of the ALRC Hearing Subcommittee; institute monthly reporting to the ALRC of all point violations; conduct a review of points accumulated at renewal time annually; detailed history of applicants if previously held liquor license.*

Background: One of the most frequent criticisms of the licensing process, from both the public and the ALRC, is that once a license is granted, it is very difficult to revoke it if there are problems. Over the years, the ALRC has been very clear in asking for more ability to single out the “bad actors” and be able to move swiftly to sanctions when necessary. In September 2011, the Common Council adopted new procedures for ALRC hearings. In the new procedures, the ALRC is granted the authority to appoint a hearing subcommittee to try all liquor license prosecutions. This was done to allow the ALRC more flexibility in scheduling the hearings and to allow the hearings to proceed in a more orderly fashion. Currently, the ALRC receives monthly reports of calls for service at licensed establishments. Also, at renewal time, unless there is a formal complaint for non-renewal from the city attorney’s office, the process for a separated alcohol beverage license renewal hearing is mostly informal.

Justification: This would allow the ALRC to play a greater role in the progressive discipline model by interacting with licensees earlier in the process. The calls for service reports that the ALRC receives are not descriptive enough to indicate major issues at establishments, so we also suggest instituting monthly reporting to the ALRC of any points accumulated, as well as a report generated at renewal time every year to determine if any licensees should be separated. By having regularly scheduled meetings of the hearing subcommittee, there would be more consistent accountability maintained and quicker processing of violations. This recommendation also gets at the issue of sometimes not having enough information about an applicant when being reviewed by the ALRC. The alcohol beverage license application asks if the applicant has held a liquor license previously. If so, the ALRC should receive a detailed history, either from the city attorney’s office or MPD, to determine past positive or negative management.

Implementation: Policy change for ALRC, and will require additional staff time to monitor points accumulated and history reporting.

Recommendation: **Change current licensing fees and policy.** *Increase the amount of the \$10,000 Class B Combination Reserve license fee collected by the city; implement criteria for applicants to be eligible for a grandfathered license; mandate full business plan (not including proprietary information) be submitted to ALRC and included in packet available to public.*

Background: There are two different types of Class B Combination (full, on-premises liquor and beer) licenses, grandfathered and reserve. The grandfathered licenses carry a standard license fee of \$600 at time of issuance. The reserve licenses are those licenses that we have received under our quota, based on an increase in population over time. Reserve licenses require a \$10,000 “deposit” at the time of issuance, but the city returns the entire amount within four weeks time as an “economic development grant”. The standard license fee still applies for the reserve licenses. Class B Combination licenses are the only licenses that are capped under State Statutes; we are also required to charge at least \$10,000 up front for the reserve licenses. Over the past seven years, we have averaged 49 active reserve Class B Combination licenses per year. We currently issue grandfathered licenses on a first come, first serve basis prior to issuing reserve licenses.

Justification: Opening a new business requires a large investment and a great deal of personal responsibility. The legal sale of alcohol is a privilege granted by the city that also requires a large investment and a high degree of personal responsibility. Our current license fee structure does not reflect those values. Part of this recommendation is to issue our reserve licenses first, instead of last. This way, more often the investment of the liquor license is made a priority within the business planning process, instead of the afterthought. The amount of money spent on the enforcement and effects of alcohol is great. This change in license fee would only be a minuscule percentage of that cost, but at the very least, it would reflect our expectations of responsibility and planning that should go into alcohol service. We also recommend that grandfathered licenses could be issued if there are criteria developed to determine the financial need of a small business. The specific criteria and fee structure should be determined by the ALRC, with the assistance of staff. A full business plan is currently required; however, we felt it was necessary to emphasize the importance of a detailed business plan to be reviewed by the ALRC in its calculus of approving alcohol license applications.

Implementation: Ordinance and policy change required.

Recommendation: **Entertainment taskforce creation.** *Support the creation of a city taskforce devoted to improving our music scene and diversity of entertainment venues.*

Background: For the past several years, there have been various bodies discussing the lack of diversity of entertainment venues in the city. Specifically, the ALRC and the Madison Arts Commission both have focused on the issue of strengthening our local hip-hop scene.

Justification: Many stakeholders have approached the city about getting involved in strengthening our local music scene. One of the genres that has especially struggled in the past few years is hip-hop. This proposal would merge the various ongoing efforts and create a taskforce that would be devoted to the issue of diversifying our entertainment venues, de-stigmatizing hip-hop, and strengthening our overall music scene.

Implementation: Forming resolution suggested.

Recommendation: **Simplify entertainment licensing.** *Bring 21 and 18+ Entertainment licenses under one umbrella; remove 49 capacity threshold for requiring entertainment license.*

Background: The city has two types of entertainment licenses; the 21+ Entertainment License and the 18+ Entertainment License. The licenses were created to allow for taverns that are traditionally 21+ establishments the ability to have 18+ nights during live entertainment. Originally, an entertainment license was only required if the establishment had a capacity over 99. That was changed a few years ago to 49. The system has been mostly successful, but some confusion over when an entertainment license has occurred. Since restaurants are allowed to have all ages present, but are also required to have an entertainment license if they provide live music, confusion persists over when an establishment is expected to be all ages, 18+, or 21+.

Justification: The proposal is to create one license for entertainment and give the discretion to the establishment if it wishes to have 18+ events. The proposal also removes the exemption for establishments under 49 capacity, requiring all establishments that provide live, amplified entertainment to obtain a license. This is due to several issues we have had with noise at establishments that are under the capacity threshold, so do not receive scrutiny of the entertainment component. This also reflects concerns from the student population over the lack of 18+ friendly entertainment options in the city.

Implementation: Ordinance change required.

Recommendation: *City-sponsored late night retail event during summer nights.*

Background: It is always beneficial to a city center to have people using its streets for a variety of different reasons at all times during the day and night. One of the often complaints about State Street after dark is the lack of options for people outside of eating and drinking.

Justification: The idea behind this proposal is to have collaboration between BID, DMI, Overture Center, and the City of Madison to develop a program around late-night retail. Possibly using such attractions as street performers, or surrounding other activities such as restaurant week, the idea is to highlight retail and bring people on the streets later into the evening.

Implementation: Budget allocation may be required.

Other Recommendations

Recommendation: *Create new incentives for entertainment venues.*

- This item is possibly something that the taskforce on entertainment take up and make specific recommendations on types of incentives.
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Recommendation: *Proactively encourage the location of a downtown movie theater.*

- One of the major missing pieces within our entertainment district is a first-run movie theater. This recommendation encourages city staff to proactively recruit a first-run movie theater, possibly through some type of incentive.
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Recommendation: *Continue to promote the city's music scene.*

- Events like Make Music Madison, Live on King Street, and Concerts on the Square are all examples of how the city supports our music scene. We recommend continuing these efforts by finding new ways to promote our diverse music sense.
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Recommendation: *Allow "pop-up" retail in vacant storefronts.*

- We are lucky to have one of lowest vacancy rates for our downtown center compared to other cities our size. This does not mean that the occasional vacancy doesn't happen. This encourages landlords to look at short-term, temporary tenants in vacant spaces, such as a Halloween costume shop, or art gallery, and directs the city to allow such uses.
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Recommendation: *Update web-based downtown business guide.*

- The city used to keep an up-to-date business guide on its website. With the assistance of BID, the city should maintain an updated business guide on its website.
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Recommendation: *Continue to maintain current parking and construct new parking when appropriate.*

Recommendation: *Revisit special event parking for short-term parking ability.*

Recommendation: *Consider new approaches for downtown parking for employees.*

Recommendation: *Ensure that bonds used to fund new parking structures do not include provisions prohibiting private parking agreements.*

- These four recommendations are geared towards improving parking in the downtown area, when appropriate. Staff acknowledges that short-term parking is necessary for attracting more errand retail shoppers to the State Street area. Staff also wants to keep the door open for private parking agreements during times ramps are underutilized.
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Recommendation: *Continue to improve development review and permitting downtown.*

Recommendation: *Increase permanent downtown residents by increasing residential units.*

Recommendation: *Support a proactive downtown business retention effort.*

- The above three recommendations follow recommendations outlined in the Downtown Plan. Staff made it clear it wanted to highlight efforts that have been discussed at length in developing the Downtown Plan.
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