

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

October 15, 2013
ALRC, PSRC, BID _____

Repealing Sections 38.06(11) and (12), recreating as Section 38.06(11), of the Madison General Ordinance to eliminate the 21+ entertainment license and move its requirements into the 18+ Centers for the Visual and Performing Arts License and creating Section 38.04(6) to provide requirements for identifying patrons over the age of twenty-one (21) at times when patrons under the age of twenty-one (21) are allowed on a licensed premise.

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Date: October 9, 2013

SPONSOR: Alder Bidar-Sielaff

DRAFTER'S ANALYSIS: This ordinance amendment is in response to the Alcohol License Density Ordinance ("ALDO") Staff Team recommendations. It creates two forms of live entertainment licenses: General Entertainment and Visual and Performing Arts. The General Entertainment License must be obtained by any licensee offering live entertainment. The Visual and Performing Arts License must be obtained by any licensee offering live entertainment for patrons ages eighteen (18) and up. The Visual and Performing Arts License has additional restrictions due to the presence of eighteen (18) and up patrons on the licensed premise.

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

- 1. Subsection (11) entitled "21 + Entertainment License" of Section 38.06 entitled "General Provisions and Hours" of the Madison General Ordinances is hereby repealed.
- 2. Subsection (12) entitled "18+ Centers For Visual And Performing Arts" of Section 38.06 entitled "General Provisions and Hours" of the Madison General Ordinances is hereby repealed and recreated to read as follows:

"(11) Entertainment Licenses.

- (a) Findings. The Wisconsin state statutes create the designation "Centers for the Visual and Performing Arts" and exempts them from certain restrictions relating to the presence of underage persons on licensed "Class B"/Class "B" alcohol beverage premises. The statutes do not define "Centers for the Visual and Performing Arts." The Common Council recognizes the importance of preventing the underage consumption of alcohol by underage persons. The Common Council also recognizes that due to the statutory restrictions regarding underage persons not being allowed on a licensed premise, the City of Madison has few venues available to underage patrons in which they can enjoy live entertainment. In the interest of providing safe, supervised opportunities for underage patrons to enjoy live entertainment events, the Common Council finds it necessary to create two categories of entertainment licenses: a General Entertainment License and a Center for the Visual and

Approved as to form:

Performing Arts License. The intent is that a Visual and Performing Arts License will be given only after careful consideration, review and deliberation and only upon a licensed establishment meeting all the criteria set forth in the ordinance.

(b) Definitions.

Live Entertainment. A licensed establishment shall be deemed to offer or allow live entertainment if any of the following activities are offered, permitted or allowed:

1. Live music performances;
2. Disc jockeys;
3. The establishment has a designated dance floor; or
4. Live dancers.

Designated Dance Floor. An identified area of at least two hundred (200) square feet that is devoted to dancing at times when entertainment is the principal business of the establishment. No dancing shall be permitted on top of a bar at which patrons are directly served.

(c) General Entertainment License. No holder of a "Class B" and/or Class "B" intoxicating liquor or fermented malt beverage license shall offer or allow live entertainment without first obtaining a General Entertainment License from the City Clerk.

(d) Center for the Visual and Performing Arts License (Visual and Performing Arts License). No holder of a "Class B" and/or Class "B" intoxicating liquor or fermented malt beverage license shall offer live entertainment and allow patrons eighteen (18) and up onto the licensed premise unless they have obtained a Visual and Performing Arts License. Applicants are eligible for a Visual and Performing Arts License only if their principal business is live entertainment with the service of alcoholic beverages incidental to the live entertainment and their premise occupancy capacity is at least two hundred (200).

(e) Exceptions. A license under this section shall not be required for events as follows:

1. Events held at and sponsored by a public or private school.
2. Events sponsored by the City of Madison.
3. Events held at and sponsored by a church or other religious institution. This does not include events held at facilities used primarily for another purpose and at which religious activities are incidental to the primary use.
4. Where music is provided only as background for dining or other featured modes of entertainment.
5. Private parties or receptions limited to invited guests for which there is no fee or charge for entry, participation, food or beverages.
6. Non-amplified or acoustic music performed by a single artist.
7. Performances where an uncompensated patron sings along with a machine that plays pre-recorded music, commonly known as karaoke.
8. Performance venues holding theater licenses pursuant to Section 9.04, MGO, shall not be required to obtain a Visual and Performing Arts License.

(f) Security Plan.

1. All entertainment license applicants shall submit a security plan at the time of application. The plan shall indicate what type of live entertainment the establishment will offer. The plan shall indicate the number of security personnel the applicant will employ and/or hire through a private security company and how they will be utilized.
2. The security plan shall set forth how the applicant will handle issues regarding: control and clearance of any parking lot during hours of operation and at closing time; how any entrance line will be managed and controlled; unruly patrons; intoxicated patrons; patrons presenting false IDs; control and supervision of patrons under the age of twenty-one (21); circumstances under which police should be called and how physical disturbances, including fights, will be handled and how applicant will maintain the orderly appearance and operation of the premises with respect to litter and noise.
3. The security plan shall identify by name and date of birth, individuals who are employed by the establishment in a management capacity.
4. The security plan shall detail the clothing that security and door personnel will wear that readily identifies them as security/door personnel.
5. The security plan for a Visual and Performing Arts License applicant shall detail how the applicant will comply with the time requirement for patrons under the age of

twenty one (21) and how those patrons will be prevented from roaming the licensed premise during live entertainment events.

- (g) Restrictions Applicable Only to Center for Visual and Performing Arts Licenses:
1. Patrons must be at least eighteen (18) years of age to enter and remain on the premise.
 2. Patrons under the age of twenty-one (21) may be allowed on the premise only for the purpose of live entertainment. Such shows must be designated as eighteen (18) and up shows and the entertainment must begin and end at a specified time. Patrons under the age of twenty-one (21) shall not be on the premise more than thirty (30) minutes before the scheduled live entertainment and must be off the premise within thirty (30) minutes of the live entertainment concluding.
 3. Licensee must provide written notification to the Captain of the police district in which their establishment is located at least five (5) days prior to a live entertainment performance. The notification shall include a detailed description of the performance including start and end times.
 4. Patrons under the age of twenty-one (21) may only be on the portion of the licensed premise where the live entertainment is occurring with the exception of incidental use of the restroom facilities and procuring a non-alcoholic beverage from the barroom. Under no circumstances will underage patrons be allowed to linger in a barroom that is separate from the live entertainment portion of the premise.
 5. The security plan must set forth how the applicant will comply with the time restrictions for patrons under the age of twenty-one (21) and how those patrons will be prevented from roaming the licensed premise during the live entertainment.
 6. Licensee may not sell more than one alcoholic beverage to an eligible patron in a single transaction during eighteen (18) and up live entertainment events and shall prohibit a patron from carrying more than one alcoholic beverage from a bar or drink dispensing location during eighteen (18) and up live entertainment events.
 7. Licensee may not have more than one eighteen (18) and up live entertainment event per week.
 8. Licensee must comply with the identification requirements in Sec. 38.04(6), MGO, relating to conspicuously identifying patrons who are twenty-one (21) years of age and older.
- (h) Control of Premises. At no time shall licensee relinquish control of the licensed premises or the service of alcohol to any other person or entity. The licensee must remain in control of the premises and must continue to be in control of the alcohol and service thereof through the licensee's own employees, including but not limited to checking identification of patrons, providing security within the licensed premises and at the door, collecting money or tickets from patrons for food, drinks, or for charges for entry to the establishment or any area within the establishment, during all events, including private parties. Notwithstanding the limitations of this subdivision, a licensee may contract with an agency that is licensed by the State of Wisconsin as a supplier of uniformed private security personnel to engage in private security activities.
- (i) Change In Operation. If, after the license has been granted or issued, the licensee wishes to make any substantial deviations from its original plan of operation, the licensee shall file a written request with the City Clerk which states the nature of the change. No change shall take place until the request has been considered by the ALRC and approved by the Common Council.
- (j) Restaurants. An establishment holding a Class "B" and/or "Class B" license and a restaurant permit and who meets the definition of a "restaurant" in Sec. 38.02, MGO, shall, for times when its primary business is entertainment, submit a plan to the Madison Police Department and the Alcohol License Review Committee that details the establishment's plan for identifying patrons under the age of twenty-one (21) and a specific plan as to how they will enforce drinking-age requirements. When the establishment's principal business, as that term is defined in Wis. Stat. § 125.02(15m), is entertainment, no patrons under the age of eighteen (18) shall be allowed on the licensed premises unless they are accompanied by a parent, legal guardian, or spouse who is of legal drinking age.
- (k) Temporary General Entertainment License.
1. A licensed establishment may obtain a General Entertainment License on an event basis. Such license shall authorize live entertainment during a particular twenty-four-

(24) hour period. No such license shall be required for New Year's Eve and live entertainment will be permitted in all licensed establishments on New Year's Eve, however, no underage persons may be upon any licensed premise on such dates. No more than five (5) Temporary Entertainment Licenses shall be issued for the same premises in any license year.

2. The issuance and review provisions contained in Sec. 38.05(9)(e) shall govern the issuance and review of this event entertainment license. Temporary licenses shall be issued by the City Clerk whenever the applicant has not been convicted of any violation of Chapter 38 within one (1) year of the date of the application. The Clerk shall not issue a license to any applicant that has been convicted of any violation of Chapter 38 within one (1) year of the date of the application, but instead, shall refer such application to the Alcohol License Review Committee.

(l) Application.

1. Applications for General Entertainment and Visual and Performing Arts licenses shall be filed with the City Clerk. The application shall be signed by the applicant, if an individual, or by a duly authorized agent or officer of a corporation or limited liability corporation, and sworn to by the applicant. The application shall require:
 - a. The name and permanent address of the applicant.
 - b. The name and address of the premise for which the license is to be granted, including the aldermanic district in which it is situated.
 - c. If the applicant is a corporation, the name of the corporation shall be set forth exactly as it is set forth in its articles of incorporation, together with the names and address of each of its officers, directors and designated managers, if any.
 - d. If the applicant is a partnership, the application shall set forth the name and resident address of each of the partners, including limited partners, and each partner shall verify the application. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partners.
 - e. All convictions, including ordinance violations with a brief statement of the nature of the convictions and the jurisdiction in which the conviction occurred.
 - f. Applicant's date of birth.
 - g. A completed security plan pursuant to Sec. 38.06(11)(f).
 - h. If the ALRC denies an entertainment license application, the applicant is prohibited from reapplying for another such license for a period of twelve (12) months from the date the application is denied.
2. Applications for permanent General Entertainment and Visual and Performing Arts licenses shall be referred to the ALRC for a public hearing in accordance with Section 38.05(3)(c), MGO. The recommendation of the committee shall be based upon information presented at the public hearing and contained in the application and accompanying documents. The ALRC shall also consider the following factors in making its recommendation:
 - a. Whether the applicant meets the criteria set forth in this section.
 - b. The appropriateness of the location and premises location and whether the location will create undesirable neighborhood problems.
 - c. Applicants record in operating similarly licensed premises.
 - d. Whether the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the licensed activity.
 - e. Any other factors which reasonably relate to the public health, safety and welfare.

- (m) Fee. The annual fee for a General Entertainment License shall be one hundred fifty dollars (\$150). The fee for each Temporary General Entertainment License shall be one hundred fifty dollars (\$150). The fee for a Visual and Performing Arts License shall be three hundred dollars (\$300). Late filing shall result in a fee of fifteen percent (15%) of the license fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to obtain the license.
- (n) Renewal. Entertainment licenses shall be renewed annually following the same procedure as liquor license renewals in Sec. 38.05(3)(f), MGO. Late filing shall result in a fee of fifteen

percent (15%) of the license fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to obtain the license.

- (o) Revocation/Suspension or Non-renewal. A complaint for revocation, suspension or non-renewal of a Visual and Performing Arts License may be made by an Alderperson; the Police Chief; the City Attorney; and/or any resident of the City of Madison. Complaints shall be made in writing and filed with the City Clerk who shall then refer the complaint to the ALRC for a hearing. The ALRC may recommend to the Common Council that a General Entertainment License or a Visual and Performing Arts License be suspended for cause after notice to the licensee and a hearing. If a General Entertainment License or a Visual and Performing Arts License is revoked, no other entertainment license shall be issued to the same person for the same premises for at least twelve (12) months. General Entertainment Licenses and Visual and Performing Arts Licenses may be suspended or revoked for any of the following causes:

1. Violation of any conditions or restrictions placed on the license by the Common Council;
2. Repeated violations of any provisions of Chapter 38 of the Madison General Ordinances;
3. The licensed premises is operated in such a manner that it has a substantial adverse effect upon the health, safety and welfare of the immediate neighborhood;
4. Any other reasonable cause which shall be in the best interests and good order of the City.

The licensee shall be notified in writing of the charges against her or him at least ten (10) days prior to the hearing. At the hearing, the complainant and the licensee will have an opportunity to produce witnesses, cross-examine witnesses and be represented by counsel. The proceedings shall be tape-recorded. Within ten (10) days of the hearing, the ALRC shall issue a written decision and recommendation stating the reasons therefor and forward such decision to the Common Council. If the Common Council rejects the recommendation of the ALRC, the matter shall be dismissed without costs to either party. If ordered, suspension shall be for a period not to exceed six (6) months; revocation shall be for a period of one (1) year.

- (p) Judicial Review. The decision of the Common Council shall be a final determination and shall be subject to review in court as may be provided by law. Any person aggrieved by the decision may seek review thereof within thirty (30) days after the date of the final determination.
- (q) Penalty. In addition to suspension, revocation or non-renewal of the General Entertainment License or Visual and Performing Arts License, licensee may be subject to a forfeiture of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) plus costs for violation of any provision of this section. Prosecution under this section shall not bar nor prohibit prosecution for these same violations under any other provision of law.”

3. Subsection (6) entitled “Identification of Patrons 21 Years of Age and Older” of Section 38.04 entitled “Underage and Intoxicated Persons, Presence on Licensed Premises; Possession; Misuse of Identification; Penalties” of the Madison General Ordinances is created to read as follows:

- “(6) Identification of Patrons 21 Years Of Age And Older. Any licensed establishment that meets the exceptions contained in Wis. Stat. § 125 and Chapter 38, MGO, for allowing underage patrons on the licensed premise, must have a means of visually and conspicuously identifying patrons who are twenty-one (21) years of age and older. It shall be the sole responsibility of the license holder to determine whether any of the exceptions contained in Wis. Stat. § 125, and Chapter 38, MGO, apply to their establishment. An establishment whose principal business is that of a tavern may not have underage patrons on the premise at any time unless an exception contained in Wis. Stat. § 125 and/or Chapter 38 applies to their situation. Performance venues holding theater licenses pursuant to Section 9.04, MGO are exempt from this subsection”

Editor’s Note:

Sections 38.06(11) & (12) currently read as follows:
Please see “Current Text” in Attachments.