

**Title**

SUBSTITUTE - Creating Section 38.05(9)(o) of the Madison General Ordinances to establish an Alcohol Beverage License Density Plan for Police Sectors 403, 404, 405 and 406.

**Body**

DRAFTER'S ANALYSIS: The purpose of this ordinance is to establish a density plan which will maintain or gradually reduce the number of certain types of alcohol beverage licenses in the named police sectors and maintain or gradually reduce the overall patron capacity of certain types of alcohol beverage licenses in those sectors.

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

Subdivision (o) entitled "Alcohol License Density" of Subsection (9) entitled "Limitation Upon Issuance of Licenses" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is created to read as follows:

"(o) Alcohol Beverage License Density Plan.

1. Purpose. Police Sectors 403, 404, 405 and 406 currently contain twenty-seven percent (27%) of all alcohol beverage licenses issued by the City of Madison ("City") and thirty-four percent (34%) of all 'Class B' Combination alcohol beverage licenses issued by the City. ~~Not coincidentally, t~~hese Sectors experience 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 Sectors identified in this Alcohol License Density Plan. This maintenance and 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 Police Sectors 403, 404, 405 and 406 in the City of Madison as defined on 5-1-07, plus the area bounded by Lake St., Park St. Dayton St. and Lake Mendota including the 700 and 800 blocks of University Ave.. The Common Council, upon recommendation of the ALRC, may add new Police Sectors 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. 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 Whether the business meets the definition of a restaurant as contained in Sec. 38.02 of these Ordinances.~~
      - 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~~ shall 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), M.G.O.
- 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, ~~nor is it prohibited from selling more than 50% alcohol at a given point in time.~~

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 the license has been deemed "cancelled" in accordance with Sec. 38.10(1)(f) of these Ordinances.~~
  - c. ~~The establishment is open to the public only intermittently in an attempt to circumvent the provisions of this subsection; or~~
  - d. ~~The establishment closes its accounts with its distributors; or~~
  - e. ~~The alcohol beverage license holder fails to submit a renewal application to the City Clerk before the last possible submittal date.~~
- ii. 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 is considered an exceptional circumstance if it presents an offering of entertainment, food, and drink or any combination thereof that adds a new dimension to the area serviced or the neighborhood. Exceptional circumstances may include but not be limited to proposals that meet changing market demands regionally or that offer faire designed to appeal to the neighborhood. Exceptional circumstances may also include economic hardship as determined by the ALRC and Common Council.~~
- ii. ~~An establishment is considered an exceptional circumstance if it is not a tavern, restaurant, liquor store, convenience store, full-service grocery store, or hotel.~~
- iii. ~~An establishment providing live music in a tavern environment is not considered an exceptional circumstance.~~
- iii. ~~Applications relying on classification as an exceptional circumstance must provide evidence therein that no more than twenty-five (25) percent~~

~~of the establishment's annual gross revenues will come from the sale of alcohol.~~

- ~~ivj.~~ 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), M.G.O.
- ~~vii.~~ Decisions regarding an establishment's status as an exceptional circumstance will be made by the Common Council upon a recommendation by the ALRC.

4. Restrictions.

- a. 'Class A' Alcohol Beverage Licenses. New applications for 'Class A' alcohol beverage licenses to be located in the Density Plan Area ~~will be accepted by the City Clerk and presented to the ALRC and the Common Council may be granted~~ only in 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, M.G.O. (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 sixty (60) days two years prior to the filing date of the new alcohol beverage license application. If the proposed establishment is intended to replace a former licensed establishment where the license is held by a holder who leased the property, the two year grace period shall not commence prior to the date the property owner has regained full possession and control of the property.
- b. Class 'B' Beer, Class 'C' Wine, or 'Class B' Combination Alcohol Beverage Licenses. New applications for Class 'B' Beer, Class 'C' Wine, and/or 'Class B' Combination alcohol beverage licenses to be located in the Density Plan Area ~~will be accepted by the City Clerk and presented to the ALRC and the Common Council may be granted~~ only in 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, M.G.O. (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 premises; or
  - vi. The proposed establishment qualifies as an exceptional circumstance; 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 sixty (60) days two years prior to the filing date of the new alcohol beverage license application. If the proposed establishment is intended to replace a former licensed establishment where the license is held by a holder who leased the property, the two year grace period shall not commence prior to the date

the property owner has regained full possession and control of the property.

5. Capacity.
  - a. Any new licenses granted pursuant to the sale of an existing and operational business or under the sixty-(60)-day-two year window described in sections 4(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.
  - b. Requests for increased capacity for existing alcohol beverage licenses within the Density Plan Area ~~will be accepted by the City Clerk and presented to the ALRC and the Common Council may be granted~~ only if the establishment is a hotel or a bona fide restaurant, ~~or~~ qualifies as an exceptional circumstance, or has a good track record and demonstrated experience in running a responsible establishment.
  
6. 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), M.G.O., a new alcohol beverage license ~~application for that location will be accepted by the City Clerk and presented to the ALRC and the Common Council may be granted~~ only if the proposed established is a bona fide restaurant, qualifies as an exceptional circumstance, or falls within the sixty-(60)-day-two year window described in sections 4(a) and (b) above.
  
7. Transfer Of Existing Alcohol Beverage Licenses.
  - a. An application to transfer an existing alcohol beverage license from outside the Density Plan Area to a location within the Density Plan Area ~~will be accepted by the City Clerk and presented to the ALRC and the Common Council may be granted~~ only if the proposed establishment is a bona fide restaurant or qualifies as an exceptional circumstance.
  - b. An application to transfer an existing alcohol beverage license from within the Density Plan Area to another location within the Density Plan Area ~~will be accepted by the City Clerk and presented to the ALRC and the Common Council may be granted upon a finding that said transfer is not contrary to the health, safety and welfare of the community.~~
  
8. Pending Prosecutions. This subsection shall not interfere with Sec. 38.06(1), M.G.O. 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.
  
9. Renewals. This subsection shall not prohibit the renewal of any alcohol beverage license existing within the Density Plan Area.
  
10. Annual Review. On the first anniversary of the adoption of this ordinance and each annual anniversary thereafter, the ALRC shall provide a report to the Common Council and all committees to which this ordinance was originally referred regarding the impact of this ordinance.
  
110. Sunset. This subsection shall expire ~~seven-(7)-two~~ years from the date of enactment unless extended by the Common Council prior to the expiration date."

#### **Fiscal Note**

It is not anticipated that enactment of the Alcohol License Density Plan will significantly affect overall General Fund revenues associated with alcohol licenses.