

Date: February 16, 2011

To: Alcohol License Review Committee, Downtown Coordinating Committee, Public Safety Review Committee, Central Business Improvement District (BID) Board, and Common Council.

From: Mark Woulf, Alcohol Policy Coordinator

Re: Report on the Alcohol License Density Ordinance (ALDO)

This report is intended to provide a context for the proposed changes to the Alcohol License Density Ordinance (ALDO). Over the past several months, an Alcohol License Review Subcommittee has met and discussed the ordinance in depth. This subcommittee has produced a draft of proposed changes to ALDO based on these discussions. This report briefly outlines the purpose of the ordinance, providing a background for the original and continued rationale for ALDO, summarizes the discussions that took place during the subcommittee meetings, and the issues surrounding the changes. The items are numbered according to the corresponding number provided in the draft of ALDO.

1. Purpose.

The Alcohol Beverage License Density Ordinance (ALDO) seeks to decrease the incidences of alcohol-related crime and disorder through two mechanisms:

a) Maintain or gradually reduce the number and capacity of certain types of alcohol beverage licenses.

- Research has demonstrated a link between alcohol license density and violent crime [1-6]. This research was the basis for the original support for an alcohol license density plan and remains as the overarching philosophy behind ALDO to reduce the number of establishments that are centered on alcohol sales (i.e. taverns). In its essence, ALDO does not allow a new tavern to locate within the density area (exceptions explained below). Since October 5, 2007, when ALDO was originally passed, there has been a decrease in taverns and an increase in restaurants.

b) Providing opportunities for businesses that either sell alcohol incidental to their principal business, or do not sell alcohol.

- ALDO currently allows new alcohol beverage licenses within the density plan area that are classified either as a "bona fide restaurant" or an "exceptional circumstance". This is intended to encourage business within the Central Commercial District of Madison, while simultaneously reducing the high-density

of alcohol-focused business. Research suggests certain types of alcohol establishments create a higher risk environment for alcohol-related harm [7-9]. Therefore, by allowing for establishments that sell alcohol incidental to the main purpose of business, there can be a reduction of higher-risk, alcohol-focused outlets, and growth of establishments with diversified offerings.

4. Definitions.

a) Bona Fide Restaurant:

- A bona fide restaurant is defined as an establishment whose principal business is food.
- It is required under ALDO that any establishment representing itself as a restaurant maintains that status (generating no more than 50% annual gross revenues from alcohol sales).

➤ Restaurants are exempt under ALDO

c) Exceptional Circumstance:

- The main purpose of defining “exceptional circumstances” is to account for potential applications that are not liquor stores or taverns, but cannot be classified as a restaurant, and sell alcohol incidental to their principal business.
- The current ordinance allows for exceptional circumstances for establishments that generate up to, but no more than 25% of their gross annual revenues from alcohol sales.

➤ Exceptional Circumstances are exempt under ALDO

- *Background:* Much of the discussion over the past year within the ALRC Subcommittee on ALDO focused on finding a way to alleviate the unintended restraint on downtown business in a tough economy, while not weakening the scope and intent of ALDO. Many possible solutions were discussed, but much of the debate centered on the exceptional circumstance section of ALDO. Community business leaders (DMI, BID, etc.) felt that through a combination of defining exactly what exceptional circumstance means to the city (i.e. instead of defining what it is not), and loosening restrictions on the percentage of gross annual revenue from alcohol sales, a more diverse mix of alcohol outlets was possible. Specifically, Downtown Madison Inc. (DMI), explained that residents want more alternative entertainment options downtown, other than bars and restaurants, based on a survey conducted and published in 2009 [10]. The concept of entertainment venues has been discussed at length within the subcommittee. ALDO is currently silent on the issue of entertainment venues; thus, the subcommittee determined it was necessary to define “entertainment venue” within the ordinance. There was some debate on whether to include “entertainment venues” as simply part of the definition of “exceptional circumstances”, or to create a new subsection of ALDO that specifically outlines

the concept of an “entertainment venue”. This current draft of ALDO separates out “entertainment venues” as its own distinct category of an exceptional circumstance.

Proposed: **d) Entertainment Venue.**

- Due to the concern of ensuring ALDO was not inherently weakened by including entertainment venues as part of the ordinance, careful consideration was given to measures that could be codified within the ordinance that placed a high level of scrutiny on such establishments:

- The establishment must maintain its status as an entertainment venue throughout its existence.

- The establishment must offer its entertainment no less than two hours after it is open and one hour before it closes.

- The licensed capacity cannot exceed the number of seats available within the establishment.

- The establishment must file an annual audit with the ALRC to ensure that no more than ___% of gross annual revenues was from alcohol.

- The percentage is currently left blank within the draft of this ordinance because consensus was not reached on a specific number among committee members. There were many numbers that were discussed, but the general consensus among committee members was that the current 25% of gross annual revenue from alcohol within the ordinance was unrealistic for an entertainment venue. Members of the Business Improvement District (BID) Board felt that up to 75% of gross annual revenue from alcohol would allow for entertainment concepts that otherwise would not consider locating in Madison the ability to do so. Other community members, including members of the Dane County Coalition against Alcohol Abuse (DCCAA), voiced concern of changing the percentage of alcohol sales at all. Some committee members felt comfortable with the 75% threshold; others voiced concerns that going above 50% would go against the intent of ALDO. At one point, a compromise of 65% of gross annual revenue from alcohol was viewed favorably, but did not gain consensus within the subcommittee.

➤ Entertainment venues would be exempt under ALDO

5. Restrictions

a) Class A Establishments.

- No new Class A establishment is allowed within the density area unless that establishment qualifies as an exceptional circumstance (ex. Fromagination, Savoir Faire, Madison Fresh Market, etc.).

b) Class B and Class C Establishments.

- No new Class B or C establishment is allowed within the density area unless it meets the definition of a restaurant, hotel, exceptional circumstance, or (as proposed) an entertainment venue.

Proposed:

c) Ceased Regular Operations within 730 days

- *Background:* The original ALDO had as a part of restrictions for all licenses within the density area that a new license could be granted at a location that previously held that particular license within 365 days since it ceased regular operations. In early 2010, it was brought to the attention of the ALRC that in the difficult economy, downtown commercial developers were having a difficult time filling vacant establishments within the 365 day window [11]. It was also noted that there is potential for owners to rush to fill vacancies with bad operators. In response to these concerns, the ALRC and Common Council indefinitely suspended the 365 day rule on May 5, 2010. It was explicitly understood when the 365 day rule was suspended that it would only be suspended until ALDO was renewed. As part of further discussions, it was decided by the subcommittee that changing the original language from 365 days to 730 days was a comfortable compromise for the business community without harming the efficacy of ALDO. The current draft reflects this change within all types of licenses, allowing for 730 days to fill the vacancy from the moment of ceased regular operations.

The application of this rule is an item that has not been clear. There are two options for implementation of the 730 day rule. Option 1 would apply the 730 days retroactively; thus, any establishment that has ceased regular operations more than 730 days at the date of passage of the new ALDO would lose their exemption under the ordinance. Option 2 would apply the 730 day rule at the date of passage of the new ALDO, in essence, restarting the clock for all vacant establishments at that time. The main issue surrounding the application of this rule is the fact that the period of time the rule has been suspended has allowed building owners to restart their search for potential operators. By applying this rule retroactively, owners are forced to make a deal before the date of passage, or risk losing the ability to operate under the previous license.

6. Capacity.

- a)** - Consistent with the goals of ALDO, no increase in capacity is allowed under the density plan. This holds for establishments that open within the 730 day window. Increases in capacity are only considered if the establishment is exempt from ALDO (i.e. hotel, restaurant, exceptional circumstance, or entertainment venue).

11. Annual Review.

- The Alcohol Policy Coordinator is responsible each year for producing an annual review of the ordinance. In years past, and especially leading up to ALDO discussions, a growing frustration has been in the lack of research and data to help analyze the ordinance. The change in language contained within this draft reflects multiple conversations with the Madison Police Department and other stakeholders in determining the appropriate information to be included in the annual review. The most crucial part of the draft relating to the annual review leaves the review open-ended. In other words, it grants the Alcohol Policy Coordinator the ability to include any and all information that would be useful in such a report. In years past, as currently stated in the ordinance, the annual review is to be due at November 1st of each year. After valuable input from the Madison Police Department, it was determined that a due date of January 31st each year allowed for the time frame for data collection to be the most complete and accurate as possible.

12. Sunset.

- Two options:
 - Set a new sunset date for ALDO
 - Make ALDO permanent

References

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