

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

July 5, 2011
ALRC, PSRC, Board of Park Commissioners, and Street Use Staff Commission

Amending Sec. 38.05(9)(e), Secs. 10.056(4)(a)7., (4)(b)3., (5)(d), (5)(f), creating Secs. 10.056(4)(b)4. and (6)(p), and amending Sec. 38.07(7) of the Madison General Ordinances to require Common Council approval of temporary Class B alcohol licenses issued in conjunction with Street Use Permits and modifying the procedures for approving such licenses and Street Use Permits accordingly.

Drafted by: Roger Allen & Lara Mainella

Date: June 28, 2011

SPONSOR: Mayor Soglin, Alders Bidar-Sielaff, Johnson, Skidmore & Subeck

DRAFTER'S ANALYSIS: This amendment would require Common Council approval of any Class B (Picnic) Temporary License for the sale of certain alcohol beverages if requested in conjunction with a request for a Street Use Permit. Temporary Class B licenses for the sale of beer or wine are currently issued administratively by the City Clerk. Under this amendment, requests for a Temporary Class B license in connection with a Street Use Permit would go to the ALRC and then the Common Council. This amendment would leave the current practice unchanged for temporary licenses unrelated to street use permits, however, where such a license is denied this amended ordinance would provide for an additional level of appeal to the Common Council. (An unsuccessful applicant currently may file an appeal with the ALRC and then appeal the ALRC's decision directly to the Circuit Court.) The proposed amendments also change the structure of section 38.05(9)(e) by breaking current text into different and more readable sections. Finally, this ordinance amends the open container ordinance to correctly cross-reference the procedure for approval of a Temporary Class B license in connection with a street use event.

This amendment also makes changes to section 10.056, the Street Use ordinance, to account for the new procedure of sending Temporary Class B requests for street use events to the ALRC and Common Council. This ordinance would require applications for Street Use permits with a Temporary Class B license to be filed 60 days prior to the event and makes the Street Use Staff Commission's 21-day decision deadline inapplicable to events seeking a Temporary Class B license. Applicants for a street use permit must specify whether approval of the Temporary Class B license will affect their willingness to hold the event. This ordinance also clarifies that the Street Use Staff Commission has no authority to authorize the sale of any alcohol beverages or possession of open containers on the street, although the Commission may set conditions for alcohol service not inconsistent with the Temporary Class B license. Finally, the ordinance creates procedures for final approval of the Street Use Permit that is conditioned upon the Common Council's decision of whether to approve the Temporary Class B license for the event.

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

1. Subdivision (e) entitled "Class B License (Picnic)" of Subsection (9) entitled "Limitation Upon Issuance of Licenses" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is amended to read as follows:

Approved as to form:

“(e) Class B License (Picnic).

1. Temporary Application Without Concurrent Street Use Permit. Class B licenses that are applied for without a concurrent application for or a previously issued Sec. 10.056, MGO, Street Use Permit may be issued by the City Clerk or designee to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months prior to the date of application and to posts of veterans’ organizations, authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. Such application shall be filed with the City Clerk at least seven (7) working days prior to the granting of the license if the event is to be indoors or three (3) working days if outdoors. The Clerk is under no obligation to consider an application that is not timely filed, but may, in his or her discretion, consider such an application if other conditions for a license are met. Failure to timely file an application shall not relieve the City Clerk of jurisdiction to issue a license if all agency approvals are received before the applied-for event. If the Clerk does not receive an approval from an agency pursuant to Sec. 38.05(9)(d)5. of these ordinances, the Clerk shall not issue a license. However, each agency shall respond to the Clerk within fourteen (14) days of receipt of the application by the agency. If an agency recommends approval with conditions, each condition shall be part of such license and the Clerk shall state such conditions on the license or append them thereto. If the applicant requests a waiver of conditions printed on the license application, such waiver may be obtained in writing from the Chief of Police or designee. Any applicant refused a license or aggrieved by any condition on the license may request a de novo review by the Alcohol License Review Committee. Any applicant aggrieved by the action of the Alcohol License Review Committee may appeal such decision to the Common Council. Any applicant aggrieved by the action of the Common Council may seek review in Circuit Court pursuant to Wis. Stat. § 753.04. ~~If the applicant organization has been convicted of any violation of Chapter 38 which violation occurred within one year of the date of application, such application shall be filed with the City Clerk at least thirty (30) days prior to the granting of the license. Applications which are required to be filed at least thirty (30) days prior to granting shall be referred by the City Clerk to the Alcohol License Review Committee for determination. In making its decision, the Committee shall consider the seriousness of the violation(s), the culpability of the license holder in the violation(s), and the measures the license holder agrees to undertake to avoid further violations. The license shall be issued upon written application, and for such time, not to exceed one (1) day, as shall be designated by the issuing body and shall be subject to such restrictions as imposed by the issuing body. For the event covered by the license, the licensee shall make available to the participants nonalcohol beverages other than water in total volume not less than ten percent (10%) of the total volume of beer made available. The licensee shall provide participants substantially equal access to alcohol and nonalcohol beverages at each service area.~~
2. Application With Street Use Permit. Temporary Class B licenses that are applied for with a concurrent application for or which are intended to be utilized in conjunction with an issued Street Use Permit pursuant to Sec. 10.056, MGO, may only issued by the Common Council upon the recommendation of the Alcohol License Review Committee. Such licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months prior to the date of application and to posts of veterans’ organizations, authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. Such application shall be filed with the City Clerk at least forty-five (45) working days prior to the granting of the license. The Clerk shall refer the application to those agencies set forth in Sec. 38.05(9)(d)5. and the Parks Division. Each agency, including the Parks Division, shall respond to the Clerk within fourteen (14) days of receipt of the application. The Clerk shall forward all agency and Parks Division approvals of the application to the Alcohol License Review Committee and the Common Council. The Clerk shall schedule public hearings before the Alcohol License Review Committee and the Committee shall thereafter make a recommendation to the Common

Council. The Common Council is under no obligation to consider an application that is not timely filed, but may, in its discretion, consider such an application if other conditions for a license are met. If the Common Council does not receive an approval from an agency as set forth herein, the Common Council may not issue a license. If an agency recommends approval with conditions, each condition shall be part of such license unless the Common Council, in its actions approving the license, otherwise explicitly remove such condition from the approved license, and the Clerk shall, upon approval of the license by the Common Council, state such conditions on the license or append them thereto. Any applicant refused a license or aggrieved by any condition on the license may seek review in Circuit Court pursuant to Wis. Stat. § 753.04.

3. Applicants Convicted of Chapter 38 Violations. If the applicant organization has been convicted of any violation of Chapter 38 which violation occurred within one (1) year of the date of application, such application shall be filed with the City Clerk at least forty-five (45) days prior to the granting of the license. Such an application shall be referred by the City Clerk to the Alcohol License Review Committee for determination and recommendation to the Common Council. In making its decision and recommendation, the Committee shall consider the seriousness of the violation(s), the culpability of the license holder in the violation(s), and the measures the license holder agrees to undertake to avoid further violations. Any applicant refused a license or aggrieved by any condition on the license may seek review in Circuit Court pursuant to Wis. Stat. § 753.04.
4. Required Availability of Non-Alcoholic Beverages. For the event covered by the license, the licensee shall make available to the participants non-alcohol beverages other than water in total volume not less than ten percent (10%) of the total volume of beer made available. The licensee shall provide participants substantially equal access to alcohol and non-alcohol beverages at each service area.
5. Term of License. The license shall be issued upon approval, and for such time as shall be designated by the issuing body and shall be subject to such restrictions as imposed by the issuing body.

2. Paragraph 7. of Subdivision (a) of Subsection (4) entitled "Application" of Section 10.056 entitled "Street Use Permit" of the Madison General Ordinances is amended to read as follows:

"7. The proposed use of the street, described in detail, including a description of all activities planned during the street use such as vending, music, selling or serving of food or alcohol beverages, location and use of tents, stages, or other equipment, and a detailed plan for clean-up after the event. If any alcohol beverage license(s) will be requested for the event, the applicant shall indicate the type of license(s) requested and whether the applicant will still want a Street Use Permit if the necessary alcohol beverage license(s) are not granted."

3. Paragraph 3. of Subdivision (b) entitled "Deadline for Applications" Subsection (4) entitled "Application" of Section 10.056 entitled "Street Use Permit" of the Madison General Ordinances is amended to read as follows:

"3. The deadline for application filing in sub. 1. and 2. above may be waived if, based upon the proposed date, time, place, size, duration, anticipated number of participants, and City services required, there will be sufficient time prior to the event for the Staff Commission to hold a public meeting to objectively review the application and make a decision under the standards of issuance herein within the timelines required by sub. (5)(f). ~~In the case of~~ For an administrative review under 10.056(5)(b)5., the application deadline may be waived if there is sufficient time prior to the event for the Parks designee to conduct the administrative review and make a decision within the timelines required by sub. (5)(f). The application deadline for events under sub. 4. below (events with alcohol) may not be waived."

4. Paragraph 4. of Subdivision (b) entitled "Deadline for Applications" Subsection (4) entitled "Application" of Section 10.056 entitled "Street Use Permit" of the Madison General Ordinances is created to read as follows:

“4. An application for an event of any size for which a temporary Class B alcohol license will be requested shall be submitted not less than sixty (60) days prior to the beginning date of the proposed event, to allow for Common Council review as required by Section 38.09(5)(9)(e)2.”

5. Subdivision (d) entitled “Alcohol Beverage Permit” of Subsection (5) entitled “Application Process and Permit Requirements” of Section 10.056 entitled “Street Use Permit” of the Madison General Ordinances is amended to read as follows:

(d) Alcohol Beverage Permit Licenses. If the applicant requests permission to sell beer or wine ~~on a public street~~ within the perimeter of the street use permit area, the applicant shall follow the procedure for a Temporary Class B Picnic License under Sec. 38.05(9)(e)2. of the Madison General Ordinances. Applications for such temporary license(s) in connection with a Street Use Permit are subject to approval by the Common Council under Sec. 38.05(9)(e)2. The Street Use Staff Commission has no authority to authorize the sale of any alcohol beverages or possession of open containers; however the Commission may impose conditions for the Street Use Permit not inconsistent with a concurrent alcohol beverage license and applicable laws. If the Commission approves a Street Use Permit prior to the Common Council’s approval under Sec. 38.05(9)(e)2., the Commission shall indicate whether its approval is conditioned upon the issuance of an alcohol beverage license, and if so, the Commission’s approval shall be conditional and the Street Use Permit shall only be issued after the Council has approved the alcohol beverage license(s). If approval of the requested alcohol beverage license is not a condition of the Street Use Permit, the Permit may be issued prior to the Council taking action on the alcohol license. Under no circumstances shall alcohol beverages of any kind be sold at a street use permitted event without the necessary alcohol beverage license(s) required by law.”

6. Subdivision (f) entitled “Time Limit for Decision” of Subsection (5) entitled “Application Process and Permit Requirements” of Section 10.056 entitled “Street Use Permit” of the Madison General Ordinances is amended to read as follows:

“(f) Time Limit for Decision. The decision to approve or deny a Street Use Permit shall be made within twenty-one (21) days of the date a complete application properly filed under sub. (5)(a) is received, unless the applicant expressly agrees to a longer period of time, or unless the application is for an event for which alcohol beverage licensing is also requested. Except for applications filed fewer than fourteen (14) days prior to the event under Sec. 10.056(4)(b)3., the decision to approve or deny shall be made no fewer than five (5) calendar days before the beginning of the proposed event, to allow a timely appeal as provided elsewhere in this section. An applicant may choose to voluntarily waive this 5-day decision deadline.”

7. Subdivision (p) of Subsection (6) entitled “Standards for Issuance” of Section 10.056 entitled “Street Use Permit” of the Madison General Ordinances is created to read as follows:

“(p) Alcohol beverage licensing has been requested for the event, the Commission has made approval of the necessary alcohol beverage licensing a condition of approval for the Street Use Permit, and the Common Council has not approved the necessary alcohol beverage licensing.”

8. Subsection (7) entitled “Possess Open Container on Street” of Section 38.07 entitled “General Restrictions” of the Madison General Ordinances is amended to read as follows:

“(7) Possess Open Container on Street. It shall be unlawful for any person to possess an open container which contains alcohol beverages or consume any alcohol beverages upon any public street (including sidewalks and alleys) within the City of Madison except when such street or portion thereof is included within an area for which the ~~Common Council~~ Street Use Staff Commission has granted a Street Use Permit pursuant to Sec. 10.056 of these ordinances and a ~~temporary malt beverage license pursuant to Wis. Stat. § 125.26(6), temporary Class B License (Picnic) has been approved by the Common Council under Sec. 38.09(5)(9)(e)2.,~~ and except in areas holding a sidewalk cafe ~~permit license~~ pursuant to Sec. 9.13 of these ordinances, and for which the sidewalk is part of the licensed premises as that term is used in Sec. 38.02 of these ordinances.”