



Office of the Mayor

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To: Alcohol License Review Committee, Plan Commission, and Common Council

From: Matt Tucker, Zoning Administrator; Mark Woulf, Food and Alcohol Policy Coordinator;
Matt Mikolajewski, Manager, Office of Business Resources

Re: **Alcohol-related land use regulations and creation of an Alcohol Overlay District**

This memorandum is to accompany ordinance changes under Legistar [No. 32961](#). This document provides history, context, and background for the proposed changes, guidance on implications to the process for future alcohol-licensed establishments, and explains the concept and value of using land use regulations in tandem with an alcohol overlay district in place of an alcohol license density ordinance. There are many links within the electronic version of this document, referencing additional information or relevant ordinances. All linked documents are also attached to the Legistar file referenced above.

Background

Over the course of the past 14 months, at the [direction](#) of the Common Council, city staff reviewed existing alcohol license regulations and business development mechanisms, and relevant data related to the [Alcohol License Density Ordinance](#) (ALDO) and alcohol-related enforcement. Staff also considered how to promote a healthy business mix, both within and outside of the Central Commercial District.

In response, staff developed a [set of recommendations](#) for policymakers to follow to improve both the way the city manages alcohol-licensed establishments and encourages responsible economic development.

After introducing the recommendations to impacted city committees, the Common Council [directed](#) staff to work on implementing the various recommendations, some policy changes, and some ordinance amendments. One of the major accomplishments already adopted by Council is the alterations and improvements to our alcohol license [enforcement](#) system, key to regulating the management of alcohol-licensed establishments.

The significance of the proposed ordinance changes at hand is that this ordinance is inherently tied to ALDO, both in content and timing. The implication and intent is that the contents of the proposed ordinance will effectively replace MGO 38.05(9)(o), or ALDO, at the effective date of July 1, 2014. ALDO is currently scheduled to sunset by ordinance on April 1, 2014. For purposes of timing, staff is recommending that if this ordinance is adopted, the sunset of ALDO should be July 1, 2014.

History

ALDO, adopted October 2007, as a part of a comprehensive approach to reduce alcohol-related crime and disorder, set out to maintain or gradually reduce the number of taverns within the Central Commercial District, defined as the area from Blair Street to Park Street, Lake Mendota to Monona. Though the impact of the ordinance is varied, it is clear that alcohol-related issues cannot be solely addressed within the confines of one policy. The management of individual establishments and the devotion of the Madison Police Department to increase enforcement presence within the entertainment district are two of the crucial inputs that are additionally responsible for a reduction in alcohol-related police calls for service since 2007 within the downtown.

The most common criticism of ALDO over the years is the stifling effect it has on potential new business downtown. ALDO restricts new alcohol-licensed businesses from locating within the Central Commercial District, with several exceptions. For example, a new restaurant, hotel, and grocery store are all allowed to be considered for a liquor license. The key marker is that any concept deriving over 50% annual sales from alcohol cannot locate downtown.

Part of the criticism stems from the frustration that a concept may be over 50% alcohol sales annually, but may not negatively impact the community. For instance, the ALRC tried a few different ways of carving out exceptions for bona fide entertainment venues, which are severely lacking, to limited success. Through using the percentage metric as our only determinate as to whether an establishment is a restaurant or tavern, we miss the ability to simultaneously attract new, exciting types of businesses, and regulate the types that may have an adverse impact on the health, safety, and welfare of the community. Simply put, ALDO is not dynamic enough for the types of emerging businesses that are attracted to Madison.

Another common criticism is that ALDO does not address issues that other neighborhoods deal with relating to alcohol-licensed establishments, such as noise and parking, outside of the downtown. There are many examples over the years of establishments that morph over time into something more impactful than the original concept; for instance, morphing from a restaurant to a nightclub. Staff felt it important to address both points with any new ordinance or policy.

The initial intention of the staff recommendations was to further refine the types of alcohol licenses by creating new definitions, expanding past restaurant/tavern, within the alcohol chapter of our ordinances. The idea behind the expanded definitions was to allow greater flexibility downtown for certain types of concepts and to provide predictability for neighborhoods elsewhere that are concerned about one concept (like a restaurant), turning into another more impactful concept (like a nightclub). After review by the Office of the City Attorney, we were [advised](#) to pursue any expansion of definitions within land use regulations, due to potential conflicts with State Statutes.

Though, for purposes of continuity, it seems to be preferable to keep all alcohol-related regulations within the same chapter of our ordinances, the use of zoning opened up much flexibility in terms of addressing key issues. For example, the Alcohol License Review Committee (ALRC) has long been interested in regulating hours of operation, something specifically prohibited by State Statutes relating to alcohol licenses. However, Chapter 125 of Wisconsin State Statutes, the alcohol regulation chapter, points out that the regulations set forth in that chapter do not prohibit a municipality from exercising its zoning authority.

Content

The ordinance proposal amends the current land use definitions of “Restaurant-Tavern”, “Tavern”, “Recreation-Outdoor”, and “Theater, Assembly Hall”. The ordinance proposes new definitions for “Nightclub” and “Restaurant-Nightclub”. The key changes come within the new supplemental regulations for each definition (found under Section 6, pages 3-4 in the new ordinance). Supplemental regulations expand the specific rules for each particular use, and are designed to ensure that a proposed concept will meet certain requirements as part of the approval for that particular land use.

Let us take a hypothetical example for clarity’s sake. A new restaurant proposal comes to the city called *Doe’s Bar and Grill*. *Doe’s*, in order to qualify as a “Restaurant-Tavern”, would have to establish a capacity that does not exceed available seats (Supplemental Regulation A); this number could be equal to or lesser than the allowed capacity of persons as required in the building code. It would also not be allowed to hold an entertainment license (Supplemental Regulation B). The presumption that the regulation makes is that if an establishment holds an entertainment license and requests a higher capacity than those that can be seated, the business has the potential to operate as something other than a restaurant-tavern. Therefore, if an establishment wanted to provide entertainment, it could proceed, but would be defined as a “Restaurant-Nightclub” and require Conditional Use approval, because of the greater potential impact on the neighborhood.

Building on this example, let’s say *Doe’s* is indeed interested in providing live entertainment, but still plans on being a bona fide restaurant. *Doe’s* would be subject to the supplemental regulations under the definition of “Restaurant-Nightclub”. Under this scenario, *Doe’s* would be required to serve food at all hours of operation, but may hold an entertainment license. The main caveat under this definition is if the business is in operation after midnight on any given night, then the land use becomes a Conditional Use (requiring Plan Commission approval). Once again, the implication is that an establishment with an entertainment license and open past midnight has the potential to have a greater land use impact on the surrounding community.

The land use approval process is separate and independent from the alcohol and entertainment licensing. Any new business, in order to legally occupy a tenant space, must adhere to the underlying zoning of the parcel of land. Especially in the case of new construction, the plans for development would likely be submitted for land use approval far before any application for a liquor license is submitted for ALRC review. In this case, the developer would be seeking land use approvals first, and in the event of any Conditional Use proceeding, appear for approval in front of the Plan Commission for the land use decision prior to an application for a liquor and/or entertainment license.

There are other situations where the liquor license is applied for prior to receiving land use approvals. For instance, some leases for establishments require the lessee to obtain approval for a liquor license prior to the execution of the lease. The important point is that under current practice, and in the practice under this ordinance proposal, timing of potential ALRC or Plan Commission approval varies greatly. Therefore, a specific procedure is not prescribed within ordinance.

Additional Examples

- **Umami Ramen & Dumpling Bar (Restaurant-Tavern), Permitted/Conditional Use.** This establishment is located at 923 Williamson Street. This building was converted from a former office building, and included a patio that was intended to be used for future outdoor

seating for the restaurant-tavern. This project was initially approved as a Permitted Use restaurant-tavern. During spring 2011, the restaurant owner chose to apply for the Conditional Use to allow outdoor seating on the patio, which was approved in May 2011. This property is now considered a Conditional Use, not because of the restaurant-tavern use, but for the outdoor seating associated with the restaurant-tavern, which is a Conditional Use.

This establishment, in addition to receiving land use approval from the Plan Commission, also had to apply for a Change in Licensed Premises from the ALRC. This process will identically mirror the process under the new ordinance.

- **Next Door Brewing Company (Brewpub), *Permitted Use*.** This establishment is located at 2439 Atwood Avenue; a property zoned Traditional Shopping Street (TSS). Within TSS, a brewpub is listed as a Permitted Use. The first floor of this mixed-use building (apartments above) was converted from a retail space, with building and site plans submitted to the City for review and approval. Being classified as a Permitted Use in the zoning code, there was no requirement for a public hearing associated with the proposed use. Once staff had reviewed and approved the building and site plans, the associated permits could be issued and the building and use could commence, pending any conditions of said permits.

This process mirrors the process under the new ordinance for all permitted uses. Even for some uses with supplemental regulations, such as capacity requirements mentioned above, it may not require Plan Commission review. It would not change the requirements of any establishment to attain an alcohol license from the ALRC, subject to Common Council approval.

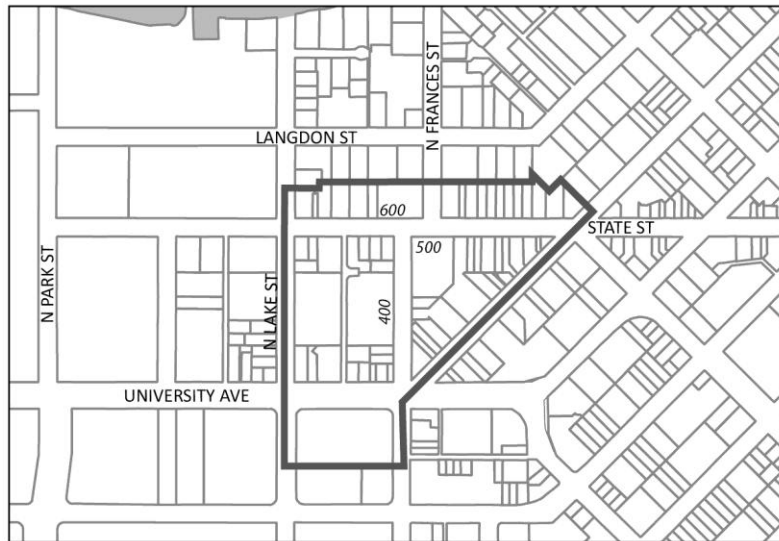
- **Plan B (Nightclub), *Conditional Use*.** This establishment is located at 924 Williamson Street. This building was converted from a retail establishment into a 250 person capacity tavern with an entertainment license in 2009, a permitted use in the C2 commercial zoning that applied to the property. The tavern operators requested a Conditional Use parking stall reduction to provide 18 off-street spaces, which was approved. Fast-forward to 2013, the City's new zoning code requires a significantly smaller number of parking spaces for this use and also allows for shared parking across uses, so through an administratively approved parking reduction and shared parking allowances, the property may be classified as a Conditional Use.

This is a situation that the new ordinance specifically sets out to improve. A permitted use under current zoning code, the neighborhood may never be afforded the proper venue to air concerns over a large capacity nightclub moving into the area. Nor, could the neighborhood truly understand what type of concept was on its way until the application for a liquor license. In this example, the neighborhood voiced concerns over potential impact at the ALRC, less about the specific impact of alcohol, but concerns over potential noise and parking issues. The ALRC made the attempt to address some of those concerns through limiting capacity on certain nights and the number of "18+ Entertainment" nights.

Several years later, noise continues to be a major issue regarding this particular operation. The ALRC has served as mediator to some limited success. The larger issue remains: the greater impact of a nightclub concept should have been addressed in the beginning as a part of land use approvals. Under the new ordinance, this proposal would be a Conditional Use, and presumably, those impact issues would be aired before the Plan Commission when considering the land use impact of that concept.

Alcohol Overlay District

Another significant element of the ordinance is the creation of an alcohol overlay district within the lower parts of State Street (500-600 Block), the 400 Block of Frances, and the 600 Block of University. The alcohol overlay district supersedes the underlying zoning within the area. The effect of this proposal is that new taverns would not be allowed within the overlay district.



The concept of overlay is not new to the current zoning code. A common example is the Wellhead Protection Overlay Districts. These special overlay districts are in place to protect the water supply in vulnerable areas against uses of land that would have a higher likelihood of spills, leaks or other discharges. The overlay district prohibits such uses that have the *potential* to create a negative impact on the groundwater, and also allows some other uses as Conditional Uses, when measures (supplemental regulations) are incorporated to mitigate potential hazard to the water supply.

An alcohol overlay district works in a similar fashion, where certain uses have been identified, either as not allowed or as Conditional Uses, to respond to the greater potential for greater land use impacts through demands for service and potential conflict with other adjacent or nearby uses. For example, taverns, are of potential greater impact to that area, and therefore are not allowed. Nightclubs, and restaurant-nightclubs are identified as Conditional Uses, as they may be acceptable in certain circumstances and under certain conditions. We are essentially asking for new proposals in that area to bring greater community value than simply an alcohol-centric establishment.

Below is the chart within the proposed new ordinance that outlines the conditional, permitted, and not allowed uses within the Alcohol Overlay District. The various terms are as defined on [Page 4](#) of the proposed ordinance. Restaurants, restaurant-taverns, and taverns that were established before July 1, 2014, are permitted uses. Restaurant-nightclubs and nightclubs are conditional uses within the district. And, new taverns are not allowed.

<u>Alcohol Overlay District Permitted and Conditional Uses</u>		Supplemental Regulations
Food and Beverages		
Nightclub	C	Y
Restaurant	P	
Restaurant-nightclub	C	Y
Restaurant-tavern	P	Y
Tavern , brewpub		
Tavern, brewpub - if established before July 1, 2014.	P	Y"

The effect of the Alcohol Overlay District would most likely involve greater ALRC oversight. Currently, any concept for a new establishment within the entire downtown that projects annual sales of alcohol over 50% may not be considered by the ALRC. Within this alcohol overlay district, a concept that is projecting over 50% annual sales from alcohol could be considered by the ALRC if the proposal included significant entertainment and/or significant food service.

This does not change the current ALRC discretion to deny a license application based on the health, safety, and welfare of the community. For example, even if a new establishment proposes a nightclub, and therefore, allowed to be considered for a liquor license, the ALRC could decide the concept is not compatible with the density of establishments in the area (i.e. too much capacity, not enough confidence in the operator, too much focus on alcohol for the area, etc.).

Likewise under this example, a nightclub proposal would be a conditional use, and therefore, require Plan Commission approval, as in most other areas of the city. The Plan Commission could determine the use at a particular location of a nightclub could too greatly negatively impact the neighborhood, and not approve the conditional use.

Taverns and Brewpubs that are established before July 1, 2014, are permitted uses in order to “grandfather” those existing within the overlay district. This allows those building and business owners to replace an existing tavern or brewpub with a new tavern or brewpub, in the event of an ownership change. There are currently seven establishments within the proposed overlay that would be defined as “tavern” establishments under the zoning code.

Conclusion

Staff believes this proposal moves us forward in many dynamic ways as it relates to regulating alcohol-related business. This proposal allows the city, including the ALRC, Plan Commission, and Common Council to simultaneously attract new, exciting concepts to the downtown, while preventing potential negative impact to residential neighborhoods.

With the effective date of July 1, 2014, there will be adequate time to clearly communicate the changes and the impact on the community at large. This will be done through information sessions, in addition to a clearly outlined process on the city website. The Common Council should also expect specific suggestions to address regulations specific to all Class A (retail) alcohol licensed establishments prior to the effective date.