



Legislation Text

File #: 04483, Version: 1

Fiscal Note

No expenditure is required to enact the Ordinance. There may be some modest future savings of City Attorney staff resources currently required to process appeals, but appeals to date have been rare.

Title

Amending Sections 9.05(3)(e) and 9.05(8)(b), deleting Section 9.05(12), renumbering Sections 9.05(13) to (16), amending Section 9.49(3) and creating Section 9.49(4)(g) of the Madison General Ordinances to remove the administrative appeal of decisions to deny, not renew, revoke, or suspend an adult entertainment license.

Body

DRAFTER'S ANALYSIS: This amendment is intended to address a U.S. Supreme Court decision, City of Littleton, Colorado v. ZJ. Gifts D-4, LLC, 124 S. Ct. 2210 (2004) that narrowed the meaning of "prompt judicial review" in the context of determinations made regarding activities protected by the First Amendment. Prompt judicial review does not mean simply the prompt access to judicial review but prompt access to a judicial decision. Requiring administrative review prior to judicial review puts the existing ordinance at risk of violating the prompt judicial review requirement.

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

1. Subdivision (e) of Subsection (3) entitled "Application for License" of Section 9.05 entitled "Adult Entertainment Establishments And Adult Entertainment Taverns" of the Madison General Ordinances is amended to read as follows:

"(e) Whenever an application is denied or a license is not renewed, the City Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial or nonrenewal, a public hearing shall be held within ten (10) days thereafter before the Council. If a public hearing is requested, it shall be held within ten (10) days thereafter before the Council. The Council shall make a determination on the ~~suspension or revocation~~ denial or nonrenewal of the license within twenty (20) days of the scheduled public hearing and shall provide notification of the determination in writing to the licensee within five (5) days of the determination. The notification shall contain reasons for the ~~suspension and/or revocation~~ denial or nonrenewal of the license. ~~Appeal of the written determination of the Council to revoke or suspend a license shall be pursuant to Sec. 9.49(6)(b), Madison General Ordinances.~~ Judicial review by certiorari may be sought within thirty (30) days of a decision issued pursuant to ~~Sec. 9.49(6)(b)3~~ termination under (c), (d), or (e) if a public hearing is requested. If a licensee makes a timely appeal, ~~of the Council's determination to suspend or revoke a license, no suspension or revocation~~ nonrenewal shall be effective until a final judicial decision is rendered pursuant to ~~Sec. 9.49(6)(b)3~~."

2. Subdivision (b) of Subsection (8) entitled "Revocation of License" of Section 9.05 entitled "Adult Entertainment Establishments And Adult Entertainment Taverns" of the Madison General Ordinances is amended to read as follows:

"(b) The Council, before revoking or suspending any license, shall give the operator at least ten (10) days written notice of the charges against the operator and the opportunity for a public hearing before the Council. If the operator does not file a timely request for a public hearing, the allegations set forth in the charges shall be taken as true, and within ten (10) days the Common Council shall meet and determine whether the charges are sufficient to revoke or suspend a license. Within five (5) days of such determination, the Common Council shall provide written notification to the licensee of its findings and shall include reasons for suspension or revocation. If a public hearing is requested, it shall be held within ten (10) days thereafter before the Council. The Council shall make a determination on the suspension or revocation of the license within twenty (20) days of the scheduled public hearing and shall provide notification of the determination in writing to the licensee within five (5) days of the determination. The notification shall contain reasons for a suspension or revocation of the license. Appeal of either of the above written determinations of the Council to revoke or suspend a license shall be pursuant to Sec. 9.49, Madison General Ordinances. Judicial review by certiorari may be sought within thirty (30) days of a ~~decision issued pursuant to Sec. 9.49(6)(b)3~~ determination under this subdivision. If a licensee makes a timely appeal of the Council's determination to suspend or revoke a license, no suspension or revocation shall be effective until a final judicial decision is rendered."

3. Subsection (12) entitled "Administrative Procedure and Review" of Section 9.05 entitled "Adult Entertainment Establishments And Adult Entertainment Taverns" of the Madison General Ordinances is hereby repealed.

4. Current Subsections (13) through (16) of Section 9.05 entitled "Adult Entertainment Establishments And Adult Entertainment Taverns" of the Madison General Ordinances are renumbered to Sections (12) through (15).

5. Subdivision (a) of Subsection (3) entitled "Determinations Reviewable" of Section 9.49 entitled "Review Of Administrative Determinations" amended to read as follows:

"(a) The grant or denial in whole or in part after application of an initial permit, license, right, privilege, or authority except a fermented malt beverage or intoxicating liquor license or an adult entertainment license."

6. Subdivision (g) of Subsection (4) entitled "Determinations Not Subject to Review" of Section 9.49 entitled "Review Of Administrative Determinations" is created to read as follows:

"(g) The grant, denial, renewal, nonrenewal, revocation or suspension of an adult entertainment license."

EDITOR'S NOTE:

Section 9.05(12) currently reads as follows:

"(12) Administrative Procedure and Review. This Municipal Code and the Wisconsin Statutes shall govern the administrative procedure and review regarding the granting, denial, renewal, nonrenewal, revocation or suspension of a license."