



Legislation Details (With Text)

File #: 27696 **Version:** 1 **Name:** Restaurant Audits
Type: Ordinance **Status:** Passed
File created: 9/13/2012 **In control:** ALCOHOL LICENSE REVIEW COMMITTEE
On agenda: 10/2/2012 **Final action:** 10/2/2012
Enactment date: 10/11/2012 **Enactment #:** ORD-12-00125
Title: Amending Section 38.05(10) of the Madison General Ordinances to provide procedures for the auditing of alcohol licensed premises operating as restaurants.
Sponsors: Shiva Bidar, Lisa Subeck, Michael E. Verveer

Indexes:

Code sections:

Attachments:

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------------------|---|--------|
| 10/2/2012 | 1 | COMMON COUNCIL | Adopt | Pass |
| 9/19/2012 | 1 | ALCOHOL LICENSE REVIEW COMMITTEE | RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER | Pass |
| 9/18/2012 | 1 | COMMON COUNCIL | Referred | |
| 9/13/2012 | 1 | Attorney's Office/Approval Group | Referred for Introduction | |

Fiscal Note

There may be a small increase in General Fund Revenues derived from forfeitures. City staff will perform any inspections and audits as part of their regular duties. No additional appropriation is required.

Title

Amending Section 38.05(10) of the Madison General Ordinances to provide procedures for the auditing of alcohol licensed premises operating as restaurants.

Body

DRAFTER'S ANALYSIS: The Alcohol License Review Commission (ALRC) regularly issues Class B licenses to premises with the condition that said premises operate as "restaurants." Sec. 38.05(9)(o)4.a.iii., MGO, provides that in order to qualify as a "restaurant" the premises must generate 50% or less of its annual gross revenues from the sale of alcohol. Sec. 28.05(9)(o)4.a.iv., MGO, provides that such a premise may be subject to an audit to ensure compliance with these requirements. Sec. 38.05(10), MGO, currently provides that licensed premises may be subject to searches by MPD officers and subject to financial audits and imposes a duty upon the license holder to cooperate with such searches and audits. However, the current ordinance is silent as to whom may order such an audit and under what circumstances. This ordinance revision was drafted at the request of the ALRC based upon its experience with recent audits.

The proposed revisions to Sec. 38.05(10), MGO, restate the requirement that compliance with the search and audit provisions are a mandatory condition of obtaining alcohol licenses. The ordinance is also amended to explicitly provide for a forfeiture of not less than \$50 nor more than \$1,000 for failure to comply with these provisions.

Sec. 38.05(10)(a), restates the existing search/inspection provisions and adopts provisions of state law with reference to the searches/inspections of licensed premises. These changes make it clear that such searches/inspections are for the purposes of determining compliance with state alcohol beverage taxes and state/local alcohol regulations.

Sec. 38.05(10)(b) creates standards and procedures for ordering a financial audit of a restaurant and sets deadlines for actions. The ALRC or the Common Council may order an audit to be conducted by the Finance

Department upon a showing that there is a reasonable basis to believe that the licensee's operations do not qualify as a "restaurant." The Finance Department shall promptly report its findings and the Office of the City Attorney has 45 days from the receipt of the audit results to bring a complaint for suspension or revocation of the license.

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

Subsection (10) entitled "Search of Licensed Premises" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is amended to read as follows:

"(10) Search Inspections and Financial Audits of Licensed Premises. Application for a license hereunder shall be deemed as consent to this provision. Any refusal to permit such inspection or financial audit shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this section. In addition to the foregoing remedies, any person who violates any provision of this section shall be subject to a penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000).

(a) Premises Inspections. It shall be a condition of any license issued hereunder that the licensed premises, delivery vehicles and any of the business' books of account, bank statements, billings, invoices and any other documents relating specifically to the licensed business may be entered and inspected at any reasonable hour by any police officer of the City of Madison without any warrant, and application for a license hereunder shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this section for the purpose of determining whether the taxes imposed by Wis. Stat. §§ 139.01 to 139.25, has been fully paid and whether Wis. Stat. ch. 125 and Chapter 38, MGO, are being complied with.

(b) Financial Audits. It shall be a condition hereunder of any license issued to a licensee whose operations must qualify as a "restaurant" as that term is defined in Sec. 38.05(9)(o)4., MGO, that the Alcohol License Review Committee or the Common Council may order the Finance Department to conduct a financial audit to determine whether a licensee is in fact operating as a "restaurant." Such order may issue upon either sworn oral testimony, affidavit or complaint establishing a reasonable basis to believe that the licensee's operations do not qualify as a "restaurant" as that term is defined in Sec. 38.05(9)(o)4., MGO. The following factors, without limitation by enumeration, may be considered in determining whether to order an audit:

1. Observations that patrons are consuming mostly alcohol with little or no food consumption;
2. Capacity or large crowds on the premises at or near the closing time for non- restaurant Class B premises;
3. Menus, literature, signage or advertising that promotes the alcoholic beverages more so than food offerings;
4. A food menu that contains exclusively traditional bar fare or frozen "heat and eat" foods;
5. Bar space that is significantly larger in square footage than the kitchen/ food preparation area;
6. A disproportionate number of calls for police/fire services than other restaurants;
7. The use of security officers/ bouncers/ door checkers;
8. The advertising, promotion or sale of "drink specials";
9. Any other factors reasonably indicative of the status of the licensed premises.

The licensee shall cooperate fully with the Finance Department and shall provide access, without delay, to any of the business' books of account, bank statements, billings, invoices and any other documents relating specifically to the licensed business as may be requested by the Finance Department. The Finance Department shall promptly report the results of such an audit to the body that ordered the audit and to the Office of the City Attorney. If the audit establishes that the licensee's operations are not those of a restaurant, the Office of the City Attorney may, within forty-five (45) days of the receipt of the audit results, file a complaint with the Alcohol License Review Committee seeking suspension or revocation of the license."