



Legislation Text

File #: 05739, Version: 4

**Fiscal Note**

It is not anticipated that enactment of the Alcohol License Density Plan will significantly affect overall General Fund revenues associated with alcohol licenses.

**Title**

AMENDED SECOND SUBSTITUTE - Creating Section 38.05(9)(o) of the Madison General Ordinances to establish an Alcohol Beverage License Density Plan within the Central Commercial District.

**Body**

DRAFTER'S ANALYSIS: The purpose of this ordinance is to establish a density plan which will maintain or gradually reduce the number of certain types of alcohol beverage licenses and maintain or gradually reduce the overall patron capacity of certain types of alcohol beverage licenses in the named density plan area.

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

Subdivision (o) entitled "Alcohol License Density" of Subsection (9) entitled "Limitation Upon Issuance of Licenses" of Section 38.05 entitled "General Licensing Requirements" of the Madison General Ordinances is created to read as follows:

"(o) Alcohol Beverage License Density Plan.

1. Purpose. The Central Commercial District currently contains at least twenty-seven percent (27%) of all alcohol beverage licenses issued by the City of Madison ("City") and at least thirty-four percent (34%) of all 'Class B' Combination alcohol beverage licenses issued by the City. Between 1997 and 2006, this area experienced an increase of 125% in the total number of alcohol beverage licenses and an increase of 128% in the number of 'Class B' Combination alcohol beverage licenses. Not coincidentally, this area experiences a high volume of alcohol-related problems, as detailed in the Madison Police Department's 2005 report, "Alcohol-Related Violence in Downtown Madison." As part of the ongoing comprehensive efforts to decrease the incidence of alcohol-related problems in the downtown area, the City seeks to maintain or gradually reduce the number and capacity of certain types of alcohol beverage licenses in the identified Alcohol License Density Plan area. This maintenance and/or reduction will be achieved through the licensing powers of the Alcohol License Review Committee ("ALRC") and the Common Council. Additionally, the City seeks to decrease the strain on public resources caused by a high density of alcohol-related businesses while simultaneously providing opportunities in the downtown area for businesses that are either not associated with the sale of alcohol or that sell alcohol incidental to their principal business.

2. Density Plan Area. Any property located within the Central Commercial District of the City of Madison. The Central Commercial District is defined as the area enclosed by the following boundaries: Lake Mendota shoreline between N. Park Street and Blair Street, Blair Street from Lake Mendota shoreline south/southeast to Lake Monona Shoreline, Lake Monona shoreline south/southwest from Blair Street to Monona Bay shoreline, Monona Bay shoreline from Lake Monona shoreline south/southwest to Proudfit Street, Proudfit Street from Monona Bay shoreline north/northwest to Regent Street, Regent Street west to Park Street, Park Street north to Lake Mendota shoreline. The Common Council, upon recommendation of the ALRC, may add additional areas within the City of Madison to this Plan at any time based upon the criteria and analysis used in the Madison Police Department's 2005 report, "Alcohol-Related Violence in Downtown Madison."

3. Procedure.

a. When an application related to an alcohol beverage licensed premise within the Density Plan Area is submitted to the City Clerk, the City Clerk will mark the application "DPA" prior to placing the application on the next available ALRC agenda. This subsection applies to all applications related to an alcohol beverage licensed premise within the Density Plan Area (e.g., new license applications, changes to a licensed premise, transfer of a license, etc.) with the

exception of renewal applications.

b. The Alcohol License Review Committee will review all applications and make recommendations to the Common Council based on the criteria and guidelines contained within this subsection specifically and within Ch. 38, M.G.O. generally.

4. Definitions.

a. Bona Fide Restaurant means the establishment's principal business is that of a restaurant.

i. Principal Business As a Restaurant is determined by the Common Council, upon recommendation of the ALRC, based on an analysis of the following factors:

A. The amount of capital, labor, time, attention and floor space devoted to each business activity; and

B. The sources of net income and gross income (i.e., revenues generated from food, alcohol, and other items); and

C. The name, appearance, and advertising of the establishment, the hours of operation, the frequency, duration, timing and magnitude of entertainment, staff scheduling, and the use of security staff. Less, but not inconsequential, weight is given to these ten factors.

ii. An establishment holding a 'Class B' Combination alcohol beverage license is presumed to be a tavern. This presumption may be rebutted by competent evidence. The burden is on the license holder to provide this evidence.

iii. Generally, an establishment licensed as a restaurant that generates fifty (50) percent or less of its annual gross revenues from the sale of alcohol is considered a restaurant.

iv. Any establishment representing itself as a bona fide restaurant will be required to maintain that status throughout the existence of its alcohol beverage license and may be required to provide evidence substantiating its status as a bona fide restaurant upon request of the City pursuant to Sec. 38.05(10), M.G.O.

v. Being classified as a bona fide restaurant does not mean that an establishment is prohibited from operating a bar that serves alcohol beverages to patrons.

b. Ceased Regular Operations

i. An establishment is deemed to have ceased regular operations when any of the following occurs:

A. The alcohol beverage license is surrendered to the City Clerk absent the issuance of a newly-granted license; or  
B. The establishment is no longer open to the public; or

C. The establishment is open to the public only intermittently in an attempt to circumvent the provisions of this subsection; or

D. The establishment fails to maintain open and active accounts with its food and/or alcohol distributors; or

E. The alcohol beverage license holder fails to submit a renewal application to the City Clerk before the last possible submittal date.

F. The alcohol beverage license is cancelled pursuant to Sec. 38.10(1)(f), M.G.O.

ii. An establishment is not deemed to have ceased regular operations if it is temporarily closed due to remodeling or any type of license suspension.

iii. Decisions regarding whether an establishment has ceased regular operations will be made by the Common Council upon a recommendation by the ALRC.

c. Exceptional Circumstance.

i. An establishment may be considered an exceptional circumstance if it is not a tavern, restaurant, liquor store, convenience store, full-service grocery store, or hotel and it generated no more than twenty-five (25) percent of its annual gross revenues from the sale of alcohol.

ii. ~~An establishment providing live music in a tavern environment is not considered an exceptional circumstance.~~

iii-ii. Applications relying on classification as an exceptional circumstance must provide evidence therein that no more than twenty-five (25) percent of the establishment's annual gross revenues will come from the sale of alcohol.

iv-iii. Any establishment representing itself as an exceptional circumstance will be required to maintain that status throughout the existence of its alcohol beverage license and may be required to provide evidence substantiating its status as an exceptional circumstance upon request of the City pursuant to Sec. 38.05 (10), M.G.O.

v-iv. Decisions regarding an establishment's status as an exceptional circumstance will be made by the Common Council upon a recommendation by the ALRC.

5. Restrictions.

a. 'Class A' Alcohol Beverage Licenses. The ALRC may recommend approval of applications for new 'Class A' alcohol beverage licenses intended to be located in the Density Plan Area only under the following circumstances:

i. The sale of an existing business that holds a valid 'Class A' alcohol beverage license and is operating as a 'Class A' licensed establishment at the time of the sale; or

ii. Any of the circumstances provided for in Sec. 38.05(8)(b)1, M.G.O. (i.e., death of the original licensee, bankruptcy, assignment for the benefit of creditors, or disability of the original licensee); or

iii. The proposed establishment is a full-service grocery store; or

iv. The proposed establishment qualifies as an exceptional circumstance; or

v. The proposed establishment is intended to replace a former 'Class A' alcohol beverage license that ceased regular operations no more than three hundred sixty-five (365) days prior to the filing date of the new alcohol beverage license application. In the case of leased property, this three hundred sixty-five (365) day grace period begins tolling on the first day that the property owner regains full possession and control of the affected property, as evidenced by competent evidence provided by the property owner.

b. Class 'B' Beer, Class 'C' Wine, or 'Class B' Combination Alcohol Beverage Licenses. The ALRC may recommend approval of applications for new Class 'B' Beer, Class 'C' Wine, and/or 'Class B' Combination alcohol beverage licenses intended to be located in the Density Plan Area only under the following circumstances:

i. The sale of an existing business that holds a valid Class 'B' Beer, Class 'C' Wine or 'Class B' combination alcohol beverage license and is operating as a Class 'B' Beer, Class 'C' Wine or 'Class B' combination licensed establishment at the time of sale; or

ii. Any of the circumstances provided for in Sec. 38.05(8)(b)1, M.G.O. (i.e., death of the original licensee, bankruptcy, assignment for the benefit of creditors, or disability of the original licensee); or

iii. The proposed establishment is a bona fide restaurant; or

iv. The proposed establishment is a new hotel; or

v. The proposed establishment is part of an existing hotel wishing to expand or modify its licensed premise; or

vi. The proposed establishment qualifies as an exceptional circumstance; or

vii. The proposed establishment is intended to replace a former Class 'B' Beer, Class 'C' Wine, or 'Class B' Combination alcohol beverage license that ceased regular operations no more than three hundred sixty-five (365) days prior to the filing date of the new alcohol beverage license application. In the case of leased property, this three hundred sixty-five (365) day grace period begins tolling on the first day that the property owner regains full possession and control of the affected property, as evidenced by competent evidence provided by the property owner.

6. Capacity.

a. Any new licenses granted pursuant to the sale of an existing and operational business or under the three hundred sixty-five- (365) day window described in sections 4 5(a) and (b) above will be eligible for a licensed capacity no greater than the licensed capacity of the

former business at the time that regular operations were ceased.

b. The ALRC may recommend approval of a request to increased capacity for existing alcohol beverage licenses within the Density Plan Area only if the establishment is a hotel or a bona fide restaurant or qualifies as an exceptional circumstance.

7. Surrender Of Existing Alcohol Licenses. If an existing alcohol beverage license for an establishment located within the Density Plan Area is surrendered for a reason other than the sale of an existing and operational business or transfer within the Density Plan Area under Sec. 38.05(8), M.G.O., the ALRC may recommend approval of a new alcohol beverage license application for that location only if the proposed establishment is a bona fide restaurant, qualifies as an exceptional circumstance, or falls within the three hundred sixty-five- (365) day window described in sections 4(a) and (b) above.

8. Transfer Of Existing Alcohol Beverage Licenses.

a. The ALRC may recommend approval of an application to transfer an existing alcohol beverage license from outside the Density Plan Area to a location within the Density Plan Area only if the proposed establishment is a bona fide restaurant or qualifies as an exceptional circumstance.

b. The ALRC may recommend approval of an application to transfer an existing alcohol beverage license from within the Density Plan Area to another location within the Density Plan Area.

9. Pending Prosecutions. This subsection shall not supercede the provisions of Sec. 38.06(1), M.G.O. pertaining to restrictions on the issuance of new Class A or Class B alcohol beverage licenses pursuant to the sale or transfer of a business while there is pending against the current licensee any proceedings related to violations of the Madison General Ordinances conviction of which would result in automatic forfeiture of said license.

10. Renewals. This subsection shall not prohibit the renewal of any alcohol beverage license existing within the Density Plan Area.

11. Annual Review. The effect of this ordinance shall be reviewed annually. In addition to any public feedback, a report shall be prepared by City staff, including the Alcohol Policy Coordinator and the Problem Analyst from the Police Department, and shared with the following committees: the Alcohol License Review Committee; Downtown Coordinating Committee; Public Safety Review Board; Central Business Improvement District (BID) Board; and Common Council. This annual review will be due November 1st of each year and include the following: 1) The number of license applications for each license type filed with the City Clerk for establishments both within the density plan area and the areas immediately adjacent; 2) the number of license applications for each license type granted by the Common Council for establishments both within the density plan area and in the areas immediately adjacent; 3) the frequency of alcohol related crime and disorder, both within the density plan area and in the areas immediately adjacent; 4) the correlation between alcohol license density and the occurrence of alcohol related crime and disorder; 5) an analysis of the economic impact of the ordinance over the previous year; 6) an analysis of the campus house party situation including, but not limited to, the number of house parties broken up by the police and number of sexual assaults reported and number of violent crimes reported.

12. Sunset. This subsection shall expire ~~four (4)~~ three (3) years from the date of enactment unless extended by the Common Council prior to the expiration date.”