File #: 22548, **Version:** 4

Fiscal Note

No significant fiscal impact is anticipated.

Title

AMENDED 2nd SUBSTITUTE Amending Sec. 38.05(9)(o) of the Madison General Ordinances to create entertainment venues, extend time limits for applying for new licenses in closed premises, modify annual reporting requirements, and extend the sunset provisions.

Body

DRAFTER'S ANALYSIS: The Sponsors have introduced this legislation at the request of the Alcohol License Review Committee. These amendments make several changes to the Alcohol License Density Ordinance (ALDO): 1. The ordinance increases the 365-day limitation on replacing a closed establishment with a new one to 730 days; 2. Increases the alcohol sales limitation under the definition of “exceptional circumstances” from its current cap of 25% of gross revenues to 50% of gross revenues; 3. Creates a new category of entertainment venues as an exception to ALDO licensing restrictions; 4. Provides for changes in the content of the Alcohol Policy Coordinator’s annual review and report as to both the report’s content and the bodies that it is submitted to; 5. Would extend the sunset date an additional two years from the date these amendments are enacted and; 6. Would permit expansion of taverns in the ALDO area under limited circumstances.
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The Common Council of the City of Madison do hereby ordain as follows:

Subdivision (o) entitled “Alcohol Beverage License Density Plan” of Subsection (9) entitled “Limitation Upon Issuance of Licenses” of Section 38.05 entitled “Limitation Upon Issuance of Licenses” of the Madison General Ordinances is amended 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, MGO 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), MGO.
      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),

MGO.

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, drug store, or hotel and it generated no more than ~~twenty-five~~ fifty percent (~~25~~50 %) of its annual gross revenues from the sale of alcohol. ~~A bowling center, having more than six (6) bowling lanes, and generating no more than thirty-three percent (33%) of its annual gross revenues from the sale of alcohol, may be considered an exceptional circumstance.~~

ii. Applications relying on classification as an exceptional circumstance must provide evidence therein that no more than ~~twenty-five~~fifty percent (~~25~~50%) of the establishment's annual gross revenues will come from the sale of alcohol.

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), MGO.

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

d. Entertainment Venue.

i. An establishment may be considered an entertainment venue if it is not a tavern, restaurant, liquor store, convenience store, full-service grocery store, drug store, or hotel and it generated no more than seventy percent (70%) of its annual gross revenues from the sale of alcohol, and voluntarily accepts the following conditions to its alcohol beverage license;

A. The establishment shall provide any of the following activities or performances during its hours of operation:

1) Movies or live theatrical performances;

2) Live sports, magic, comedy, poetry, prose, musical or theatrical performances;

3) Bowling;

4) Gaming such as board games, shuffleboard, volleyball or electronic/internet gaming;

5) Or any activity that is substantially similar or related to any of the activities set forth in sub. 1.a through 1.d. above.

B. The establishment's business is primarily focused upon delivery of the entertainment component or activity as determined by an analysis of the establishment's:

1) Capital, labor and floor space dedicated to the entertainment component or activity;

2) The name, identity, appearance and advertising of the establishment, and;

3) The frequency, duration, timing and magnitude of the entertainment component or activity of the establishment in relation to the overall business activities of the establishment.

C. The establishment shall be open for business no more than two hours prior to any event or activity qualifying the establishment as an entertainment venue and shall close its business no more than one hour

following such an event or activity. However, an establishment may be open during other hours so long as its operations during such hours would meet the definition of a bona fide restaurant pursuant to Sec. 38.05 (9)(0)4.a., MGO.

D. The establishment, as part of its application, shall file a detailed business plan with the ALRC that establishes the business will conform to all the requirements of an entertainment venue. However, the establishment may elect to withhold, redact or obliterate from such business plan any information that it considers to be a trade secret as defined by Wis. Stat. § 134.90(1)(c), or proprietary information, or that would give its competitors an undue competitive advantage. The establishment shall state, in its application, the reasons for withholding, redacting or obliterating any such information from the business plan.

E. The establishment shall file an annual report with the ALRC establishing that no more than **~~sixty-five~~ seventy** percent (**~~65~~ 70**%) of gross revenues were obtained from the sale of alcohol.

F. Notwithstanding any requirements herein the establishment shall comply with all licensing requirements and conditions and all laws, regulations and rules applicable to the establishment. The establishment shall have installed such materials or equipment necessary to minimize any noise emanating from the establishment and to ensure that the establishment complies with Chapter 24 of the Madison General Ordinances.

G. Any establishment representing itself as an entertainment venue 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 entertainment venue upon request of the City pursuant to Sec. 38.05(10), MGO.

H. Decisions regarding an establishment's status as an entertainment venue will be made by the Common Council upon a recommendation by the ALRC.

I. Any establishment licensed as an Adult Entertainment Tavern pursuant to Sec. 38.11 is not an entertainment venue for the purposes of the Alcohol Beverage License Density Plan.

J. No more than seven (7) entertainment venue licenses may be issued and in effect under this ordinance at any time.

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., MGO, (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~~ ~~entertainment venue~~**; 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)~~ seven hundred thirty (730) days prior to the filing date of the new alcohol beverage license application. In the case of leased property, this ~~three~~

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~~hundred sixty-five (365)~~ seven hundred thirty (730) 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.

vi. Notwithstanding the ~~three hundred sixty-five (365)~~ seven hundred thirty (730) day restriction contained in Sec. 38.05(9)(o)5.a.v., MGO, the ALRC may recommend approval of applications for 'Class A' alcohol beverage licenses intended to be located in the Density Plan area, so long as the application is filed on or before ~~March 4~~ August 1, 2011, and the proposed establishment is intended to replace a former "Class A" alcohol beverage license that has ceased regular operations at the same premise and no other business has occupied the premise since the closing of the former licensed establishment.

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., MGO, (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 as an entertainment venue; 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)~~ seven hundred thirty (730) 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)~~ seven hundred thirty (730) 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.

viii. Notwithstanding the ~~three hundred sixty-five (365)~~ seven hundred thirty (730) day restriction contained in Sec. 38.05(9)(o)5.b.vii., MGO, the ALRC may recommend approval of applications for Class 'B' Beer, Class 'C' Wine or 'Class B' Combination alcohol beverage licenses so long as the application is filed on or before ~~March 4~~ August 1, 2011, and the proposed establishment is intended to replace a former "Class 'B' Beer, Class 'C' Wine or 'Class B' Combination alcohol beverage license that has ceased regular operations at the same premise and no other business has occupied the premise since the closing of the former licensed establishment.

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)~~ seven hundred thirty (730) day window or replacing a former licensee that ceased regular operations as described in sections 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.

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b. The ALRC may recommend approval of a request to increased capacity for existing alcohol beverage licenses within the Density Plan Area only if:
   i. the establishment is a hotel or a bona fide restaurant or qualifies as an exceptional circumstance or as an entertainment venue~~.~~, or:
   ii. A change in fire or building codes or physical improvements to the licensed premises have resulted in a higher physical capacity limit for the licensed premises as determined by the Fire Marshal and the Building Inspection ~~**Unit**~~ **Division**.

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), MGO, the ALRC may recommend approval of a new alcohol beverage license application for that location only if the proposed established is a bona fide restaurant, qualifies as an exceptional circumstance or as an entertainment venue, or falls within the ~~three hundred sixty-five (365)~~ seven hundred thirty (730) 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 or as an entertainment venue.
   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), MGO, 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 Committee; Central Business Improvement District (BID) Board; Economic Development Committee; and Common Council. This annual review will be due ~~November 1st~~ March 15th 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~~ licensed establishments within the density plan area; 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~~ ALRC approved licensed capacity of each such establishment and the total aggregate licensed capacity of the density plan area; 3) The ~~frequency of alcohol related crime and disorder, both within the density plan area and in the areas immediately adjacent~~ number of calls for police and EMS services within the density plan area broken down by time of day and further reporting separately those numbers for major special events such as Freakfest, Mifflin Street Block Party, etc.; 4) ~~the correlation between alcohol license density and the occurrence of alcohol related crime and disorder~~ Maps that display the calls for police services as set forth under sub. 3; 5) An analysis of ~~the economic impact of the ordinance over the previous year~~ police and EMS calls for service showing any clustering or “hot spots” for such calls; 6) ~~an analysis of the campus house party situation including, but not limited to, the~~

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~~number of house parties broken up by the police and number of sexual assaults reported and number of violent crimes reported~~ And such additional information as city staff may believe of benefit to the ALRC and the community.

12. Sunset. This subsection shall expire on ~~July 5, 2011~~August 1, 2013, unless extended by the Common Council prior to the expiration date."