



Legislation Text

File #: 23005, Version: 1

Fiscal Note

There is no impact on General Fund Revenues because no citations were written.

Title

Repealing Section 38.12 and renumbering Section 38.13 to Section 38.12 to eliminate the prohibition of alcohol to habitually intoxicated persons, and amending Section 1.08(3)(a) of the Madison General Ordinances to repeal the bail deposit for such violation.

Body

DRAFTER'S ANALYSIS: Current state law and City ordinances prohibit the sale of alcohol beverages to "habitual drunkards." This proposal eliminates the ordinance requiring the maintenance of a list by the Madison Police Department, of Known Habitually Intoxicated Persons, who may not be sold carry out alcohol by a Class "A" or Class "A" alcohol beverage licensee. The proposal also eliminates the appeal procedure for the person who objects to their name being placed or maintained on such list.

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

1. Section 38.12 entitled "Habitually Intoxicated Persons" of the Madison General Ordinances is hereby repealed.
2. Current Section 38.13 entitled "Enforcement" of the Madison General Ordinances is renumbered to Section 38.12.
3. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by repealing therein the following:
"Sale of alcohol to Known Habitually Intoxicated Person 38.12 \$200"

EDITOR'S NOTE:

Current Section 38.12 entitled "Habitually Intoxicated Persons" of the Madison General Ordinances reads as follows:

"38.12 HABITUALLY INTOXICATED PERSONS.

- (1) Declaration of Policy. Wis. Stat. § 125.12(2)3. provides procedures for the suspension, revocation or nonrenewal of a retail alcohol beverage license, when the licensee "has sold or given away alcohol beverages to known habitual drunkards." A person who is habitually intoxicated may lack self-control as to the use of alcohol beverages and use such beverages to the extent that their health is substantially impaired or endangered and their social or economic functioning is substantially disrupted. Such conduct is dangerous to the individual and to others. It is in the interest of the health, welfare and safety of the citizens of the City of Madison to prohibit the harmful conduct of habitually intoxicated persons, and it is a reasonable exercise of the City's police powers to enforce those provisions of state law that prohibit a retailer from selling alcohol beverages to these habitually intoxicated persons.
- (2) Definition of a Known Habitually Intoxicated Person. A Known Habitually Intoxicated Person is a person who, within the past one hundred eighty (180) days:
 - (a) Has been convicted of six (6) or more civil or criminal offenses, in which the police reports or other evidence indicate that the police officer who made the arrest determined, based upon the training and experience of the officer, that the person was under the influence of alcohol at the time of the commission of the offense, or
 - (b) Has been transported and admitted six (6) or more times to an approved public treatment facility under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment, or

- (c) Has been subject to any combination of arrests and convictions under sub. (1) and admissions to an approved public alcohol treatment facility under sub. (2), that equals or exceeds six (6) times.
- (d) Where a person from the same incident has been both convicted of a civil or criminal offense, as defined in sub. a., and has been admitted to an approved public alcohol treatment facility under sub. b., both the arrest and the admission may be counted separately for the calculation provided in sub c.
- (e) A person may voluntarily request that their name be added to the list of Known Habitually Intoxicated Persons. Such a request shall be made in writing and shall be submitted to the Madison Police Department.

(3) Maintenance of List.

- (a) The Madison Police Department shall maintain a list of Known Habitually Intoxicated Persons and shall, in its judgment, determine the format and content of the list. The Department shall periodically review the format of the list. Whenever the Department determines that a person meets the definition of a Known Habitually Intoxicated Person, as provided in sub. (2), the Department shall cause the name of that person to be placed on said list, as provided in this Section, along with a photograph of the person, which reasonably represents the likeness of the person.
- (b) Petition for Removal. If one hundred and eighty (180) days have passed from the time the name of a person has been placed on the list, and the person has not either been convicted of an offense under sub. (2)(a), or has not been admitted to an approved public alcohol treatment facility during that one hundred eighty (180) day period, that person may petition the Madison Police Department to remove their name from the list, pursuant to this Section, by filing a written request with the City Clerk, stating that they qualify for removal from the list. Upon verification that within the past one hundred eighty (180) days the person has not either been convicted of an offense under sub. (2) (a), or has not been admitted to an approved public alcohol treatment facility during that one hundred eighty (180) day period, the Madison Police Department shall remove the name of the person from the list.
- (c) Removal by Police Department. On or about January 1 of each year, the Madison Police Department shall review the list of Known Habitually Intoxicated Persons and shall remove the names of all persons who during the prior calendar year, has not been convicted of an offense under sub. (2)(a) and who has not been transmitted to an approved public alcohol treatment facility by the Department.

- (4) Notice. When the Madison Police Department determines that a person meets the definition of a Known Habitually Intoxicated Person, the Department shall provide the person with a written notice, prepared by the Department, that their name will be placed on the list of Known Habitually Intoxicated Persons. The notice shall inform the person of their right to appeal the determination of the Department as provided in sub. (5). The Department shall keep a record of the date and time that the person was provided with such written notice.

(5) Appeals.

- (a) A person who has been informed in writing by the Madison Police Department that their name will be placed on the list of Known Habitually Intoxicated Persons, may appeal the determination of the Department by filing a written objection with the City Clerk within 5 (five) business days of receiving the notice from the Department. The content of an appeal shall be liberally construed so that, as long as the person appealing provides timely written notice that states that he or she objects to being placed on the list of Known Habitually Intoxicated Persons, the appeal shall be deemed to be in proper form.
- (b) Hearing Examiner. The Chair of the Alcohol License Review Committee, or his or her designee, shall serve as Hearing Examiner for Appeals under this Section, and shall have the authority to conduct hearings upon the filing of a written objection as provided under sub. (5)(a).

- (c) Authority of Hearing Examiner. The hearing examiner shall have the authority to administer oaths and shall be responsible for the fair, orderly and impartial conduct of the hearing and the preservation of the exhibits and record therein.
- (d) Procedure. All proceedings and testimony shall be recorded on tape. A copy of the tape recordings shall be supplied to anyone requesting the same at the requester's expense. If either party requests a stenographic recording and transcription, the hearing examiner shall make the necessary arrangements, but the expense shall be borne by the requesting party.
- (e) Standard of Proof. In the hearing, the Madison Police Department shall have the burden of proving to a reasonable certainty by the greater weight of the credible evidence, i.e. by the preponderance of the evidence, that the person has been convicted of six (6) or more civil or criminal offenses, where the police reports or other evidence indicate that the person was under the influence of alcohol at the time of the commission of the offense; or that the person has been transported and admitted six (6) or more times to an approved public treatment facility under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment; or has been subject to any combination of convictions and admissions that equals or exceeds six (6) times. If after the hearing, the hearing examiner finds that there is not a preponderance of evidence of any combination of six (6) convictions or admissions, as provided in sub. (2), the hearing examiner shall enter an order granting the appeal and the Department shall remove the person's name from the list of Known Habitually Intoxicated Persons. If after the hearing, the hearing examiner finds that there is a preponderance of the evidence that the person has been subject to any combination of six (6) or more convictions or admissions, the hearing examiner shall deny the appeal and the Department shall retain the person's name on the list of Known Habitually Intoxicated Persons.
- (f) Finality of Appeal. All orders of the Hearing Examiner shall be final administrative determinations and shall be subject to review in court as by law may be provided. Any party to the proceeding may seek review thereof within thirty (30) days of service by mail of the final determination of the Hearing Examiner. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding before the Hearing Examiner, with said notice to be sent by first class mail to each party's last known address. The institution of the proceeding for judicial review shall not stay the decision and order of the Hearing Examiner; however, the reviewing court may order a stay upon such terms as it deems proper.
- (6) Distribution of List. The Alcohol Policy Coordinator shall distribute the list of Known Habitually Intoxicated Persons to each retail Class "A" or "Class A" alcohol beverage licensee in the City on a quarterly basis. If the position of Alcohol Policy Coordinator is vacant, the Mayor shall designate a member of the Mayor's staff to distribute the list under this subsection.
- (7) Retailers Prohibited. It shall be unlawful for any Class "A" or "Class A" retail establishment or any person employed by a Class "A" or "Class A" retail establishment, to sell, dispense or give away alcohol beverages to a person whose name and photograph appears on the list of Known Habitually Intoxicated Persons. If the Alcohol Policy Coordinator has provided a copy of the most current list to the licensee, at the address of the licensee as listed by the Madison City Clerk, it shall not be a defense that the licensee did not have a copy of the most current list
 - (a) If a licensee has no prior convictions for violations of sub (7), and has not previously received a warning, the Madison Police Department shall formally warn the licensee that any future violations will result in issuance of a citation. The Madison Police Department shall be responsible for maintaining a list of those licensees who have received warnings under this subsection.
- (8) Nothing in this section shall be construed to limit a licensee's or permittee's duties under Sec. 38.04(1), MGO.

- (9) Review. The Alcohol License Review Committee shall annually review Section 32.12 to determine the efficacy of the Section in deterring alcohol consumption by habitually intoxicated persons.
- (10) Sunset. Section 32.12 shall expire three years from the date of enactment, unless extended by the Common Council prior to the expiration date.”