



Legislation Text

File #: 23497, Version: 1

Fiscal Note

No fiscal impact is anticipated.

Title

Amending Sections 38.10(1)(ar) and (b) and repealing Section 38.10(5) of the Madison General Ordinances creating an ALRC Hearings Subcommittee and Procedures.

Body

DRAFTER'S ANALYSIS: This ordinance amendment would create a subcommittee within the ALRC charged with conducting the license revocation hearings. The Hearings Subcommittee would conduct the actual license revocation hearing and prepare the record, proposed findings of fact and a proposed decision for the full ALRC to act upon. The licensee and the City would have the opportunity to raise objections to the Hearings Subcommittee's recommendations. The ALRC would decide the revocation matter based upon the record prepared by the Hearings Subcommittee. The ALRC decision would then proceed to the Common Council in the same fashion as it does under the current ordinance.

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

1. Subdivision (ar) entitled "Summons" of Subsection (1) of Section 38.10 entitled "Revocation, Suspension or Nonrenewal of License" of the Madison General Ordinances is amended to read as follows:
 "(ar) Summons. Upon the filing of the complaint, the Common Council or the Alcohol License Review Committee shall issue a summons, signed by the Clerk and directed to any peace officer in the municipality. If the complaint is filed by ~~the Office of the City Attorney~~, the City Clerk is authorized to and shall issue and sign a summons, on behalf of the Common Council, directed to any peace officer in the municipality. The Clerk shall notify the Common Council and the Alcohol License Review Committee of the filing of a complaint under this section by ~~the Office of the City Attorney~~ and the issuance of any summons pursuant to it. The summons shall command the licensee complained of to appear before the Alcohol Licensee Review Committee or a special committee designated by the Common Council on a day and time and at a place named in the summons, not less than three (3) days and not more than ten (10) days from the date of issuance, and show cause why the license should not be revoked or suspended. The City and the licensee may mutually agree to waive the time limits relating to the date and time of the initial hearing, except that such waiver shall not delay the initial hearing more than thirty (30) days, without the consent of the Alcohol License Review Committee. The summons and a copy of the complaint shall be served on the licensee at least three (3) days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under Wis. Stat. ch. 801, for service in civil actions in circuit court."
2. Subdivision (b) entitled "Summons" of Subsection (1) of Section 38.10 entitled "Revocation, Suspension or Nonrenewal of License" of the Madison General Ordinances is amended to read as follows:
 "(b) Procedure on Hearing.
 1. The Alcohol License Review Committee (hereinafter Committee) shall serve as the hearing agency for the Common Council. The Initial Appearance on the Complaint shall be before the Committee.
 - (a) If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the Committee finds the allegations sufficient, the license shall be revoked. The Clerk shall give notice of the revocation to the person whose license is revoked.
 - (b) If the licensee appears as required by the summons and denies the complaint then the Committee shall appoint a three member ad hoc subcommittee, composed of the

Chairperson and two additional members at least one of whom must be an alderperson, hereinafter referred to as the Hearings Subcommittee, to conduct the evidentiary hearing and to make a licensing recommendation to the Committee. The Committee shall also schedule such dates for the conduct of the evidentiary hearings as it sees fit. To the extent possible these hearings should be held in as expedient a fashion as is practicable. Whenever possible the hearing should be conducted on a single date.

- (c) Either party or any Committee member may move to hold the hearing before the full committee rather than the Hearings Subcommittee. The decision whether to grant such a motion shall be at the discretion of the Committee.

2. Conduct of Hearings.

~~The Alcohol License Review Committee (hereinafter Committee) shall serve as the hearing agency for the Common Council.~~

- (a) The Alcohol License Review Committee chairperson of the Committee, or the chair's designee shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in Wis. Stat. § 227.45, shall be followed. The complainant shall have the burden of proving the charges by a preponderance of the evidence.
- (b) ~~If the licensee appears as required by the summons and denies the complaint, b~~Both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. All proceedings and testimony shall be recorded on tape and transcribed unless waived by both the complainant and licensee. If either party requests a stenographic recording and transcription, City staff shall make the necessary arrangements, but the expense shall be borne by the requesting party. The secretary to the Committee shall mark and receive all exhibits admitted into the record.
- (c) Within twenty (20) days of the completion of the hearing, the Committee Hearings Subcommittee shall submit a report, accompanied by the complete record of the evidentiary hearings, to the Common Council Committee, including recommended findings of fact, conclusions of law and a recommendation as to what action, if any, the Common Council should take with respect to the license. The Committee Hearings Subcommittee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Common Council Committee. The Common Council Committee shall determine whether the arguments shall be represented orally or in writing or both. The Committee may decide the objection only upon the record produced by the Hearings Subcommittee. The Committee may grant or deny the objection and may make any order consistent with its disposition of the objection.
- (d) If the Common Council Committee, after considering the Committee Hearings Subcommittee's report, the record of the evidence and testimony and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked as provided below. Committee shall within twenty (20) days of the completion of the hearing shall either return the matter to the Hearings Subcommittee for further evidentiary hearings as specified by the Committee or the Committee shall either issue its own findings and recommendations, or adopt or amend the Subcommittee's report and forward such report to the Common Council. Such report shall include findings of fact, conclusions of law and a recommendation as to what action, if any, the Common Council should take with respect to the license. The Committee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Common Council.

The Common Council shall determine whether the arguments shall be represented orally or in writing or both.

If the Common Council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to the report recommending suspension or revocation, the license shall be suspended for not less than three (3) days nor more than ninety (90) days or revoked, except that, if a complaint under Subdivision (a)6., above, is found to be true with respect to a license issued under Wis. Stat. § 125.51(4)(v), the license shall be revoked.

If the Common Council rejects or modifies the report, the Common Council shall adopt appropriate findings of fact and conclusions of law. If the recommendation of the Alcohol License Review Committee is based upon a stipulation of the parties, the Common Council may accept or reject the recommendation by a simple majority vote. If the Common Council rejects the recommendation, the matter shall be referred back to the Committee for a full fact-finding hearing. If the recommendation is based upon a full fact-finding hearing, the recommendation shall become the decision of the Common Council unless reversed or modified by a simple majority vote. No further evidence shall be allowed before the Common Council.

~~If the City Council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to the report recommending suspension or revocation, the license shall be suspended for not less than three (3) days nor more than ninety (90) days or revoked, except that, if a complaint under Subdivision (a)6. is found to be true with respect to a license issued under Wis. Stat. § 125.51(4)(v), the license shall be revoked.~~

The decision of the Common Council shall be a final determination for purposes of judicial review. If the complaint is found to be true, the licensee shall pay to the City the actual cost of the proceedings.

3. The City Clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.
4. If the Common Council finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Common Council finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Common Council or committee may require the complainant to provide security for such costs before issuing the summons under Section 38.10(1)(ar)."
3. Subsection (5) entitled "Severability" of Section 38.10 entitled "Revocation, Suspension or

Nonrenewal of License" of the Madison General Ordinances is hereby repealed.

EDITOR'S NOTE:

Current Section 38.10(5) reads as follows:

"(5) Severability. The several terms and provisions of this section shall be deemed severable, and if any provision hereof or the application hereof to any person or circumstances is held invalid, the remainder of the section and the applicability of such provisions to other persons and circumstances shall not be affected thereby."