

**STATE OF WISCONSIN  
DANE COUNTY  
CITY OF MADISON ALCOHOL LICENSE REVIEW COMMITTEE**

---

CITY OF MADISON  
210 Martin Luther King Jr. Boulevard  
City-County Building, Room 401  
Madison, Wisconsin 53703,

**SUMMONS**

Complainant,

vs.

RED ROOSTER MADISON, LLC  
d.b.a. Red Rooster  
Timothy R. Payne, Liquor/Beer Agent  
[REDACTED]

Non-renewal of "Class B" Combination  
Alcohol Beverage License and City of  
Madison Entertainment License

Respondent.

---

To each person named above as Respondent:

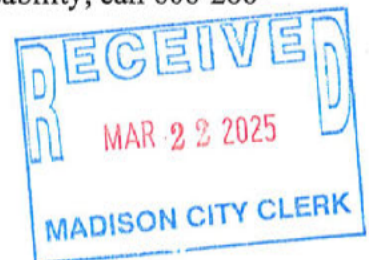
You are hereby summoned and required to appear before the Alcohol License Review Committee of the City of Madison at its meeting of May 29, 2025, in Room 201, City-County Building, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin, at 5:30 p.m., to answer to the attached Complaint for Red Rooster Madison, LLC, Timothy R. Payne, Agent, doing business as Red Rooster, 2513 Seiferth Road, Madison, Wisconsin 53716.

Dated this 22 day of May 2025.



Colin Barushok  
Chair, Alcohol License Review Committee

If you require the assistance of auxiliary aids or services because of a disability, call 608-266-4511 (TDD 267-8664) to make the appropriate arrangements.



**STATE OF WISCONSIN  
DANE COUNTY  
CITY OF MADISON ALCOHOL LICENSE REVIEW COMMITTEE**

---

CITY OF MADISON  
210 Martin Luther King Jr. Boulevard  
City-County Building, Room 401  
Madison, Wisconsin 53703,

**COMPLAINT**

Complainant,

vs.

RED ROOSTER MADISON, LLC  
d.b.a. Red Rooster  
Timothy R. Payne, Liquor/Beer Agent  
[REDACTED]

Non-renewal of "Class B" Combination  
Alcohol Beverage License and City of  
Madison Entertainment License

Respondent.

---

NOW COMES the City of Madison by Assistant City Attorney Jennifer Zilavy, and alleges as follows, that:

1. The Complainant, Assistant City Attorney Jennifer Zilavy, is an adult resident of the City of Madison, with a business address of 210 Martin Luther King Jr. Boulevard, Room 401, Madison, Wisconsin, and at all times material to this action, she was and is a member of the Office of the City Attorney, in her official capacity.

2. The Respondent herein, Red Rooster Madison, LLC, Timothy R. Payne, agent, is the alcohol beverage licensee doing business as Red Rooster at 2513 Seiferth Road, Madison, Wisconsin, according to documents filed with the City Clerk of the City of Madison.

3. The Common Council of the City of Madison granted a "Class B" Combination Alcohol Beverage license to Respondent for the period July 1, 2024, through June 30, 2025. At all times alleged in this complaint, Respondent was the holder of a "Class B" Combination Alcohol Beverage license issued by the City of Madison.



4. The Common Council of the City of Madison granted a 21+ Entertainment License to Respondent for the period July 1, 2024, through June 30, 2025. At all times alleged in this complaint, Respondent was the holder of a 21+ Entertainment License issued by the City of Madison.

5. Respondent has filed a renewal application for its "Class B" Combination Alcohol Beverage License for the period July 1, 2025, through June 30, 2026.

6. Respondent filed a renewal application for its Entertainment License for the period July 1, 2025, through June 30, 2026.

7. Timothy R. Payne is the owner and operator of Red Rooster operating at 2513 Seiferth Road, Madison, WI.

8. On information and belief, Respondent, under the City of Madison "Class B" Combination Alcohol Beverage License for the premises known as Red Rooster, 2153 Seiferth Road, Madison, Wisconsin, has violated various provisions of Sec. 38.10(1)(a) of the Madison General Ordinances and various provisions of Chapter 125 of the Wisconsin Statutes, as set forth in Madison Police Department officers' reports, information received from the City of Madison Clerk's Office, and a report from the Wisconsin Division of Alcohol Beverages, to wit:

**VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES AND WISCONSIN STATE STATUTES WITHIN THE MEANING OF § 38.06(2), MGO, AND § 125.68(2), WIS. STAT., NO LICENSED OPERATOR ON DUTY**

9. On November 27, 2024, at approximately 7:55 p.m., Madison Police Officer Michael Franklin, Jr., was dispatched to Red Rooster for a disturbance. Upon arrival Officer Franklin made contact with the bartender identified as Nancy S. Martin, DOB [REDACTED] ("Martin"). Officer Franklin also contacted the only other employee on site, identified as Nicholas S. Nesthus, DOB [REDACTED] ("Nesthus"). According to records from the City of Madison Clerk's Office, neither

Martin nor Nesthus have Operator's Licenses issued by the City of Madison. Madison Police case No. 005234466.

10. On December 6, 2024, bartender Rebecca Brauer ("Brauer") and bar manager Nicholas Nesthus were working at Red Rooster. From approximately 6:00 p.m. until 3:46 a.m. on December 7, 2024, Brauer and Nesthus were the only two employees at Red Rooster. Per the City of Madison Clerk's Office, neither Brauer nor Nesthus held a City of Madison Operator's License on December 6 or 7 2024, and there was no other person on premises during the aforementioned time period that either had an operator's license or the privilege of an operator's license. Madison Police Case No. 2024-00534963.

**VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES  
AND WISCONSIN STATE STATUTES WITHIN THE MEANING OF § 38.07(b)  
AND (d), MGO AND § 125.68(4)(c), WIS. STAT., OPEN AFTER HOURS AND NON-  
SERVICE PERSONNEL ON PREMISES AFTER HOURS**

11. On December 7, 2024, Red Rooster was open after hours and had patrons who were not employees on the premises. Per Wisconsin Statute § 125.68, all patrons must be off the licensed premises by 2:30 a.m. Two patrons remained on the premises after 2:30 a.m. Those patrons were identified as Patrick Anderson, who was in and out of the premises several times between 2:30 and 4:31 a.m. and was still in his vehicle in the parking lot at 5:00 a.m., and Kimberly Brauer (bartender Rebecca Brauer's sister), who was on the premises until exiting the premises at 3:19 a.m. According to Red Rooster's bartender that evening, Rebecca Brauer, she did not close the bar until sometime after 4:00 a.m. Madison Police Case No. 2024-00534963.

**VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES AND  
WISCONSIN STATE STATUTES WITHIN THE MEANING OF § 38.07(A), MGO, NO  
SALE OR SERVICE OF ALCOHOL BEVERAGES BETWEEN THE HOURS OF 2:15  
A.M. AND 6:00 A.M. ON SATURDAYS AND SUNDAYS**

12. On December 7, 2024, at approximately 3:27 a.m., Rooster manager Nesthus can

be seen on video from Red Rooster's interior cameras sitting at the end of the bar and taking a drink out of the Maker's Mark whisky bottle that was sitting in front of him. This bottle had been sitting on the bar at this location since 2:03 a.m. when bartender Brauer poured a large glass of Maker's Mark for Nesthus out of that same bottle. Madison Police Case No. 2024-00534963.

**VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES AND  
WISCONSIN STATE STATUTES WITHIN THE MEANING OF § 38.04(1)(a)(3), MGO,  
PERMIT INTOXICATED PERSON ON LICENSED PREMISES**

13. Over the course of several weeks, beginning on December 7, 2024, Madison Police were investigating a homicide by intoxicated use of a motor vehicle case involving employees of Red Rooster. In the course of the investigation, Madison Police Crash Investigator Brandon Mortenson made contact with Red Rooster owner Timothy Payne ("Payne") and obtained video from inside and outside of Red Rooster from the night of December 6, 2024, into the early morning hours of December 7, 2024.

Investigator Mortenson watched several hours of video. On the video, and with the assistance of Payne, Investigator Mortenson identified two patrons, Kimberly Brauer and Patrick Anderson, who were clearly intoxicated while on Red Rooster premises. The following is what Investigator Mortenson observed on the video. At approximately 12:58 a.m., Investigator Mortenson observes patron Brauer fall down inside the bar due to what appeared to be her intoxication level. At 1:18 a.m., patron Brauer is observed on camera on the back deck area of Red Rooster. Bar manager Nesthus can be seen helping Kimberly Brauer back inside the bar. At 1:26 a.m., Kimberly Brauer stumbled off her stool and appeared to almost fall down again as she attempted to walk outside. At 1:27 a.m., Kimberly Brauer is back outside and is struggling to walk down the back stairs and leaning heavily on the railing. Once she exits the stairs, Kimberly Brauer can be seen staggering both backwards and side-to-side, almost falling down, as she walked. At

1:29 a.m., Nesthus helps Kimberly Brauer back into the bar as she is staggering so badly, she almost falls down. At 2:15 a.m. Kimberly Brauer can be seen attempting to help Nesthus up after he fell down due to his level of intoxication. At 3:19 a.m., Kimberly Brauer can be seen exiting the back door of Red Rooster. Kimberly Brauer staggers heavily to her vehicle which is parked in the back lot and enters the vehicle. Investigator Mortenson does not observe anyone else approaching the vehicle with Kimberly Brauer or entering the vehicle. At 3:21 a.m., Kimberly Brauer's vehicle can be seen driving out of the Red Rooster parking lot.

At 3:29 a.m., Anderson can be seen struggling to stand up straight and is staggering every time he lets go of the bar. Anderson walks in circles and is pacing back and forth but can barely stand up. As Anderson walks up and down the bar, he runs into chairs and stools. At 3:31 a.m., Anderson can be seen standing near the end of the bar where he was swaying and apparently passes out. Anderson falls over a bar stool to the ground, appearing to injure his face as he is holding his forehead once he hits the ground. At 3:36 a.m., Anderson is able to stand back up on his feet. At 3:41 a.m., Anderson is seen on the video staggering out the back door of the Red Rooster and struggling to get down the stairs. Anderson is seen staggering through the parking lot to a parked vehicle located in the back corner of the lot. Investigator Mortenson observes on the video the brake lights on the vehicle and various instrument lights coming on. At 4:12 a.m., Anderson can be seen on video stumbling back across the parking lot and then up the stairs into the back entrance of the Red Rooster. At 4:16 a.m., Anderson can be seen back outside and attempting to walk down the stairs when he appears to have missed a step and lands very hard on the ground and begins running to keep his balance. At 4:18 a.m., Anderson staggers across the parking lot again to the back deck area picking up various items and appearing to be looking for something. He attempts to reënter the Red Rooster and begins knocking on the back door and is let in by someone. At 4:21

a.m., Anderson is back on the deck staggering around, again, appearing to be looking for something. He heads back to his vehicle in the back corner of the lot. At 4:28 a.m., Anderson is back out of his vehicle and heads across the parking lot, on the deck again, and is now using a flashlight and appearing to look for something. Anderson again begins pounding on the Red Rooster back door. At 4:31 a.m., someone comes to the back door and after a brief conversation the door is shut, and Anderson is alone outside. Anderson again staggered across the parking lot to his vehicle. At 4:36 a.m., Anderson is back again at the rear entrance to the Red Rooster pounding on the door. No one opens the door and Anderson heads back to his vehicle. The video ended at 5:00 a.m., and Anderson was still in his vehicle in the parking lot. Madison Police Case No. 2024-00534963.

**VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES AND  
WISCONSIN STATE STATUTES WITHIN THE MEANING OF § 38.04(1)(a)(2), MGO  
AND § 125.07(2), WIS. STAT., SELL, DISPENSE, OR GIVE AWAY ALCOHOL  
BEVERAGES TO INTOXICATED PERSON**

14. On November 27, 2024, at approximately 7:55 p.m., Madison Police Officer Michael Franklin, Jr., was dispatched to the Red Rooster for a reported disturbance. Upon arrival Officer Franklin made contact with bartender Martin. Martin told Officer Franklin that a patron, who she said was causing problems from the moment he got there, was belligerent and calling staff “bitches.” Martin told Officer Franklin that this customer, later identified as Kevin Doerr (“Doerr”), “appeared very drunk.” Martin said that based upon Doerr’s behavior she “cut him off” and that he did not like that. Officer Franklin also spoke with bar manager Nesthus. Nesthus told Officer Franklin that Doerr seemed “pretty drunk from the moment he arrived at the bar.” Nesthus stated that after Martin stopped serving Doerr, he got in Martin’s face and that is when Nesthus decided to escort Doerr off the premises. Martin told Officer Franklin that Doerr was served “only

three drinks” the entire time he was at the Red Rooster. Doerr was cited for Disorderly Conduct While Under the Influence of Alcohol. Madison Police Case No. 2024-00523466.

15. Over the course of several weeks, beginning on December 7, 2024, Madison Police were investigating a homicide by intoxicated use of a motor vehicle case involving employees of Red Rooster. In the course of the investigation, Madison Police Crash Investigator Brandon Mortenson made contact with Red Rooster owner Payne and obtained video from inside and outside of Red Rooster from the night of December 6, 2024, into the early morning hours of December 7, 2024.

Investigator Mortenson watched several hours of the video supplied to him by Payne in order to gather evidence related to the fatal car crash that involved the Red Rooster bar manager Nicholas Nesthus. On the video, Investigator Mortenson sees Nesthus arrive at the Red Rooster at 6:03 p.m. on December 6, 2024. Nesthus sets up work computers at the end of the bar and is seen working and talking for a period of time. At 7:15 p.m., Investigator Mortenson observes Red Rooster bartender Rebecca Brauer make and serve Nesthus his first mixed alcohol drink which appears to be an old fashioned. Brauer confirmed in a later interview with Investigator Mortenson that the drink was in fact an old fashioned. At 7:38 p.m., Nesthus consumes his first shot of alcohol. At 8:17 p.m., Nesthus is observed consuming his second shot of alcohol. At 8:31 p.m., Nesthus is observed consuming his third shot of alcohol. At 8:36 p.m., Brauer is seen making and serving Nesthus his second mixed alcohol drink which appears to be another old fashioned. At 9:12 p.m. Brauer is seen making and serving what appears to be Nesthus’s third mixed alcohol drink, which again, appears to be an old fashioned. At 9:23 p.m., Nesthus is seen consuming his fourth shot of alcohol. At 9:45 p.m., Brauer is seen making and serving what appears to be Nesthus’s fourth alcohol drink which appears to be old fashioned. At 10:31 p.m., Nesthus starts



serving drinks and assisting Brauer with bartending. At 10:52 p.m., Brauer makes and serves Nesthus his fifth mixed alcohol drink, which appears to be an old-fashioned. At 10:58 p.m., Nesthus is observed consuming his fifth shot of alcohol. At 11:12 p.m., Nesthus can be seen walking toward the back area of the bar by the kitchen and stumbles slightly into the wall. At 11:38 p.m. Nesthus can be seen starting some type of dance where he is waving his hands in the air. As he backs up, he stumbles slightly into the cooler area. At 12:25 a.m., Nesthus is seen helping himself to a Pabst Blue Ribbon beer and opens the beverage. At 12:48 a.m., Nesthus is seen consuming his sixth shot of alcohol. At 12:48 a.m., Nesthus can be seen drinking an old-fashioned out of the wrong glass, which appeared to have been another customer's drink. At 12:54 a.m., Nesthus consumes his seventh shot of alcohol. At 1:20 a.m., Nesthus attempts to get another intoxicated patron some water and appears to spill the water on himself as he is pouring it. He then stumbles to the register area and stumbles to his right, appearing very unsteady on his feet. At 1:58 a.m., Nesthus consumes his eighth shot of alcohol. At 2:03 a.m., Brauer pours Nesthus a large glass of what appears to be Maker's Mark whisky. At 2:14 a.m., after having taken what appeared to be a large drink from the Maker's Mark, Nesthus can be seen at the corner of the bar attempting to get up, but he falls to the ground. Another unidentified intoxicated patron and patron Patrick Anderson appear to attempt to help Nesthus up and he falls down again. Brauer can be seen cleaning the bar nearby and continues cleaning and does not become involved but clearly sees that Nesthus is falling down drunk. At 2:40 a.m., Nesthus is at the end of the bar with his head down. It appears that he is passing out as his head is bobbing up and down. At 2:47 a.m., Nesthus appears to be passed out on the bar. At 3:04 a.m., Nesthus can be seen walking behind the bar and trips over his own feet and catches himself on the cooler to steady himself. At 3:06 a.m., Nesthus can be seen standing in front of the register area hunched over with his head down and seemingly

swaying side-to-side. At 3:07 a.m., Nesthus tries to walk to Brauer, who is at the register area and is having difficulty maintaining his balance, staggering, and stumbling. At 3:23 a.m., Nesthus and patron Patrick Anderson appear to be staggering around the bar looking for something. At 3:24 a.m., Nesthus can be seen walking by the back kitchen area towards the end of the bar. He stumbles and falls backwards and catches the wall to avoid falling on the floor. At 3:27 a.m., Nesthus is sitting at the end of the bar and takes another drink from the Maker's Mark whisky that had been sitting there since Brauer poured it at 2:03 a.m. At 3:42 a.m., Nesthus can be seen staggering to the side door of the bar where he is swaying and staggering from time to time as he stands at that location. At 3:46 a.m., Nesthus moves from that standing position and struggles with the side door and leaves to go outside. At 3:47 a.m., Nesthus can be seen staggering across the parking lot towards his 2017 Jeep Grand Cherokee. Nesthus enters the Jeep by himself and no one else can be seen in or around the car when he enters into the driver's seat. At 3:48 a.m., Nesthus leaves the parking lot.

At approximately 3:56 a.m., Nesthus ran a red light on North Stoughton Road at Highway 30 and crashed into two vehicles, killing the occupant of one of the vehicles. Nesthus was arrested and charged with Homicide by Intoxicated Use of a Motor Vehicle and 2<sup>nd</sup> Degree Reckless Endangerment. Madison Police Case No. 2024-00534963.

**VIOLATION OF CHAPTER 38 OF THE MADISON GENERAL ORDINANCES AND WISCONSIN STATE STATUTES WITHIN THE MEANING OF § 38.031, MGO, AND WIS. ADMIN. CODE CHAPTER 8.43 AND §§ 125.33(9) AND 125.69(6), WIS. STATS.**

16. On April 15, 2025, Wisconsin Division of Alcohol Beverages Special Agent Nicole Zautner conducted an inspection at the Red Rooster. Agent Zautner discovered empty liquor bottles that were not defaced as required by Wisconsin Administrative Code Chapter 8.43. Agent Zautner also discovered alcohol that was not purchased from a licensed wholesaler as required by


Wisconsin Statutes §§ 125.33(9) and 125.69(6). Red Rooster owner Timothy Payne was informed of these violations and was also informed of his responsibility to post his seller's permit and current liquor license. Zautner Field Report dated 4/15/2025.

NOW, THEREFORE, for all the above stated reasons and pursuant to Sec. 38.10(1)(e), Madison General Ordinances, the Complainant requests that the Common Council of the City of Madison NON-RENEW the "Class B" Combination Alcohol Beverage License and the Entertainment License issued to Red Rooster Madison, LLC, for the premises known as Red Rooster, 2153 Seiferth Road, Madison, Wisconsin.


### JURAT

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF DANE         )

Assistant City Attorney Jennifer Zilavy, being duly sworn on oath, states that she has read the foregoing Complaint against RED ROOSTER MADISON, LLC, d/b/a Red Rooster, 2513 Seiferth Road, Madison, Wisconsin, and that the statements are true of her own knowledge, except those which are stated upon information and belief, and as to such matters, she believes them to be true as they are based reports by Madison Police Officers filed pursuant to their official duties, a report from Special Agent Zautner from the Wisconsin Division of Alcohol Beverages, and official records from the City of Madison Clerk's office.

  
\_\_\_\_\_  
Jennifer Zilavy  
Assistant City Attorney

Subscribed and sworn to before me  
this 22<sup>nd</sup> day of May 2025.

  
\_\_\_\_\_  
Notary-Public, State of Wisconsin  
My Commission expires is permanent

