

CITY OF MADISON
ENFORCEMENT OF ALCOHOL VIOLATIONS AGAINST LICENSED
ESTABLISHMENTS

1. After the Common Council has adopted the ALRC’s recommendation for approval of a liquor license and the City Clerk issues that license, the holder of the license has a property interest in that liquor license. Therefore, in order to take away that license or impose a sanction against the licensee, there must be a due process hearing. Because of the steps necessary to revoke, suspend or impose sanctions on a licensee, ALRC members must be careful in granting liquor licenses. If an establishment has come to the City’s attention for liquor law violations or public nuisance activity, the City can deal with the establishments informally and/or in a formal enforcement capacity in the following ways:
 - a. Informal
 - i. ALERT meeting
 - b. Formal
 - i. Prosecute/assess points for ordinance violation
 - ii. Formal Expression of Concern
 - iii. Suspension/Revocation hearing for point accumulation
 - iv. Chief of Police Security Plan
 - v. Suspension/Revocation for disorderly house
 - vi. Suspension/Revocation for public nuisance
 - vii. Non-renewal
 - viii. Conditions on license at time of renewal
 - ix. Citizen complaints

- a. **ALERT.** ALERT stands for Alcohol License Enforcement/Emergency Response Team. The purpose of an ALERT is to meet with liquor establishments that have been identified as having issues which, if persist, could lead to disciplinary actions by the City against the license holder. The goal is to efficiently resolve problems and issues in an informal setting and proactive manner consistent with the City’s discipline structure contained in Chapter 38 of the Madison General Ordinances. The primary goal of an ALERT is to solve an identified problem before it becomes a chronic problem that must be addressed through the disciplinary and/or court process. The Alcohol Policy Coordinator is responsible for scheduling and coordinating ALERT meetings. The Alcohol Policy Coordinator is responsible for briefing ALRC. The ALERT team is comprised of the following:
 - i. One member of the ALRC (rotates quarterly)
 - ii. The alderperson of the district within which the establishment is located
 - iii. The City Attorney or designee
 - iv. The Police District Captain in which the establishment is located
 - v. ALRC police representative

- vi. Alcohol Policy Coordinator
- vii. License holder
- viii. Tavern League Representative

- b. **Violation of Chapter 38.** The Madison Police Department refers reports of alleged Chapter 38 violations by licensed establishments to the City Attorney's Office for charging decisions. If the City Attorney's Office determines that probable cause exists that a violation of Chapter 38 occurred, the City Attorney's Office drafts a complaint that is filed in the Madison Municipal Court. The matter is then prosecuted as any other ordinance violation. The City of Madison has a "point" system for dealing with violations of Chapter 38, the City's alcohol regulation ordinance. For example, allowing an underage person on the licensed premise is a 25 point violation. Upon conviction in municipal court, either by trial or by entering a plea of no contest or guilty, the license holder is assessed a monetary penalty by the municipal court and the City Attorney's Office assesses the points and if appropriate, follows through with discipline based upon the point assessment.
- c. **Formal Expression of Concern.** In those instances in which a licensee has accumulated less than 100 demerit points as determined by the City Attorney, and additional violations on one date would result in the accumulation of at least 100 points but not more than 200 points, the ALRC shall call before it the licensee for purposes of a "Formal Expression of Concern." If the licensee appears, no discussion of the alleged facts underlying the assessment of the demerit points shall be permitted unless the licensee requests such discussion. The licensee is advised that any statements made may be considered by the ALRC in any subsequent suspension/revocation hearing which may result from the alleged violations which are the subject of the formal expression of concern.
 - a. If a licensee fails to appear, after notice, the matter is referred for a suspension/revocation hearing.
 - b. If the licensee appears, the points that led to the formal expression of concern are deleted from their current record.
 - c. A formal expression of concern can only occur once in a 12 month period. If a licensee exceeds 100 points in a 12 month period after a formal expression of concern, the matter proceeds to a suspension/revocation hearing.
 - d. Points are accumulated over a 12 month period with the date of each violation being the basis for determining that 12 month period.
- d. **Suspension/Revocation.** If a licensee accumulates more than 100 points within a 12 month period, the matter will be scheduled for a suspension/revocation hearing rather than a formal expression of concern. The City may also proceed with a suspension/revocation hearing without the accumulation of 100 points for egregious conduct in violation of Chapter 38, MGO. Upon the filing of a

complaint with the City Clerk, the Common Council authorizes a summons to be issued to the licensee for the purposes of the suspension/revocation hearing, which occurs before the ALRC.

- a. The ALRC serves as the hearing agency for the Common Council. The chair of the ALRC conducts the hearing, administers the oaths to witnesses and may issue subpoenas. The complaint must be proven by a preponderance of the evidence. Within 20 days of the conclusion of the hearing, the ALRC submits a report to the Common Council with findings of fact, conclusions of law and a recommendation.
 - b. A license holder can stipulate to a suspension or revocation, in which case a formal hearing is not held and the stipulation is presented to the ALRC for approval and recommendation to the Common Council.
 - c. Any action by the Common Council in suspending or revoking a license or failure to revoke or suspend any license for good cause may be reviewed in circuit court.
 - d. When a license is revoked, no other license can be granted to the licensee or the premises for a period of 12 months from the date of revocation.
- e. **Chief's Security Plan.** It allows the Chief of Police to impose certain conditions on a liquor license. The conditions must include a security plan, cannot be contrary or inconsistent with any statute or ordinance regulating alcohol or any other condition on the license. The Chief of Police or designee determines the elements of the plan. The City Clerk then issues a new license with the Chief's conditions listed on the license. License holder has 10 days to object to the plan. The objection is made to the ALRC via the City Clerk. ALRC can amend the plan based on a hearing. The security plan can only include the following elements:
- a. Provision for licensed security guards
 - b. Monitoring of interior/exterior areas by licensee
 - c. Regulating traffic flow in parking areas
 - d. Exterior/interior lighting
 - e. Regular meetings with police department personnel
 - f. Posting of regulatory signage to aid enforcement efforts
 - g. Limitations on the number of patrons allowed on the premises at certain times
 - h. Any other reasonable security measures not enumerated
- f. **Disorderly House.** Sometimes an establishment is ripe for discipline but there have not been Chapter 38 violations that could be established by probable cause in order to trigger the point system. For example, if an establishment is the site of fights, litter, noise, batteries, sexual assaults, weapons violations, drug violations, or other disturbances, the City could proceed against the license holder with a disorderly house action. The disorderly house action has traditionally been prosecuted before the ALRC. However, there is a provision in Chapter 24 of the

Madison General Ordinances to prosecute in municipal court for a disorderly house.

- g. **Public Nuisance Action.** Elements to trigger a public nuisance action are similar to but more extensive than a disorderly house action. This action is filed in Circuit Court.
- h. **Nonrenewal.** This would happen prior to the renewal of licenses in June of each year. The process and procedure for nonrenewal is identical to that for suspension/revocation.
- i. **Conditions On License At Time of Renewal.** If an establishment has been problematic for police and/or neighbors, the ALRC can place conditions on the license at the time of renewal in an attempt to address the issues of concern that have been brought to their attention.
- j. **Citizen Complaint.** Section 38.10(1)(a) provides that any resident of the City may file a sworn written complaint with the City Clerk alleging one of the following about any person or entity licensed pursuant to Chapter 38:
 - a. The person has violation any provision of Chapter 38.
 - b. The person keeps or maintains a disorderly or riotous, indecent or improper house.
 - c. The person has sold or given away any intoxicant to any underage person, or to persons intoxicated or bordering on intoxication, or to known habitual drunkards.
 - d. The person has failed to maintain the premises according to standards prescribed for sanitation by the Public Health Department, or whose premises persons are permitted to loiter for purposes of prostitution.
 - e. The person has not observed and obeyed any lawful order of the Common Council or police officers of the City.
 - f. The person does not possess the qualifications required under Chapter 38 to hold the license.
 - g. The person has been convicted of manufacturing or delivering a controlled substance; of possessing, with intent to manufacture or deliver a controlled substance.
 - h. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture or deliver, or to manufacture or deliver a controlled substance.

If a complaint is found to be malicious and without probable cause, the costs shall be paid by the complainant.

WHAT CAN CITIZENS DO TO ASSIST IN ELIMINATING PROBLEM ESTABLISHMENTS?

- a. Stay actively involved and informed in your neighborhood association and the community at large.**
- b. Contact City officials to voice complaints (Alder, Mayor, City Attorney, Police, Building Inspection, Health Department, Fire).**
- c. Keep logs of observations and be specific as to date, time and facts.**
- d. Attend meetings where the establishment is on the agenda and register to speak.**
- e. Get to know the establishment owner.**
- f. Call the establishment owner with complaints/observations and keep a detailed log of such contact.**
- g. Call the police when appropriate.**
- h. File a complaint if appropriate (see above)**