

BID ALDO Subcommittee

Recommended Changes to proposed "Sober Server" Amendment
Approved February 2, 2010

1. Current version of "sober server" provisions in ordinance:

(Sec. 38.06(7) Am. by Ord. 9350, 12-21-87)

(8) It shall be unlawful for the licensee or any employee of a licensed establishment to be under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance, while performing services on the licensed premises. (Cr. by Ord. 8894, 6-12-86)

"Under the influence" means not only all the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging to any degree in alcohol beverages and which tends to deprive a person of the clearness of intellect and control of himself or herself which he or she would otherwise possess. (Cr. by Ord. 8894, 6-12-86)

NB: Per current city ordinance (38.04 (1)(a), "No licensee or permittee may [sell, dispense, give away] alcohol beverages to a person who is intoxicated" and "No licensee or permittee may permit an intoxicated person to be on a licensed premise."

2. Proposed Amendment Introduced at ALRC January 21:

(Sponsor: Mayor Cieslewicz)

City of Madison Legislative File Number 16432 (version 1)

Title

Amending Section 38.06(8) of the Madison General Ordinances to prohibit the drinking of alcohol by licensees and employees of a licensed retail alcohol establishment while working in the establishment.

Body

DRAFTER'S ANALYSIS: This proposal makes it unlawful for any individual in a licensed retail alcohol establishment to consume alcohol beverages while working or performing services in the establishment.

The Common Council of the City of Madison do hereby ordain as follows:
Subsection (8) of Section 38.06 entitled "General Provisions and Hours" of the Madison General Ordinances is amended to read as follows:

"(8) It shall be unlawful for the licensee, agents, officers, directors, partners, members, managers of the licensee, or any employee or independent contractor of a licensed establishment, including members of the licensee's immediate family, to drink or consume any alcohol beverage or to be under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance, while working or performing services on the licensed premises."

Fiscal Note

There may be a minimal increase in General Fund revenues

3. BID ALDO Subcommittee Recommendations:

- a. Reject the proposed amendment language (see 2, above).
- b. Recommend the following ordinance amendment to simplify the definition of under the influence (for all persons on the premises of a licensed establishment).

38.02(2)

“Under the influence” means ~~not only all the well known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging to any degree in alcohol beverages and which tends to deprive a person of the clearness of intellect and control of himself or herself which he or she would otherwise possess (Cr. By Ord. 8894, 6-12-86) that the actor’s ability is materially impaired because of his or her consumption of an alcohol beverage.~~
Editor’s Note: This language tracks Sec. 939.24(42), Stats.

38.04 UNDERAGE AND INTOXICATED PERSONS, PRESENCE ON LICENSED PREMISES; POSSESSION; MISUSE OF IDENTIFICATION; PENALTIES.

(1) Intoxicated Persons.

(a) Restrictions.

1. No person may procure for, sell, dispense, or give away alcohol beverages to a person who is intoxicated under the influence.
2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated under the influence.
3. No licensee or permittee may permit an ~~intoxicated~~ under the influence person to be on a license premises.

- c. Suggest to the ALRC that they could address problems with specific establishments through license conditions for those establishments, rather than amending the ordinance.