

Evaluation of Smoking Restriction Ordinances in Madison Restaurants and Taverns

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Madison, once considered a nation-wide smoke-free leader, adopted its first smoke-free ordinance on August 5, 1975, covering many public areas. However, restaurants were not included until the adoption of the phased-in 1992 ordinance that prohibited smoking in all restaurants that did not sell alcohol.

Smoking continued in all taverns and restaurants selling alcohol until Madison's smoking ordinance, MGO 23.05, Smoking Prohibited in Certain Areas, was amended in November 2002. This ordinance, which again used a phased-in approach, was to finally end smoking in all restaurants by 2006, whether or not alcohol was sold. Taverns were not covered by the ordinance.

However, the tavern exemption and the line drawn between which establishments were restaurants and which were taverns immediately created controversy and conflict between inspectors and establishment owners and between restaurant owners and tavern owners.

This conflict emerged because although the difference is written in clearly into the State Statutes, it is not so clear when standing inside an establishment. (An establishment is defined as a restaurant if its alcohol sales are 50% or less of its total food and drink sales, while a tavern is defined as an establishment that sells more than 50%).

During the phase-in period, health inspectors were charged with assuring that no smoking was occurring in the dining area of any restaurant—smoking would still be allowed in the full-service bar area until 2006. This caveat resulted in even more confusion. What exactly does a full service bar area look like? Where is the line drawn between it and the smoke-free area?

After passage of the 2002 ordinance there was on-going frustration among City staff, industry stakeholders, and citizen callers regarding its impact and implementation. On August 3, 2002 Alder Jean MacCubbin sent a request to the Madison Department of Public Health to “conduct a comprehensive evaluation and review of the implementation and interpretations as well as the effects on 'smoke-free workplaces' due to the ordinance.”

Subsequently we wrote a detailed report in response her questions, which in turn resulted in considerable discussion among the Alders as to the fairness of the ordinance they had recently created.

In the fall of 2003, Alderman Steve Holtzman began the process to correct the many problems that resulted from the 2002 ordinance and eventually spearheaded Madison's comprehensive smoke-free law, which requires all workplaces, including restaurants and taverns to be 100% smoke-free. This ordinance passed April 20, 2004 and took effect

July 1, 2005. Subsequently, one change to the law was made to allow an exemption for existing cigar bars, for cigar smoking only.

It may be useful for those who might be considering passage of less comprehensive smoke-free laws to read through the following problems that occurred subsequent to the passage of the 2002 restaurant-only ban.

- The ordinance changes did not include a workable procedure to allow the City to verify reported percentages of alcohol sales. Although most establishments seemed to report accurately, some were questionable.
- When the new ordinance went into effect in 2003, five large and popular establishments revised their alcohol percentage numbers up above the 50% limit from the numbers they submitted for their 2002-03 food and drink license. The newly reported percentages of alcohol sold suddenly changed these establishments from being defined as restaurants (where anyone under 21 years of age can enter) to being defined as taverns (where one must be over 21 years of age to enter unless accompanied by parent or guardian). A short time later, just as suddenly as the upward changes occurred, all establishments revised their numbers down and once again became restaurants, saying there were calculation errors.
- Restaurant owners have told us that it is VERY EASY to manipulate the percentage of alcohol sold up or down (“I can run a couple more drink specials or add a few more happy hours and push us into the tavern category” or “All I have to do is raise the price of this or that drink”).
- Except for the fact that unaccompanied minors are not allowed in taverns, there is essentially **no apparent difference** to customers or health inspectors between an establishment selling 50% alcohol (defined as a restaurant under State law) or 51% (defined as a tavern under State law); or 49% verses 52%, etc. All of these similar establishments sell a lot of food as well as a lot of alcohol. They all look like places that the whole family would go to for dinner, kids included.
- A significant problem with the ordinance has been the vague definition of full service bar **area**. There is no description of how big this area can be. There are restaurants with huge bar areas that fall under the restrictions. In some cases these places have 3 bars throughout the facility. Smoking is allowed at all of those bar areas—and the areas are big.
- In many establishments that are allowed to have smoking in the full service bar area, it is necessary to pass through the smoking area to get to the non-smoking area or to the restrooms.

- Although overall the restaurant operators worked well with us as we tried to work out the details of the ordinance, many operators were angry about different aspects of it. Many wanted to see an across-the-board smoke free ordinance that would also cover taverns.
- When smoking is allowed in part of an establishment but not the rest, an annual inspection cannot catch all the smoking ordinance violations that may occur throughout the year.
- One establishment owner tried to find a creative way to get around the law. He had two separate licenses in the same facility (one for food and one for alcohol) under two different corporate names. The alcohol license was for a business that sold 100% alcohol. The food license was for a business that sold 100% food. The same individual was listed as the contact person for both businesses. The alcohol license would allow smoking past 2006, since this business reported 100% alcohol. However, the food license required the business to operate in a building that was entirely smoke free. We became aware of other businesses, especially hotels, which were inquiring about this possibility of two licenses to change their requirements for smoking restrictions.

All of the above issues and more created extraordinary problems of fairness and reasonableness as we tried to work with and enforce an ordinance that allowed smoking in some establishments that served alcohol, but not in others. New establishment operators and operators buying existing businesses became confused over these rules. The serious health impact of second-hand smoke exposure continued in almost all establishments having full service bars.

Since the comprehensive smoke-free ordinance became effective in Madison on July 1, 2005, and as smoking customers have made the adjustment, the confusion and fairness issues no longer exist. All restaurants and taverns that sell alcohol are playing by the same rules. Many restaurant and tavern operators have found creative ways to keep old customers coming back but also to attract new customers. There are many more outdoor patio areas, music venues, expanded food service, games and other innovations as a result of the smoke-free ordinance. Additionally, potential new restaurant and tavern owners keep lining up to open business in Madison.

Following is a table of alcohol sales percentages of Madison restaurants and taverns in 2005, when the comprehensive smoke-free ordinance was about to take effect. It is easy to see that using percent alcohol sales does not provide a clear picture of what a restaurant looks like and what a tavern looks like. Eleven establishments stated they had exactly 50% alcohol sales.

Restaurants have the yellow (lighter) background, taverns shown with the black background. There were 400 restaurants and taverns with alcohol licenses in Madison in 2005.

Madison Alcohol Sales % 2005

	Number of Establishments	% of total establishments
0-10%	86	0.21
11-20%	65	0.16
21-30%	46	0.12
31-40%	34	0.09
41-50%	28	0.07
51-60%	21	0.05
61-70%	27	0.07
71-80%	24	0.06
81-90%	28	0.07
91-99%	21	0.05
100%	20	0.05
Total Establishments	400	

Restaurant Total (0-50%)	259	0.65
Tavern Total (51-100%)	141	0.35

50% 11 0.03

Another statistic of note is that in January 2005, there were 332 combination Class B liquor licenses, in January 2006 there were 339 and in January 2007 there were 350. Madison businesses are on the increase after the implementation of a comprehensive smoke-free ordinance, including restaurants and taverns.

Finally, people frequently comment on the amazing improvement in restaurant and tavern indoor air quality that has resulted from this ordinance. Everyone frequenting or working in any of these establishments is now realizing tremendous public health benefits, in addition to the fine meals and happy times Madison establishments offer.