

Awarding Alcohol Licenses: Issues and Procedures

To be an effective advocate for an improved alcohol environment, you must understand how your municipality grants alcohol licenses. A significant portion of the community alcohol environment is determined by the number, location and character of the places alcohol is sold or served. When local elected leaders exercise their authority with an understanding of how alcohol outlets impact the community, licensing decisions support public safety and health.

Wisconsin imposes very few procedural requirements on awarding new alcohol licenses. Each municipality has the ability to create its own alcohol license review policy as long as three state requirements are met [these are listed below and noted in brackets throughout the document]:

- Use the application form designated by the state, or a local application requiring at least the same information.
- Publish the name of the applicant and location of the proposed establishment in the community newspaper.
- The governing body of the municipality (village trustees, common council, etc.) must vote to approve the license.

Of course, all open-meetings and open-records laws must be observed.

Within those basic requirements, municipal processes and systems vary dramatically. The mandated steps form the foundation for individual community review; working within that framework, a community can create a process that encourages citizen participation and a thoughtful review of the applicant and the proposed location prior to final action. The chart in Appendix 4 provides a general map of the process. Once awarded, alcohol licenses can only be revoked or non-renewed for cause, often after an expensive and lengthy process. Accordingly, it is very important for municipalities to award licenses after a thorough investigation and thoughtful deliberation.

This document guides you through your municipal system for awarding alcohol licenses and the people who administer it. Even if you are familiar with local practice, confirm what you know. Systems, especially systems based on tradition and individuals as opposed to adopted policies and procedures, change over time. Until you know and understand your municipal licensing system, your suggestions – no matter how valid – will lack credibility.

Section 1: What are the mechanics of issuing licenses to sell or serve alcohol in the municipality?

1. Who (by name or office) accepts applications for new alcohol licenses in your community and when is that office open?
Name/Office: _____ Hours of operation: _____
2. Many communities require supplemental application information in addition to what is required by the state. [The information on the Original Alcohol Beverage License Application AT-106 (see **Appendix #1**) is required by state law, and an auxiliary questionnaire (AT 103, see **Appendix #2**) is state-provided].Has your community created a local application or supplemental form?
 Yes (Ask for a copy.) No
3. Does your community provide a checklist or pre-screening document that allows applicants to understand what the community requires before filing an application?
 Yes (Ask for a copy.) No.
4. Does a staff member screen applicants and return any deficient applications?
 Yes No
5. Who verifies eligibility for the licensee, including residency [must have resided continuously in Wisconsin for at least 90 days prior to the application date], age [must be 21 or older], seller's permit [issued by the Department of Revenue], and completion of a responsible beverage server training course [required by state law]? Name/Office:

6. Does a different individual conduct a criminal background check? Yes (if so,
Name/Office: _____ No
7. Is there a written application review process or policy?
 Yes (Ask for a copy.) No.
8. Is there is an unwritten, but generally accepted license review policy, communicated verbally to new staff and members of the governing body?
 Yes (Talk to the staff to learn the steps just like a new staff member.)
 No.

9. Where are public notices for license applications published, and how often? [Required to be published in the local newspaper by state law.]
Where? _____
How often? _____
10. Does the municipality require notification of the area or local posting in addition to the published notice?
- Yes No
10. How does your municipality notify neighboring homes and businesses about pending alcohol license applications? Are only property owners notified, or will people who rent or work in the area be aware of the pending license?
- a. Is clear and distinctive signage posted at the proposed location to alert passers-by about the application and possible hearing?
- Yes No
- b. Is an advisory sent by U.S. mail or e-mail, or by automated telephone calls that deliver a recorded message (*robo* or reverse 911 calls)?
- Yes (Specify means of notification: _____) No
11. Observe a meeting of the committee or commission which reviews alcohol license applications prior to a vote of the governing body. Compare what people tell you and how you see written policies administered. Take very careful notes; two note takers who compare perceptions after the meeting is even better.

Use the checklists in Sections 2 and 3 as a guide.

NOTE: Some municipal governing bodies may review alcohol licenses without any committee review. Municipalities are not required to have a committee review or public hearing on alcohol licenses. [State law requires a vote of the municipal governing body.]

12. While examining written policies, look to see if they consider the areas of information listed in Sections 2 and 3.

If you find gaps, ask the clerk, law enforcement officers and others involved in the process how information is requested or provided before issuing a license, but outside the official review process. Your goal is to know what information is considered, who provides it and how it is evaluated prior to the vote on a license.

Municipalities may request additional information not required on the state application. Examine municipal policies and practices to determine if your municipality knows the answers to the questions in Sections 2 and 3 (below) before awarding a license

Section 2: What does your community know about the applicant’s proposed business and facility before the license is awarded?

Asking detailed questions on the application and requiring the submission of business-related documents-- such as diagrams, floor plans, and business and management plans-- allow the municipality to determine how the applicant plans to present the establishment to the community, and will help a municipality consider whether an applicant is likely to become a problem or an asset for the community.

For Class “A” or “Class A” Licenses (alcohol sold for consumption elsewhere):

1. What is the primary purpose of the retailer? Is it a convenience store, grocery store, sports or camping supply retailer? Are gas pumps present on the property?

For Class “B” and “Class B” Licenses (alcohol sold for on-premises consumption):

2. What is the primary activity of a proposed establishment?

NOTE: Wisconsin does not distinguish between on-premises Class B licenses for bars and restaurants. Both restaurants and taverns that want to serve beer, wine and spirits require the same type of alcohol license. Accordingly, community groups and elected officials should ask careful questions to draw a distinction.

How does the licensee describe the business? Does the proposed name place the emphasis on food or alcohol beverages (Sam’s Bar and Grill or Sam’s Supper Club)?

A community may ask a business to indicate what percentage of revenue it anticipates from alcohol sales and other sources such as food, providing an indication of the applicant’s focus (see item #12 below).

3. Will any food be prepared and sold on site? A menu can help determine if food choices are snacks or meals, helping to distinguish between restaurants and taverns.

4. What are the proposed hours of operation? Closing time is another clue that distinguishes a restaurant from a bar. Restaurants often close earlier than taverns or bars (establishments that focus on alcohol sales). Some communities have problems with restaurants that turn into clubs after food service ends and tables are moved out. Attaching license conditions that close restaurants earlier can prevent restaurants from “morphing” into clubs after the kitchen closes.

For bars, license conditions that stagger closing times by as little as 15 minutes can reduce police problems with traffic, unruly pedestrians and closing time disorder. For more information on license conditions, see **Appendix 5**.

5. Does a “Class B” applicant plan to offer drink specials that could promote over-drinking?
NOTE: The license could contain a condition prohibiting all-you-can-drink, or time limited/quantity unlimited drink specials.

For both Class A and B Licenses:

6. What is the physical layout of the proposed area where alcohol will be sold, served and stored? Research shows room and building design can reduce or escalate alcohol related disorder and violence, problems that can be avoided by a careful review of the plans. Municipalities may require drawings to scale showing all entrances, exits, stages, dancing areas, serving areas, parking and seating areas. Are scale drawings required or requested?
7. Does the licensed area *as defined* on the application define the area that alcohol is both stored and sold narrowly? If not, what is the compelling reason to approve a larger licensed area? See **Appendix #3 confirm** , “The Importance of the Licensed Premises Description.”
8. What products or activities will be marketed adjacent to the licensed area? For example: Will gasoline be sold at the same building as single servings of alcohol such as cans of products? Municipalities can prohibit this. Will alcohol be sold next to the checkout area? A municipality may choose to license a portion of a building and restrict alcohol sales to that area. Grocery stores, for instance, can be required to limit alcohol sales and events to a single area of the store. See **Appendix 3** for more information on the importance of a narrow definition of the licensed area.

9. Maximum establishment capacity (maximum number of people in the establishment) requested by applicant.

NOTE: A municipality may set the capacity of a licensed establishment **lower** than fire code allows based on the structure's design. Many municipalities default to the maximum capacity established by the fire inspector, forfeiting an important tool. Licensed capacity can become a concern for the community if an over concentration of outlets develops. For example, capacity can impact sidewalk use, parking, traffic, and crowd control at closing time.

10. How far is the applicant's location from schools, churches, parks, medical facilities and other locations where youth are often present? Convenience stores and other convenience retail outlets are prime targets for youth attempting to acquire alcohol. Convenience stores and gas stations with alcohol advertising visible from the exterior can increase youth exposure to alcohol advertising, a factor in alcohol initiation.
11. Does the applicant have a written business plan? What role does alcohol sale play in this plan? Examining the business plan can indicate how well planned and capitalized a venture will be, its marketing plan and target clientele.
12. What is the anticipated ratio of gross income for alcohol income to income from other products and services?
13. What alcohol products are planned for sale by the applicant? (6 packs, single servings, kegs).
14. Has the applicant met with local neighborhood associations (residential) and adjacent property owners to describe the proposed licensed establishment? Who examines plans, drawings or other documents on behalf of the neighborhood or adjacent properties?
15. What is the security plan for the licensed area, including: plans to screen and review identification, the number of door or security staff, the number and location of closed circuit TV, and entry/reentry limitations.
16. What are the plans for parking, entrance and waiting line security?

In summary, what does your community know about the applicant's plans for the business and the facility? Some considerations:

- Alcohol related problems are more likely to occur when people are uncomfortable. Physical discomfort caused by crowding, bumping, difficulty reaching the bathrooms, poor ventilation, or lighting contributes to alcohol related violence.
- Boredom is another factor that leads to alcohol related disorder. Fortunately, that can be alleviated by something as simple as televisions in a bar.
- Municipalities can consider the likelihood of both boredom and physical comfort in a proposed establishment if the necessary documents must be provided along with the application.
- Business plans indicate how the business plans to market itself, the staffing pattern, and security plans. These issues are all relevant to the licensing decision. It is also useful to know if the applicant has not prepared these documents.

Section 3: What does your municipality know about the applicant or agent before granting an alcohol license?

Municipalities have the right to gather information about the proposed licensee to help inform whether the applicant/agent will operate in compliance with the law and be an asset to the community.

1. Has the applicant held an alcohol license before – anywhere in the nation? Does the record indicate any previous problems with local law enforcement, community groups or neighbors?
2. Does your municipality conduct a full criminal background check on all applicants, agents and business partners prior to reviewing or voting on an alcohol license?
3. Do the applicant, agent or partners have alcohol-related offenses, including underage drinking citations or OWI convictions, which may indicate individual problems with alcohol use?

Section 4: Does your municipality consider the impact of another alcohol license on the neighborhood or the community alcohol environment?

State law does not require a public hearing or an evaluation of community impact prior to awarding an alcohol license, but alcohol licenses must be awarded at a public meeting, posted as required by Wisconsin's Open Meetings Law.

Groups and individuals can appear at the meeting to comment on alcohol licenses prior to a vote. Once a license is placed on the agenda and posted for a vote, the process varies from community to community. Knowing what to expect allows you to prepare. To advocate effectively, it is important to know the people who make or influence the decision before a final vote is taken on a license so you can reach them prior to the vote.

1. Does the municipality consider licenses at each meeting?
2. Does the Police Department or Sheriff provide a recommendation or report on the applicant or the proposed establishment?
3. Is the applicant expected to attend? What happens if an applicant is absent?
4. Is testimony from local residents common? Is it clear to attendees when members of the public may speak? (Public comment on specific license applications is rare in many municipalities.)
5. Does the municipality have legal counsel present? What is their role in awarding the license?
6. Is the impact of the license on the community or community residents discussed? What is the tone of the discussion? Are applicants questioned? Are the police or committee reports discussed?
7. Does the governing body commonly defer to the judgment or preferences of the local alderman, trustee or village board member?

In summary, does the municipality know how alcohol sales by this business at this location will impact the neighborhood and the overall alcohol environment of the community?

Section 5: Test Your Knowledge

If your group has answered the questions in Sections 1-4, you should know how alcohol is licensed in your municipality. Test your knowledge by describing the alcohol license review process in your community. It may be helpful to create a chart of the alcohol licensing process, listing all the governmental groups and individuals included in the review. (See **Appendix #4**, Sample Chart of the Alcohol Licensing Process.) Then answer these questions:

1. What does an applicant need to know about his business before filing an application for an alcohol license in your municipality?
2. What does the municipality know – and verify – about the applicant and the proposed business before awarding the license?
3. What and when can your neighborhood association or community coalition tell Alders, Trustee or Town Board members about the impact of the proposed license on the community alcohol environment?

Section 6: Meeting with Local Elected Leaders

When your group is able to answer the questions in Section 5, you are ready to make appointments with the people who award licenses. The purpose of these meetings is to learn how local elected leaders view the process and their role in alcohol licensing. If your group has attended and monitored meetings as suggested in Section 1 and Section 4, your local elected leaders will recognize your interest in the municipal alcohol licensing process.

Suggestion: Local elected officials have substantial discretion in awarding or denying licenses. Your group may hope for a different or more inclusive process in the future, but try to avoid any implication that the current process is “wrong.” Chances are very good the current procedure is legal, but fails to exercise the full range of opportunities available to municipal government by state statute. Building bridges during these discussions is the best option for securing long-term change.

Some suggested questions to ask:

- Who takes the lead on each alcohol license application?
- What issues do you consider when evaluating an alcohol license application?
- During the application process, how do you identify a problem or troubled licensee?
- How often does [our municipality] attach license conditions to a new alcohol license? Can you give me an example? See **Appendix #5** for more information on license conditions.
- How do you think our alcohol licensees impact the community?
- How do our licensees impact our alcohol culture?
- We would like to be more involved in the review process. What would you suggest we do?

You might state why you feel that making some modifications to the current licensing process would improve your community’s alcohol environment. If you do so, also emphasize your common ground: you are both working for a healthy and prosperous community. Remember to thank the elected official for his/her time, and try to leave on a positive note.

Appendix #1: State of Wisconsin Form AT-106: Original Alcohol Beverage License Application

Question 9 below has been highlighted by the author; see Appendix #3 “The Importance of the Licensed Premises Description” for a discussion.

ORIGINAL ALCOHOL BEVERAGE RETAIL LICENSE APPLICATION
 Submit to municipal clerk.

For the license period beginning _____ 20____; ending _____ 20____;

TO THE GOVERNING BODY of the: Town of _____
 Village of _____
 City of _____

County of _____ Aldermanic Dist. No. _____ (if required by ordinance)

1. The named INDIVIDUAL PARTNERSHIP LIMITED LIABILITY COMPANY
 CORPORATION/NONPROFIT ORGANIZATION
 hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individuals/partners give last name, first, middle; corporations/limited liability companies give registered name): _____

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of a partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

| Title | Name | Home Address | Home Phone & Fax No. |
|-----------------------|-------|--------------|----------------------|
| President/Member | _____ | _____ | _____ |
| Vice President/Member | _____ | _____ | _____ |
| Secretary/Member | _____ | _____ | _____ |
| Treasurer/Member | _____ | _____ | _____ |
| Agent | _____ | _____ | _____ |
| Directors/Managers | _____ | _____ | _____ |

3. Trade Name _____ Business Phone Number _____

4. Address of Premises _____ Post Office & Zip Code _____

5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? Yes No

6. Is the applicant an employe or agent of, or acting on behalf of anyone except the named applicant? Yes No

7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business? Yes No

8. (a) Corporate/limited liability company applicants only: Insert state _____ and date _____ of registration.
 (b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company? Yes No
 (c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin? Yes No
 (NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)

9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, consumption, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.)

10. Legal description (omit if street address is given above): _____

11. (a) Was this premises licensed for the sale of liquor or beer during the past license year? Yes No
 (b) If yes, under what name was license issued? _____

12. Does the applicant understand they must file a Special Occupational Tax return (TTB form 5630.5) before beginning business? [phone 1-800-937-8884] Yes No

13. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown in Section 2, above? [phone (608) 266-2776] Yes No

14. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers, breweries and brewpubs? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.) Any lack of access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

SUBSCRIBED AND SWORN TO BEFORE ME
 this _____ day of _____, 20____

 (Clerk/Notary Public)

 (Officer of Corporation/Member/Manager of Limited Liability Company/Partner/Individual)

 (Additional Partners/Member/Manager of Limited Liability Company if Any)

TO BE COMPLETED BY CLERK

| | | | |
|--|--------------------------------|---------------------------------|-----------------------------------|
| Date received and filed with municipal clerk | Date reported to council/board | Date provisional license issued | Signature of Clerk / Deputy Clerk |
| Date license granted | Date license issued | License number issued | |

AT-106 (R. 6-14) Wisconsin Department of Revenue

Appendix #2: State of Wisconsin Form AT-103: Supplementary Questionnaire

**AUXILIARY QUESTIONNAIRE
ALCOHOL BEVERAGE LICENSE APPLICATION**

Submit to municipal clerk.

| | | | | | |
|---|-------------|---------------|----------------|---------------|--|
| Individual's Full Name (please print) (last name) | | (first name) | | (middle name) | |
| Home Address (street/route) | Post Office | City | State | Zip Code | |
| Home Phone Number | Age | Date of Birth | Place of Birth | | |

The above named individual provides the following information as a person who is (check one):

- Applying for an alcohol beverage license as an individual.
- A member of a partnership which is making application for an alcohol beverage license.
- _____ of _____
(Officer/Director/Member/Manager/Agent) (Name of Corporation, Limited Liability Company or Nonprofit Organization)
which is making application for an alcohol beverage license.

The above named individual provides the following information to the licensing authority:

1. How long have you continuously resided in Wisconsin prior to this date? _____
2. Have you ever been convicted of any offenses (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of any other states or ordinances of any county or municipality? Yes No
If yes, give law or ordinance violated, trial court, trial date and penalty imposed, and/or date, description and status of charges pending. (If more room is needed, continue on reverse side of this form.) _____
3. Are charges for any offenses presently pending against you (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of other states or ordinances of any county or municipality? Yes No
If yes, describe status of charges pending. _____
4. Do you hold, are you making application for or are you an officer, director or agent of a corporation/nonprofit organization or member/manager/agent of a limited liability company holding or applying for any other alcohol beverage license or permit? Yes No
If yes, identify. _____
(Name, Location and Type of License/Permit)
5. Do you hold and/or are you an officer, director, stockholder, agent or employe of any person or corporation or member/manager/agent of a limited liability company holding or applying for a wholesale beer permit, brewery/winery permit or wholesale liquor, manufacturer or rectifier permit in the State of Wisconsin? Yes No
If yes, identify. _____
(Name of Wholesale License or Permit) (Address by City and County)

6. Named individual must list in chronological order last two employers.

| | | | |
|-----------------|--------------------|---------------|----|
| Employer's Name | Employer's Address | Employed From | To |
| Employer's Name | Employer's Address | Employed From | To |

The undersigned, being first duly sworn on oath, deposes and says that he/she is the person named in the foregoing application; that the applicant has read and made a complete answer to each question, and that the answers in each instance are true and correct. The undersigned further understands that any license issued contrary to Chapter 125 of the Wisconsin Statutes shall be void, and under penalty of state law, the applicant may be prosecuted for submitting false statements and affidavits in connection with this application.

Subscribed and sworn to before me

this _____ day of _____, 20 _____

(Clerk/Notary Public)
My commission expires _____

(Signature of Named Individual)



Appendix #3: The Importance of the *Licensed Premises* Description as it appears on the license.

Municipalities should require a very narrow description of the licensed premises for all new licenses. The standard application form (see Appendix 1, Form AT-106, Question 9) leaves only a small space for a description of the area in which alcohol can be sold, served, consumed, and stored. When completing this form, most applicants describe the licensed premises as the address of the proposed establishment.

If this is how the licensed premises is defined, alcohol can be sold, served, and consumed anywhere at that address. Municipal leaders have the ability to request or even create a narrow description of the licensed premises before the license is awarded. Research and the effects of recent court decisions require communities to be as specific as possible when identifying the exact area where alcohol may be sold or served.

Consider how a broadly defined description of the area in which alcohol can be stored, sold, served, or consumed effects public safety and health in these examples:

Outdoor Concert Venue

An outdoor concert venue covering over 50 acres was the defined licensed area for a Class “B” and “Class B” license (alcohol to be served and consumed on the site) in western Wisconsin. The broad definition allows alcohol to be stored, sold, served and consumed anywhere on that tract of land. Clearly, it is difficult to control youth access to alcohol or locate seriously impaired individuals over such a large expanse.

SOLUTION: The license could limit alcohol sales and consumption to a much smaller area to allow for more crowd control and limit opportunities for underage drinking.

Large public buildings

Areas open to the public, such as art galleries and civic centers, may license the entire building if portions of it are used for events or are rented out for weddings or similar private gatherings. A large unrestricted area for alcohol sales and/or consumption can contribute to alcohol related problems, as demonstrated by the infamous [2006 Martini Night held at the Milwaukee Art Museum](#).

SOLUTION: Although a large building may be licensed, consider restricting event space to smaller areas or zones. For example, while an entire gallery may be licensed, each event is limited to a portion of the space and a maximum number of attendees.

Large and “big box” retailers

Alcohol retailing has changed in recent years. The display of alcohol is no longer relegated to a limited area, but can be near compatible foods, such as fish or meat. While harmless or even practical on the surface, this practice increases youth exposure to alcohol and alcohol advertising. For example, while many individuals consider beer an inherent part of any picnic, displays of beer together with hot dogs, chips and ice cream will be seen by large numbers of children. The Centers for Disease Control and Prevention have suggested that alcohol advertising be at least 36 inches off the floor to minimize the number of youth able to view the advertising at eye level.



Figure 1: [Beer Pontoon Boat at Wal-Mart](#). The C.D.C. recommends limiting alcohol advertising to more than 36 inches from the floor – higher than eye level for young children.

SOLUTION: Limit alcohol to a specific aisle or areas of the store, and require that area to be closed or secured if the store is open after the hours for alcohol sales have ended. This approach also has the advantage of assuring that alcohol and alcohol-free products are not co-mingled in refrigerator cases where consumers may select the wrong beverage.

Golf Courses

Many golf courses are licensed with rolling carts selling alcohol and other beverages to golfers on the course area.

SOLUTION: Limit alcohol sales to the clubhouse where both sales and consumption can be monitored.

As these examples show, it is important to narrowly define the licensed premises. Note that licensed areas of an establishment do not need to be contiguous in most Wisconsin communities. Milwaukee is an exception. For example, outside the City of Milwaukee, a single license can cover a storage area off the retail area or cooler *and* an unconnected specified area where alcohol will be displayed within the store. Areas that alcohol merely passes through, such as check-out areas, do not need to be included in the licensed description. Adding those areas of the store to the description, or failing to narrowly describe the licensed area, allows alcohol to be displayed and sold near the check-out or throughout the store, which, as we have seen, may not be desirable. **The effect of recent court decisions make it imperative for communities to narrowly define the licensed area when issuing licenses.**

Prior to issuing a license, the municipality can specify the licensed area based upon the needs of the community, and if the applicant dislikes that description, the only recourse is negotiation and political persuasion. After a license is issued, the period when a municipality may dictate the selling and serving area has passed. In 2012, the Wisconsin Supreme Court clarified that a municipality does not have the authority to unilaterally modify the description of a licensed area. (*Wis. Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76, 342 Wis. 2d 350, 815 N.W. 2d 690.) **Once the license is issued, any changes to the licensed area must be agreed upon by both the licensee and the municipality.**

Some proposed changes will be harmless, such as adding additional storage area; others may have an unintentional negative impact. The lesson for municipal leaders is clear: defining the licensed area narrowly at the outset protects the community by requiring licensees to return to the Council or Village Board for changes.

For example, many licensed establishments have outdoor serving areas for summer months or to allow people to drink and smoke outside. Some communities quickly expanded the licensed area to the property line as outdoor patio and smoking options were created.

Those descriptions allowed people to wander in parking areas while they consumed alcohol, creating public safety concerns and problems for local police. When municipalities attempted to narrow the description, some licensees were uncooperative. Many municipalities avoided this problem by requiring detailed plans for proposed smoking decks and withholding approval until that narrow definition of the outdoor area was reviewed by the neighborhood.

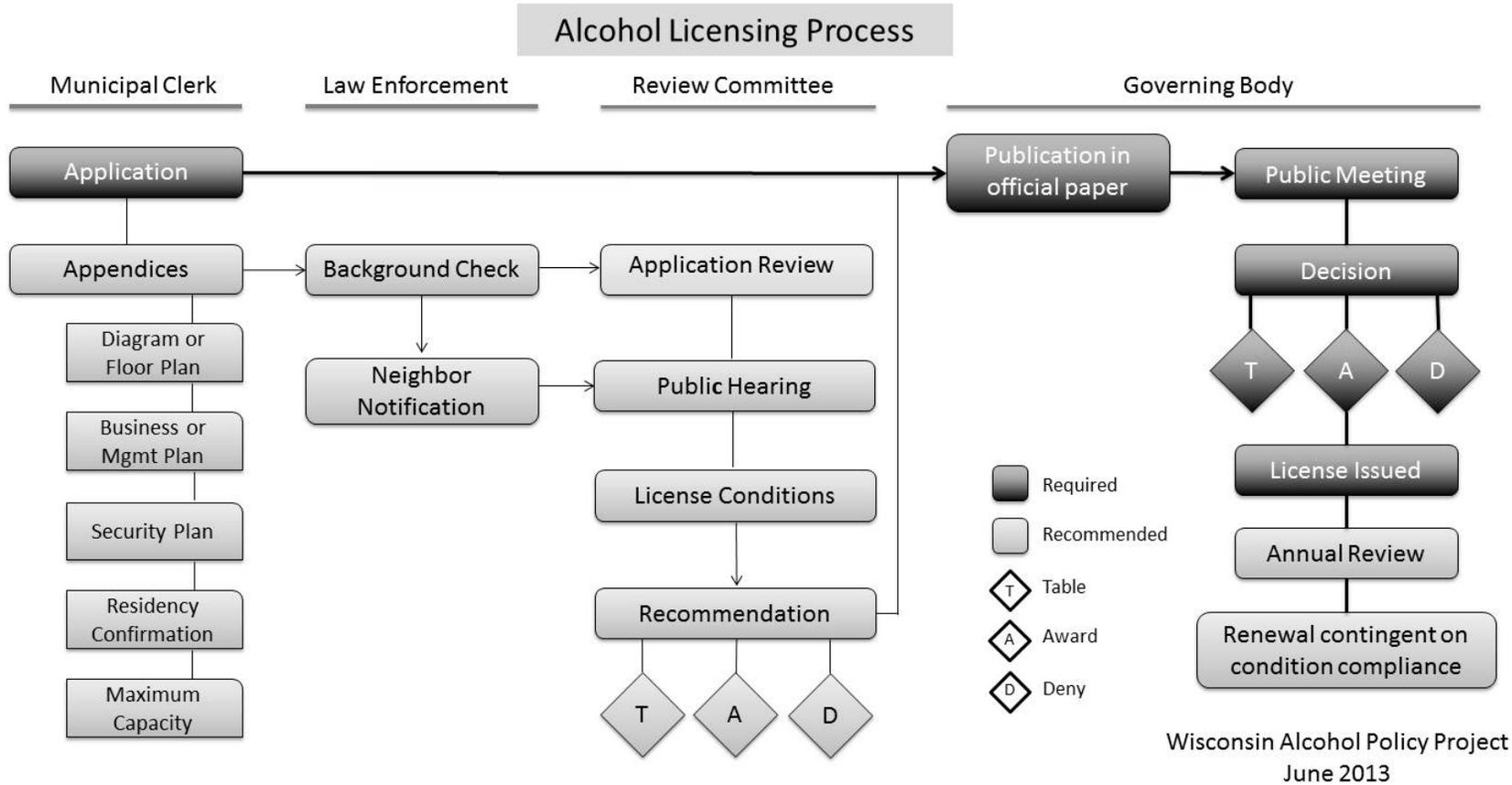


Figure 1: Photo: Municipalities may require detailed plans for outdoor smoking and serving areas before approving changes in the licensed area.

Retailers will talk about the need for flexibility when they attempt to license a very large area or even the entire building, such as a big-box or grocery store. Creating a narrowly defined area doesn't eliminate flexibility; a municipality may amend the premises description at any point with the agreement of the licensee. When the licensed area is defined narrowly, the flexibility to change the area later still exists, but the ability for the owner to change it without the consent of the community is gone.

Retailers may volunteer to limit alcohol to a modest percentage of the shelf space, but request the entire building be part of the licensed area. However the promise is not binding on the applicant, while the broad licensed area binds the municipality. The municipality has the ability to make license agreements or promises binding by including them on the license itself as a condition. Distant corporate decisions and personnel changes make it imperative that important promises be backed up by license conditions before the original license is issued.

Appendix #4: Sample Chart of the Alcohol Licensing Process



Appendix #5: License Conditions

Under what circumstances does the municipality attach license conditions to a new alcohol license?

When considering applications any alcohol license a municipality may attach specific conditions to the license. The applicant agrees to the conditions, although often without enthusiasm, because without the conditions it is unlikely the license will be granted. These conditions are analogous to conditional use permits attached to their property. Violation of alcohol license conditions may be grounds for suspension, nonrenewal or revocation. License conditions can be extremely helpful if the political will power to enforce them is present. Prior to a vote approving the license, the applicant has an incentive (the license) to agree to proposed conditions. License conditions can address past problems at that location and secure binding assurances for the community. Once a license is granted, the municipality cannot unilaterally attach license conditions; the licensee must agree (though he or she no longer has an incentive to cooperate).

Once awarded, a license can only be suspended, revoked or non-renewed for cause. Before the award, a license application may be refused for any reason that is not arbitrary or discriminatory. License conditions are an underutilized tool that allows a community to tailor a license to the very specific concerns of each licensee without amending local ordinances.

For example, an ordinance requiring all licensed establishments to sweep a parking lot and sidewalk area at the close of business may be impractical, as not all licensees will have parking areas and sidewalks, and such an ordinance might be unenforceable. Alternatively, a large venue with sidewalk and parking areas would be a good candidate for a license condition outlining specific exterior tasks or standards to resolve neighborhood concerns about trash.

Municipalities need to think through possible problems, including past problems at the location, prior to initially issuing the license. License conditions can be written to cover most aspects of the licensee and its operation. The City of Racine has successfully used extensive and very detailed license conditions to address specific concerns and control gang activity in some bars and taverns. Licensees that fail to meet those conditions find themselves facing suspension or revocation.

License conditions should be specific and even unique. Municipal authority is broad, and each situation specific. Neighborhood groups and local residents have the ability to suggest license conditions before a license is awarded. The following examples are a starting point for consideration and discussion.

The basic differences between on-premises (Class B) and off-premises (Class A) licensees suggest different license conditions.

Examples of conditions for Class B (on premises) licenses: restaurants, clubs, and taverns

Security:

- Require video cameras at specific locations with images or tapes retained for a specified period of time.
- Require an ID check point at the door, electronic ID scanner with memory, and records maintained for a specific period of time.
- Make licensee responsible for maintaining an orderly queue or entrance line.
- Require all alcohol servers and bar staff to take Responsible Beverage Server Training.
- Mandate that patrons involved in a physical altercation be banned from the premises for xx days.

Management:

- Establish a dress code to reduce gang activity or set standard of decorum.
- No flat fee or timed dinks specials.
- Limitations on entertainment, such as no live bands, amplified music on exterior seating.
- Set an occupancy number – the total number of individuals in the building – that reflects the number of patrons based on concerns for public safety or crowd control. The number set by the fire or building inspector is the upper limit, but a lower number may be placed on the license.
- Establish and enforce employee rules prohibiting drinking or measurable alcohol in blood or breath, or limit employees to a .04 BAC.
- Set earlier closing time: While municipalities may not adopt ordinances establishing closing times that conflict with state statues, license conditions may set an earlier closing time. An earlier closing time makes it less likely that a restaurant will operate as a club late in the evening. Earlier staggered closing times can help relieve over congested sidewalks and streets resulting from a uniform closing time.
- Establish an acceptable sound level in cooperation with neighborhood representatives.
- Require staff to sweep and remove trash (including cigarette butts) within x feet of the entrance.

Possible conditions for Class A (off-premises) licensees:

Merchandise

- Agrees to remove any product from the shelves immediately at the request of the Police or Sheriff. Wisconsin does not have a central system for recalling alcohol beverages – such as Four Loko -- after health or safety issues are identified.
- Will not sell single serving containers of alcohol.
- Will maintain separate coolers for alcohol and alcohol-free beverages.

Promotional Activities

- Prohibit alcohol tasting events where gasoline is sold.
- Limit the number of tasting events annually or simultaneously.
- Alcohol promotions limited to specific areas of the store.
- Limit or prohibit alcohol advertising in the store that is viewable from the outside.

Not all communities place conditions on license, although all have the ability. Some issues to consider when reviewing municipal policy:

- Does the community have a pre-established list of situations that trigger specific conditions?
For example: Would a patio automatically trigger serving, music or entertainment conditions on a license?
- When and how can community members/immediate neighborhood suggest or request conditions?
- Once established, can license conditions be removed *without notice* to the community?

Appendix 6: License Suspension, Non-renewal and Revocation

Nonrenewal, suspension and revocation involve similar legal process that must be initiated by the municipality on specific timelines to protect the rights of the licensee and preserve community order.

If the municipality has criteria or guidelines for awarding alcohol licenses:

- Does the community know and understand the purpose and scope of the guidelines?
- Does the licensing review process and criteria also serve as an outline for the licensee discipline/suspension/revocation/nonrenewal actions?
- Does local law enforcement link alcohol license guidelines and applicant review to licensee discipline? (Learning this requires talking to both law enforcement and local licensees)
- Are the guidelines applied to all new applicants and used to and used to settle disagreement with existing licensees? (Are the guidelines used consistently?)
- Who determines compliance with the terms of the licensing guidelines? A committee, the Police Department? How does the community monitor ongoing compliance?

If the municipality does not have guidelines:

- Have municipal ordinances been amended to make it clear that failure to comply with any of the documents or representations made as part of the application may result in suspension, revocation or nonrenewal?
- Is there another disciplinary system, for example a point system, operating independently? If so, how was the point system developed and how often has it resulted in disciplinary action against licensees? Point systems can be effective or ineffective, depending on enforcement and adherence to the point schedule, which is crucial.
- If not, how are community expectations communicated? When is the last time a licensee was disciplined under the existing system? What was the situation and how was it resolved?

Resident option in extreme circumstances:

In *extreme* situations, a resident of the municipality may choose to file a sworn complaint with the municipal clerk outlining at least one of the nine specific reasons the license should be suspended, nonrenewal or revoked as provided in 125.12(2)(ag). The complaint triggers a series of events including notification of the licensee and a hearing. Consultation with an attorney and local law enforcement should precede the decision to file a complaint.

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