



Municipal Regulation of "Click and Collect" Alcohol Sales¹

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

"Click and Collect" describes a practice where consumers order online from a retailer's website and then pick up their orders at a local store. The use of Click and Collect has become increasingly popular as retailers in competitive markets look for innovative ways to serve customers, and customers have become accustomed to the comfort and convenience of ordering online.

Notably, many grocery stores and other similar retailers have begun offering Click and Collect and, for a small fee or free with a minimum order, will assemble the grocery order and deliver it curbside when the customer arrives to pick it up. It's not hard to imagine the convenience factor as being off the charts for, among others, persons with busy work schedules, persons with small children in tow, and those with limited mobility.

While Click and Collect sales do not typically require municipal oversight or approval, oversight and/or approval may be desirable and/or necessary when the online sale includes alcohol beverages and, in particular, when the sale involves curbside delivery. Recently, some retailers with alcohol licenses have sought municipal approval to expand the description of their premises to include designated parking stalls used for the Click and Collect deliveries. This is

necessary since state law requires the licensed premises to be "particularly described" and include all areas where alcohol is stored or sold.²

To amend described premises during the license year, the licensee must file a written request with the municipality. The governing body has discretion to approve or disapprove the change.³ Municipalities can impose conditions in connection with allowing amendment of the premises but are limited in imposing conditions once the request to amend the premises description has been granted.⁴

This legal comment briefly summarizes state law requirements that come into play when Click and Collect involves the sale of alcohol beverages.

Wisconsin law requires the following for alcohol sales:

1. Face-to-face sales to consumers at the licensed premises.⁵
2. Purchaser must be of legal drinking age (21 or older).
3. Seller must be a licensed operator or under the immediate supervision of a licensed operator.
4. No sales can be made to intoxicated persons.

In order to satisfy the requirement that the sale be face-to-face and that it take place on the licensed premises, an online order for alcohol beverages should not be consummated when the order is placed but, rather, when the order is picked up by the customer with the customer signing the credit card or paying at the retailer's licensed premises. If the customer is picking up curbside, those parking spaces must be included in the licensee's described premises since that is where the sale is taking place.

The requirement that all persons selling alcohol possess an operator's license or be under the immediate supervision of someone with an operator's license effectively means that those delivering alcohol curbside should have an operator's license. "Immediate supervision" has been interpreted to mean that the person supervising must be able to see those being supervised at all times.⁶

Municipalities that receive requests to amend premise descriptions to allow Click and Collect with curbside delivery of alcohol must decide whether such sales should be allowed and, if so, what conditions are appropriately imposed to ensure that any such sales are done lawfully.

► p.16

1. This article was inspired by a Nov. 7, 2017 memo on Click and Collect Alcohol Sales written by Julia Sherman at the Wisconsin Alcohol Policy Project.

2. Wis. Stat. §§ 125.25(3), 125.26(3), 125.28(3), 125.51(2)(c) and 125.51(3)(d).

3. *Alberti v. City of Whitewater*, 109 Wis.2d 592, 327 N.W.2d 150 (1982). See also Wis. Stat. sec. 125.04(3)(h).

4. *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76. The Wisconsin Alcohol Policy Project's Nov. 7, 2017 memo on Click and Collect Alcohol Sales mentioned a variety of conditions that municipalities were considering or had adopted.

5. Wis. Stat. §§ 125.272 and 125.51(6).

6. OAG 9-10-62 (informal opinion).

Municipalities should review a retailer's policies for the Click and Collect operation before granting an expansion of the licensed premises and may want to include those policies as license conditions. Municipalities that want to allow Click and Collect alcohol sales may want to also adopt an ordinance governing such sales. A Wisconsin Alcohol Policy Project memo on Click and Collect⁷ suggests that municipalities inquire about the following before granting an expansion of the licensed premises to allow Click and Collect alcohol sales:

- What hours will alcohol orders be allowed?
- How is an alcohol order assembled?
- Who assembles the entire order? Is an itemized tape prepared?
- When is the credit card charged for the order?
- Is the individual who delivers the order a licensed operator?
- What equipment is provided to staff (e.g., is ambient light sufficient or is a flashlight needed to read the ID, a scanner to record the credit card sale or ID)?

- Is the newly licensed area under video surveillance?
- When is the ID checked?
- Does the seller determine that the name on the order is the same name on the ID?

The memo notes that in addition to provisions relating to the above factors, some municipalities have adopted or considered the following provisions:

- A requirement that the system allow the purchase of alcohol to be denied without affecting the remainder of the purchase.
- Notification of police when an apparently underage person or intoxicated person attempts an alcohol purchase.
- Imposing a minimum waiting period between order time and pick-up time for alcohol and tobacco.
- Requiring that images of the transaction (purchaser, ID card, vehicle, license plate) be captured and retained for a minimum period of time.
- Prohibiting tasting events in the parking lot.

Although municipalities may differ regarding whether Click and Collect alcohol sales should be permitted, those municipalities that wish to allow it should take measures to ensure that such sales are in compliance with state law.

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7. See footnote 1.

Editor's Note:

If you are generally interested in municipal responsibility/authority for handling local health matters, please request the Legal Comment "Health 65," authored by Claire Silverman, League Legal Counsel, and published in the June 1999 *The Municipality*.



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Click & Collect Alcohol Sales in Wisconsin

Retail sales habits are changing, with people looking to make more purchase online. Grocery stores and general retailers with large grocery sections are expanding their online ordering and pick-up services to include grocery sales, known in the industry as “Click & Collect.”

The target customer groups are individuals who may have difficulty walking into or through the store, such as people with mobility problems or individuals with young children. Recently those efforts have expanded dramatically in Wisconsin, and many retailers are seeking the necessary municipal approval to add alcohol sales to their online grocery offerings. However, adding alcohol to Click & Collect sales can unintentionally increase youth access to alcohol and increase excessive alcohol use. Public safety and health requires a municipality to carefully consider if and how to manage Click & Collect alcohol sales.

If retailers wish to include alcohol sales in their Click & Collect sales, they must take specific actions at the municipal level to comply with state law.

Wisconsin requires the following for alcohol sales:

1. The sale must be face-to-face.
2. The sale must take place on the licensed premises.
3. The purchaser must be 21 years or older.
4. The seller must be a licensed “operator” or under the supervision of a licensed operator.
5. The purchaser must not be intoxicated.

Retailers are asking municipalities to designate the parking stalls used for the Click & Collect deliveries as part of the licensed premises on the alcohol license. Licensed premises must include all areas where alcohol is stored or sold, and alcohol cannot be sold outside those areas. In other words, without the expansion of the licensed premises to include the pick-up area, alcohol cannot be included in Click & Collect sales. Outside the City of Milwaukee, licensed areas do not need to be contiguous, allowing specific parking stalls to be designated for Click & collect alcohol sales.

A municipality has discretion over whether to allow the expanded premises. **A municipality should evaluate applications uniformly, but granting one request for extended premises does not require granting all subsequent requests.** A consistent set of guidelines or criteria for reviewing these requests supports consistent review of these applications. Online ordering and delivery only requires municipal approval if alcohol is included. **When a municipality takes the time to evaluate the application to expand the licensed premises, it does not delay all Click & Collect sales, just alcohol sales.**

A request for expanded premises provides an opportunity for the municipality to add new license conditions that can govern the overall alcohol sales policy as well as the Click & Collect sales. After the description of the premises has been changed, both the licensee and municipality must agree to any changes on the license, but the community can add conditions unilaterally as part of the change in the licensed premises. If the applicant does not agree with the license conditions, they may withdraw the application to expand the premises.

Municipalities should review all of a retailer's policies for the Click & Collect sales before expanding the licensed premises so that any necessary amendments are reflected as license conditions. Verbal agreements or internal store policies are not binding. At this time, there are no approved or generally accepted forms of alcohol age-compliance checks for Click & Collect operations.

Straw buyers—individuals who are age 21 or older who purchase alcohol for underage youth—are a serious risk in Click & Collect sales. While youth have not traditionally used grocery stores to purchase alcohol, the possibility of straw buyers must be considered, due to the actual purchases happening outside of the store, credit card sales, and the additional challenges of darkness, weather, and the relative anonymity of a parking lot purchase.

Face-to-face alcohol sales

Wisconsin requires face-to-face alcohol sales. Some reports indicate not all retailers check the ID to confirm *the purchaser is the person picking up the alcohol*. If the purchaser is a different individual than the individual who accepts the alcohol, whether the sale was conducted face-to-face is open to interpretation. Consult your city attorney and police to determine how this is interpreted locally.

Once the identity of the purchaser is confirmed, a licensed operator should confirm the age of the purchaser and only then load the purchases to complete the sale. A licensed operator (sometimes called a licensed bartender) must conduct or supervise every alcohol sale by state law. Since the sale is completed outside the store, it obviously cannot be supervised by the licensed operators inside the store.

Questions a municipality should ask before extending the licensed premises:

Some communities may decide to adopt an ordinance that includes provisions designed to reduce the potential for illegal sales or sales that lead to illegal or excessive consumption of alcohol. An ordinance covers all licensees with Click & Collect operations while still requiring each change in the licensed premises to be reviewed. Although an ordinance is unlikely to cover every situation, a broad ordinance can regulate this type of alcohol sale with specific conditions added to individual licenses as needed.

Questions a municipality should ask before expanding the licensed area for Click & Collect include:

- What hours will alcohol orders be allowed? Should ordering conclude before high school recesses for the day?
- Exactly how is an alcohol order assembled?
- Who assembles the entire order?
- Is an itemized tape prepared? Is it a receipt indicating the sale was already completed?
- When is the credit card charged for the order? [Note: It could be asserted the sale occurs when the card is charged. If that is done when the order is assembled, is it really a face-to-face sale?]

- Is the individual delivering the order a licensed operator? Clearly someone outside the building checking an ID is not under supervision; that individual needs to be a licensed operator (bartender).
- What equipment is provided to the licensed operator conducting the sale? For example, is a flashlight to read the ID provided, or is ambient light sufficient? Is a scanner to record the credit card sale or scan ID provided?
- When is the ID checked?
- When is it determined that the name on the order is the name on the ID? The answer may be never. If the order is under a different name, it is arguable that the sale isn't a face-to-face sale, and the individual with the ID is only delivering, not purchasing, the alcohol.

Alcohol Interdiction Operations to Identify Straw Buyers

Click & Collect sales can unintentionally increase the availability of alcohol for youth. Municipalities should ask retailers for the alcohol sales policy when the driver is age 21 or older but the other occupants of the vehicle are underage, or when the driver is underage but one person in the vehicle is age 21 or older. The need for such a policy is supported by Wisconsin Statutes §346.93 Intoxicants in vehicle; underage persons, which states:

(1) No underage person, as defined under s. 125.02 (20m), may knowingly possess, transport, or have under his or her control any alcohol beverage in any motor vehicle unless the person is employed by a brewer, brewpub, alcohol beverage licensee, wholesaler, retailer, distributor, manufacturer, or rectifier and is possessing, transporting, or having such beverage in a motor vehicle under his or her control during his or her working hours and in the course of employment, as provided under s. 125.07 (4) (bm).

The **City of La Crosse** operated successful alcohol interdiction operations for several years at liquor stores near campus to discourage straw buyers. When money from a youth is given to the adult who purchases the alcohol, the purchaser is acting as a straw buyer and may be cited. When officers in La Crosse observed underage youth in a car leaving an alcohol outlet with what appeared to be legally purchased alcohol, they would pull the car over—if traffic laws were violated—and determine the age of the car passengers. If appropriate, citations were issued.

Alcohol Tastings

Under Wisconsin statutes, any area licensed for off-premises alcohol sales may hold an alcohol-tasting event within the limits of the law. Municipalities are preempted from prohibiting tasting events but may impose some forms of regulation on them. Retailers seeking to begin Click & Collect alcohol sales have been willing to add a license condition that prohibits alcohol-tasting events in the newly licensed parking area; to date, it is wise to add this provision because there may not be another opportunity to add this language.

Alcohol License Conditions & Ordinances to Regulate Click & Collect

In October 2017, the **City of Fond du Lac** added the following alcohol license conditions as part of the revised description of the premises to allow Click & Collect sales of alcohol:

- The system must allow the purchase of alcohol or tobacco to be denied without affecting the remainder of the purchase.
- If the purchaser is not the driver of the vehicle, the Agent/Licensed Employee must ensure the driver is 21 or older.
- Payment cannot be consummated until the purchaser is at the licensed premise and identification has been verified.
- A licensed bartender/Operator must perform the sale/delivery.
- No alcohol sales are permitted if the purchaser does not have valid photo identification.
- The name on the order must match the name on the ID when purchasing alcohol or tobacco products.
- Tasting events are prohibited in the parking lot.
- Minimum 4-hour waiting period between order time and pick-up time for alcohol and tobacco.

The **City of Madison** adopted a similar ordinance to regulate Click & Collect alcohol sales in February 2018. The following provisions were adopted as ordinance:

- Applicants looking to expand their licensed premises for the purpose of Click & Collect must file a detailed operations plan with the application including the protocol for assuring underage and intoxicated persons are unable to secure alcohol through Click & Collect.
- Applications without the operations plan will not be considered.
- Minimum 4-hour waiting period between order time and pick-up time.
- Orders after 2 p.m. cannot be picked up until the following day.
- Pick-up hours are limited to 8:00a.m.-8:00p.m.
- Images of the transaction must be captured and retained at least 30 days.
- The licensed operator must determine the person picking up the order is the same individual who placed the order.
- The licensed operator must report any signs of alcohol consumption to the manager who will assess sobriety for the purpose of approving or denying the sale.
- The pick-up area must be clearly identified with markings, signs and/or barriers.
- No tasting events are allowed in the designated pick-up area.
- The images must include
 - Purchaser
 - The type of ID
 - Purchaser's date of birth
 - License plate

The **City of Neenah** prohibits Click & Collect alcohol sales. The City considered an ordinance very similar to the draft adopted in Madison, but rejected the idea believing that the increased availability of alcohol would have a negative effect on the community.

Wine “Clubs” and other Direct Shippers are not analogous to Click & Collect

While there are some similarities, direct shipment of wine is not analogous to Click & Collect:

- Wine is not part of a larger purchase that includes a range of products.
- Direct shippers are vintners, not local retailers as in Click & Collect.
- Licensing direct shipping of wine is the statutory responsibility of the Wisconsin Department of Revenue, while local alcohol retailing is the statutory responsibility of municipal government.

An out-of-state winery holding a Direct Shipper’s Permit from the Wisconsin Department of Revenue may ship their products directly to individuals in Wisconsin. The delivery must be face-face-face, with a signed receipt indicating the recipient is age 21 or older. A Wisconsin resident may have only 108 liters (about 140 bottles/12 cases) shipped directly to them annually. A Direct Shipper’s Permit is also required for Wisconsin wineries to ship out of the state.

This is a rapidly evolving issue, so please feel free to contact the Wisconsin Alcohol Policy Project with your questions or specific situations. As with other license changes, once the licensed premises are expanded to accommodate Click & Collect, local options are limited.

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Click & Collect Alcohol Policy Check List

This check list is a supplement to *Click & Collect Alcohol Sales* prepared by the Wisconsin Alcohol Policy Project.

Understanding and being involved in alcohol licensing allows a community group or coalition to prevent dangerous over-concentrations of alcohol outlets and understand changes in alcohol sales that can have a negative impact on the community, such as Click & Collect sales.

Follow these general steps to determine how the necessary changes to allow Click & Collect alcohol sales are processed in your community. Because alcohol licensing is a municipal responsibility in Wisconsin, what you learn in one community may not apply in another.

If you are unfamiliar with how locations that sell or serve alcohol are licensed in Wisconsin, it will be useful to review materials prepared for community members on the Wisconsin Alcohol Policy Project's webpage on alcohol licensing:

https://law.wisc.edu/wapp/licensing_alcohol.html.

Local alcohol licensing and amendments to existing licenses begin at city or village offices with the people who process alcohol license applications:

- Ask the person responsible for alcohol licenses (usually the municipal clerk) if any applications to expand the licensed premises for Class A (off-premises licensees) have been filed.
- Ask how you can quickly learn when applications to amend the licensed premises are filed. Often there are e-mail lists/listservs for committees or websites where all alcohol applications are posted.
- Find out how alcohol license applications and amendments to current applications are reviewed. Every municipality has its own process. For example: Does a committee review the application before it is reviewed by the full governing body?

NOTE: A detailed checklist on alcohol licensing in Wisconsin is available online at: [http://law.wisc.edu/wapp/wapp_final_combined_license_memo_04-21-15 .pdf](http://law.wisc.edu/wapp/wapp_final_combined_license_memo_04-21-15.pdf)

- Find out who within the Police Department reviews or comments on these applications.
- Reach out to this person to determine what opinions or information they may have about alcohol sales through Click & Collect.

- If an application to amend the description of the licensed premises by a grocery store or bigbox retailer like Wal-Mart was filed, secure a copy along with any additional documentation and information provided by the applicant.

For example, a drawing of the parking lot or a narrative description of the alcohol-sales policy is important information that can raise or allay fears. These are public records and will be provided upon request.

- Consider asking local independent liquor stores what they think of allowing Click & Collect alcohol sales—they may be concerned that it will hurt their sales and planning to oppose the expanded premises.
- Visit the proposed expanded area to document any outdoor lighting, distance from store, and foot traffic. Take pictures with your phone if the expanded premises are in a dark or isolated portion of the parking lot. Could you check an ID and verify a purchaser in that location?
- Attend the committee or license review meeting, collect the names of those present, and take notes using the list below as a guide.

Is there discussion of how Click & Collect sales will meet the five requirements of state law **(in bold)**? Note if each are discussed:

- The sale must be face-to-face.**
- How will the seller check for fake IDs?
- Will the seller check to determine the name on the credit card is the person taking delivery? [NOTE: This may or may not be an issue for your local police.]
- The sale must take place on the licensed premises.** If the sale is completed in the store before pick-up, it occurs on the licensed premises but isn't face-to-face. If the sale occurs in the parking lot that isn't included on the description of the licensed premises, it has taken place off premises.
- The purchaser must age 21.** How does the retailer plan to verify the age of the purchaser? Is it physically possible to examine an ID at the delivery spot in cold or wet weather? It isn't sufficient for the retailer to assert they will take steps—they should explain how they will implement the stated policy.
- The seller must be a licensed "operator" or under the supervision of a licensed operator.** Most retailers are simply having the individuals assembling and delivering these orders become licensed operators, but each community licenses operators. Someone licensed in City A needs a second operators-permit to be licensed in City B. The current responsible beverage-server training has no information or guidance for Click & Collect sales. What training does this retailer provide these individuals?
- The purchaser is not intoxicated.** Does the retailer have a procedure for terminating a sale if the customer is intoxicated?

How is the expanded licensed area described?

- Where are the additional areas to be located?
- Does that area have lighting?
- Does that location have video coverage?
- Is this area isolated from foot traffic?
- What hours will alcohol orders be allowed? Should ordering conclude before high school recesses for the day?
- Exactly how is an alcohol order assembled?
- Who assembles the entire order?
- Is an itemized tape prepared? Is it a receipt indicating the sale was already completed?
- When is the credit card charged for the order? [NOTE: It could be asserted the sale occurs when the card is charged. If that is done when the order is assembled, is it really a face-to-face sale?]
- Is the individual who delivers the order a licensed operator? Clearly someone outside the building checking an ID is not under supervision; that individual needs to be a licensed operator (bartender).
- What equipment is provided to the licensed operator conducting the sale? For example, is a flashlight to read the ID provided, or is ambient light sufficient? Is a scanner to record the credit card sale or scan ID provided?
- When is the ID checked?
- When is it determined that the name on the order is the name on the ID? The answer may be never. If the order is under a different name, it is arguable that the sale isn't a face-to-face sale and the individual with the ID is only delivering, not purchasing, the alcohol.
- Are the sales policies attached to the license or part of a contractual agreement with the municipality?
- What consequences does the retailer face for failing to abide by the sales policy? [NOTE: There may not be any consequences, which is why it is important to find out.]
- Consider making a statement. Taking a position isn't required, but a simple statement that your coalition is concerned that this type of sale will increase youth access to alcohol and increase underage drinking is very useful, because it reframes this as a public safety issue.

What recommendations are made to the full Council:

- By the review committee
- By the police
- By the public health department
- By the Chamber of Commerce or other local business group
- By your coalition

What license conditions are recommended? License conditions are specific requirements added to the alcohol license by the community at the time it is issued or amended. Failure to fulfill license conditions are serious violations and may be reason to suspend, non-renew, or revoke a license.

A brief general summary of alcohol license conditions is available on line at:
http://law.wisc.edu/wapp/license_conditions.pdf

Here are the conditions added by the City of Fond du Lac in October 2017:

- The system must allow the purchase of alcohol or tobacco to be denied without affecting the remainder of the purchase.
- If the purchaser is not the driver of the vehicle, the Agent/Licensed Employee must ensure the driver is 21 or older.
- Payment cannot be consummated until the purchaser is at the licensed premise and identification has been verified.
- A Licensed Bartender/Operator must perform the sale/delivery.
- No alcohol sales are permitted if the purchaser does not have valid photo identification.
- The name on the order must match the name on the ID when purchasing alcohol or tobacco products.
- Tasting events are prohibited in the parking lot.
- Minimum 4-hour waiting period between order time and pick-up time for alcohol and tobacco.

Click & Collect is an evolving form of retail sales, but the growth of internet sales suggests some form of Click & Collect will be part of the retail landscape for the foreseeable future. Coalitions working with public health leaders and law enforcement can help shape Click & Collect policies that protect community safety and health.