The importance of the licensed premises description

The description of the licensed premises (question #9) and the exact description that appears on the license is extremely important. Prior to issuing a license, the municipality can specify the licensed area based upon the needs of the community, if the applicant dislikes that description the only recourse is negotiation and political persuasion. After a license is issued, changes in the description of the licensed premises must be mutually agreed upon; the period when a municipality may dictate the selling and serving area has passed.

All areas where alcohol is stored, sold or served must be described on the license although the application only provides a single line for the description. As a result, municipalities are often stuck with vague descriptions (123 Main St, Ourtown WI) which allows alcohol to be sold or served anywhere at that address. If a more detailed description isn’t provided by the applicant as part of the application, municipal leaders have the ability to request or even create a narrow description of the licensed premises before the license is awarded.

Licensed areas 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 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 allows alcohol to be displayed and sold near the check-out, which may not be desirable.

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. After 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. A system that requires licensees to seek municipal approval for these changes gives the municipality the opportunity to shape any changes in the licensed premises for community safety and convenience.

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. Such a description 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

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1 Original Alcohol Beverage License Application AT-106 Wisconsin Department of Revenue. Municipalities often reproduce the form with the municipal letterhead.
smoking decks and withholding approval until that narrow definition of the outdoor area was reviewed by the neighborhood.

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.

Consider how each situation below effects public safety and health:

Outdoor Concert Venue

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

Large public buildings

Many golf courses are licensed with rolling carts selling alcohol and other beverages to golfers on the course. Areas open to the public, such as art galleries and civic centers, may license the entire area if portions of the building are used for events or are rented out for weddings, or similar private gatherings. But licensing large areas, regardless of the setting, can contribute to alcohol related problems as demonstrated in the infamous 2006 Martini Night held at the Milwaukee Art Museum.

Large and “big box” retailers

Alcohol retailing has changed in recent years, alcohol display is no longer relegated to a limited area, but is displayed near compatible foods such as fish or meat. While harmless or even practical on the surface, this practice can run counter to public welfare. For example, while many individuals consider beer an inherent part of any picnic, displays of beer with the hot dogs chips and ice cream together 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.

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, but 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.