

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.

Wisconsin Alcohol Policy Project
Julia Sherman, Julia.Sherman@wisc.edu
608-262-0370