

## Public Impairment Ordinances in Wisconsin

Wisconsin does not have a state law prohibiting public impairment. Municipalities may adopt ordinances sanctioning public impairment to maintain community order, reflect community expectations and prevent the serious public safety concerns that result from dangerous drinking. Municipalities cannot create crimes; these ordinances do not criminalize consuming alcohol or impairment. These ordinances sanction public impairment while taking steps to assure the safety of the intoxicated person. Impaired behavior does not always rise to the level of disorderly conduct, although Wisconsin's high number of disorderly conduct citations issued suggests some communities use it as a proxy for public intoxication.<sup>1</sup>

Two Wisconsin municipalities, La Crosse and Menomonie, have adopted ordinances making public intoxication illegal. The first was adopted by La Crosse in March 2007 and later by the City of Menomonie in April 2011.

Both ordinances are useful tools for local law enforcement, although there are important differences between the two. Public impairment ordinances; sometimes referred to as P.I. ordinances, are not extensions of municipal alcohol control but an effort to reduce the harm caused by intemperate alcohol use. Comparing these ordinances creates an opportunity for local discussions and examining the community rationale for adoption.

### **Statement of Intent or Public Purpose**

#### **La Crosse:**

It is the policy of the City of La Crosse to comply with Chapter 51, Wis. Stats., as well as provide for the safety, welfare and health of the public while prohibiting certain harmful conduct of intoxicated persons. Nothing within this ordinance is meant to contradict those elements proscribed under Chapter 51, Wis. Stats.

La Crosse Municipal Code 7.02(1)

#### **Menomonie:**

This section [Intent And Purpose] is intended to provide for the safety, welfare and health of the public as is allowed under Section 62.11(5), Wis. Stats and is intended to comply with Chapter 51, Wis.Stats. Being publicly intoxicated makes a person vulnerable to injury, robbery, assault, and a number of other difficulties. This section addresses the behavior of the individual, rather than his or her blood alcohol content level, thus encouraging responsible behavior while consuming alcohol.

Menomonie City Code 5-1-11 A.

**Comment:** Wisconsin municipalities have broad authority in matters that effect public safety and welfare. Both communities provide a clear rationale for the ordinance; the need to provide for public safety and welfare while meeting their responsibilities to individuals with alcohol dependence.

Both communities note their ordinance concerns the consequences of individual conduct *as a result* of alcohol use. In short, the public impairment ordinance does not regulate alcohol; it addresses a threat to public safety resulting from excessive alcohol use.

### **Definition of an Intoxicated Person**

#### **La Crosse:**

Intoxicated person: a person who is presently impaired, mentally or emotionally, as a result of the presence of alcohol in the person's body. Also included is any person presently impaired, mentally or emotionally, as a result of a drug or controlled substance, as that term is defined by the Wisconsin Statutes, in the body or a combination of alcohol and such other drugs or controlled substances. The La Crosse ordinance requires administration of the Standard Field Sobriety Test (SFST) prior to a citation unless the individual is unconscious or refuses.

Evidence of an intoxicated person shall include a combination of the following indicators:

- (1) odor of intoxicants on the breath,
- (2) bloodshot eyes,
- (3) dilated pupils,
- (4) stumbling or staggering,

- (5) slurred speech
- (6) failure of Standard Field Sobriety Test. <sup>ii</sup>

La Crosse Municipal Code 7.02(1)(c)

**Menomonie:**

An intoxicated person is defined as someone whose mental or physical functioning is substantially impaired as a result of the use of alcohol, drugs or another controlled substance.

[The Menomonie ordinance then defines an incapacitated person:]

Such an individual is defined as someone, who as the result of the use of alcohol, drugs or another controlled substance, is unconscious or whose judgment is so impaired that he or she is incapable of making rational decisions, as evidenced objectively by indicators such as extreme physical debilitation, physical harm or threats of harm to himself or herself or to any other person or to property.

Menomonie City Code 5-1-11 B.

**Comment:** Neither community defines impairment, intoxication or incapacitation as a specific blood alcohol level (BAC). La Crosse describes observable traits to define intoxication listing five specific indicators of intoxication or failing the Standard Field Sobriety Test.

Menomonie adopted a somewhat broader approach including incapacitated individuals who are vulnerable to harm, unable to make rational decisions, are unconscious or a threat to themselves or others as a result of impairment. Both municipalities note that this conduct may be the result of alcohol and drug consumption, without any distinction between illegal and prescribed drugs.

Both standards have proven workable for local law enforcement. Menomonie's Interim Chief of Police Chris Langlois noted that the average blood alcohol of those cited was 0.22, very similar to La Crosse where the average blood alcohol level among those cited was 0.21. <sup>iii</sup> Many of those cited had been injured or were vomiting and urinating in public.

Both municipalities found the majority of those receiving citations for public intoxication were 21 years old or older. In Menomonie, 89% of those cited were age 21 or older. In La Crosse the average age of those cited was 33.4 years of age. <sup>iv</sup>

### **Definition Public Place**

#### **La Crosse:**

Public Place: A building or place owned or controlled by the City, a school, a place of public worship, any public street, including public sidewalk, alley, walk, or other publicly owned lands. The premises of a licensed establishment (a location licensed to sell or serve alcohol) are specifically excluded.

La Crosse Municipal Code 7.02(2)(a)

#### **Menomonie:**

Public Place: A place to which the public has access, and includes, but is not limited to, places owned or controlled by the city, county or state, any public street, highway, sidewalk, parking lot, alley, parks, schools, places of worship and places of business. Places of business include premises open to the public where alcohol is consumed, including a licensed alcohol establishment.

Menomonie City Code 5-1-11 B.

**Comment:** The definition of a public place is an important difference between the two ordinances. Menomonie allows a citation for public intoxication to be issued inside a licensed establishment while the La Crosse ordinance **specifically excludes** licensed premises.

It is illegal to sell or serve alcohol to an intoxicated person in Wisconsin (Chapter 125.07(2)), but only Menomonie allows a ticket for public intoxication to be issued on licensed premises, within a bar, restaurant, tavern or location licensed to sell alcohol for consumption elsewhere. Beginning in 2010, the Menomonie Police Department conducted bar walk-throughs, ticketing underage drinkers. As adopted, the Menomonie ordinance allows citations for public intoxication to be issued during a bar “walk-through” and at any licensed outlet at any time.

### **Definition of a Public Nuisance**

#### **La Crosse:**

**Public Nuisance:** Conduct by an individual which includes engaging in obnoxious behavior, being disoriented, falling, vomiting, public urinating, acting lewdly, loudly and/or combatively or being a danger to oneself or others.

La Crosse Municipal Code 7.02(2)(b)

**Menomonie:**

**Public Nuisance:** Conduct by an individual that is a disturbance of the peace, including, but not limited to, endangering himself or herself or other persons or property, acting in an unruly or combative manner, creating loud noises to the disturbance of other persons, refusing to follow the instructions of a police officer, refusing to follow the instructions to leave a place of business by the owner, employee or other person in charge thereof, or otherwise disturbing the peace in any public place.

Menomonie City Code 5-1-11 A.

**Comment:** While similar standards for personal behavior are applied in both municipalities, the Menomonie ordinance includes failing to leave licensed premises when ordered as cause for a citation. Issuing citations for public intoxication within licensed premises is specifically precluded by the La Crosse ordinance.

**Sanctions**

**La Crosse:**

While the first priority is the individual safety, La Crosse motivates first offenders to reexamine their personal alcohol use. First offenders receive a warning and the opportunity to have the forfeiture waived if they complete a specific alcohol education program, usually within three months. The program was created locally by Professor Debra Murray of Viterbo University using the principles of motivational interviewing and effective communications skills.

Failure to complete the alcohol education program results in prosecution in municipal court and a forfeiture. Repeat offenders and those who fail to complete the alcohol education program are assessed a \$150 forfeiture, court costs and any transportation costs.

A second and any subsequent offense within a twelve-month period is assessed a \$400.00 forfeiture plus penalty, costs and assessments, along with the cost of transporting the individual to an approved treatment facility.

La Crosse Municipal Code 7.02(5) [summarized]

**Menomonie:**

The penalty for the first conviction is a forfeiture of not less than \$200.00 plus penalty, costs and assessments, including the cost of transporting the individual to an approved treatment facility if the individual agrees to be transported or is incapacitated so as to require transport, on average a total of \$390.<sup>v</sup> The second and any subsequent offense within a twelve (12) month period shall be not less than \$400.00 plus penalty, costs and assessments, along with the cost of transporting the individual to an approved treatment facility.

Menomonie City Code 5-1-11 D [summarized]

**Comment:** A significant difference between the two communities is the first offender warning in La Crosse issues to first offenders in lieu of a citation. First offenders have the opportunity to receive a warning and have the forfeiture waived by attending an alcohol education class offered by the La Crosse Police Department. The Menomonie ordinance does not allow first offenders to avoid the forfeiture by attending an alcohol education session.

Debra A. Murray, Psy.D. ICS, CSAC of Viterbo University in La Crosse created the La Crosse session at the request of Chief Ed Kondracki. She has trained six La Crosse officers in principles of communication, and motivational interviewing and the theory of change. Called an “evidence based alcohol education” in the ordinance, the class provides a first offender a guided discussion of alcohol use, without judgment or blame. While the class alone is unlikely to result in permanent changes in behavior, attendees learn the health related consequences of alcohol misuse, become aware of community resources and question the role of alcohol in their life, steps that may lead to changes in their alcohol consumption.

Chief Kondracki’s support for a program including the principles of motivational interviewing was essential to support within the La Crosse Police Department.

Of the 76 individuals given citations in the first year, 35 persons chose to attend the alcohol education session in lieu of the \$150 forfeiture. Initial reviews indicate attendees respond well to the sessions, but the lack of repeat offenders among the attendees suggests the class has long term positive impact.

### **Seeking Medical Treatment**

**La Crosse:** Individuals seeking medical treatment and those assisting individuals seeking medical treatment for alcohol or drug related overdoses cannot be cited *solely* for possession or consumption of alcohol.

La Crosse 7.02(4)

**Menomonie:** No provision.

**Comment:** It is widely believed that youth and young adults fail to seek emergency services fearing campus disciplinary or police action. The La Crosse ordinance makes it clear that individuals summoning or seeking medical assistance for others will not be sanctioned solely for alcohol consumption. The Menomonie ordinance is silent on this topic; local leaders believed prosecutorial discretion made this explicit exemption unnecessary.

### **Summary: Implementation**

Neither La Crosse nor Menomonie takes impaired or intoxicated individuals into police custody. In both municipalities, the responding officer decides whether the individual is in need of medical care or should be released to the care of others. In Menomonie, unconscious and unresponsive individuals are taken by ambulance to receive medical care. In both communities, police report that friends often volunteer to care for an impaired individual.

The public debate in Menomonie framed the ordinance as call for “individual accountability” while discussions in La Crosse focused on the safety of intoxicated individuals. Although similar, the different perspectives are highlighted by the different penalties and the La Crosse exception for those seeking medical treatment.

### **Summary: Outcomes**

The La Crosse Police Department issued 76 first offenders *warning* in 2009. The Menomonie Police Department issued 88 citations in the first year (2012).<sup>vi</sup> One Menomonie citation was issued in a licensed establishment, a Class A licensee after alcohol sales hours.<sup>vii</sup> Both communities have a significant concentration of bars, taverns and other alcohol retailers near campuses attracting young adults to the area, a factor in alcohol related disorder.<sup>viii</sup>

When the initial report was released, the number of citations and severity of the impairment surprised many members of the Menomonie City Council. Both police departments in Menomonie (Menomonie and UW Stout Police Departments) believe the public impairment ordinance is a valuable public safety tool. The University of Wisconsin - Stout is considering similar language to create an analogous violation on campus. La Crosse reports that the few repeat offenders are limited to habitual inebriates who are well known to local police.

**For more information, please contact:**

Captain Jacob Melby, La Crosse Police Department, Director Professional Standards Community Services Bureau [MelbyJ@cityoflacrosse.org](mailto:MelbyJ@cityoflacrosse.org)

Chief Lisa Walter, UW-Stout Police Department (Menomonie), [walterl@uwstout.edu](mailto:walterl@uwstout.edu)

Professor Debra Murray, Viterbo University, La Crosse [damurray@viterbo.edu](mailto:damurray@viterbo.edu)

Julia Sherman, Wisconsin Alcohol Policy Project, Resource Center on Impaired Driving, University of Wisconsin Law School, [jsherman2@wisc.edu](mailto:jsherman2@wisc.edu)

July 12, 2012

---

<sup>i</sup> In 2010 Disorderly Conduct accounted for the greatest number of society crime arrests in Wisconsin with 1,403 arrests occurring per 100,000 males and 563 arrests occurring per 100,000 females. Wisconsin Office of Justice Assistance, Arrests in Wisconsin, 2010, p. 12.

<sup>ii</sup> In impaired driving or OWI incidents, officers use a Standardized Field Sobriety Test (SFST) Battery, which refers to the Horizontal Gaze Nystagmus (HGN), Walk-and-Turn (WAT), and One-Leg Stand (OLS). These three tests are administered and evaluated in a standardized manner to obtain validated indicators of impairment based on

NHTSA research. In contrast the La Crosse ordinance does not define or enumerate the specific test or tests to be administered.

<sup>iii</sup> Powers, Pamela, Menomonie Chief: Intoxication Law has led to 63 citations. Eau Claire Leader Telegram, February 2, 2012.

<sup>iv</sup> Abraham, Robert, 2009 Report on Public Intoxication Ordinance 7.02(S), LaCrosse Police Department, 2010.

<sup>v</sup> Powers, Pamela, Menomonie Chief: Intoxication Law has led to 63 citations. Eau Claire Leader Telegram, February 2, 2012.

<sup>vi</sup> E-mail from Menomonie Interim Police Chief Chris Langlois, May 11, 2012.

<sup>vii</sup> The citation was issued at a convenience store open after the time alcohol can legally be sold in Wisconsin. The individual arrived intoxicated long after the licensee had stopped selling alcohol.

<sup>viii</sup> Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham, K., Grube, H., Hill, L., Holder, H., Homel., Livingston, M., Osterberg, E., Rehm, J., Room, R., Rossow, I., Alcohol No Ordinary Commodity: research and public policy, second edition. Oxford University Press, 2010.