To: Interested Parties

RE: Current law applicability of Wis. Stat. Ch. 125 licensing requirements to non-public events and proposed changes that would be made by LRB-0348/P2

Date: September 25, 2018

Under Wis. Stat. Ch. 125, with limited exceptions, the consumption of alcohol beverages in a “public place” is prohibited unless done under a valid alcohol beverage retail license or permit. A permit is not needed to consume alcohol at an event if: (1) it is not open to the public; and (2) if alcohol beverages are not sold – because such events are not in “public places.” A new proposal to amend these laws was recently circulated by a legislative study committee, and is on the agenda to be discussed by that committee on Wednesday, September 26, 2018. This proposal would dramatically increase the alcohol beverage retail licensing requirements in our state, impacting everything from private event venues to vacation cottages up north.

This memorandum summarizes the current state of Wisconsin law regarding certain permitting requirements under Wis. Stat. Ch. 125, and then discusses how existing law would be modified by the proposal to be discussed this week.

I. Background

As outlined further below, under current Wisconsin law, a person does not need to obtain an alcohol beverage retail license or permit to allow consumption of alcohol at an event when the event is a private event and not open to the public. Our conclusion on this point is in line with that of the Wisconsin Department of Revenue, a formal Attorney General opinion, and is further supported by recent actions of the legislature.

Wisconsin’s laws on “alcohol beverages” (a statutory term of art, defined as “fermented malt beverages and intoxicating liquor”) are contained in Wis. Stat. Ch. 125. Generally speaking, under Ch. 125 no person may allow the consumption of alcohol beverages in a “public place” unless a license or permit has been issued for that purpose. The statute creates certain exceptions to the general rule. Specifically, Wis. Stat. § 125.09(1) provides:

Public place. No owner, lessee, or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless

1 Wis. Stat. § 125.09(1)
2 See “Preliminary Agenda – Study Committee on Alcohol Beverages Enforcement.” Available at https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789/030_september_26_2018_meeting_10_00_a_m_room_411_south_state_capitol/sep26agenda_abe
3 Wis. Stat. § 125.02(1)
the person has an appropriate retail license or permit. This subsection does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges, as defined in s. 16.99 (3g), at the place and time an event sponsored by the private college is being held, churches, premises in a state fair park or clubs. This subsection also does not apply to the consumption of fermented malt beverages on commercial quadricycles except in municipalities that have adopted ordinances under s. 125.10 (5) (a).

Thus, under the current statute, whether or not a permit or license is required to consume alcohol depends on whether the venue is a “public place” within the meaning of the statute – if it is, then the Wis. Stat. Ch. 125.09(1) licensing and permitting requirements apply.

II. Analysis of Current Law

The term “public place” as used in that statute is not defined. In the 1990s, the Attorney General issued a formal opinion which included analysis of the term “public place,” concluding:

The term “public place,” as used in section 125.09(1) is not defined. Nontechnical words and phrases are to be construed according to their common and ordinary usage. Ervin v. City of Kenosha, 159 Wis. 2d 464, 464 N.W.2d 654 (1991). The ordinary and common meaning of a word may be established by definition of a recognized dictionary. Id, Black's Law Dictionary 1107 (5th ed. 1979) defines ‘public place’ as “[a] place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public.”

80 Op. Att’y Gen. Wis. 218, 219. Under this analysis, a purely private event at an event venue is not “public,” as the general public has no right to attend. Since such a venue is not “public” it does not trigger the “public place” restrictions of Wis. Stat. § 125.09(1), and does not need to obtain an alcohol beverage retail license or permit under that statute.

This analysis is consistent with DOR’s own guidance and enforcement, as summarized by Legislative Council. Under that guidance, when DOR determines whether or not a license is required, they look at the nature of the event itself. Specifically, DOR “considers whether the event is limited to personally invited guests known to the host and not open to the general public.”

A purely private event, limited to specifically invited guests and not open to the general public does not require an alcohol beverage retail license or permit under Wis. Stat. § 125.09(1).

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4 See Wisconsin Legislative Council, Study Committee Memorandum, “Items for Consideration Related to Alcohol Consumption at Certain Private Events,” Dated August 15, 2018. Available at: https://devdocs.legis.wisconsin.gov/misc/lc/study/2018/1789/020_august_22_2018_meeting_10_00_a_m_room_411_south_state_capitol/aug15memo_abe
5 Id, page 2.
This conclusion is also bolstered by the legislature’s own recent interpretation of the statute. In February of this year, the Assembly passed 2017 Assembly Bill 433 on a voice vote, adopting Assembly Substitute Amendment 1 (also known as the “tailgate ban legislation”\(^6\)). That amendment, and subsequently the bill itself, would have made significant changes to the licensing requirements under Wis. Stat. Ch. 125. Specifically, the amendment would have “prohibited the owner or person in charge of property that is not a public place from permitting the consumption of alcohol beverages on the property if the owner or person in charge of the property received payment for temporary use of the property by another person for a specific event, unless the person had an appropriate retail license or permit and the consumption of alcohol beverages occurred on that portion of the property covered by the retail license or permit.”\(^7\) Similar language is included in LRB-0348/P2, discussed *infra*.

The legislature, in proposing to require a retail license to consume alcohol beverages at non-public venues, tacitly acknowledged that such permitting requirements do not exist under current law. It should be noted that this legislation did not pass last session, which can be viewed as affirmation of a preference for maintaining the status quo – that such private events do not require alcohol beverage retail licenses or permits.

III. **Proposed Changes Under LRB-0348/P2**

On Wednesday, September 19, 2018, the Wisconsin Legislative Council circulated materials for a meeting of the Study Committee on Alcohol Beverages Enforcement to take place on September 26, 2018.\(^8\) Included with those materials was a bill draft, LRB-0348/P2, relating to: consumption of alcohol beverages on certain nonpublic property. **This draft makes some significant changes to current law alcohol beverage license and permit requirements for non-public venues, and appears to be an attempt to revive portions of the “tailgate ban legislation” discussed earlier.**

A. **Summary Of Proposed Changes**

First, the draft expands licensing and permitting requirements from the “premises” of a “public place” to the “property” of a “public place.”\(^9\) Under this proposal, an “owner, lessee, or person in charge” of a “public place” may not allow the consumption of alcohol beverages on the property of that public place without first obtaining an alcohol beverage retail license or permit. The significance of this change is unclear, as “premises” is defined by statute to mean “the area described in a license or permit.”\(^10\) Presumably, by changing “premises” to “property” the draft proposes to expand the “public place” restriction beyond current law.

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\(^6\) See “WILL Memo: Bill could end tailgating as we know it.” Dated March 9, 2018. Available at: [http://www.will-law.org/bill-end-tailgating-know/](http://www.will-law.org/bill-end-tailgating-know/)

\(^7\) See footnote 3.

\(^8\) See “2018 Legislative Council Study Committee on Alcohol Beverages Enforcement.” Available at: [https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789](https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789)

\(^9\) See LRB-0348/P2, § 2. Available at: [https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789/030_september_26_2018_meeting_10_00_a_m_room_411_south_state_capitol/lrb_0348_p2](https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789/030_september_26_2018_meeting_10_00_a_m_room_411_south_state_capitol/lrb_0348_p2)

\(^10\) Wis Stat. § 125.02(14m)
In addition to expanding the “public place” licensing and permit requirements from “premises” to “property,” the draft also expands those licensing requirements to certain property “that is not a public place.” This change is a significant expansion with regard to who needs to obtain a license or permit under state law.

Under this expansion, and subject to several exceptions (noted below), the owner or person in charge of property that is not a public place, and who receives payment for temporary use of the property by another person for a specific event, may not permit the consumption of alcohol beverages on the property unless the person has an appropriate alcohol beverage retail license or permit.

The expansion to non-public property does not apply11 to:

1. A room in a hotel, motel, or bed and breakfast that is used for overnight accommodations;
2. Vacation rental property, or any other property of temporary lodging, that is used for overnight accommodations if the property is furnished with sufficient beds for all adult guests to sleep;
3. A campsite on a campground licensed under Wis. Stat. § 97.67;
4. Property for purposes of parking;
5. Property within a local professional football stadium district created under Subchapter IV of Wis. Stat. Ch. 229 if the property is used in connection with, and on the same day as, a professional football game held at the football stadium;
6. Property within a local professional baseball park district created under Subchapter III of Wis. Stat. Ch. 229 if the property is used in connection with, and on the same day as, a professional baseball game held at the baseball park; and
7. The use of property by a nonprofit organization, as defined in Wis. Stat. § 134.695 (1)(am), or property that such a nonprofit organization owns, leases, or rents.

B. Analysis of Proposed Changes

This legislative proposal could greatly restrict the private locations where alcohol could be consumed in Wisconsin without first obtaining an alcohol beverage retail license or permit. This proposal appears to be a somewhat scaled-back version of the original “tailgate ban legislation,” (2017 Assembly Bill 433, discussed on p. 3 of this memorandum). This proposal would prohibit individuals from consuming alcohol at certain private events that are not open to the public unless done under a valid license or permit.

This new licensing requirement is very broad. Specifically, this legislation would prohibit the consumption of alcohol on any property “that is not a public place” (i.e., a wedding, a birthday party, a graduation party, an anniversary party, a retirement party), where such property has been rented or leased, and the event does not qualify for one of the exemptions noted supra.

Any venue that currently rents itself out to private individuals to host private parties that are not open to the public would be prohibited from allowing the consumption

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11 See LRB-0348/P2, § 3.
of alcohol on their property unless they first obtain an alcohol beverage retail license or permit.

Additionally, this proposal, although scaled back from the near total ban proposed by the original tailgating ban legislation, still creates confusion and uncertainty. For example, the proposal exempts out “property within a local professional football stadium district” (Lambeau Field), and “property within a local professional baseball district” (Miller Park), but it only exempts such property on the same day that a professional football game is held at the football stadium or a professional baseball game is held at the baseball park, and even then only if such property is used in connection with the professional football game, another term which is not defined.

So, for example, if you want to tailgate and have a beer with your brat when the Wisconsin Badgers play Notre Dame at Lambeau Field in 2020, or when Miller Park hosts an Ed Sheeran concert in October of this year, or any other concert (Kenny Chesney has played there several times) or other sporting event besides a professional baseball game held at Miller Park in the future, those specific exemptions would not apply, while others may (see below).

Additionally, while the draft appears to exempt at least some fans of the Brewers and the Packers, there are no exemptions for other professional baseball stadiums in the state (we do have several minor league teams), or for property related to stadiums in any amateur leagues (the Northwoods League is tremendously popular throughout Wisconsin).

Presumably, to ease these very concerns, there is also a blanket exemption for “property for purposes of parking.” This term, like many key terms in Wis. Stat. Ch. 125 and this proposed draft, is undefined. This likely covers any parking lot that you may want to tailgate in, however, if you plan to tailgate somewhere other than “property used for purposes of parking,” (like if you rented a pavilion for your tailgate, for example) that exemption does not apply.

The broad scope of this legislation targets vacationers in Wisconsin as well. For example, if you plan to rent out a two-bedroom lake house that can sleep four adults somewhere in Wisconsin, under this legislation, if you host a party at that lake house and there are more than 4 adults present, you cannot serve any alcohol without first obtaining an alcohol beverage retail license or permit. This is because the proposal requires a “vacation rental property” to have “sufficient beds for all guests to sleep” in order to qualify for the permitting exemption. This is a significant restriction, and could very well make it illegal to host a dinner party while you vacation in Wisconsin. Rented hunting land may even fall under this requirement if you plan to stay overnight; so if this proposal passes, be careful cracking a beer at deer camp after a long day in the field. There is also the question of how the state would intend to enforce such requirements: will revenue agents be knocking on doors to count beds during your next dinner party?

Finally, the term “property” is not defined to limit it to just real property. That means things like pontoon boat rentals would likely require a permit to consume alcohol. These
may seems like absurd results, but that is what happens with shoddy drafting and special interest legislation.

IV. Conclusion

The plain language of the statute, the interpretation of the Attorney General, the guidance from DOR and the legislature’s own actions all support the conclusion that event venues hosting non-public events where alcohol will be consumed do not need to obtain an alcohol beverage retail license under Wis. Stat. Ch. 125 as currently drafted. The proposed legislation being reviewed by the committee, LRB-0348/P2, would dramatically increase the scope of alcohol beverage licensing in Wisconsin.