

Old Fashioned to Go? Alcohol Beverages May Be Ordered on a Carry-Out Basis During the COVID-19 Pandemic

Article

March 26, 2020

On March 17, 2020, Governor Evers issued Emergency Order #5 to restrict mass gatherings of 10 or more people (as described in this article *New Limits on Gatherings and Private Businesses in Wisconsin*), which included a mandate that restaurants only offer take-out or delivery services as no in person seating would be permitted.

Subsequently, on March 24, 2020, the State of Wisconsin issued the Safer At Home Order, which shut down all nonessential businesses^[1] effective at 8:00 a. m. on March 25th but specifically permits restaurants to remain open for carry-out sales of alcohol beverages and food if: (1) permitted by state law and municipal ordinance, (2) social distancing requirements are implemented as much as possible, and (3) food and drink are not self-dispensing or consumed inside or outside on the premises.

When are carry-out sales of alcohol permitted under state law? Chapter 125 of the Wisconsin Statutes permits brewers, manufacturers, rectifiers, wineries, Class "A" beer, "Class A" liquor, Class "B" beer, and "Class B" liquor license holders to sell carry-out alcohol beverages in the original, sealed container so long as it is permitted by that municipality's ordinances. Restaurants typically hold either a Class "B" beer or "Class B" liquor license (but commonly both) to serve customers for on-premises consumption. Breweries and Class "B" beer license holders are also permitted to sell growlers on a carry-out basis.

On March 20, 2020, the Wisconsin Department of Revenue issued Emergency Order #8 clarifying certain permissible sale and distribution activities during the COVID-19 pandemic, including carry-out sales of alcohol beverages.

Recently, several Milwaukee area restaurants announced that they are selling "old fashioned kits" and other drink mixes to go. As an increasing number of restaurants seek creative ways to sell products and serve their customers during this public health emergency (and beyond), it is imperative that alcohol beverage license holders comply with the Department of Revenue guidelines.

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Under the guidelines, restaurants must:

1. Sell the alcohol beverages in a face-to-face transaction;
2. Abide by state and municipal closing hours related to face-to-face transactions;
3. Only permit patrons to enter the establishment to pay and pick up the alcohol beverage;
4. Prohibit lines of 10 or more people; and
5. Abide by the social distancing guidelines of six feet or more.

Next, when are carry-out sales of alcohol permitted by municipal ordinance? A license holder should confirm whether any local ordinances prohibit or restrict carry-out sales so that they are not subject to enforcement or objections at renewal. Even if allowed by municipal ordinance, license holders may need to file an update to their licensed premises (the location to which the alcohol beverage license is currently issued) to include parking areas or other locations where the transaction and alcohol delivery will occur. License holders are encouraged to submit such amendment requests to the Department of Revenue or municipalities (as applicable) to extend the licensed premises for such carry-out sales.

While the City of Milwaukee recently implemented a temporary program to provide "Restaurant Carryout Zones" to assist restaurants that currently do not have a Loading Zone at the street curb adjacent to the business (as described at the Department of Public Works website along with a link to the request form), the program currently does not expressly permit the restaurant to deliver the alcohol beverages to the customer at the street curb as the delivery must occur on the licensed premises.

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