



DEPARTMENT OF
**LEGAL AND
ADMINISTRATIVE
SERVICES**

CITY ATTORNEY'S OFFICE
100 North Appleton Street
Appleton, WI 54911
p: 920.832.6423
f: 920.832.5962
www.appleton.org

TO: Safety and Licensing Committee

From: ACA Zak Buruin

Date: 10/17/2025

RE: Underage Sale of Alcohol and Demerit Point Enforcement

This memorandum is intended to address, at a preliminary level, what options might be available for the City to enforce the prohibitions against alcohol sales to underage individuals, and the City's requirement for license holders to appear before the Safety and Licensing Committee when reaching certain demerit point thresholds.

Enforcement Of Underage Sale Prohibition

The City of Appleton's mechanisms of enforcing this prohibition stem both from Wisconsin Statutes and from its own municipal code. The City has determined how it will consider violations involving sales to underage persons by way of the demerit point system. The violation is assigned a value of 80 demerit points under section 9-54 of the City's municipal code. Accumulation of certain thresholds of demerit points over specified periods of time leads to a requirement to appear before the Safety and Licensing Committee (more on that later), suspension of alcohol licenses, and revocation of alcohol licenses. On the surface, this is a simple system. With most kinds of violations, it is.

Wisconsin Statute §125.12(1) preempts simple operation of the City's demerit point system as it relates to violations involving sales to underage persons ("violations"). §125.12(1)(b)2. Prohibits these violations from being considered as part of decisions to revoke, suspend, and refusals to issue or renew alcohol licenses, unless they have violated this same prohibition within the year prior. In order to comply with this statute, demerit points for underage sale violations are not considered for possible license denial, suspension, or revocation unless the licensee has a prior violation within the previous year. They may still be considered for purposes of summoning them to address the Safety and Licensing Committee, as that is not prohibited by statute.

In summary, the yearly "free pass"¹ from any licensing consequences for violations cannot be changed at the municipal level. It is possible to increase the penalties for violations

¹ This is a common colloquial interpretation of the statute used for ease of understanding, not a legal assessment by the writer.

which the City is allowed by statute to consider.

Enforcement of Demerit Point “Appearance Requirement”

ACC Sec. 9-54(d)(1) requires that when a licensee accumulates between 25 and 149 demerit points within a 24-month period, they shall appear before the Safety and Licensing Committee to inform the Committee of their efforts to rectify the issues leading to the demerit points.

Based upon the compulsory language in this section, ACC sec 1-16 at least arguably provides a mechanism of enforcement not utilized to this point. Subject to proof requirements, a licensee could be cited for failing to appear as summoned, requiring them to appear in court to address the new violation. Such a violation does not fit clearly into one of the specific types for which demerit points are assigned by Sec. 9-54. It most reasonably qualifies as “other acts,” for which 45 demerit points are assigned. A more specific demerit point assignment could be provided for by legislative action.

If it is determined that the existing code language cannot or should not be relied upon to enforce the requirement to appear, specifically providing for enforcement via legislative action would be a clear alternative. Wisconsin Statutes §125.10(1) permits municipal regulation of alcohol beverages as long as they do not conflict with Chapter 125. As of now, I have found no statutory conflict with a potential amendment to the City’s code permitting the issuance of a municipal citation against a licensee for failing to appear before the Safety and Licensing Committee in response to a proper summons. Were this course of action to be adopted, specifying what existing or newly created category of violations this would be considered for demerit points purposes is recommended. Of the alternatives presented in this memorandum, this is the alternative that I would recommend be most strongly considered if action is to be taken.

The two above alternatives represent the enforcement options requiring the smallest change to the City’s code, practices, and procedures. Other options include amending the City’s code to provide different procedures for enforcement of such a violation within the existing demerit point system, removing such a violation from the demerit point system altogether, or a more comprehensive reworking of the demerit point system as a whole. These options would be the most difficult and take the most time to draft and implement. These alternatives are not recommended as a means of addressing the pattern of non-appearances for demerit point accumulation.

Conclusion

The City is unable to substantively change the lookback period for violations of selling alcohol to underage persons. An increase to the assessed demerit points could increase the ability for repeated violations to impact denial, suspension, and licensing decisions beyond what the demerit point system currently allows.

The City can provide for enforcement of its requirement to appear before the Safety and

Licensing Committee pursuant to the demerit point system. This would be most efficiently achieved by the adoption of explicit language within the City's code.

As this memo is intended only as preliminary guidance, it is not intended to be comprehensive or final. This memo is intended to provide an overview of options to help determine which, if any, merit additional time for research, review, or consideration of specific language.

If I can provide additional information or answer additional questions, I remain available to do so.