

Social Host Ordinances in Wisconsin

Overview

Underage drinking is a serious problem in Wisconsin. The 2011 Youth Risk Behavior Survey of Wisconsin high school students showed that 39% of high school students had consumed alcohol within the proceeding 30 days and 24% of high school students had engaged in dangerous (sometimes called binge) drinking in the previous 30 days.ⁱ

Research shows youth access to alcohol contributes to underage drinking. Youth can access alcohol through commercial sources that can be controlled with alcohol age compliance checks, retailer education and related evidence-based activities to reduce alcohol sales to youth. Noncommercial sources, including alcohol pilfered from residences or provided by legal-aged purchasers, is the other source of alcohol consumed by youth often in dangerous circumstances.

Underage drinking parties, regardless whether the alcohol is either provided or gathered, are common in Wisconsin. Many communities are taking the danger posed by these parties and the adults who permit or fail to prevent them very seriously. Alcohol is frequently a contributing factor in the leading causes of death among youth, accidents, homicides and suicides,ⁱⁱ and the prelude to numerous tragedies including, sexual assault, falls, drowning or vehicular injury. The tragic March 2012 events in Slinger began with an underage drinking party. Reports indicate one of the hosting parents advised youth to flee the police, precipitating the young man's attempt to hide nearby with tragic consequences.ⁱⁱⁱ

Far too many adults continue to operate under the discredited theory that underage drinking is safe if adults provide alcohol and collect car keys. Over a dozen Wisconsin municipalities (a city, village, or town for the purposes of this summary) have adopted social host ordinances punishing adults who permit, allow or, fail to take reasonable steps to prevent underage drinking on premises under their control. These municipal offenses are not crimes and are unrelated to any civil actions that may result from underage drinking. Financial penalties range from \$100 to \$5,000 .

These ordinances complement state laws against purchasing or providing alcohol to youth by holding the individuals who provide a location for underage drinking accountable in municipal court. Effective social host ordinances cover a wide range of locations and situations, noting that adult "hosts" must take reasonable steps to prevent underage drinking. Adults who allow or facilitate an underage drinking party may be ticketed even when they are not present during the party.

A social host ordinance is not the same as a public nuisance ordinance. Social host ordinances target individuals who are hosting underage drinking, whether or not a disturbance occurs. Public nuisance ordinances sanction those who repeatedly host raucous events disturbing nearby residents. Some public nuisance ordinances target property owners who tolerate disruptive tenants and may even assign the cost of enforcement to the property owners as an incentive to evict troublesome tenants. Again, the title “public nuisance ordinance” is applied to a wide range of ordinances with significant differences.

Social host ordinances have no effect on the legal right of a parent to provide alcohol to their own child or the use of alcohol as part of a religious service.

In Wisconsin, social host ordinances are enforced by the local police department and adjudicated by the municipal court. Both agencies should be involved in the development of a local social host ordinance to assure it is workable for the community. Uniformity in language, even in adjoining communities, is not essential; a commitment to enforcement is imperative.

Before proposing a social host ordinance, it is important to understand the frequency and context of underage drinking within a municipality. Most underage drinking parties are discovered as a result of noise complaints or party related disorder.

One of the first social host ordinances in Wisconsin was adopted by the city of Two Rivers in 2008. Many subsequent ordinances include language found in the Two Rivers ordinance. County ordinances, which apply only the unincorporated portions of the county not cities, towns or villages, are significantly different from those adopted by municipalities and are not included in this comparison.

While many of the social host ordinances adopted in Wisconsin have similar elements, there are important differences as well. The phrase *social host* is used quite casually; examining the text of a social host ordinance is essential to understanding the approach and impact of a specific ordinance.

This summary compares the most commonly shared elements of the social host ordinances adopted by villages, cities and towns through May, 2012. It provides a starting point for discussion by identifying the important aspects of the ordinance and options other communities have adopted. A list of the municipal ordinances reviewed for the preparation of this comparison is at the conclusion of this document.

Common Elements of Social Host Ordinances

Intent of the Ordinance: It is important to describe the public protection, safety and health goals of a social host ordinance; such as protecting public order, discouraging underage drinking and holding individuals accountable for underage drinking under the situations described within the ordinance. These ordinances reflect the police power of the municipality, not municipal regulatory authority over alcohol sales. The Village of North Fond du Lac and City of Prairie du Chien did not include statements of legislative intent. The legislative intent language adopted by the City of Manitowoc is similar to the language found in many social host ordinances.

City of Manitowoc

(1) Purpose and Findings. The Common Council of the City of Manitowoc intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and intends to hold persons civilly responsible who host events or gatherings where persons under 21 years of age possess or consume alcohol regardless of whether the person hosting the event or gathering supplied the alcohol. The Common Council of the City of Manitowoc finds:

(a) Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of 21 are harmful to those persons and constitute a potential threat to public health requiring prevention or abatement.

(b) Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.

(c) Alcohol is an addictive drug which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.

(d) Often, events or gatherings involving underage possession and consumption occur outside the presence of parents. However, there are times when the parent(s) is/are present and condone the activity, and in some circumstances, provide the alcohol.

(e) A deterrent effect will be created by holding a person responsible for hosting an event or gathering where underage possession or consumption occurs.

The **City of Wausau** begins with a similar general statement, and then continues:

The common council finds:

(1) Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of twenty-one are harmful to those persons and constitute a potential threat to public health requiring prevention or abatement.

(2) Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol related traffic collisions.

(3) Alcohol is an addictive drug which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.

(4) Often, events or gatherings involving underage possession and consumption occur outside the presence of parents. However, there are times when the parent(s) is/are present and condone the activity, and in some circumstances, provide the alcohol.

(5) A deterrent effect will be created by holding a person responsible for hosting an event or gathering where underage possession or consumption occurs.

Definitions

How an ordinance defines a “host” and the locations covered has a significant impact on the overall effectiveness of the ordinance. Research indicates siblings or other acquaintances frequently provide alcohol, locations to drink alcohol or both.^{iv} In some communities, youth drink in hotel rooms rented specifically for the party. In addition, barns, out-buildings and recreational property such as cabins and boat-houses can provide convenient venues for underage drinking. It is important to adopt a definition reflecting the range of underage drinking situations the police will encounter.

Event or gathering: The numerical minimum

Social Host ordinances adopted in Wisconsin generally apply to gatherings of three or more unrelated individuals. Similar language was adopted in Fond du Lac, Kenosha, the Villages of Oregon, Weston and Rothschild. Racine’s social host ordinance includes gatherings with just two individuals. Not all of the attendees need to be younger than the minimum legal drinking age to fall within the definition of a gathering or event.

City of Racine

Event or gathering means any group of two or more persons who have assembled or gathered together for a social occasion or other activity.

City of Prairie du Chien

Event or Gathering. “Event or gathering” means any group of three or more persons who have assembled or gathered together for a social occasion or other activity.

City of Manitowoc

Event or gathering means any group of three or more persons who have assembled or gathered together for a social occasion or other activity.

Definition: Host

State law makes it illegal, although not a criminal act, to purchase, pour or provide alcohol to anyone younger than age 21 other than your child or underage spouse. When an underage drinking party is disrupted by law enforcement, it can be difficult to accurately determine who provided alcohol beverages. Social host ordinances rest on the definition of the “host”, the individual who provides the location for the party. The host provides the location, but not necessarily the alcohol, allowing it to be collected at the provided location or, fail to take reasonable steps to prevent underage drinking.

Many ordinances include an extensive list of terms defining “hosting” such as “aid”, “conduct”, “supervise” and “permit”. Under these definitions, “hosting” does not require providing alcohol. Effective language allows the host to be any age and not limited to those who are legal adults, age 18 or who have reached the minimum legal drinking age of 21.

The City of Manitowoc, City of Fond du Lac, City of Wausau, and Village of North Fond du Lac use the following definition of “host”:

Host or allow means to aid, conduct, entertain, organize, supervise, control or permit a gathering or event.

Racine (city) uses slightly different language:

Allow or host means to aid, conduct, entertain, organize, supervise, control, or permit an event or gathering.

Prairie du Chien adopted the following definition:

Host or Allow. “Host” or “allow” means to aid, conduct, entertain, organize, supervise, control or permit a gathering or event.

Presence of Host

Most social host ordinances in Wisconsin explicitly state that the “host”, as defined within the ordinance, does not need to be present during the party. This targets the individual who permits a location under their control (owned, leased or rented) to be used in their absence knowing that underage drinking will take place or creating the circumstances that allow underage drinking.

This provision is frequently found within the section enumerating the prohibited acts such as the ordinances adopted by the Cities of Fond du Lac, Kenosha, Manitowoc, Prairie du Chien, Two Rivers, and Racine and, the Villages of North Fond du Lac, Rothschild and Weston.

The City of Kenosha adopted the most commonly used language with this reference found in 11.025 Social host (C) (2):

C. Prohibited Acts. It is unlawful for any person(s) to: host or allow an event or gathering at any residence, premises or on any other private or public property where alcohol or alcoholic beverages are present when the person knows that an underage person will or does consume any alcohol or alcoholic beverage; or possess any alcohol or alcoholic beverage with the intent to consume it; and the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).

1. A person is responsible for violating this section if the person intentionally aids, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act.

2. A person who hosts an event or gathering does not have to be present at the event or gathering to be responsible.

The City of Schofield includes the provision within the definition of “control”:

37-117 Social Host (b)(5) “Control” means the power to direct, manage, oversee, supervise, organize, conduct, and shall also mean, hosting, allowing or permitting or sponsoring. A person need not be present on the premises to be in control.

Locations: Defining residence, premises or public or private property

The circumstances of underage drinking and adult hosted underage drinking have changed dramatically in recent years. The more expansive definition recognizes the broader context of contemporary underage drinking, including the trend for others to rent hotel rooms on behalf of youth with explicit or tacit understanding that alcohol will be consumed in the rented room. Including the terms “farms, field or land” supports enforcement of the ordinance in rural areas, although ownership alone does not automatically make property owners the “host” of an underage drinking party or the automatic recipient of a citation.

Research indicates that older siblings or other family members often provide locations for underage drinking. This broader definition anticipates enforcement at the wide range of locations that underage drinking occurs.

Two Rivers, Village of North Fond du Lac, Prairie du Chien and Racine use the following definition of residence:

Residence, premises, or public or private property means any home, yard, farm, field, land, apartment, condominium, hotel or motel room or other dwelling unit, or a hall or meeting room, park or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.

Kenosha:

Premises or Public or Private Property. "Residence", "premises", or "public or private property" means any home, yard, farm, field, land, apartment, condominium, hotel or motel room or other dwelling unit, or a hall or meeting room, park or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.

The Village of Schofield took an alternative path by describing “premises”

“Premises” shall have the meaning under Section 125.02(14m) of the Wisconsin Statutes, and shall also include all public or private property, regardless of whether said property is described in a license or permit.

As a result of a Wisconsin Supreme Court decision, which turns on the term “premises” this approach may create more confusion than clarity, the effect itself is unclear. ^v

Hotel and Motel Rooms

Rented hotel or motel rooms are specifically included in the social host ordinances adopted by the Cities of Fond du La, Kenosha, Manitowoc, Prairie du Chien and Racine; plus the Villages of North Fond du Lac, Oregon, and Weston

In some communities, adults rent hotel rooms for alcohol fueled prom, graduation or other teen parties. Sometimes these misguided actions are an effort to reduce impaired driving or simply relocation the noise and trash often associated with teenage drinking.

Schofield’s broad definition based on “all public or private property” may also cover rented rooms.

Prohibited Acts

This section connects the different sections of the ordinance to describe the illegal activity. It carefully details scenarios that constitute a violation including hiring another individual to organize a party and failing to take reasonable steps to prevent a party.

The later scenario applies when an individual leaves or allows alcohol to be stockpiled at a location and fails to take action to prevent the alcohol from being consumed illegally by youth.

Two Rivers adopted the following language, later adopted by other municipalities.

PROHIBITED ACTS. It is unlawful for any person(s) to: host or allow an event or gathering at any residence, premises or on any other private or public property where alcohol or alcoholic beverages are present when the person knows that an underage person will or does

(i) consume any alcohol or alcoholic beverage; or

(ii) possess any alcohol or alcoholic beverage with the intent to consume it; and the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).

(1) A person is responsible for violating this ordinance if the person intentionally aids, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act

(2) A person who hosts an event or gathering does not have to be present at the event or gathering to be responsible

City Manitowoc

(a) A person is responsible for violating subsection (3) of this section if the person intentionally aids, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act.

(b) A person who hosts an event or gathering does not have to be present at the event or gathering to be responsible.

City of Racine

(1) It is unlawful for any person to allow or host an event or gathering at or on any private or public property where alcohol or alcoholic beverages are present when the person knows that an underage person will possess or consume any alcohol or alcoholic beverage if the person fails to take reasonable steps to prevent possession or consumption by any underage person, even if the person who allows or hosts the event or gathering is not present at the event or gathering.

(2) It is unlawful for any person to intentionally advise, aid, conspire with, counsel, hire, or otherwise procure another person to commit a prohibited act.

City of Wausau

It is unlawful for any person(s) to: host or allow an event or gathering at any residence, premises or on any other private or public property where alcohol or alcoholic beverages are present when the person knows that an underage person will or does consume any alcohol or alcoholic beverage; or possess any alcohol or alcoholic beverage with the intent to consume it; and the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).

(1) A person is responsible for violating this section if the person intentionally aids, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act.

Kenosha

It is unlawful for any person(s) to: host or allow an event or gathering at any residence, premises or on any other private or public property where alcohol or alcoholic beverages are present when the person knows that an underage person will or does consume any alcohol or alcoholic beverage; or possess any alcohol or alcoholic beverage with the intent to consume it; and the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).

1. A person is responsible for violating this section if the person intentionally aids, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act.

2. A person who hosts an event or gathering does not have to be present at the event or gathering to be responsible.

Exceptions:

Some communities enumerate specific exceptions although unnecessary because these exceptions are state law. It is likely these sections are included for clarity or local political concerns and are not legally necessary.

The three common exceptions included in the ordinance are:

- 1) Serving alcohol one's own child
- 2) Alcohol use as part of a religious service
- 3) Youth in possession of alcohol as part of their employment

Penalties

Because social host ordinances define serious illegal, but not criminal, behavior most communities assign a significant penalty. Ordinance forfeitures range from a low of \$100 to \$5,000. In some municipalities those failing to pay the forfeiture can be jailed for contempt until they make arrangements for payment over time.

Two Rivers, Prairie du Chien and Manitowoc:

A forfeiture of \$1,000-\$5,000 together with the costs of prosecution added

Village of Oregon

\$100 to \$1,000 with municipal court policy requiring a court appearance.

Village of North Fond du Lac

Not to exceed \$1,000, no minimum amount

Final Considerations:

Social host ordinances can only prevent or reduce underage drinking if they are enforced. It is essential for the police and community advocates to involve municipal judges in the public discussion before a social host ordinance is adopted.

Effective deterrence requires the reasonable belief of detection and prosecution. In addition to imposing a substantial forfeiture, a widely publicized police policy on noise and party complaints makes it clear to the police will respond to these calls and appropriate citations will be issued. Briefing local hotels and motels on how a social host ordinance can help them maintain a safe and orderly establishment around those events associated with teenage drinking, such as prom and graduation.

Publicizing the policy also allows local officials to respond to unfounded concerns. For example; a party in a distant farm field without the knowledge of the property owner, a party thrown by a house or pet sitter while the residents were away would not result in a ticket for uninvolved property owners.

Ordinances Reviewed

Fond du Lac, city

Kenosha, city

Kronenwetter, village

Manitowoc ,city

North Fond du Lac, village

Oregon, village

Prairie du Chien, city

Racine, city

Rothschild, village

Two Rivers, city

Valders, village

Wausau, city

Weston, village

ⁱ Wisconsin Department of Public Instruction, 2011 Wisconsin Youth Risk Behavior Survey, Executive Summary, page 5. February 2012, Accessed March 27, 2012

ⁱⁱ American Academy of Pediatrics, October 1998, child health month promotional material.

ⁱⁱⁱ Milwaukee Journal Sentinel, Homeowner knew police were nearby before firing. Bruce Vielmetti, March 25, 2012 v. Preventive Medicine July 2000 vol 31, #1 pg. 39-48.

^v In *Nichols v. Progressive Northern Ins. Co.*, 2008 WI 20, 308 Wis. 2d 17, 746 N.W.2d 220, the Wisconsin Supreme Court denied a claim for common-law negligence against property owners who were allegedly aware that minors were on their property consuming alcohol, but who did not provide the alcohol, when an underage guest later allegedly caused an alcohol-related car accident. ¶ 3. As part of their claim, the Nichols (injured plaintiffs) alleged the Niesens (the property owners) “knowingly permitted and failed to take action to prevent the illegal consumption of alcohol beverages by underage persons on premises under their control contrary to Sec. 125.07(1)(a)3. “The Nichols argued that the Niesens “had a duty to supervise and monitor the activities on their property” and that they were negligent because they failed to do so.” ¶ 5. Both the trial court and the court of appeals concluded that plaintiffs’ reliance on Wis. Stat. § 125.07(1)(a)3 was misplaced. However, the court of appeals disagreed with the trial court by allowing the Nichols to proceed with a common-law negligence claim against Niesens. The Wisconsin Supreme Court reversed the Court of Appeals on public policy grounds. The Wisconsin Supreme Court concluded that a common-law negligence claim could not proceed against a social host who did not provide the alcohol but was aware underage persons were on their property consuming alcohol, which alcohol consumption resulted in an alcohol related car crash.

Note: the Supreme Court’s use of the term “social hosts” should not be construed to equate to the use of “social host” in terms of various ordinances by the same name.

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