Dempsey Law

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The Municipal Brief

By Alex R. Ackerman

Welcome back to the second edition of *The Municipal Brief*. Spring is finally here. With it comes vacation and wedding season, which frame this issue, along with a brief update on data centers.

First, 2023 Wisconsin Act 73 took effect on January 1, 2026. Commonly referred to as the "Wedding Barn Bill," the law clarifies the definition of "public place" to include venues such as wedding barns, which had previously occupied a regulatory gray area. The Act imposes limitations on alcohol beverage consumption and sales at these venues.

Second, as municipalities prepare for the tourism season, many continue to regulate short-term rentals through local licensing ordinances. Those ordinances are under increased scrutiny following two recent appellate decisions.

Finally, interest in data center development across Wisconsin continues to grow. Many communities are beginning to evaluate the zoning and policy considerations that accompany these projects. Attorney Kenya Wilson of our office has been doing the same and has developed several practical recommendations for municipalities to consider.

2023 Act 73

This Act makes significant changes to how alcohol consumption is regulated at public places and private events, and for the first time, the law actually defines what a "public place" is.

Previously, owners or operators of public places could not allow alcohol consumption without a retail license, but the law left "public place" undefined. Act 73 fills that gap. The term now covers any venue, room, open space, or establishment that is rented or made available to the public for events or social gatherings. For municipalities, this most commonly affects wedding barns and similar spaces. Hotels, motels, B&Bs, short-term rentals with enough beds for all adult guests, licensed campsites, and tailgating areas near professional or collegiate sporting events are excluded from the definition.

As a result, public places like wedding barns now need appropriate licenses or permits to allow alcohol consumption on their property. If a wedding barn wants to sell beer and liquor, it will generally need a "Class B" liquor license. Act 73, however, creates several additional licensing options for event operators beyond the traditional liquor license route.

QUALIFYING EVENT VENUES

A wedding barn or similar venue can apply to be certified as a "qualifying event venue" and, if approved, it is exempt from the municipal "Class B" license quota. To qualify, the venue must meet the following requirements in the 12-month period preceding the application:

- At least five events were held at the venue with at least 50 invited guests in attendance (documentation required).
- The venue owner received at least $20,000 in revenue from renting or leasing the venue for those events (documentation required).

The Division of Alcohol Beverages (DAB) may only certify a venue as eligible for the quota exemption if all of the following are also met:

- The venue was in operation on January 1, 2026 (documentation required).
- The venue has not been a "Class B" licensed premises at any point in the 12 months preceding the application.
- The venue owner has not applied for a No-Sale Event Venue Permit.
- The venue owner provides documentation to DAB confirming that the municipality where the venue is located has no "Class B" licenses available to issue.
- The venue owner notifies DAB by March 2, 2026, that they are applying for a "Class B" liquor license and are not seeking a No-Sale Event Venue Permit.

The March 2, 2026 deadline has now passed. If an applicant comes to your municipality seeking a qualifying event venue exemption, it will be important to confirm that the necessary deadlines were met. If they were not, the opportunity may be foreclosed entirely. Municipalities must receive above-quota license applications no later than August 1, 2026, and those applications require that the applicant provided timely notice to DAB by March 2, 2026.

NO-SALE EVENT VENUE PERMIT

The second option is the No-Sale Event Venue Permit, which allows a property owner to rent or lease their venue for events where beer and wine are consumed, subject to important limitations. Events involving alcohol consumption may not occur on more than six days per calendar year or more than one day per month.

Under the permit, the venue owner is authorized to:

- Allow renters, lessees, or their guests to bring their own beer and wine for consumption at no charge.
- Allow a renter or lessee to obtain a temporary Class "B" or "Class B" license to sell beer and wine at an event.
- Allow a renter or lessee to hire a licensed caterer holding the appropriate licenses to provide beer and wine service.
- When 20 or more people are being served, a licensed or permitted bartender must be present.

What the permit does not allow is equally important:

- The venue owner may not sell or otherwise provide alcohol beverages to renters, lessees, or attendees.
- Beer and wine must be provided free of charge. Cash bars, admission fees, and other direct or indirect sales are prohibited.
- Distilled spirits are not permitted at any event held under the permit.

Venues that expect to host more than six events per year involving alcohol consumption will need to pursue a retail license from the municipality rather than relying on the no-sale permit.

With wedding season approaching, we encourage you to keep these changes in mind. If you have any licensing questions related to these new requirements, please do not hesitate to reach out to our office.

Short-Term Rental Licensing Ordinances

Two recent Wisconsin Court of Appeals decisions addressed how municipalities may regulate short-term rentals.

The first, *Wisconsin Realtors Association, Inc. v. City of Neenah*, addressed a narrow question: whether a municipality can restrict short-term rental permits to properties that are the owner's primary residence. The City of Neenah had enacted a Tourist Housing Ordinance with that requirement, and the Wisconsin Realtors Association challenged it as preempted by state law. The Court of Appeals sided with the Wisconsin Realtors Association, holding that the ordinance conflicted with Wis. Stat. § 66.1014 and was, therefore, void. Municipalities with similar primary residence requirements in their short-term rental ordinances should take note.

The second decision, *Wildwood Estate, LLC v. Village of Summit*, is broader and relevant to how municipalities structure their short-term rental regulations. The Village of Summit had enacted an ordinance requiring short-term rental owners to obtain a license and a tenant permit for each rental, requiring guests to sign a registry, and prohibiting rentals of six days or fewer. The court focused on the rental-period prohibition and, because the ordinance effectively barred certain short-term rental periods, treated it as a zoning ordinance regardless of how it was labeled. That distinction matters, because zoning ordinances carry different procedural and substantive requirements than standalone licensing ordinances. For instance, there are additional procedures for the adoption of a zoning ordinance that do not apply to a licensing ordinance. Similarly, the doctrine of nonconforming use applies to zoning ordinances but not licensing ordinances.

These decisions raise an important threshold question for any municipality looking to regulate short-term rentals: should the regulation be structured as a zoning ordinance or as a standalone licensing ordinance? We generally recommend the licensing ordinance approach for reasons that include avoiding nonconforming use issues. However, under this new case law, the licensing ordinance path carries some uncertainty, and the relevant litigation is ongoing. We will continue to monitor these developments and will keep you informed as the law in this area evolves.

In the meantime, if your municipality is considering short-term rental regulations, please reach out to our office to discuss the approach that best fits your community.

Data Centers

As the artificial intelligence industry grows, so does its demand for energy and infrastructure. Wisconsin has become an active market for data center development, and municipalities across the state are facing a familiar question: welcome these facilities, or keep them out?

One tool available to a municipality is its zoning ordinance. A municipality that has concerns about data center development can consider amending its zoning ordinance to regulate data centers as a conditional use or exclude them entirely. Attorney Kenya Wilson has developed an approach to help our municipal clients review and revise their zoning ordinances to address data center development, including exclusion where that is the direction the community wants to go.

If your municipality is considering how to address data center development, please reach out to our office. We are happy to discuss what approach makes the most sense for your community.

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The Municipal Brief is provided for informational purposes only. It does not constitute legal advice for any specific situation and is not intended to be a comprehensive discussion of the topics addressed. Because each situation is unique, you should not rely solely on this information when making legal decisions. Please consult legal counsel if you have questions.

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