



## Legislation Text

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**File #:** 131408, **Version:** 2

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### 131408 SUBSTITUTE 2

#### ALD. BAUMAN

A substitute ordinance relating to the possession and consumption of alcohol beverages in public places including parking lots and parking structures and upon commercial quadricycles.

100-3-13.5 cr

100-50-12-k cr

106-1.8-1 am

106-1.8-2 rc

106-1.8-3 cr

106-2.1-1.5-e rn

106-2.1-1.5-e cr

The Wisconsin Legislature enacted 2013 Wisconsin Act 106 (Act 106), effective January 1, 2014, providing an exception to the prohibition against consumption of alcohol beverages in public places for the consumption of fermented malt beverages on commercial quadricycles.

Act 106 also declares that any municipal ordinance passed before January 1, 2014, prohibiting the public consumption of any alcohol beverages - not limited to fermented malt beverages - is unenforceable if applied to passengers on a commercial quadricycle.

This ordinance authorizes the regulated consumption of fermented malt beverages on commercial quadricycles subject to the public passenger vehicle permit requirements in ch. 100 of the Milwaukee Code of Ordinances. These requirements are amended to include the limitations established by Act 106 in ch. 346, Wis. Stats., relating to the conduct of drivers and passengers of commercial quadricycles. The regulations include prohibitions on sale, transport or possession of alcohol beverages on commercial quadricycles with the exception that allows consumption of fermented malt beverages and sets a limit of 36 ounces on the amount of fermented malt beverages that a passenger may possess on or carry upon a commercial quadricycle.

The ordinance also provides regulations that prohibit carrying of glass beverage containers on commercial quadricycles and that require identification of the geographic area in which a commercial quadricycle will be operated in the approved plan of operation.

The ordinance includes requirements for informing passengers about restrictions on alcohol beverages and requires conspicuous posting of a notice of restrictions in a form and manner to be approved by the city.

Forfeiture penalties are provided for violation of commercial quadricycle regulations in the amount of not less than \$200 nor more than \$500 with minimum penalties of not less than \$350 if the violation occurs in designated cruising areas between 8:00 p.m. and 5:00 a.m.

Additionally, persons convicted of driving a commercial quadricycle in violation of the regulations are prohibited from subsequently driving a commercial quadricycle and, if convicted of prohibited driving, are subject to a forfeiture of not less than \$1,000 nor more than \$2,000.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 100-3-13.5 of the code is created to read:

**100-3. Definitions.**

**13.5.** PEDICAB, COMMERCIAL QUADRICYCLE means a vehicle with fully operational pedals for propulsion entirely by human power, that has 4 wheels and is operated in a manner similar to a bicycle, that is equipped with at least 12 seats for passengers, that is designed to be occupied by a driver and passengers providing pedal power to the drive train of the vehicle, that is used for commercial purposes, and that is operated by the vehicle owner or an employee of the owner.

Part 2. Section 100-50-12-k of the code is created to read:

**100-50. Public Passenger Vehicle Permits.**

**12. REGULATIONS.**

k. Commercial Quadricycles. Passengers on a commercial quadricycle that is permitted to operate as a pedicab under a plan approved by the licensing committee may possess on or carry onto the commercial quadricycle not more than 36 ounces of fermented malt beverages and may consume fermented malt beverages upon the quadricycle subject to the following requirements and restrictions and any other regulation required by the city or specified in the plan of operation:

k-1. No other alcohol beverage including intoxicating liquor as defined in ch. 125, Wis. Stats., may be possessed on, carried upon or consumed upon a commercial quadricycle.

k-2. Restrictions on possession, transportation and consumption of alcohol beverages in the operation of commercial quadricycles upon city highways and public places shall apply to operation of commercial quadricycles when used for nonrevenue-producing events or transportation in addition to regular commercial activities.

k-3. No driver of a commercial quadricycle may consume alcohol while the commercial quadricycle is occupied by passengers.

k-4. No person may drive a commercial quadricycle with an alcohol concentration of more than 0.02.

k-5. No person may drive a commercial quadricycle on which any alcohol beverages are carried or consumed other than fermented malt beverages under this section.

k-6. No person may drive a commercial quadricycle on which alcohol beverages are sold and may not transport alcohol beverages on a commercial quadricycle for the purposes of sale or delivery upon sale.

k-7. No alcohol beverages, including fermented malt beverages, shall be possessed, carried upon or consumed on a commercial quadricycle if any passenger or the driver has not attained the legal drinking age as defined in ch. 125, Wis. Stats.

k-8. Passengers shall be advised by the operator, driver or other person responsible for the operation of a commercial quadricycle that no alcohol beverages shall be possessed on, carried upon or consumed on a commercial quadricycle in violation of city ordinance or state statute, and shall conspicuously post a notice of these restrictions upon the commercial quadricycle in a form and manner approved by the city.

k-9. No glass beverage containers shall be carried upon a quadricycle while operated on the public way.

k-10. The plan of operation of a licensed quadricycle shall identify the geographic area in which the quadricycle shall

routinely operate and may include a description of procedures for notifying police or other authorities when anticipated operation of a quadricycle deviates from customary routes.

k-11. Failure of a licensee to comply with the regulations of this paragraph or to operate in accordance with an approved plan of operation shall constitute grounds for non-renewal, suspension or revocation as provided in ss. 85-4-4 and 100-51-16.

Part 3. Section 106-1.8-1 of the code is amended to read:

**106-1.8. Public Drinking and Possession of Alcohol Beverages.** 1. PROHIBITED. ~~[[#]]>>Except as provided in sub. 2, it>>~~ shall be unlawful for any person to consume any alcohol beverage or possess on his or her person, any bottle or receptacle containing alcohol beverages if the bottle has been opened, the seal broken or the contents of the bottle or receptacle have been partially removed upon any public alley, highway, pedestrian mall, sidewalk, or street within the limits of the city>>, including upon or within any commercial quadricycle as defined in s. 100-3-13.5 except as permitted in s. 100-50-12-k>>. Public events for which a permit has been issued under s.105-55.5 to barricade and occupy the public right of way are exempt from this section.

Part 4. Section 106-1.8-2 is repealed and recreated to read:

**2. REGULATION OF COMMERCIAL QUADRICYCLES.** a. No driver of a commercial quadricycle, as defined in s. 340.01 (8m), Wis. Stats., may consume alcohol while the commercial quadricycle is occupied by passengers.

b. No person may drive a commercial quadricycle while the person has an alcohol concentration of more than 0.02.

c. No person may drive a commercial quadricycle on which any alcohol beverages other than fermented malt beverages are carried or consumed or on which any alcohol beverages are sold, including delivery on the commercial quadricycle of alcohol beverages previously sold by a caterer.

d. No person may possess on, or carry onto, a commercial quadricycle more than 36 fluid ounces of fermented malt beverages.

e. No person convicted of driving a commercial quadricycle in violation of any provision of pars. a to d shall subsequently drive a commercial quadricycle within the city.

f. No person may drive a commercial quadricycle occupied by passengers after 10:30 p.m.

Part 5. Section 106-1.8-3 of the code is created to read:

**3. PENALTIES.** a. Any person who violates sub. 1 shall upon conviction be subject to a forfeiture of not less than \$50 nor more than \$250, together with the costs and disbursements of prosecution and upon default of payment thereof may be imprisoned as provided by law; and, further, any person who violates sub. 1 between the hours of 8:00 p.m. and 5:00 a.m. upon a street designated as a cruising area under s. 101-20.5, including the land within the street lines whether or not improved, shall be subject to a forfeiture of not less than \$100 nor more than \$500, together with the costs and disbursements of prosecution and upon default thereof may be imprisoned as provided by law.

b. b-1. Any person who violates any provision of sub. 2-a to d shall upon conviction be subject to a forfeiture of not less than \$200 nor more than \$500, together with the costs and disbursements of prosecution and upon default of payment thereof shall be imprisoned as provided by law; and, further, any person who violates sub. 2 between the hours of 8:00 p.m. and 5:00 a.m. upon a street designated as a cruising area under s. 101-20.5, including the land within the street lines whether or not improved, shall be subject to a forfeiture of not less than \$350 nor more than \$500, together with the costs and disbursements of prosecution and upon default thereof may be imprisoned as provided by law.

b-2. Any person who violates sub. 2-e shall upon conviction be subject to a forfeiture of not less than \$1,000 nor more than \$2,000 and upon default of payment thereof may be imprisoned as provided by law.

Part 6. Section 106-21.-1.5-e of the code is renumbered s. 106-2.1-1.5-f.

Part 7. Section 106-2.1-1.5-e of the code is created to read:

**106-2.1. Drinking Upon Public Parking Structures and Public Parking surface Lots.**

**1.5. EXCEPTION.**

f. Commercial quadricycles if the locations and times when consumption of fermented malt beverages is specified in the plan of operation of the commercial quadricycle approved by the licensing committee as provided in s. 100-50.  
APPROVED AS TO FORM

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Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

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Office of the City Attorney

Date: \_\_\_\_\_

LRB150872-2.2  
Richard L. Withers  
2/19/2014