



## Legislation Text

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**File #:** 110472, **Version:** 1

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### 110472 SUBSTITUTE 1

#### ALD. COGGS

A substitute ordinance relating to carrying, possessing or controlling firearms and other dangerous weapons, and providing penalties.

105-34-1-a am

105-34-1-b rc

105-34-1-c rp

105-34-1-d rp

105-34-1-e rp

105-34-1-f rp

105-34-2 rc

105-34-3-0 rc

105-34-3-a rc

105-34-3-b rc

105-34-3-c am

105-34-3-d am

105-34-4 cr

106-1-2 rn

106-1-2 cr

This ordinance amends, repeals and recreates code provisions that regulate the possession and use of firearms and other dangerous weapons to comply with 2011 Wisconsin Act 35 (Act 35).

Act 35 revised state laws relating to the manner in which firearms and other weapons may be lawfully kept, transported and carried. Act 35 also created s. 66.0409(6), Wis. Stats., limiting the authority of municipalities to hold persons in violation of ordinances addressing disorderly conduct or other inappropriate behavior in the loading, carrying or going armed with firearm absent a finding of criminal or malicious intent whether the firearms are actually loaded or is concealed or openly carried.

Section 66.0409(2), Wis. Stats., created by 1995 Wisconsin Act 72, prohibits a municipality from enacting an ordinance or adopting a resolution that regulates the use, keeping, possession, bearing or transportation of any firearm or part of a firearm, including ammunition, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

Code provisions that regulate the concealed carrying of dangerous weapons other than firearms are retained to the extent permitted by state law. This ordinance incorporates the exceptions provided in Act 35 for firearms.

Finally, the ordinance establishes new penalties for violations of state laws prohibiting the sale,

possession or use of a machine gun or other full automatic, a short-barreled rifle or short-barreled shotgun, body armor, armor-piercing ammunition or a firearm silencer. These violations of state law, and violations of state laws prohibiting felons and certain other persons from possessing firearms, are punishable by a forfeiture of not less than \$1,000 nor more than \$5,000.

Whereas, The laws of Wisconsin relating to the manner in which firearms and other weapons may be lawfully kept, transported and carried were substantially revised by 2011 Wisconsin Act 35 (Act 35), effective July 23, 2011; and

Whereas, Act 35 provides exceptions to prohibitions relating to the possession, handling, carrying and use of dangerous weapons; and

Whereas, Section 66.0409(2), Wis. Stats., prohibits a municipality from enacting an ordinance or adopting a resolution that regulates the use, keeping, possession, bearing or transportation of any firearm or part of a firearm, including ammunition, except an ordinance or resolution that is the same as or similar to, and no more stringent than, a state statute; and

Whereas, Political subdivisions, including municipalities, are prohibited under s. 66.0409(6), Wis. Stats., from enforcing any ordinance relating to disorderly conduct or “other inappropriate behavior” of any person for loading, carrying, or going armed with a firearm without regard to whether the firearm is loaded or is concealed or openly carried, except if other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply; and

Whereas, Law enforcement authorities may determine from time to time that circumstances warrant citations for an offenses involving firearms under municipal ordinance rather than the corresponding state statute; and

Whereas, Prosecution of violations of municipal ordinances may result in recovery by the city of expenses related to enforcement; and

Whereas, The common council intends to conform its ordinances to the requirements of state statute while providing residents of the city with the greatest protection available under municipal law to preserve health, safety and welfare; now, therefore

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

Part 1. Section 105-34-1-a of the code is amended to read:

**105-34. Carrying Dangerous Weapons.**

1. PROHIBITED. a. ~~[[It]]>>Except as provided under state law and this code, it<<~~ shall be unlawful for any person except a peace officer to go armed with a concealed and dangerous weapon within the city of Milwaukee.

Part 2. Section 105-34-1-b of the code is repealed and recreated to read:

b. Unlawful carrying of weapons by licensees. b-1. With the exceptions provided in par. b-2, it shall be unlawful for any licensee or out-of-state licensee to carry a permitted weapon or a firearm that is

not a permitted weapon in any of the following places:

b-1-a. Any portion of a building that is a police station, sheriff's office, state patrol station, or the office of a division of criminal investigation special agent of the Wisconsin department of justice.

b-1-b. Any portion of a building that is a prison, jail, house of correction, or secured correctional facility.

b-1-c. Any portion of a building that is a county, state, or federal courthouse.

b-1-d. Any portion of a building that is a municipal courtroom if court is in session.

b-1-e. Any place beyond a security checkpoint in an airport.

b-2. The prohibitions under par. b-1 <[https://docs.legis.wisconsin.gov/document/statutes/175.60\(16](https://docs.legis.wisconsin.gov/document/statutes/175.60(16))> do not apply to any of the following:

b-2-a. A permitted weapon in a vehicle driven or parked in a parking facility located in a building that is used as, or any portion of which is used as, a location under par. b-1-a.

b-2-b. A permitted weapon in a courthouse or courtroom if a judge who is a licensee is carrying the weapon or if another licensee or out-of-state licensee, whom a judge has permitted in writing to carry a weapon, is carrying the weapon.

b-2-c. A permitted weapon in a courthouse or courtroom if a district attorney, or an assistant district attorney, who is a licensee is carrying the weapon.

Part 3. Section 105-34-1-c to f of the code is repealed.

Part 4. Section 105-34-2 of the code is repealed and recreated to read:

**2. DEFINITIONS.** For purposes of this section:

a. "Carry" means to go armed with.

d. "Dangerous weapon" means any device designed as a weapon and capable of producing death or great bodily harm, any electric weapon as defined in s. 941.295(1c), Wis. Stats., and any similar electronic control device, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. The following are dangerous per se: blackjack, billy, standclub, sandbag, bludgeon, nunchaku sticks, throwing stars, sling shot, slung shot, any instrument which impels a missile by compressed air, spring or other means, any weapon in which loaded or blank cartridges are used, crossknuckles, knuckles of any metal, barbed or blade type arrowhead, bowie knife, dirk knife, dirk, dagger, switch blade knife or any knife which has a blade that may be drawn without the necessity of contact with the blade itself or is automatically opened by pressure on the handle or some other part of the knife and is commonly known as a switch blade knife, straight-edge razor or any other knife having a blade 3 inches or longer.

c. "Handgun" means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore. "Handgun" does not include a machine gun, a short-barreled rifle or a short-barreled shotgun, as defined in ss. 941.27 and 941.28, Wis. Stats.

d. "Firearm" means a handgun, rifle or shotgun which acts by force of gunpowder or explosive to expel a projectile through a smooth or rifled bore, excluding air guns, ammunition, antique firearms or any device which is neither designed nor redesigned for use as a weapon including signaling, pyrotechnic, line throwing, safety or fastening devices.

e. "Licensee" means an individual holding a valid license to carry a concealed weapon issued under s. 175.60, Wis. Stats.

f. "Out-of-state license" means a valid permit, license, approval, or other authorization issued by another state as defined in s. 175.60(1)(f), Wis. Stats.

g. "Peace officer" means any person employed by the state of Wisconsin or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he or she is employed to enforce.

h. "Permitted weapon" means a handgun, an electric weapon, as defined in s. 941.295(1c), Wis. Stats., a knife other than a switchblade knife under s. 941.24, Wis. Stats., or a billy club, carried lawfully under license as provided in s. 175.60, Wis. Stats.

Part 5. Section 105-34-3-0 to b of the code is repealed and recreated to read:

**3. PENALTY.** a. Any person violating sub. 1-a shall, upon conviction thereof:

1. Forfeit not less than \$200 nor more than \$500, and the costs and disbursements of the prosecution, with respect to going armed with a concealed and dangerous weapon other than a firearm and, in default of payment, may be imprisoned as provided by law.

2. Forfeit not less than \$500 nor more than \$1,000, and the costs and disbursements of the prosecution, with respect to going armed with a concealed firearm without a permit, and in default of payment, may be imprisoned as provided by law.

b. Any person violating sub. 1-b shall, upon conviction thereof forfeit not less than \$200 nor more than \$500 and the costs and disbursements of the prosecution and, in default of payment, may be imprisoned as provided by law.

Part 6. Section 105-34-3-c and d of the code is amended to read:

c. For offenses occurring between the hours of 8:00 p.m. and 5:00 a.m. and upon a street designated as a cruising area under s. 101-20.5 including the land within the street lines whether or not improved, forfeit not less than \$300 nor more than \$500, and the costs and disbursements of prosecution, with respect to going armed with a concealed and dangerous weapon other than a

firearm pursuant to sub. 1~~[[a]]~~, and in default thereof ~~[[, shall be imprisoned in the county jail or house of correction for not less than 12 days nor more than 20 days]]~~>> may be imprisoned as provided by law<<.

d. For offenses occurring between the hours of 8:00 p.m. and 5:00 a.m. and upon a street designated as a cruising area under s. 101-20.5 including the land within the street lines whether or not improved, forfeit not less than \$750 nor more than \$1,000, and the costs and disbursements of prosecution, with respect to going armed with a concealed firearm pursuant to sub. 1~~[[a or going armed with a firearm on or about their person pursuant to sub. 1-b,]]~~ and in default thereof~~[[, shall be imprisoned in the county jail or house of correction for not less than 30 days nor more than 40 days ]]~~>> may be imprisoned as provided by law<<.

Part 7. Section 105-34-4 of the code is created to read:

**4. MISCELLANEOUS FIREARM OFFENSES.** a. The following are prohibited:

a-1. The sale, possession, use or transport of any machine gun or other full automatic firearm in violation of s. 941.26, Wis. Stats.

a-2. The sale or offering to sell, transport, purchase, possess or go armed with a short-barreled rifle or short-barreled shotgun in violation of s. 941.28, Wis. Stats.

a-3. Possession of a firearm in violation of s. 941.29, Wis. Stats., prohibiting certain felons and other persons from possessing a firearm.

a-4. Possession of body armor in violation of s. 941.291, Wis. Stats.

a-5. Possession or use of armor-piercing ammunition in violation of s. 941.296, Wis. Stats.

a-6. The sale, delivery or possession of a firearm silencer in violation of s. 941.298, Wis. Stats.

b. Any person violating par. a shall, upon conviction thereof, forfeit not less than \$1,000 nor more than \$5,000, and the costs and disbursements of the prosecution and in default of payment, may be imprisoned as provided by law.

Part. Section 106-1-2 of the code is renumbered 106-1-3.

Part . Section 106-1-2 of the code is created to read.

**106-1. Disorderly Conduct.**

**2. CONSTRUCTION.** Subsection 1 shall not be construed to apply to, and no person may be charged with a violation of sub. 1 solely on account of, behavior limited to loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried, except when other facts and circumstances indicate a criminal or malicious intent.

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

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

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

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

LRB132105-2.3  
Richard L. Withers  
12/3/13