



Legislation Text

File #: 051702, **Version:** 2

051702 SUBSTITUTE 2

ALD. DAVIS AND BOHL

A substitute ordinance relating to penalties for certain violations of ordinances in areas designated for cruising enforcement.

79-16-1-c am
80-91 cr
101-20.5-5 am
101-34-2-k cr
101-34-7-k cr
105-2 am
105-34-3-c cr
105-34-3-d cr
105-138-3 cr
106-1 am
106-1.8-2 am
106-5 rc
106-31-0 rc
106-31-10 cr

This ordinance increases penalties for cruising and for certain other ordinance violations occurring between the hours of 8:00 p.m. and 5:00 a.m. on any street designated as a cruising area in s. 101-20.5 or any street designated as a cruising area through the process of temporary designation established in s. 101-20.5-4 and including any area between the street lines whether or not improved with sidewalks or otherwise. Specifically, this ordinance increases penalties in cruising areas as follows:

1. Doubles the penalties for cruising from not more than \$50, \$100 and \$200 respectively for first, second and third or more offenses within 12 months to not more than \$100, \$200 and \$400 for such offenses.
2. Changes the range of penalties for littering on public and private properties from not less than \$50 nor more than \$500 to not less than \$100.
3. Increases penalties for certain noise violations from a range of \$50 to \$500 to a range of \$250 to \$1,000.
4. Increases the minimum forfeitures upon stipulation for non-moving traffic offenses by \$10. Maximum penalties are already fixed in state law.
5. Increases the penalties schedule for non-moving traffic violations by \$15. Maximum penalties are already fixed in state law.

6. Provides a minimum penalty of \$250 for assault and battery. The current penalty is not more than \$500 with no minimum specified.

7. Increases the penalties for carrying a dangerous weapon other than a firearm to a range of \$300 to \$500 and for carrying a firearm to a range of \$750 to \$1,000. These are equivalent to the maximum penalties for comparable state offenses.

8. Doubles the penalties for resisting or obstructing an officer from a range of \$100 to \$500 to a range of \$200 to \$1,000.

9. Increases the penalties for disorderly conduct from not more than \$500 to a range of not less than \$200 to more than \$1,000.

10. Doubles the penalties for public drinking and possession of alcohol beverages from a range of \$50 to \$250 to a range of \$100 to \$500.

11. Increases the range of penalties for indecent exposure from \$50 to \$250 to a range of \$150 to \$500. This section is repealed and recreated to also provide exceptions for mothers' breastfeeding and for lawful performances protected under the free speech provisions of the United States Constitution.

12. Provides a range of penalties for loitering and prowling of \$150 to \$500. The current penalty is not more than \$500 with no specified minimum.

Minimum periods of imprisonment upon default of payment are accordingly increased and maximum periods of imprisonment are increased where maximum forfeitures are increased.

The ordinance also requires that, on or before July 1, 2007, signs that are posted to identify cruising areas also include notice that penalties may be increased for violations of ordinances in cruising areas.

Whereas, The city finds that disturbances involving operators and passengers of motor vehicles continue to occur, especially at nighttime along streets designated as cruising areas; and

Whereas, The city finds that these disturbances include behaviors that are unlawful, disorderly, violent, unreasonably loud, obscene, profane and create substantial risk of injury to persons and to property; and

Whereas, The city finds that such disturbances in designated cruising areas have resulted in substantial costs to the city in enforcement including the commitment of law enforcement personnel and other resources and have drawn law enforcement personnel away from other city neighborhoods especially during nighttime hours; and

Whereas, The city finds that such disturbances often involve the obstruction of lawful traffic and travel; and

Whereas, The city finds that persons within the city have a right to lawfully travel that is protected by the constitution of the United States without undue obstruction or risks to personal safety or property;

and

Whereas, The common council is authorized and empowered by the state of Wisconsin pursuant to the provisions of s. 62.11(5), Wis. Stats., and by charter authority pursuant to s. 4-10, Milwaukee city charter, to manage and control the highways for the government and good order of the city and for the health, safety and welfare of the public and may carry out its powers by regulation, suppression, fine, imprisonment, confiscation and other necessary or convenient means; now, therefore

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

Part 1. Section 79-16-1-c of the code is amended to read:

79-16. Penalty. 1 . FORFEITURE.

c. Any person who violates ss. 79-11 or 79-12-1 shall forfeit not less than \$50 nor more than \$500 for the first offense and not less than \$100 nor more than \$500 for each subsequent offense >>and any offense occurring between the hours of 8:00 p.m. and 5:00 a.m. on a street designated as a cruising area under s. 101-20.5 including the land within the street lines whether or not improved<<, and the costs and disbursements of such action, and in default thereof, shall be imprisoned in the county jail or house of correction for not less than 2 days nor more than 20 days, until such forfeiture costs are paid.

Part 2. Section 80-91 of the code is created to read:

80-91. Penalties For Violations in Cruising Areas. Any person violating the provisions of ss. 80-63 and 80-65 between the hours of 8:00 p.m. and 5:00 a.m. on 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 liable upon conviction to a forfeiture of not less than \$250 nor more than \$1,000 and, upon default, shall be imprisoned in the county jail or house of correction not less than 10 days nor more than 40 days.

Part 3. Section 101-20.5-5 of the code is amended to read:

5. PENALTY. Any person who violates this section shall upon conviction be subject to the following forfeitures together with the costs of prosecution, and, in default of payment be confined in the county jail or house of correction until such forfeiture and costs are paid, but not to exceed [[8]]>>16<< days:

- a. Not more than [[50]]>>\$100<< if the person has not committed a previous violation within 12 months of the violation.
- b. Not more than [[100]]>>\$200<< if the person has committed an previous violation within 12 months of the violation.
- c. Not more than [[200]]>>\$400<< if the person has committed 2 or more violations within 12 months of the violation.

Part 4. Section 101-34-2-k of the code is created to read:

101-34. Stipulation Procedure; Nonmoving Traffic Violations.

2. FORFEITURE SCHEDULE.

k. Citations issued for violations of ss. 101-23, 101-23.5, 101-24, 101-24.1 and 101-24.2 occurring between the hours of 8:00 p.m. and 5:00 a.m. and occurring upon a street designated as a cruising area under s. 101-20.5 including the land within the street lines whether or not improved: the forfeiture upon stipulation for violations provided in pars. b, f and g shall be increased by \$10.

Part 5. Section 101-34-7-k of the code is created to read:

7. PENALTY.

k. Violations of ss. 101-23, 101-23.5, 101-24, 101-24.1 and 101-24.2 occurring between the hours of 8:00 p.m. and 5:00 a.m. and occurring upon a street designated as a cruising area under s. 101-20.5 including the land within the street lines whether or not improved: the lower extent of the range for violations provided in pars. b, f and h shall be increased by \$15.

Part 6. Section 105-2 of the code is amended to read:

105-2. Assault and Battery. Any person who shall commit an assault and battery upon another shall be punished by a fine of not more than \$500>>, and 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, by a fine of not less than \$250 nor more than \$500,<<and in default of payment thereof by imprisonment in the house of correction of Milwaukee county not less than 10 days nor more than [[6 months]]>>20 days<<.

Part 7. Section 105-34-3-c and d of the code is created to read:

105-34. Carrying Dangerous Weapons.

3. PENALTY.

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.

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.

Part 8. Section 105-138-3 of the code is amended to read:

105-138. Resisting or Obstructing Officer.

3. PENALTY. Any person violating this section shall upon conviction forfeit not less than \$100 nor

more than \$500, together with the costs of prosecution and in default of payment shall be imprisoned in the county jail or house of correction for a period not to exceed 20 days, or until the forfeiture and costs are paid>>; and for violations occurring 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 upon conviction forfeit not less than \$200 nor more than \$1,000, together with the costs of prosecution and in default of payment shall be imprisoned in the county jail for a period not to exceed 40 days, or until the forfeiture and costs are paid<<.

Part 9. Section 106-1 of the code is amended to read:

106-1. Disorderly Conduct. Whoever does any of the following may be fined not more than \$500: In a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance >>;and, for offenses occurring 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 fined not less than \$200 nor more than \$1,000 and in default of payment shall be imprisoned in the county jail or house of correction for not more than 40 days, or until the fine and costs are paid<<.

Part 10. Section 106-1.8-2 of the code is amended to read:

106-1.8. Public Drinking and Possession of Alcohol Beverages.

2. PENALTY. Any person who violates this section shall upon being found guilty thereof, 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 thereof shall be imprisoned in the county jail or house of correction of Milwaukee county until such time costs and disbursements are paid, such imprisonment not to exceed 10 days >>;and, further, any person who violates this section 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 shall be imprisoned in the county jail or house of correction of Milwaukee county until such costs and disbursements are paid, such imprisonment not to exceed 20 days.<<

Part 11. Section 106-5 of the code is repealed and recreated to read:

Section 106-5. Indecent Exposure . 1. DEFINITION. In this section, “intimate part” means the anus, genitals or pubic area of a person or the areola of the female breast.

2. PROHIBITION; PENALTIES. Any person who publicly and indecently exposes an intimate part of his or her body shall upon conviction be punished by a fine of not less than \$50 nor more than \$250 and the costs of prosecution; and, further, any person who violates this section 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 punished by a fine of not less than \$150 nor more than \$500 and the costs of prosecution.

3. EXCEPTIONS. a. Subsection 2 does not apply to a mother’s breast-feeding of her child.

b. Subsection 2 does not apply to any performance having serious artistic, literary, scientific or educational value, if taken as a whole.

Part 12. Section 106-31-0 of the code is repealed and recreated to read:

106-31. Loitering or Prowling. The activities of loitering or prowling set forth in subs. 1 to 9 are unlawful within the limits of the city.

Part 13. Section 106-31-10 of the code is created to read:

10. PENALTIES. Any person who violates any provision of this section shall be fined not more than \$500 together with the costs of prosecution or, upon default of payment, shall be imprisoned in the county jail or house of correction for not more than 20 days; and, further, any person who violates any provision of this section 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, may be fined not less than \$150 nor more than \$500 or, upon default of payment thereof, shall be imprisoned in the house of correction of Milwaukee county for not more than 20 days.

Part 14. Noncodified provisions. On or before July 1, 2007, signs posted to identify cruising areas shall provide notice that penalties may be increased for violations of ordinances occurring in designated cruising areas.

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: _____

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RLW

6/7/2006

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