

LEGAL SERVICES DEPARTMENT

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TO: Kyle Lobner, Chair of the Safety and Licensing Committee
Members of the Safety and Licensing Committee

FROM: Darrin Glad, Assistant City Attorney

DATE: November 8, 2017

RE: 22-R-17; Alcohol Consumption on the "Social Station"

This memo is in response to Ald. Konezke's request for information on how State laws or other guidelines affect the proposed resolution.

The proposed resolutions states:

NOW THEREFORE BE IT RESOLVED, The Social Station be permitted to have up to three beverages of malt beverages, wine in individual servings, hard sodas, hard seltzer's and similar canned beverages or craft beers per person. Served only to twenty-one years of age and served only till 11:00 PM daily.

The Appleton Municipal Code, section 9-55 states that "No person may consume a fermented malt beverage while a passenger on a commercial quadricycle...within the city of Appleton."

Wisconsin Statutes, section 340.01(8m) defines a commercial quadricycle as "a vehicle with fully operative 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 by 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."

As it relates to the proposed resolution, Wisconsin Statutes, section 346.94(23) regulates commercial quadricycles in following manner:

No person may drive a commercial quadricycle occupied by passengers after 10:30 p.m. or after any earlier time established by ordinance under s. [349.18 \(1\) \(d\)](#).

No person may drive a commercial quadricycle on which any alcohol beverages other than fermented malt beverages are carried or consumed.

No person may drive a commercial quadricycle on which any alcohol beverages are sold, including delivery on the commercial quadricycle of alcohol beverages previously sold by a caterer.

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

The proposed resolution is in direct conflict with section 9-55 of the Appleton Municipal Code. The concerns then shift to what is intended to be done by this resolution; repeal that section of the Code,

carve out an exception for just one business, or something else. There are additional general concerns if the resolution results in the special treatment to a single entity.

The next issues arise from the conflicts with State law. First, the proposed resolution's limitation of three beverages is not entirely consistent with the State law prohibiting the amount to be not more than 36 fluid ounces. There may be a need to clarify, as there already exists a prohibition on having more than 36 fluid ounces.

Similarly, the proposed resolution describes the types of alcoholic beverages to be allowed on the "Social Station" which is directly in conflict with the State law prohibiting alcohol beverages other than fermented malt beverages.

The proposed resolution conflicts with both of the State law prohibitions on serving of alcohol and driving an occupied commercial quadricycle after 10:30 PM.

In addition to the conflict with the Code and State law, there are other concerns over the enforcement of any violations. Currently, the Social Station operates under a limousine license that does not contemplate the alcohol consumption described in the proposed resolution. There is a need to clarify the intention of the resolution. For example, is the intention to create a separate licensing and enforcement procedure? If so, would that procedure be for all "commercial quadricycles" in Appleton or just the Social Station?

There is an additional concern over the routes and the Police Chief's position. Previously, Police Chief Thomas expressed concern over keeping commercial quadricycles off College Avenue. The proposed resolution describes two routes that were acceptable to Chief Thomas, but as the resolution is currently written, those routes are not binding on the Social Station and unenforceable.