



**Date:** March 4, 2013

**To:** Thomas J. Bonfield, City Manager  
**From:** Patrick Baker, City Attorney  
**Subject:** Amendment to City Code to Allow Passengers on a Pub Bike to Possess and Consume From Open Containers of Certain Alcoholic Beverages

### **Executive Summary**

A proposal has been made to the Durham City Council to allow the operation of a “pub bike” within the City. The “pub bike” is essentially a non-motorized device with four wheels, steering for a forward seated driver, 8-12 passenger saddle seats, and pedals by which the device may be propelled upon a street at a maximum speed of 15 mph. The device is constructed with a low running board, built-in coolers, and a bar at which passengers sit and are allowed to consume beer and wine, which they must provide themselves, while pedaling the device.

State laws would not prohibit the operation of such a device upon the public streets. However, the possession and consumption of beer and wine by a passenger aboard the “pub bike” would currently violate Durham City’s open container ordinance (D.C.C. 46-149 “Possession of open containers of certain alcoholic beverages; disposal of containers, and consumption of certain alcoholic beverages”). The proposed amendment to the City’s open container ordinance will allow passengers aboard the “pub bike” to possess and consume beer and unfortified wine.

### **Recommendation**

Staff recommends approval of the amendment to Durham City Code Section 46-149 set forth in Attachment 1.

### **Background**

A proposal was made to the Durham City Council to allow the operation of a “pub bike” within the City, similar to that which is currently being operated in the downtown Raleigh area. The proposed “pub bike” is essentially a non-motorized device with four wheels, steering for a forward seated driver, 8-12 passenger saddle seats, and pedals by which the device may be propelled upon a street at a maximum speed of 15 mph. The device is constructed with a low running board, built-in coolers, and a bar at which passengers sit and are allowed to consume beer and wine, which they must provide themselves, while pedaling the device. The proposal indicated that the “pub bike” would be available by advance reservation and would travel upon pre-determined routes for tours or parties. In response to the proposal, the Durham City Council requested further details regarding what, if any, local action would be needed to allow the operation of such a device upon the City’s streets.

### **Issues and Analysis**

State laws would not prohibit the operation of a non-motorized “pub bike” upon the City’s streets. Currently, the only local law which would prevent its operation is Durham City Code Section 46-149 “Possession of open containers of certain alcoholic beverages; disposal of containers, and consumption of certain alcoholic beverages.” With a very limited exception for permitted special events, this ordinance currently prohibits any person, who is not an occupant of a motor vehicle, from possessing or consuming from an open container of beer or unfortified wine on any public street. (Note that the possession and consumption of fortified wine and spirituous liquor, and the possession and consumption of all alcoholic beverages within a motor vehicle, are regulated exclusively by State law.) Therefore, if City Council wishes to allow the operation of a non-motorized “pub bike” upon the public streets so that its passengers are allowed to possess and consume beer and unfortified wine, a narrowly drafted exception to the City’s open container ordinance, as recommended in Attachment 1, would be necessary.

### **Alternatives**

If Council chose not to amend the City’s current open container ordinance, passengers aboard the “pub bike” would be unable to lawfully consume beer and unfortified wine while aboard the device. Because State laws prohibit passengers from consuming spiritous liquor and fortified wine while aboard the device, failure to amend the City’s current open container ordinance would effectively prohibit passengers from being able to possess and consume *any* type of alcoholic beverage while aboard the “pub bike.”

### **Financial Impact**

There is no financial impact to the City by this agenda item.

### **SDBE Summary**

There are no SDBE requirements for this agenda item.

### **Attachments**

Attachment 1, Ordinance to Amend Durham City Code Section 46-149. Possession of open containers of certain alcoholic beverages; disposal of containers, and consumption of certain alcoholic beverages.