



Memorandum

City Attorney's Office

P.O. Box 2511
Winston-Salem, NC 27102
CityLink 311 (336.727.8000)
Fax 336.748.3816

TO: James Taylor, Southeast Ward, Chairman, Public Safety Committee
Members of the Public Safety Committee

FROM: Angela I. Carmon, City Attorney
Lori Sykes, Assistant City Attorney

DATE: November 1, 2017

SUBJECT: Trolley Pub

CC: Lee D. Garrity, City Manager
Greg Turner, Assistant City Attorney
Toneq McCullough, Director of Transportation

Subsequent to a proposal submitted by Mr. Kai Kaapro on behalf of the “Trolley Pub” company, in which Mr. Kaapro expressed an interest in the Trolley Pub company opening operations within the City of Winston-Salem, a Request and Concern was submitted to our office. The Request and Concern asked that our office: (1) address the issue of potential liability relating to the operation of an open-air vehicle with on-board alcohol consumption on City streets; and (2) prepare a draft Ordinance allowing for the operation of trolley pubs in the City for discussion at the Public Safety Committee’s next meeting.

1. Background Information on “trolley pubs” (also known as “pub bikes” and “commercial quadricycles”) and applicable laws

The concept of an open-air device with wheels, seating for a forward seated driver, 8-12 passenger saddle-type seats with bicycle-type pedals, and room for storage of alcohol supplied by the passengers originated in Europe and has made its way to the United States. Such devices may be motorized or partially-motorized, or may depend solely on the pedaling of passengers for forward movement.

If the device depends solely on the pedaling of passengers for forward movement, the device would not qualify as a moped, motorcycle, motor vehicle, vehicle or bicycle under North Carolina’s traffic laws.¹ Accordingly, the device would not be required to be registered with the North Carolina Department of Motor Vehicles and therefore would not be subject to that agency’s rules and regulations. However, if the device depends on an electric battery or

¹ Chapter 20 of the North Carolina Code defines: (1) a “bicycle” as a “human-powered vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame” and also a “human-powered vehicle, designed to transport by the action of pedaling which has more than two wheels where the vehicle is used on a public roadway, public bicycle path, or other public right-of-way, but does not include a tricycle;” (2) an “electric assisted bicycle” as a bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour;” and (3) a “motor-driven bicycle” as a “vehicle with two or three wheels, a steering handle, one or two saddle seats, pedals, and a motor that cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface. This term shall not include an electric assisted bicycle as defined in subdivision (7a) of this section.

motor for either full-time or assisted power in forward movement, the device would be considered a low-speed vehicle or motor vehicle for purposes of safety standards and traffic laws and would have to be registered with the North Carolina Department of Motor Vehicles.

While some of these devices are, or have been, operated without serving alcohol, it appears that most offer participants the ability to bring their own alcoholic beverages (limited to beer and wine) onto the device for the purpose of consumption while the device is in operation. According to our research, these devices would not be required to obtain an ABC permit for operation since neither the driver of the device or an employee present on the device to facilitate its operation would be serving alcohol. Further, the consumption of alcohol by passengers of battery-assisted or motorized devices would not violate either the State laws on open containers or the Winton-Salem City Code, as both exempt persons who are occupants of a motor vehicle (NCGS 20-138.7(a2) and Code Sec. 38-9).

2. Potential liability associated with operation of “trolley pubs”

As outlined above, there appear to be three (3) variations of vehicles referred to as “trolley pubs,” “pub bikes” and/or “commercial quadricycles:” (1) passenger-powered; (2) electric-assisted; and (3) motor-powered. If the City were to allow operations of such devices on City streets, the primary liability concern would appear to be that a passenger on such a device were to suffer injury or damage to property, and attempt to name the City as a defendant on the theory that the City permitted this type of operation. Because the permitting or licensing of the operation would be a governmental function, the City should be able to assert the defense of governmental immunity and insulate itself from liability in the event of a lawsuit.

While our office is unable to predict how a court might rule on such a claim, from the outline of applicable laws referenced in Section 1, above, it is clear that allowing only electric-assisted or motor-powered devices would lessen any potential liability should the city fail to prevail on the basis of governmental immunity. This conclusion is based on the fact that electric-assisted and motor-powered devices would be required to meet certain Federal and/or State safety standards, equipment regulations and insurance requirements. If the City were to consider allowing passenger-powered only “trolley pubs,” potential liability could be lessened by requiring those devices to meet the same safety, equipment and insurance standards as the electric-assisted and motor-powered versions.

3. Issues to consider in drafting an Ordinance allowing for “trolley pubs”

The approval being requested by Mr. Kai Kaapro on behalf of the “Trolley Pub” corporation is specifically for a motorized device which would operate within the City as a “vehicle for hire.” Mr. Kaapro has indicated that his devices would operate particularly “in the hospitality areas along Trade and Fourth Street.” It is anticipated that any other company or business entity making a similar proposal would also be interested in operating within the central business district in general, and the Trade and Fourth Street area specifically. Given the City’s successful efforts to revitalize this area and the corresponding increase in motor vehicle and pedestrian traffic in this area, there are some considerations we believe should be taken into account in discussing potential approval of these operations. A number of these

considerations are presented, with recommended conclusions, in the draft Ordinance being provided to the Committee.

a. Inspection of devices

From our research, we understand that some jurisdictions already allowing motorized trolley pubs on their streets do not perform City inspections of the devices, but defer to the inspections required by the State in association with the registration of the devices as “vehicles for hire.” Should the City consider also approved passenger-powered only devices, it is recommended that the City Department of Transportation conduct inspections as already occurs with other vehicles for hire under City Code Chapter 78.

b. Maximum allowed speed for trolley pub devices; areas of operation

The proposal submitted by Mr. Kaapro on behalf of the Trolley Pub company does not indicate the maximum speed at which the company’s devices will operate. It appears that for added safety for passengers, it appears that at least one jurisdiction has limited the maximum speed at which said devices may be operated to 25 miles per hour (Ann Arbor, Michigan Ordinance No. 16-11) and has limited its operation to streets designated by the City.

c. Prohibition of operation during certain special events or on certain occasions

In an effort to lessen potential complaints as to traffic congestion in the central business district (especially given upcoming shifts in traffic patterns due to the closing of Business 40), it is recommended that the City prohibit operation of trolley pubs during special events occurring in that area. Obviously, such devices could not operate on City streets which are closed during such events, but allowing operation even on adjoining streets could result in an unacceptable increase in traffic congestion. As an example of such a prohibition, the “commercial quadricycle” ordinance adopted by the City of Ann Arbor, Michigan, referenced above and codified as Sections 10:211 *et seq.*, does not allow operation of such a device in Section 10:222:

- a. on a street closed in connection with an approved City Special Event Permit during the duration of the closure;
- b. on all University of Michigan Stadium event days, including but not limited to any University of Michigan home football game days;
- c. on any date designated or within the boundaries of the Art Fair;
- g. on Main Street within the central business district during the hours of 4:00 – 6:00 p.m. Monday through Friday.

d. Pre-arranged tours v. “hailing” of trolley pub

While it appears that the Trolley Pub company offers only pre-arranged tours, other operators may consider a different business model. It is recommended, again for safety and traffic congestion purposes, that any such operation be allowed to conduct only pre-arranged tours and not be allowed to stop at random locations to pick up passengers who spontaneously decide that they would like to participate in a tour.

e. Parking/Stopping for trolley pubs

In order to minimize potential complaints as to parking and/or traffic congestion, especially within the central business district, it is also recommended that any allowance of the operation of trolley pub devices be conditioned upon those devices loading and unloading passengers, otherwise stopping, and parking, at designated locations (for example, locations chosen by the City, or existing public parking spaces or public parking areas so long as any parking fee is paid).

f. Noise

It appears that trolley pubs in at least one other jurisdiction use sound amplification to transmit either music or the voice of the tour guide or person otherwise steering the device. In order to minimize complaints of noise from the use of these devices, it is recommended that any use of sound amplification must be permitted either: (1) as is currently required in City Code Sec. 46-31 *et seq.*; or (2) through specific provisions in the ordinance allowing the operation of such devices in the City.