

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO: 4910

ORDINANCE COUNCIL SERIES NO: _____

COUNCIL SPONSOR: MR. ARTIGUE

PROVIDED BY: COUNCIL ATTORNEY

INTRODUCED BY: _____

SECONDED BY: _____

ON THE 1 DAY OF NOVEMBER , 2012

PLEASE SEE ATTACHED FOR COMPLETE DOCUMENT

ORDINANCE TO AMEND AND REENACT SECTION 3-105.00 OF ARTICLE V OF THE ST. TAMMANY PARISH CODE OF ORDINANCES, ALCOHOLIC BEVERAGES, IN GENERAL, AND TO REPEAL SECTIONS 3-190.00 THROUGH 3-190.04 OF ARTICLE VIII.

REPEAL: All ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective fifteen (15) days after adoption.

MOVED FOR ADOPTION BY: _____ SECONDED BY: _____

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

THIS ORDINANCE WAS DECLARED DULY ADOPTED AT A REGULAR MEETING OF THE PARISH COUNCIL ON THE 6 DAY OF DECEMBER , 2012 ; AND BECOMES ORDINANCE COUNCIL SERIES NO _____.

MARTIN W. GOULD, JR., COUNCIL CHAIRMAN

ATTEST:

THERESA L. FORD, COUNCIL CLERK

PATRICIA P. BRISTER, PARISH PRESIDENT

Published Introduction: OCTOBER 25 , 2012

Published Adoption: _____, 2012

Delivered to Parish President: _____, 2012 at _____

Returned to Council Clerk: _____, 2012 at _____

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO.: 4910

ORDINANCE COUNCIL SERIES NO. 12-

COUNCIL SPONSOR: MR. ARTIGUE

PROVIDED BY: COUNCIL ATTORNEY

INTRODUCED BY: _____

SECONDED BY: _____

ON THE 1 DAY OF NOVEMBER, 2012

ORDINANCE TO AMEND AND REENACT SECTION 3-105.00 OF ARTICLE V, CHAPTER 3, OF THE ST. TAMMANY PARISH CODE OF ORDINANCES, ALCOHOLIC BEVERAGES, IN GENERAL, AND TO REPEAL SECTIONS 3-190.00 THROUGH 3-190.04 OF ARTICLE VIII.

WHEREAS, the Louisiana Legislature has preempted local regulation of the possession of alcoholic beverages in motor vehicles that are in conflict with the provisions of La.R.S. 32:300, paragraph E of which provides as follows: "E. This Section shall preempt the authority of a municipal or parish governing authority to enact any code or ordinance regulating the possession of alcoholic beverages in motor vehicles. However, the local governing authority of a local governmental subdivision with a population of over fifty thousand as of the most recent federal decennial census may enact a code or ordinance that does not conflict with the substantive provisions of this Section, and such local code or ordinance may provide for the imposition and collection of fines and court costs for violations thereof for amounts in excess of the amounts provided in this Section; and

WHEREAS, considering the provisions of applicable state law, and in order to be consistent therewith, it is necessary to redefine and reinforce certain related provisions of Section 3-190.00 through 3-190.04, now contained in Article VIII Permit Provisions Applicable to Article VI & VII, and to incorporate said provisions into the regulations of Section 3-105.00 of Article V Alcoholic Beverages.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS that Section 3-105.00 of Article V, Chapter 3, of the St. Tammany Parish Code of Ordinances is amended to incorporate therein certain related provisions of Section 3-190.00 through 3-190.04 of Article VIII being repealed herewith, all as more particularly provided for immediately hereinafter, to-wit:

CHAPTER 3 ALCOHOLIC BEVERAGES

ARTICLE V ALCOHOLIC BEVERAGES, IN GENERAL

SEC. 3-105.00 Open Containers

A. Definitions

- 1. ~~"Private motor vehicle"~~ - Any motor vehicle which is not operating as a licensed passenger carrier. Examples: automobile, truck, van, motorcycle, bicycle, recreational vehicle, etc.
- 2. ~~"Alcoholic Beverage"~~ - Any fluid or liquid suitable for human consumption of either low or high content alcohol, including, but not limited to, beer, ale, malt beverage, stout, wine, wine cooler, cider, or intoxicating liquors (pure or rectified by distillation).
- 3. ~~"Open Container"~~ - Any bottle, container, receptacle or vessel holding fluids or liquids of low or high content alcohol with visible evidence of an opening or broken seal whereby consumption is possible or probable. (Editorial Note: Deleted Definitions from former SEC. 3-190.04 being repealed hereby)

1) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

2) "Alcoholic beverage" means any of the following:

(a) Beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

(b) Wine of not less than one-half of one percent of alcohol by volume.

(c) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced

(3)(a) "Open alcoholic beverage container" means any bottle, can, or other receptacle that contains any amount of alcoholic beverage and to which any of the following is applicable:

(i) It is open or has a broken seal.

(ii) Its contents have been partially removed.

(b) "Open alcoholic beverage container" shall not mean any bottle, can, or other receptacle that contains a frozen alcoholic beverage unless the lid is removed, a straw protrudes therefrom, or the contents of the receptacle have been partially removed. (Editorial Note: See La.R.S. 32:300)

~~A.~~ B. Open Containers Off Premises.

1) No holder of a permit for the retail sale of alcoholic beverages shall knowingly permit any individual, whether patron, customer, employee or otherwise, to remove any alcoholic beverage from the premises in a container of any type, whether glass, bottle, can, paper or plastic cup, go-cup, or otherwise, unless said container is unopened and sealed.

2) No person, whether patron, customer, employee or otherwise, shall remove any alcoholic beverage from the premises of a holder of a permit for the retail sale of alcoholic beverages in a container of any type, whether glass, bottle, can, paper or plastic cup, go-cup, or otherwise unless said container is unopened and sealed.

3) All holders of permits for the sale of alcoholic beverages shall post a conspicuous notice inside their premises, as well as by each exit, stating that it is illegal to remove any alcoholic beverages from the premises in any type of unsealed or open container of any kind, and that said violators shall be subject to fine and/or imprisonment as provided in parish ordinances.

4) Unopened and sealed container shall be defined as a container of any type, whether glass, bottle, can paper or plastic cup, go-cup, or other receptacle which has not been opened, or on which a seal or stamp has not been broken, or which a straw does not protrude.

~~B.~~ C. Exceptions.

The provisions of ~~this section~~ paragraph B of this Section shall not apply to the Saturday and Monday proceeding Mardi Gras Day and Mardi Gras Day itself.

~~C.~~ D. Penalties.

Whoever violates any provision of ~~this section~~ paragraph B of this Section shall be fined not more than TWO HUNDRED DOLLARS (\$200.00) for each offense. (Editorial Note: Ord. No. 97-2581, adopted 02/10/97)

E. Possession of alcoholic beverages in motor vehicles

1) It shall be unlawful for the operator of a motor vehicle or the passenger in or on a motor vehicle, while the motor vehicle is operated on a public highway or right-of-way, to possess an open alcoholic beverage container, or to consume an alcoholic beverage, in the passenger area of a motor vehicle.

2) "Passenger area" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. It shall not mean a locked glove compartment or behind the last upright seat, or any area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

3) "Public highway or right-of-way" means the entire width between and immediately adjacent to the boundary lines of publicly maintained highways or roads when any part thereof is open to the use of the public.

4) Whoever violates the provisions of paragraph E of Section 3-105.00E shall not be taken into custody by the arresting officer, but instead shall be required either to deposit his driver's license with the arresting officer or give his written promise to appear. Furthermore, a violation of the provisions of this Section shall not be included in the records kept by the commissioner required in R.S. 32:393.1.

5) Whoever violates the provisions of paragraph E this Section shall be fined not more than five hundred dollars. Court costs shall be assessed in addition to the fine authorized by this Subsection.

6) For purposes of enforcement of paragraph E of this Section, the observance of a glass, cup, or other container that, on its face, does not indicate that the container contains an alcoholic beverage, shall not, absent other circumstances, constitute probable cause for a law enforcement officer to stop and question a person.

7) The provisions of paragraph E of this Section shall not apply to the following persons or in the following areas:

(a) Any person operating or occupying a motor vehicle who, as a condition of his employment and while acting in the course and scope of such employment, is required to carry open alcoholic beverage containers, provided that the operator or passenger does not consume the alcoholic beverages.

(b) Any paid fare passenger on a common or contract carrier vehicle, as defined in R.S. 45:162.

(c) Any paid fare passenger on a public carrier vehicle, as defined in R.S. 45:200.2.

(d) Any passenger in a courtesy vehicle which is operated as a courtesy vehicle.

(e) Any passenger of a self-contained motor home which is in excess of twenty-one feet in length.

(f) Possession of an open container of alcoholic beverage in the trunk of a motor vehicle.

(g) If the motor vehicle is not equipped with a trunk, possession of an open container or alcoholic beverages in any of the following areas:

(1) In a locked glove or utility compartment.

(2) In an area of the vehicle not normally occupied by, and not readily accessible, to the driver or passengers.

(8) Passengers and krewe members riding on a parade float.

(9) Any passenger in a privately owned limousine the driver of which possesses a Class D commercial driver's license. (Editorial Note Paragraph E: See La.R.S. 32:300)

BE IT FURTHER ORDAINED that herein below Sections 3-190.00 -3-190.04 of Article VIII of the St. Tammany Parish Code of Ordinances are hereby repealed in their entirety, all as more particularly provided for immediately hereinafter, to-wit:

SEC. 3-190.00 Consumption by Driver

It shall be unlawful for any driver to drink or consume alcoholic beverages in any private motor vehicle, when such vehicle is being operated upon a public street within the unincorporated parish limits:

~~SEC. 3-190.02 Possession by Driver~~

~~It shall be unlawful for a driver to have in his possession, while operating a private motor vehicle upon a public street within the unincorporated parish limits, any bottle, container or receptacle containing alcoholic beverages, which has been opened, or the seal broken, or the contents of which have been partially removed. (Ord. No. 91-1442, adopted 05/16/91)~~

~~SEC. 3-190.03 Dispensing or Selling of Alcoholic Beverages Via a Drive-Thru Window is Prohibited~~

~~It shall be unlawful for any person to distribute, dispense or sell **any alcoholic beverage** through any opening, window, door or orifice to the exterior of any establishment that sells alcoholic beverages, including, but not limited to, through any opening commonly described as a "drive-thru window" or "drive up window".~~

~~SEC. 3-190.04 Definitions~~

~~1. "Private motor vehicle" - Any motor vehicle which is not operating as a licensed passenger carrier. Examples: automobile, truck, van, motorcycle, bicycle, recreational vehicle, etc.~~

~~2. "Alcoholic Beverage" - Any fluid or liquid suitable for human consumption of either low or high content alcohol, including, but not limited to, beer, ale, malt beverage, stout, wine, wine cooler, cider, or intoxicating liquors (pure or rectified by distillation).~~

~~3. "Open Container" - Any bottle, container, receptacle or vessel holding fluids or liquids of low or high content alcohol with visible evidence of an opening or broken seal whereby consumption is possible or probable.~~

REPEAL: All Ordinances or parts of Ordinances in conflict herewith are superceded hereby.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective immediately upon adoption.

MOVED FOR ADOPTION BY: _____, SECONDED BY: _____

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS:

NAYS:

ABSTAIN:

ABSENT:

THIS ORDINANCE WAS DECLARED ADOPTED AT A REGULAR MEETING OF THE PARISH COUNCIL ON THE 6 DAY OF DECEMBER, 2012, AND BECOMES ORDINANCE COUNCIL SERIES NO. 12-.

MARTIN W. GOULD, JR., COUNCIL CHAIRMAN

ATTEST:

THERESA FORD, COUNCIL CLERK

PATRICIA P. BRISTER, PARISH PRESIDENT

Published Introduction: OCTOBER 25, 2012
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