



May 20, 2020

To: Mayor Brian Steele and Members of City Council
CC: Jimmy Liles, City Administrator, Joe Campbell, Chief of Police
From: Nick Woodman, City Attorney
Re: Proposed amendments to section 20-9 of the Nixa City Code.

The Mayor, City Council, and staff held a discussion at Council's May 11, 2020 regular meeting regarding the City's open container Ordinance. This Ordinance is codified at section 20-9 of the City Code.

The discussion with the Mayor and Council was initiated after concerns were raised related to businesses who served alcohol and the recent stay-at-home measures implemented by the City. Some local businesses began distributing alcohol in containers provided by customers. Concerns were raised about the applicability and enforcement of section 20-9, particularly section 20-9(b)(1), and this practice.

After review of section 20-9 and the ordinances of other Missouri communities, an Ordinance has been prepared for the Mayor and Council consideration.

The proposed Ordinance makes two changes to section 20-9. First, it provides clarification on what is considered the passenger area of a vehicle. Second, it adopts language which establishes a rebuttable presumption that containers marked as containing alcohol contain the described alcohol. The proposed Ordinance does not modify the "original container" or "seal unbroken" language.

The current language of section 20-9 prohibits the transporting of alcoholic beverages within the passenger area of any motor vehicle, except when the alcoholic beverage is in an original container and with the seal unbroken. Currently, an individual would be allowed to transport an alcoholic beverage in their vehicle, in a container other than the original and with the seal broken if they placed the beverage in an area other than the passenger area of the vehicle.

The inclusion of section 20-9(e) will help clarify for the public what area of the vehicle is considered the passenger area for purposes of this ordinance. This language was adapted from similar language contained in Ozark's open container ordinance.

The recommended language added at section 20-9(f) was adapted from Columbia's open container ordinance. While not related to the issues raised at the May 11 Council meeting, it is recommended that this language be adopted as part of this Ordinance. This added section would establish an evidentiary presumption that the contents of a



container labeled as alcoholic is alcoholic. Any defendant in a prosecution under section 20-9 would be able to rebut this presumption with competent evidence.

Staff recommends approval of the amendments described in the draft ordinance accompanying this memorandum.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA, MISSOURI,
AMENDING SECTION 20-9 OF THE CITY CODE FOR THE PURPOSE OF
MODIFYING CERTAIN PROVISIONS RELATED TO OPEN CONTAINERS OF
ALCOHOLIC BEVERAGES.**

WHEREAS, City Code section 20-9 prohibits the transport of alcoholic beverages in the passenger area of any motor vehicle operated upon any public way in the City of Nixa, except in the original container and with the seal unbroken; and

WHEREAS, City Council desires to amend certain portions of section 20-9 to clarify what actions are prohibited under said section.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NIXA, MISSOURI, AS FOLLOWS, THAT:

SECTION 1: Chapter 20, Article I, Section 20-9 of the Nixa City Code is hereby repealed in its entirety and a new section 20-9 is enacted in lieu thereof and shall read as follows:

(Note: Language to be added is underlined and language to be removed is ~~stricken~~.)

Sec. 20-9. - Open containers of alcoholic beverages.

(a) Definitions. Unless the context indicates that a different meaning is intended, as used in this section, the following words or phrases have the following meaning:

Alcoholic beverages includes intoxicating liquor, non-intoxicating beer and any liquid having an alcoholic content, regardless of the percentage alcoholic content by weight or volume irrespective of the manner in which the alcohol was placed in the container, which is capable of being consumed as a beverage by a human being.

Bus is a motor vehicle designed for the transportation of a driver and ten or more passengers.

Person includes a driver or passenger.

Public way means any street, alley, boulevard, parkway, or other public thoroughfare.

Recreational motor vehicle is any motor vehicle designed, constructed or substantially modified so that it may be used and is used for the purpose of temporary housing quarters, including therein sleeping and eating facilities which are either permanently attached to the motor vehicle or attached to a unit which is securely

attached to the motor vehicle. Such a vehicle may or may not be registered as a commercial vehicle.

(b) Prohibited.

(1) Except as provided in RSMo 311.101, no person shall transport, carry, possess or have, and no driver shall permit the transporting, carrying, possessing or having, of any alcoholic beverages within the passenger area of any motor vehicle, which is being operated upon a public way, except in the original container and with the seal unbroken.

(2) This subsection shall not apply to exclusive possession by a passenger in a taxicab or limousine; on a chartered bus or a similar motor vehicle licensed to transport passengers for hire; provided, however, the driver of such vehicle is prohibited from consuming or having any alcoholic beverages within his reach.

(3) This subsection shall not apply to a recreational vehicle, provided the alcoholic beverage is kept in a container with an airtight lid which is stored in a closed cabinet, refrigerator, or other storage compartment located outside the reach of the driver of the vehicle.

(c) Any evidence of an alcoholic beverage container in the passenger area of such vehicle and alcoholic consumption by the driver shall be prima facie evidence that such driver has disobeyed this section.

(d) The exemption applicable to chartered buses under subsection (b)(2) of this section does not apply to any vehicle being used for school purposes.

(e) For purposes of this section, passenger area shall not include any area of the motor vehicle which is inaccessible to the driver or any other person in such vehicle while it is in motion. In the case of a pickup truck, station wagon, hatchback vehicle or other similar vehicle, the area behind the last upright seat shall not be considered accessible to the driver or any other person, provided that no person is occupying, sitting or standing in that area of the vehicle.

(f) In prosecutions under this section, there is a rebuttable presumption that a container marked or labeled as containing an alcoholic beverage actually contains the described alcoholic beverage. This rebuttal presumption applies only in cases where a sample of the contents of the container has been preserved and is available to the defendant for testing.

SECTION 2: The City Clerk is authorized to provide for different section numbers, subsection numbers, and different internal citation references than those provided in Section 1 hereof when such section numbers, subsection numbers, or internal citation references are in error or contrary to the intent of this Ordinance.

SECTION 3: Savings Clause. Nothing in this Ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred nor any cause or causes of action occurred or existing, under any act or ordinance repealed hereby.

SECTION 4: Severability Clause. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause, or phrases be declared invalid.

SECTION 5: This Ordinance shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

READ TWO TIMES AND PASSED BY THE CITY COUNCIL OF THE CITY OF NIXA, MISSOURI THIS _____ DAY OF _____ 2020.

PRESIDING OFFICER

ATTEST:

CITY CLERK

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY