

CHAPTER 5

ALCOHOLIC BEVERAGES

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[HISTORY: Adopted by the Common Council of the City of Dunkirk 10-16-1979. Amendments noted where applicable.]

GENERAL REFERENCES

Parks - See Ch. 49.

- § 5-1. **Purpose; findings. [Amended 5-31-1988 by L.L. #2-1988]**
- A. **Purpose.** The purpose of this chapter is to protect and promote the safety, health and well-being of the people of the City of Dunkirk and to regulate the conduct of persons in the City of Dunkirk by prohibiting the consumption of alcoholic beverages in public places and on property owned or leased by another person without the invitation or consent of such persons.
 - B. **Findings.**
 - (1) The Common Council of the City of Dunkirk finds that the possession or consumption of alcoholic beverages in public streets and public places, except under certain conditions, is detrimental to the health, safety and welfare of the residents of the City of Dunkirk, causes unsightly and unsanitary conditions, creates a nuisance and interferes with the peace and good order of said city.

- (2) The Common Council further finds that the possession or consumption of alcoholic beverages on public streets and public places is a serious, substantial and significant cause of persons (especially persons who are under the legal age for alcoholic consumption) becoming unruly, disruptive, disorderly, uncontrollable, obnoxious, offensive and of a general character detrimental to the health, welfare and peaceful orderliness of the community. In addition, the allowance of possession or consumption of alcoholic beverages on public streets and public places has been proven to be a significant and substantial cause in the congregation of persons who in turn significantly and substantially cause and promote unruly, disruptive, disorderly, uncontrollable, obnoxious, offensive and generally detrimental behavior.
- (3) The Common Council further finds that there is a significant relationship between the possession of an open or unsealed container of an alcoholic beverage on public streets or places and the general health, welfare and safety of the public and that it has been demonstrated to this Common Council that the allowance of open or unsealed containers of alcoholic beverages is the most significant and substantial factor contributing to the consumption of such alcoholic beverages.
- (4) The Common Council further finds that this chapter is necessary and proper to promote the health, welfare and safety of the general public and that the restrictions on conduct created by this chapter are not unduly harsh or restrictive and are necessary and proper pursuant to the police power of the City of Dunkirk.

§ 5-2. Definitions. [Amended 5-31-1988 by L.L. #2-1988]

For the purpose of this chapter, the following words, phrases and terms and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in plural number include the singular, words used in the singular number include the plural and words in the masculine include the feminine.

ALCOHOLIC BEVERAGE - Includes alcohol, spirits, liquor, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being.

CONTAINER - Any bottle, can, glass or other receptacle suitable for or used to hold any liquid.

MOTOR VEHICLE - Every vehicle, including a snowmobile, which is or can be operated or driven upon a public highway and which is propelled by any power other than muscular power, other than a public omnibus used in the business of transporting passengers for hire.

PUBLIC PLACE - A place in the City of Dunkirk to which the public or a substantial group of persons has access and includes, but is not limited to, highways, sidewalks, parking areas, parks, playgrounds, shopping centers, schoolyards and hospital ground or other public places as defined by § 240 or the Penal Law of the State of New York.

§ 5-3. Open containers prohibited in public places and motor vehicles; age limit. [Amended 5-31-1988 by L.L. #2-1988]

- A. No person shall drink an alcoholic beverage or have in his or her possession any open bottle, can or other container of alcoholic beverage with the intent to consume such alcoholic beverage while such person is in a public place or on property owned or leased by another person without the invitation or consent of such person.
- B. No person shall drink an alcoholic beverage or have in his or her possession any open bottle, can or container of alcoholic beverage, with the intent to consume such alcoholic beverage, while such person is the operator of or occupant or passenger in or on a motor vehicle which is parked, standing or being operated in a public place or on the property owned or leased by another without the invitation or consent of such person.
- C. The possession of an open bottle or open container unwrapped or with the top exposed in a public place, as herein defined, shall be presumptive evidence that such open bottle or open container is intended to be consumed in a public place.
- D. An open bottle or open container in any vehicle while in or on any public sidewalk, street, highway, parking lot, public park or other public place as defined by § 5-2 of this chapter, shall be presumptive evidence that the same is in the possession of all the occupants thereof.
- E. No person less than twenty-one (21) years of age shall possess any alcoholic beverage except on property owned by him or his parents or in the capacity of his employment.

§ 5-4. Responsibility of licensees.

No person or establishment licensed to sell beer, wine, whiskey or any other alcoholic beverage, as defined by the New York State Alcoholic Beverage Control Law, shall permit consumption of same in or upon any of the public places stated in § 5-2 within twenty-five (25) feet of such person's place of business.

§ 5-5. Exceptions.

The foregoing prohibition shall not apply to:

- A. Any person drinking an alcoholic beverage or possessing an open container containing an alcoholic beverage at any block party held after receiving approval and permission of the Common Council.
- B. Any person drinking an alcoholic beverage in a motor vehicle being driven upon public highway within the city in violation of § 1227 of the New York State Vehicle and Traffic Law.
- C. Those portions of Wright Park and Point Gratiot where the consumption of alcohol is not prohibited by the provisions of §§ 49-4C, 49-4D and 49-6F of the Code of the City of Dunkirk.
- D. Those parklands or public rights-of-way which have written approval and permission of the Common Council.

§ 5-6. Penalties for offenses.

A person found guilty of a violation of this chapter shall be subject to a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or imprisonment for not more than ten (10) days, or to both such fine and imprisonment.

§ 5-7. Severability. [Amended 5-31-1988 by L.L. #2-1988]

If any clause, sentence, paragraph, subdivision, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment is rendered.

§ 5-8. When effective.

This chapter shall take effect upon publication in the official city newspaper.