



Town of New Castle
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Memorandum

To: Mayor Riddile and Town Council
From: Melody Harrison, Town Clerk
Subject: Discussion Regarding Emergency Ordinance TC 2020-5
Date: 9.6.22

Purpose:

The purpose of this agenda item is to review Emergency Ordinance TC 2020-5 as requested by the town council.

In early 2020 the COVID-19 pandemic began, and in an effort to support the economic welfare of local restaurant owners and to promote the general health and welfare of the citizens of the Town by encouraging outdoor activity, the Town Council passed an ordinance to allow for consumption of alcohol on public property without prior authorization from Town Council. Restaurant patrons then could take their carry-out food and more specifically, alcoholic beverages, to a downtown park for consumption.

The ordinance allowed for this public consumption to continue until such time that the Town Council amended or revoked the same by resolution.

House Bill 21-1027 was passed in June 2021 and allowed the sale of carry-out alcoholic beverages by bars and restaurants to continue until July 1, 2025.

Staff felt that because CDPHE had lifted the closures and restaurants were back to full capacity for in-house dining, it was valuable to review Emergency Ordinance TC 2020-5, and did so at it's November 16, 2021, council meeting. At that time the council decided that consumption of carry-out alcoholic beverages from town restaurants should continue, and that it should be reviewed again in 2022.

It should be noted here that at the beginning of 2022, the state implemented a permitting process for restaurants who want to continue providing carry-out alcohol. Restaurants who do not obtain a permit may not provide carry-out alcohol to patrons.

To date, only one restaurant in town has obtained a carry-out alcohol permit from that state, and that is 88 Grill.

Staff has recently done a small survey of town restaurants regarding carry-out alcohol. Many places did not know that carry-out alcohol was allowed. One will allow their regular liquor

license to expire, and they will not renew because they sell very little alcohol, and they do not do carry-out. One has a carry-out permit and provides carry-out alcohol to their hotel room patrons, and for their business, feel that carry-out should become a permanent option. One does carry-out alcohol somewhat consistently but does not hold a carry-out permit. Several said that people must not know or care about carry-out alcohol because they have no one asking for it.

For the purposes of reconsidering Emergency Ordinance TC 2020-5 and the public consumption of carry-out alcohol from a town restaurant, staff notes that because only one restaurant in town has the proper state permit for carry-out alcohol, they will be the only establishment allowed to serve carry-out alcohol. That restaurant contends that their carry-out business is almost exclusively from hotel guests. The leaves no other restaurant in town legally providing carry-out alcohol for public consumption in the downtown parks. Staff has observed over time that there is little to no consumption in the parks as the social-distancing restrictions of the pandemic have lifted entirely.

It would be staff's opinion that the council could repeal Emergency Ordinance TC 2020-5, once again prohibiting public consumption of alcohol with little to no effect on any restaurant business.

**TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. 2020-5**

**AN EMERGENCY ORDINANCE OF THE NEW CASTLE TOWN
COUNCIL AMENDING CHAPTERS 9.28 AND 12.20 OF THE NEW
CASTLE MUNICIPAL CODE.**

WHEREAS, on March 10, 2020, Jared Polis, the Governor of the State of Colorado, declared a statewide state of emergency in response to coronavirus (COVID-19); and

WHEREAS, on March 19, 2020, as a result of COVID-19, the Colorado Department of Public Health and Environment (“CDPHE”) issued Public Health Order 20-22 closing places of public accommodation, including bars and restaurants, except for carry-out and delivery service until April 30, 2020; and

WHEREAS, on April 26, 2020, Governor Polis issued Executive Order D 2020-044 which, among other things, extended the places of public accommodation limitations set forth in Public Health Order 20-22 through at least May 27, 2020; and

WHEREAS, while necessary to protect the health and safety of citizens, state and local responses to COVID-19 have had a negative impact on the economic welfare of bars, restaurants, and other businesses in the Town of New Castle and elsewhere; and

WHEREAS, to support the economic welfare of local restaurant owners and to promote the general health and welfare of citizens of the Town by encouraging outdoor activity, the Town Council desires to amend the Town Municipal Code to allow for consumption of alcohol on public property with prior authorization from Town Council; and

WHEREAS, Article IV, Section 4.7 of the Town Charter authorizes the Town Council to pass an emergency ordinance to become effective immediately if necessary; and

WHEREAS, given the unknown duration of restrictions on the operations of places of public accommodation and the potential for further restrictions in response to COVID-19, the Town Council finds that an emergency ordinance is necessary in order to protect and promote the economic and general welfare of Town citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals. The Town Council incorporates the foregoing recitals as findings by the Town Council.
2. Findings of Necessity. Pursuant to Section 4.7 of the Town Charter, Town Council hereby finds that this Ordinance should be effective immediately upon passage for the following reasons:

- a. To date, the negative impacts of the state and local response to COVID-19 on economic and community welfare have been significant; and
- b. Immediate support for local businesses is needed to mitigate the negative impacts of COVID-19 response actions; and
- c. Waiting for the Code changes to take effect until after second reading and 14-day publication of this Ordinance will further exacerbate the negative economic and welfare impacts of COVID-19 response actions on Town citizens and business owners, which would be detrimental to the preservation of public peace, health, safety, and welfare.

3. Amendment of Chapter 9.28. The Town Council hereby repeals Section 9.28.010(B) of the Code in its entirety and reenacts the same to provide as follows:

9.28.010 Possession of open alcoholic or fermented malt beverage container prohibited.
 ...

B. The prohibition set forth in Section 9.28.010(A) with respect to public streets, highways, alleys, sidewalks, parks, elementary or secondary school buildings or grounds, or other publicly owned property located within the Town limits, or parking areas open to the public, shall not apply in the event of one or more of the following:

- 1. The Town Administrator has issued a permit allowing the consumption, possession or sale of alcoholic or fermented malt beverages, provided that:
 - a. Such permit shall be issued only for a designated area;
 - b. Such permit shall be in effect for a period not to exceed twelve (12) hours; and
 - c. The Town Administrator shall have determined that the permit shall be necessary for conducting a public or private event or celebration and that adequate provision has been made for police or other supervision and area maintenance. A fee shall be charged by the Town as a condition for issuance of the permit in an amount set by the Town's fee schedule to defray the costs incurred by the Town in issuing and supervising the permit
- 2. Town Council has authorized by resolution the consumption, possession, or sale of alcoholic or fermented malt beverages. The scope and extent of the authorized consumption, possession, or sale shall be as set forth in any such resolution adopted from time to time.

4. Amendment of Chapter 12.20. The Town Council hereby amends Section 12.20.080(D) of the Code as follows, with added language in **bold** and underlined. The remainder of Section 12.20.080 of the Code shall remain unchanged and in full force and effect.

12.20.080 – Prohibited Items.

...

D. Open containers containing any alcoholic or fermented malt beverage, unless a permit has been issued or Town Council has authorized by resolution the consumption, possession, or sale of alcoholic or fermented malt beverages in parks or other public places.

5. Temporary Authorization for Consumption and Possession. Town Council hereby authorizes the consumption and possession of alcoholic and fermented malt beverages purchased from a restaurant located within the Town of New Castle in (a) Ritter Plaza; (b) the two pocket parks located adjacent to Town Hall at 450 W. Main Street; (c) Burning Mountain Park; and (d) that portion of 5th Street south of Main Street that is between Main Street and the alleyway adjacent to the railroad tracks during such times that Town staff has closed said area to vehicular traffic. The authorization set forth in this section shall remain in effect until Town Council amends or revokes the same by resolution.

6. Severability. Each section of this Ordinance is an independent section, and a holding of any section or part thereof to be unconstitutional, void, or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other section or part thereof, and the remainder of this Ordinance shall continue in full force and effect.

ADOPTED this 5th day of May, 2020, to be effective immediately and to be published in full as soon as reasonably possible in accordance with the Charter and Municipal Code of the Town of New Castle.

TOWN COUNCIL OF THE TOWN OF
NEW CASTLE, COLORADO

By: *Art Riddile*
Art Riddile, Mayor

ATTEST:

Melody Harrison *cmc*
Melody Harrison, Town Clerk

