

AN ORDINANCE TO AMEND, CHAPTER 21, ARTICLE III OF THE CODE OF  
ORDINANCES SO AS TO ESTABLISH AN OPEN CONTAINER LAW

**WHEREAS**, The State of Tennessee currently has in effect Tennessee Code Annotated 55-10-416, which prohibits a driver from consuming any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while operating a motor vehicle in this state; and

**WHEREAS**, Tennessee Code Annotated 55-10-416 (c) authorizes a municipality, by ordinance, to prohibit the passengers in a motor vehicle from consuming or possessing an alcoholic beverage or beer in an open container during the operation of the vehicle by its driver and impose penalties for violation of the ordinance; and

**WHEREAS**, Tennessee Code Annotated 16-18-302 (a)(1-2) recognizes and authorizes a municipal court to possess jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars (\$50.00).

**WHEREAS**, Tennessee Code Annotated 55-10-416 (b)(1) provides that violation of the Tennessee Code Annotated 55-10-416 is a Class C misdemeanor, punishable by fine only.

**WHEREAS**, the City Council of the City of Memphis intends to exercise its authority to enact new traffic ordinances.

**SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, that Chapter 21, Article III is hereby amended to create a new section 21-134.5 to read as follows:

Sec. 21-134.5. **Open container law.**

(a) (1) No driver or passenger shall consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while either operating a motor vehicle or while a passenger within a motor vehicle within the boundaries of the city of Memphis.

(2) For purposes of this section:

(A) "Open container" means any container containing an alcoholic beverage, the contents of which are immediately capable of being consumed or the seal of which has been broken;

(B) An open container is in the possession of the driver when it is (i) not in the possession of any passenger or (ii) and is not located in a closed glove compartment, trunk or other non-passenger area of the vehicle, and

(C) A motor vehicle is in operation if its engine is operating, whether or not the motor vehicle is moving.

(b) (1) A violation of this section is a Class C misdemeanor, punishable by a fine of \$50.00.

(2) For a violation of this section, a law enforcement officer shall issue a citation in lieu of continued custody, unless the offender refuses to sign and accept the citation, as provided in T.C.A. § 40-7-118.

**SECTION 2.** BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**SECTION 3.** BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

Myron Lowery  
Council Chairman

Attest:  
Patrice Thomas, Comptroller

## SUMMARY SHEET

### I. DESCRIPTION OF ITEM

Adoption of this ordinance will amend Chapter 21, Article III of the City of Memphis Code of Ordinances to create Section 21-134.1, an ordinance establishing a penalty for operating off-highway motor vehicles on highways. This ordinance will make the operation of such vehicles on highways a Class C misdemeanor, subject to a 50.00 fine. Once approved, the final version will be provided to the publisher for the purpose of amending the Code.

### II. SOURCE AND AMOUNT OF FUNDING

Not applicable.

### III. CONTRACT ITEMS

Not applicable.

### IV. ADDITIONAL INFORMATION RELEVANT TO APPROVAL OF THIS ITEM

This proposed ordinance is an adoption of Tennessee Code Annotated 55-8-185. Tennessee Code Annotated 16-18-302 (a)(1-2) recognizes and authorizes a municipal court to possess jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars (\$50.00).