



MEMORANDUM

Office of the City Attorney

Legistar No. 990163

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: July 26, 1999
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-99-61

An ordinance of the City of Gainesville, Florida, amending subsection 4-4 of the Code of Ordinances relating to consumption and sale of alcoholic beverages during a city-produced New Year's Eve event at the Downtown Plaza, allowing possession of all types of alcoholic beverages at the event; providing an exception to the prohibition against possession of alcoholic beverages in open containers on streets, thoroughfares and sidewalks closed during the event; allowing sales of alcoholic beverages pursuant to State permit on street and sidewalks closed during the event; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

The City Commission at its meeting of June 28, 1999, authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance allowing consumption and possession of all alcoholic beverages at the Gainesville Community Plaza, and sale, consumption, and possession of alcoholic beverages under State permit on designated downtown streets when properly closed to traffic and utilized as part of the event area for a city-produced New Year's eve event.

Prepared by:

Patricia M. Carter
Sr. Assistant City Attorney

Approved and
Submitted by:

Marion J. Radson
City Attorney

MJR:PMC:sw

1 Ordinance No. _____
2 0-99-61
3

4 **An ordinance of the City of Gainesville, Florida, amending subsection**
5 **4-4 of the Code of Ordinances relating to consumption and sale of**
6 **alcoholic beverages during a city-produced New Year's Eve event at**
7 **the Downtown Plaza, allowing possession of all types of alcoholic**
8 **beverages at the event; providing an exception to the prohibition**
9 **against possession of alcoholic beverages in open containers on streets,**
10 **thoroughfares and sidewalks closed during the event; allowing sales of**
11 **alcoholic beverages pursuant to State permit on street and sidewalks**
12 **closed during the event; providing directions to the codifier;**
13 **providing a severability clause; providing a repealing clause; and**
14 **providing an immediate effective date.**
15

16 **WHEREAS**, at least 10 days notice has been given once by publication in a
17 newspaper of general circulation notifying the public of this proposed ordinance and of a
18 Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

19 **WHEREAS**, a Public Hearing was held pursuant to the published notice
20 described at which hearing the parties in interest and all others had an opportunity to be
21 and were, in fact, heard;

22 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
23 **THE CITY OF GAINESVILLE, FLORIDA:**

24 **Section 1.** Subsection 4-4 of the Code of Ordinances of the City of Gainesville is
25 amended to read as follows:

26 **Sec. 4-4. Consumption, sale and consumption, and possession generally.**

27 (a) *Parks, similar areas.* It shall be unlawful for any person to consume or to have in
28 his/her possession any alcoholic beverages in a publicly owned park or recreation area, or
29 on any public school property, or at any municipally owned and operated recreation
30 centers or swimming pools, or at the stadium located near Waldo Road, commonly known

1 as Citizens Field. The foregoing prohibitions shall not apply in the following areas on the
2 occasions stated as to any type of alcoholic beverage:

3 (1) The airport terminal facility when being dispensed by a person duly
4 licensed under the ordinances of the city and the statutes of the state;

5 (2) The Thomas Center, the Thelma Bolton Center and Boulware Springs
6 upon approval of the city manager or designee for consumption, not sale, of
7 alcoholic beverages;

8 (3) The municipal golf course facility when being dispensed by a person duly
9 licensed under applicable ordinances and state statutes.

10 (4) The Downtown Plaza upon approval of the city manager or designee for
11 consumption on the premises, or sale and consumption on the premises, of
12 alcoholic beverages associated with a special event. ~~Sale and consumption of~~
13 ~~alcoholic beverages shall be limited to beer and wine. Possession and~~
14 consumption of alcoholic beverages shall be limited to beer and wine except during
15 a city-produced New Year's Eve event, and Sale of beer and wine will be
16 permitted by the city manager or designee only under the following conditions:

17 a. The special event shall be produced by the city. The city manager
18 or designee shall select an organization qualified under § 501(c)(3) of the
19 Internal Revenue Code and registered pursuant to F.S. chapter 496 to sell
20 alcoholic beverages at a designated location or locations on the Plaza.

21 Selection of the nonprofit organization and sales of beer and wine shall be
22 pursuant to policy developed by the city manager.

23 b. The nonprofit organization and persons responsible for sale or
24 dispensing of the alcoholic beverages shall comply with all local, state and

1 federal laws related to the sale, dispensing and consumption of alcoholic
2 beverages including, but not limited to, procuring a license to sell
3 alcoholic beverages from the State of Florida.

4 c. All sales of alcohol shall take place during the event as specified
5 by the city manager or designee, and only between the hours of 9:00 A.M.
6 and 11:00 P.M. on Friday and Saturday, 1:00 P.M. and 10:00 P.M. on
7 Sunday, 9:00 A.M. New Year's Eve and 1:00 A.M. New Year's Day and
8 9:00 A.M. and 10:00 P.M. on any other day.

9 d. The organization and persons responsible for sale of or dispensing
10 the alcoholic beverages shall stop such sale or dispensing upon
11 determination of the city manager or designee that continued sale and
12 consumption of alcohol creates a clear and present danger of a riot or other
13 general public disorder, and substantial injury to persons or to property.

14 e. The organization shall indemnify the City, its elected and
15 appointed officers, employees, agents, and attorneys from any claim for
16 personal injury, including death, or property damage, including
17 destruction, associated with the special event. This indemnification shall
18 be in the form of an insurance policy that names the city as an additional
19 insured and is endorsed to provide a separate aggregate of \$1,000,000.00
20 for the event for which the person or organization is making application.

21 f. The organization shall present an accounting of the
22 revenues and cost of sales of alcohol to the city manager or designee
23 within 10 days after the event. The city shall charge the organization for

1 the cost of the event in excess of the cost the city would have incurred if
2 no alcohol was sold (for example, the cost of extra police or signs).

3 (b) Other areas generally:

4 (1) It shall be unlawful for any person to consume or have in his/her
5 possession any alcoholic beverages in any open container on any public street,
6 thoroughfare, sidewalk (except in a licensed sidewalk cafe), or on any public or
7 semi-public parking facility in the city, except as specified in subsection (3)
8 below. It shall be unlawful for any person to have in his/her possession any
9 alcoholic beverages in any open container while in or on any motor vehicle on any
10 public or semi-public parking facility in the city. The term "semi-public parking
11 facility" shall include any privately owned area wherein motor vehicles may be
12 parked by the public in conjunction with any business, enterprise, commercial
13 establishment, office building or multiple-family residential building. Pursuant to
14 a special event permit approved by the city manager, the dispensing and
15 consumption of beer, as defined in F.S. § 563.01, and/or wine, as defined in F.S. §
16 564.01, will be permitted in semi-public parking facilities under the following
17 conditions:

18 a. The special event permitted shall be jointly sponsored by
19 the city, with the requirement that a sufficient number of off-duty law
20 enforcement officers, as shall be determined by the city, be employed by
21 the noncity sponsoring agency to provide security and crowd control for
22 the special event.

23 b. The special event shall occur on semi-public parking
24 facilities of an establishment which is not licensed for the sale and/or

1 consumption of alcoholic beverages either by state statute or city
2 ordinance.

3 c. The special event permit shall have a duration of no longer
4 than two days (48 hours); however, the number and hours during which
5 the dispensing of the alcoholic beverage(s) may occur each day shall be
6 determined by the city manager.

7 d. The persons responsible for dispensing the alcoholic
8 beverages permitted shall comply with all local, state and federal laws
9 related to the dispensing and consumption of the permitted alcoholic
10 beverages.

11 e. No more than one permit for any 12-month period will be
12 issued to any corporation, company, association, organization or group of
13 any type.

14 (2) In addition to the prohibitions contained in subsection (b)(1), no
15 person shall consume or have in his/her possession any alcoholic
16 beverages in an open container on any other privately owned property,
17 except as a lawful guest and with the consent of the owner or person in
18 charge of such privately owned property.

19 (3) Sale, possession and consumption of alcoholic beverages are
20 allowed on streets, thoroughfares and sidewalks adjacent to these streets
21 and thoroughfares during the time they are closed for a city-produced New
22 Year's Eve event. All sales must be pursuant to a valid temporary permit
23 granted by the State of Florida.

1 (c) Florida Field. Except in the section commonly known as the executive suite
2 boxes, it shall be unlawful for any person to consume or to have in his/her possession any
3 alcoholic beverages within the stands, stadium or grounds of Florida Field, which is the
4 stadium located on the campus of the University of Florida. This prohibition shall apply
5 at any place within the gates of the stadium whether the same be in the stands, under the
6 stands, on the grounds, in the aisles, or at any other place in the stadium.

7 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
8 this Ordinance shall become and be made a part of the Code of Ordinances of the City of
9 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be
10 renumbered or relettered in order to accomplish such intentions.

11 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
12 or unconstitutional by any court of competent jurisdiction, then said holding shall in no
13 way affect the validity of the remaining portions of this ordinance.

14 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
15 such conflict hereby repealed.

16 **Section 5.** This ordinance shall be effective immediately upon final adoption.

17
18 **PASSED AND ADOPTED** this _____ day of _____, 1999.
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20

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22 _____
23 PAULA M. DeLANEY
24 MAYOR

25
26 ATTEST: Approved as to form and legality
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30 _____
31 KURT M. LANNON
CLERK OF THE COMMISSION

30 _____
MARION J. RADSON
CITY ATTORNEY

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2 This Ordinance passed on first reading this _____ day of _____, 1999.

3 This Ordinance passed on second reading this _____ day of _____, 1999.

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6 carter:ordinances:0-99-61 alcohol on NYE