

ARTICLE I. - IN GENERAL

Sec. 4-1. - Definitions.

- (a) The definitions contained in the beverage law of the state, as defined in F.S. chs. 561, 563 and 564, and interpreted by the courts of this state and the state director of the division of alcoholic beverages and tobacco of the department of business and professional regulation, shall apply to the terms in this chapter.
- (b) *Open container* shall mean any bottle, can, glass, cup or other vessel, other than the original unbroken sealed container or a bottle of wine resealed pursuant to F.S. § 564.09, containing an alcoholic beverage; provided however, that if a bottle of wine resealed pursuant to F.S. § 564.09 is transported in a motor vehicle, the resealed bottle shall be considered an open container unless it is placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.
- (c) *Alcohol event permit* means a permit issued pursuant to section 4-4 of this Code that allows the temporary sale of beer, wine or other alcoholic beverages.
- (d) *Not-for-profit entity* means an entity qualified under Section 501(c)(3) of the Internal Revenue Code and registered pursuant to F.S. ch. 496.

(Code 1960, § 4-1; Ord. No. 3307, § 1, 12-15-86; Ord. No. 3311, § 1, 1-5-87; Ord. No. 4067, § 1, 3-27-92; Ord. No. 050369, § 1, 10-24-05; Ord. No. 130695, § 2, 3-6-14)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 4-2. - Hours of sale.

- (a) *Alcoholic beverages by the package, other than packaged beer and unfortified wine.* No beverage licensee, or employee or agent of such licensee, permitted under state law to sell alcoholic beverages by the package, bottle or original container shall sell, offer for sale, serve or deliver such a product (other than packaged beer and unfortified wine) for consumption either on or off the premises during the following hours (time is local time): 11:00 p.m. to 7:00 a.m. the following day, all days.
- (b) *All other alcoholic beverages.* No beverage licensee, or employee or agent of such licensee, shall sell, offer for sale, serve, or permit to be sold or served or consumed, any alcoholic beverage not regulated under subsection (a) in a place operating under the beverage license, for consumption either on or off the premises, during the following hours (time is local time): 2:00 a.m. to 7:00 a.m., all days.

(Code 1960, § 4-5; Ord. No. 4067, § 2, 3-27-92; Ord. No. 970042, § 1, 9-8-97; Ord. No. 990443, § 1, 11-8-99; Ord. No. 990797, § 1, 12-13-99; Ord. No. 110367, § 1, 12-15-11)

State law reference— Authority to regulate hours of sale, F.S. §§ 562.14(1), 562.45(2).

Sec. 4-3. - Schools; distance restrictions.

- (a) *Schools.* No sale of alcoholic beverages shall be made where the place of business is within 400 feet of a public or a private school, duly accredited and offering any of the grades from kindergarten through the 12th grade, which measurements shall be by a straight line from the main entrance of the building of the licensed premises of the applicant to the nearest part of the school grounds normally and regularly used in connection with the school program.
- (b)

Existing licenses. Those licensees previously issued beverage licenses under the terms of F.S. § 561.34(1) (now F.S. § 563.02(1)), permitting sale of malt beverages containing alcohol of 0.5 percent or more by volume for consumption on the premises and having a beverage license for the year 1962—1963 may continue to sell alcoholic beverages at the same premises only and as vendors only under F.S. § 563.02(1), notwithstanding the provisions of subsection (a). Should such license be suspended, revoked, transferred to a different licensed premises, or not be renewed and kept continuously valid, this exemption shall no longer apply, and the provisions of subsection (a) shall be enforced on those premises.

- (c) *Applicability.* The prohibitions and distance restrictions contained in this section shall not apply to licenses issued pursuant to and for the classification described in F.S. § 563.02(1)(a) (sale of malt beverages containing alcohol of 0.5 percent or more by volume, only for consumption off the premises) and F.S. § 564.02(1)(a) (sale of brewed beverages containing malt, wines, and fortified wines, only for consumption off the premises).

(Code 1960, § 4-7; Ord. No. 970296, § 1, 10-27-97)

Cross reference— Land development regulations relating to alcoholic beverage establishments, § 30-105.

State law reference— Authority to regulate location of alcoholic beverage business, F.S. § 562.45(2).

Sec. 4-4. - Sale, dispensing, consumption and possession generally.

- (a) *Generally.* Except as specifically allowed by this section, it shall be unlawful for any person to sell, distribute, consume or possess any alcoholic beverage in any open container on any property owned by the city or on any public right-of-way, including without limitation, streets, thoroughfares, highways or sidewalks, Any person or legal entity that is allowed to sell or dispense alcoholic beverages pursuant to this section shall comply with all applicable federal, state and local laws related to the sale or dispensing of alcoholic beverages. The city manager is authorized to promulgate written administrative procedures to implement this section and any alcohol event permits authorized herein.
- (b) *City-owned property.* It shall be unlawful for any person to sell, dispense, possess or consume any alcoholic beverages on any property owned by the city, except as follows:
- (1) At the airport terminal facility and the municipal golf course facility when being sold or dispensed by the facility owner or by a natural person or legal entity that is under contract with the facility owner;
 - (2) Within the rental event space at the Thomas Center, the Thelma Bolton Center, Boulware Springs, the Senior Recreation Center and the Depot Building, dispensing, but not sale, for consumption during an event for which the space is rented. A fundraising event sponsored by a governmental or other public entity or a not-for-profit entity that charges admission for the event, but does not charge for the purchase of the alcoholic beverages, is not considered the sale of alcoholic beverages. The rental agreement may specify such terms and conditions as may be required by the city in its sole discretion as owner of the property.
 - (3) During a special event produced by the city, pursuant to written policy of the city. The city manager is authorized to promulgate a written policy to govern the process and contract terms and conditions under which the city may select not-for-profit entities to sell or dispense alcoholic beverages during a city produced special event.

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On other property that the city makes available for special events produced by private parties, pursuant to written policy of the city. The city manager is authorized to promulgate a written policy to govern the process and terms and conditions under which the city may issue an alcohol event permit for the sale, dispensing, consumption or possession of alcoholic beverages on particular parcels of city-owned property. The city commission shall determine which particular parcels, if any, are made available for such events.

- (5) On property that is leased to a private party pursuant to the city's real estate policy, if the sale, dispensing, possession and consumption of alcoholic beverages is expressly allowed under the terms of the lease agreement. The lease may specify such terms and conditions as may be required by the city in its sole discretion as owner of the property.
- (c) *Public right-of-way.* It shall be unlawful for any person to sell, distribute, consume or possess any alcoholic beverage in any open container on any city or other public right-of-way, including without limitation, streets, thoroughfares, highways or sidewalks, except as follows:
 - (1) Within a sidewalk café that is licensed in accordance with the city's Land Development Code.
 - (2) At an outdoor event, within the downtown district as shown in Figure 1, pursuant to an alcohol event permit.

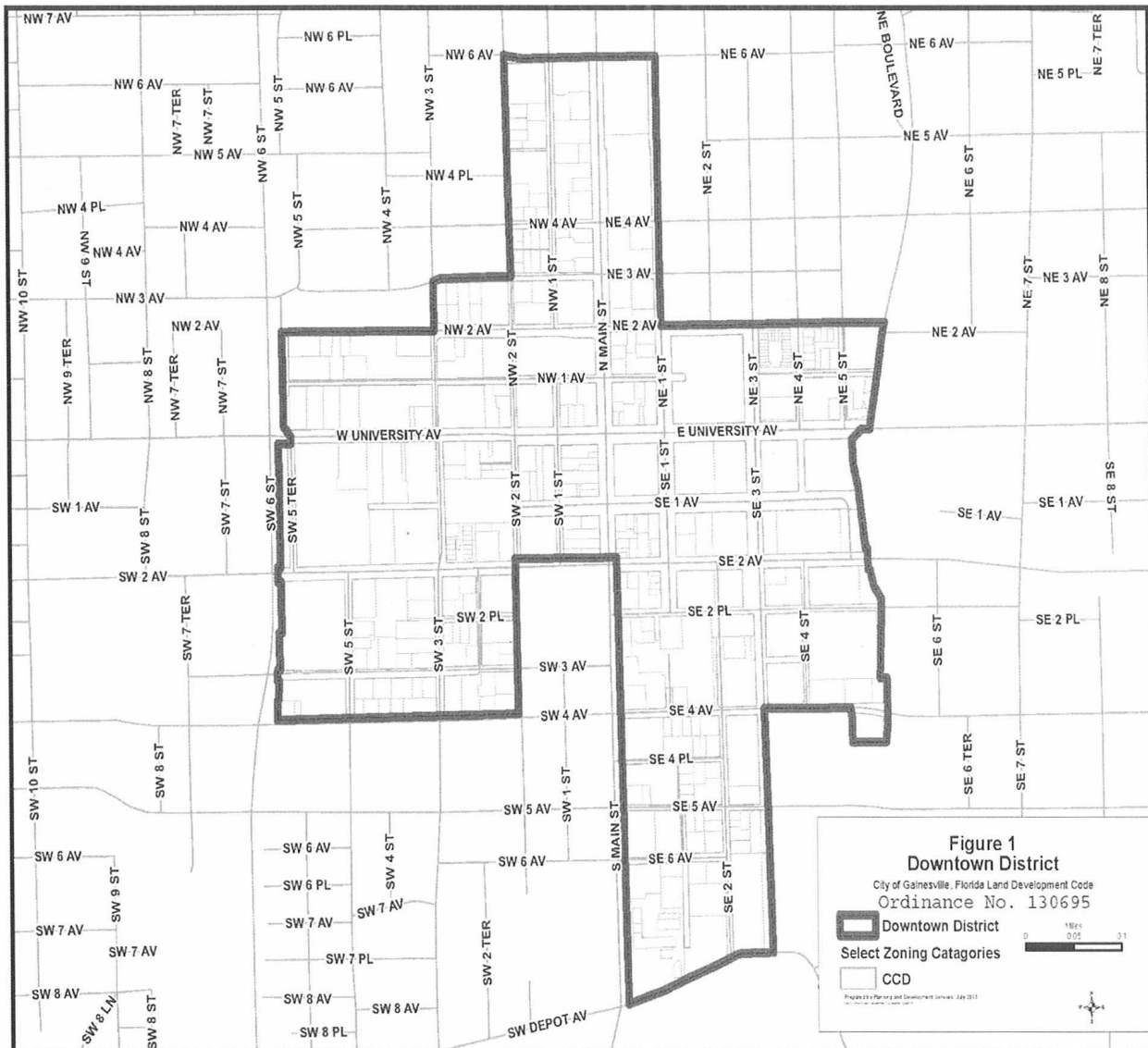


Figure 1. Downtown District

The city manager, or designee, is authorized to issue an alcohol event permit for the sale of beer and wine associated with an outdoor event organized, produced and managed by a governmental or other public entity or a not-for-profit entity, subject to the following:

- a. An alcohol event permit application must be submitted by the event organizer, on the form provided by the city, along with payment of the fee set forth in Appendix A of this Code.
- b. The alcohol event permit application shall include a site plan sketch showing the location, access, barriers delineating the event site from other public areas and all other pertinent details of the site; a report detailing the dates and times during which the event will be conducted, the estimated number of people expected to attend, the capacity of any proposed temporary structures, the capacity of the event site, whether there will be outdoor entertainment, a plan for the installation of temporary sanitary facilities, a plan for the storage and pickup of solid waste during and after the event; and a public safety plan detailing how the applicant will maintain crowd control and public safety, and comply with the city's noise ordinance.
- c. The alcohol event permit application shall be reviewed by the appropriate departments of the city to ensure protection of the public health, safety and general welfare. In addition to normal concerns of each such department, particular attention will be given to traffic flow and control, auto and pedestrian safety, noise and the effect that the use and activity will have on surrounding uses, particularly where the adjoining or nearby use is residential.
- d. The alcohol event permit may be approved or denied by the city manager or designee based on compliance with this subsection. The city manager or designee may impose additional special conditions as deemed necessary to protect the public health, safety and general welfare.
- e. Only two alcohol event permits may be issued per calendar year per applicant. However, one alcohol event permit may include all of the University of Florida home football games for the school year.
- f. Each alcohol event permit issued shall be subject to the following conditions, requirements and limitations, as well as any other special conditions stated in the permit.
 1. A sufficient number of off-duty law enforcement officers and EMS personnel, as determined by the city, shall be employed by the permittee to provide security, crowd control and emergency medical services for the event.
 2. The permittee shall indemnify the city, its elected and appointed officers, employees, and agents from any claim for personal injury, including death, or property damage, including destruction, associated with the event. This indemnification shall be in the form of an insurance policy acceptable to the city's risk manager, that names the city as an additional insured and is endorsed to provide a separate aggregate of a minimum of \$1,000,000.00 for the event. In addition, the permittee shall procure a liquor liability policy with not less than \$1,000,000.00 of coverage that also names the city as an additional insured.
 3. The event may only be held on such streets, sidewalks and rights-of-way as the city deems appropriate for temporary closure in its sole discretion.
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The event may be open to the public only during such hours as the city ^{#140775}deems appropriate in its sole discretion. Each event shall be limited to 48 consecutive hours, inclusive of time for set-up and clean-up.

5. The sale, dispensing and consumption of beer and wine shall occur only within an area secured by fencing or barricades that are a minimum of four feet in height and with limited points of entry and exit. The permittee shall not allow alcoholic beverages purchased outside of the event to be brought into or consumed inside the permitted event area. Nor shall the event organizer allow beer or wine sold inside the secured area to be taken out of, or consumed outside of, the secured area.

(d) *Outdoors on property owned by parties other than the city.* It shall be unlawful for any person to sell any alcoholic beverage in an open container outdoors on any property owned by a party other than the city, except as follows:

- (1) Within a patio or porch that is part of the permanent building on property zoned, permitted and operated: a) as an alcoholic beverage establishment within the central city district; or b) as an eating place; or c) for the manufacturing of alcoholic beverages.
- (2) On property owned and managed/operated by the University of Florida or Alachua County, provided the university or the county (as applicable) ensures the protection of the public health, safety and general welfare. In particular, attention should be given to traffic flow and control, auto and pedestrian safety, noise and the effect that the use and activity will have on surrounding uses, particularly where the adjoining or nearby use is residential.
- (3) At a temporary outdoor event on property that is located in a business, mixed-use or industrial zoning district as classified in the city's land development code; or at a temporary outdoor event on property that is zoned planned development (provided the planned development ordinance allows commercial or mixed-uses and not solely residential uses); or in connection with a temporary sale for fundraising by a nonprofit agency that is permitted under section 30-107 of the city's land development code. Any such events shall require an alcohol event permit issued by the city manager or designee as follows:
 - a. All alcohol event permit applications shall be submitted by the event organizer to the city, on the form provided by the city, along with payment of the fee set forth in Appendix A of this Code. If the event is conducted within common area, the applicant must obtain the written consent of the owner(s) or manager (if the owners utilize a manager for such purposes) of the common area on the permit application.
 - b. All alcohol event permit applications must include a site plan sketch showing the location, access, barriers delineating the temporary sale from other public areas and all other details of the site; a report detailing the dates and times during which the event will be conducted, the estimated number of people expected to attend, the capacity of any proposed temporary structures, the capacity of the event site, whether there will be outdoor entertainment, a plan for the installation of temporary sanitary facilities, a plan for the storage and pickup of solid waste during and after the event; and a public safety plan detailing how the applicant will maintain crowd control and public safety, and comply with the city's noise ordinance.
 - c. Alcohol event permit applications shall be examined by the appropriate departments of the city to ensure protection of the public health, safety and general welfare. In addition to normal concerns of each such department, particular attention will be given to traffic flow

and control, auto and pedestrian safety, noise and the effect that the use and activity will have on surrounding uses, particularly where the adjoining use is residential.

- d. The alcohol event permit may be approved or denied by the city manager or designee based on compliance with this subsection. The city manager or designee may impose additional special conditions as deemed necessary to protect the public health, safety and general welfare.
 - e. Only six (6) alcohol event permits may be issued per calendar year per applicant per location. However, one alcohol event permit may include all of the University of Florida home football games for the school year.
 - f. Each alcohol event permit issued shall be subject to the following conditions, requirements and limitations, as well as any other special conditions stated in the permit.
 1. A sufficient number of off-duty law enforcement officers and EMS personnel, as determined by the city, shall be employed by the permittee to provide security, crowd control and emergency medical services for the event.
 2. The event may be open to the public only during the hours 10:00 a.m. to 2:00 a.m. the following day. Each event shall be limited to 48 consecutive hours, inclusive of time for set-up and clean-up.
 3. The sale, dispensing, consumption and possession of alcoholic beverages shall occur only within an area secured by fencing or barricades a minimum of four feet in height and with limited points of entry and exit. The permittee shall not allow alcoholic beverages purchased outside of the permitted area to be brought into or consumed inside the permitted area. Nor shall the permittee allow alcoholic beverages sold inside the permitted area to be taken out of, or consumed outside of the permitted area.
- (e) *Alcohol event permits, generally.* An application for an alcohol event permit may not be submitted more than six months prior to the first day of the event. If the city manager or designee determines that an event is creating a clear and present danger of a riot or other general public disorder, or substantial injury to persons or to property, the city manager or designee may require the immediate cessation of the sale, dispensing, consumption and possession of alcoholic beverages or may require the immediate cessation of the event. In addition, if the city manager or designee finds that the requirements or conditions of an alcohol event permit have been violated, and not cured within a reasonable time after reasonable notice to the permit holder, the city manager or designee may require the immediate cessation of the sale, dispensing, consumption and possession of alcoholic beverages or may require the immediate cessation of the event.
- (f) *Penalties.* The provisions of this section regarding the unlawful open consumption of and/or possession of an open container of alcoholic beverage, may be enforced by civil citation as provided in sections 2-236 through 2-339 of this Code, or by criminal citation, as provided in section 1-9 of this Code. Any person not in compliance with any section of this article shall be subject to the penalties designated in sections 1-9 or 2-339 of this Code. Each violation shall be considered a separate offense, which can be prosecuted separately.

(Ord. No. 130695, § 4, 3-6-14)

Editor's note—

Ord. No. 130695, adopted March 6, 2014, repealed § 4-4 and enacted a new section as set out herein.

The former § 4-4 pertained to consumption, sale and possession generally, and special events, and derived from § 4-11 of the 1960 Code; Ord. No. 3066, § 1, adopted Oct. 8, 1984; Ord. No. 3373, § 1, adopted Sept. 21, 1987; Ord. No. 3762, § 1, adopted April 20, 1992; Ord. No. 3784, § 1, adopted July 20, 1992; Ord. No. 970260, § 1, adopted Oct. 27, 1997; Ord. No. 980349, § 1, 10-26-98; Ord. No. 981162, § 1, 4-26-99; Ord. No. 002382, § 1, adopted Sept. 23, 2002; Ord. No. 040669, § 1, adopted Jan. 10, 2005; Ord. No. 080931, § 1, adopted July 2, 2009; Ord. No. 090624, § 1, adopted March 18, 2010; Ord. No. 100217, § 1, adopted Feb. 17, 2011; Ord. No. 110017, § 1, adopted Aug. 18, 2011; and Ord. No. 120767, § 1, adopted Feb. 21, 2013.

Cross reference— Streets, sidewalks and other public places, Ch. 23.

Sec. 4-5. - Consumption on certain premises prohibited during certain hours.

- (a) It is unlawful for any person to consume or to permit the consumption of any alcoholic beverages in bottle clubs or on premises open to the public, catering to the sale and/or consumption of alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m., all days. All time is Eastern standard time or Eastern daylight savings time, whichever is in effect.
- (b) The provisions of this section shall apply whether the premises holds a valid beverage license or not and shall apply within or without any improvements located thereon.

(Code 1960, § 4-11.1; Ord. No. 3311, § 2, 1-5-87; Ord. No. 110367, § 2, 12-15-11)

Sec. 4-5.1. - Warning of the dangers of alcoholic beverage consumption for pregnant women, to be posted.

All vendors of alcoholic beverages shall have posted in a conspicuous place in their premises a sign which is clearly visible and readable to all persons entering the premises which shall warn of the dangers of consuming alcoholic beverages during pregnancy. This sign shall read as follows:

WARNING

TO PREGNANT WOMEN

The consumption of alcohol

may be hazardous

during your pregnancy

(especially during the first 13 weeks)

The warning sign is to be of the same dimensions as the vendor's alcoholic beverage license. The phrase "Warning to Pregnant Women" is to be printed in 36-point type. The words "The Consumption of Alcohol May be Hazardous During Your Pregnancy (Especially During the First 13 Weeks)," are to be printed in 18-point type.

(Ord. No. 3317, § 1, 1-26-87)

Editor's note—

Ord. No. 3317, § 1, adopted Jan. 26, 1987, added provisions to the 1960 Code which have been designated as § 4-5.1 hereof at the editor's discretion.

Sec. 4-5.2. - Minors prohibited in alcoholic beverage establishments.

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- (1) It shall be unlawful for any person less than 18 years of age who is not accompanied by a parent or guardian, to enter or remain in an alcoholic beverage establishment as defined in section 30-23 of the City of Gainesville Land Development Code regardless of whether or not the alcoholic beverage establishment is selling or allowing the consumption of alcoholic beverages at the time the person less than 18 years of age is present.
 - (2) The employment exceptions set forth in F.S. § 562.13, and Rule 61A-3.039, Florida Administrative Code, shall be exceptions to this section.

(Ord. No. 120991, § 1, 4-3-14)

Sec. 4-6. - Violations.

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter shall be subject to the penalties of section 1-9.

(Code 1960, § 4-12)

Secs. 4-7—4-20. - Reserved.