

LEGISLATIVE #

110683c

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Sec. 4-1. - Definitions.

(a) The definitions contained in the beverage law of the state, as defined in F.S. § 561.01 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.

(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)

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):

(1) Any time Sunday, except if December 31 occurs on a Sunday, sales will be permitted between 6:00 p.m. that day and 2:00 a.m. the following day.

(2) 11:00 p.m. to midnight Monday through Saturday.

(3) Midnight to 7:00 a.m. Monday through Saturday.

(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

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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):

- (1) 2:00 a.m. to 7:00 a.m.
- (2) 7:00 a.m. to 1:00 p.m. on Sunday.
- (3) 11:00 p.m. Sunday to 2:00 a.m. the following day, except if December 31 occurs on a Sunday, this restriction shall not apply on that day.

(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)

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. - Consumption, sale and possession generally; special events.

(a) *Parks, similar areas.* It shall be unlawful for any person to consume or to have in his/her possession any alcoholic beverages in a publicly owned park or recreation area, or on any public school property, or at any municipally owned and operated recreation centers or swimming pools, or at the stadium located near Waldo Road, commonly known as Citizens Field. The foregoing prohibitions shall not apply in the following areas on the occasions stated as to any type of alcoholic beverage:

- (1) The airport terminal facility when being dispensed by a person duly licensed under the

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ordinances of the city and the statutes of the state;

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

(3) The Thomas Center and the Thelma Bolton Center, upon approval of the city manager or designee, for consumption only of alcoholic beverages on the premises associated with a fundraising event sponsored by a governmental or not-for-profit entity that charges admission for entry to the event. The approval pursuant to this subsection is subject to the following conditions:

- a. Sponsor obtains a facility use agreement from the city.
- b. Sponsor must obtain a temporary liquor license and otherwise comply with Florida's alcoholic beverage law.

(4) The municipal golf course facility when being dispensed by a person duly licensed under applicable ordinances and state statutes;

(5) The Downtown Plaza, upon approval of the city manager or designee for consumption on the premises, or sale and consumption on the premises, of alcoholic beverages associated with a special event. Sale and consumption of alcoholic beverages shall be limited to beer and wine, and permitted by the city manager or designee only under the following conditions:

- a. The special event shall be produced by the city. The city manager or designee shall select an organization qualified under section 501(c)(3) of the Internal Revenue Code and registered pursuant to F.S. Ch. 496 to sell alcoholic beverages at a designated location or locations on the Plaza. Selection of the nonprofit organization and sales of beer and wine shall be pursuant to policy developed by the city manager.
- b. The nonprofit organization and persons responsible for the sale or dispensing of the alcoholic beverages shall comply with all local, state and federal laws related to the sale, dispensing and consumption of alcoholic beverages, including, but not limited to, procuring a license to sell alcoholic beverages from the state.
- c. All sales of alcohol shall take place during the event as specified by the city manager or designee, and only between the hours of 9:00 a.m. and 11:00 p.m. on Friday and Saturday, 1:00 p.m. and 10:00 p.m. on Sunday, 9:00 a.m. New Year's Eve and 1:00 a.m. New Year's Day, and 9:00 a.m. and 10:00 p.m. on any other day.
- d. The organization and persons responsible for the sale or dispensing of the alcoholic beverages shall stop such sale or dispensing upon determination of the city manager or designee that continued sale and consumption of alcohol creates a clear and present danger of a riot or other general public disorder, and substantial injury to persons or to property.
- e. The organization shall indemnify the city, its elected and appointed officers, employees, agents, and attorneys from any claim for personal injury, including death, or property damage, including destruction, associated with the special event. This indemnification shall be in the form of an insurance policy that names the city as an additional insured and is endorsed to provide a separate aggregate of \$1,000,000.00 for the event for which the person or organization is making application.
- f. The organization shall present an accounting of the revenues and cost of sales of

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alcohol to the city manager or designee within ten days after the event. The city shall charge the organization for the cost of the event in excess of the cost the city would have incurred if no alcohol was sold (for example, the cost of extra police or signs).

(6) The Bethel Station leased premises within the Downtown Plaza, upon written approval by the city manager or designee. Such approval shall be limited to the sale of beer and wine by the tenant of the Bethel Station leased premises solely for purchase, possession and consumption on the premises by the tenant's customers within the leased premises; conditioned upon the tenant being properly licensed by and in compliance with all applicable local, state and federal laws relating to the sale, dispensing and consumption of beer and wine; and subject to such further terms and conditions as may be required by the city in its sole discretion as owner of the Bethel Station leased premises.

(b) *Unlawful consumption and possession; authorized special events.*

(1) Except as otherwise provided in this section, it shall be unlawful for any person to consume or have in his/her possession any alcoholic beverage in any open container within or on any public street, thoroughfare, highway, sidewalk or right-of-way.

(2) Except as otherwise provided in this section, it shall be unlawful for any person to have in his/her possession any alcoholic beverage in any open container while in or on any motor vehicle on any public or semi-public parking facility in the city. The term "semi-public parking facility" shall include any privately owned area wherein motor vehicles may be parked by the public in conjunction with any business, enterprise, commercial establishment, office building or multiple-family residential building.

(3) No person shall consume or have in his/her possession any alcoholic beverage in an open container on any privately owned property, except as a lawful guest and with the consent of the owner or person in control of such privately owned property.

(4) Exception: Special event in Central City District for home football games.

a. The temporary on-street sale of beer as defined in F.S. § 563.01, is authorized by a special event permit issued by the city manager or designee on a public street, sidewalk, right-of-way or thoroughfare, in the Central City District incidentally associated with an event suitable for a broad range of ages held on the Friday immediately preceding a regularly scheduled University of Florida Home Football Game ("CCD HFG event") under the following conditions:

1. The CCD HFG event must be sponsored by an active 501(3)(c) charitable organization and co-sponsored by the city, with the requirement that the event include activities suitable for a broad range of ages as the principle event and that a sufficient number of off-duty law enforcement officers, as shall be determined by the city, be employed by the charitable organization sponsor to provide security and crowd control for the CCD HFG event.

2. The charitable organization and any person responsible for the sale or dispensing of beer shall stop such sale or dispensing at any time upon determination of the city manager or designee that continued sale and consumption of beer creates a clear and present danger of a riot or other general public disorder, and substantial injury to persons or to property.

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3. The charitable organization 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 CCD HFG 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 for which the charitable organization is making application. In addition, the organization 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.
4. Subject to approval of the city manager or designee and provided sufficient law enforcement officers and barricades as determined by the city are provided, the CCD HFG event may be held on SE 1st Street between University Avenue and SE 2nd Place, SE 1st and 2nd Avenues between Main Street and SE 3rd Street, and on the Downtown Plaza (excluding the Bethel Station leased premises).
5. Except for the Friday before the University of Florida annual homecoming football game, the CCD HFG event shall not begin before 5:30 p.m. on the Friday immediately preceding a regularly scheduled University of Florida home football game, and shall end no later than 10:00 p.m. that same day. On the Friday before the homecoming game, the CCD HFG event shall not begin before 1:30 p.m. and shall end no later than 5:30 p.m. that same day.
6. Any person responsible for the sale and dispensing of beer shall comply with all local, state and federal laws related to the sale, dispensing and consumption of beer.
7. Alcoholic beverages, including beer, sold outside of the CCD HFG event shall not be brought into or consumed inside the CCD HFG event area, and beer sold inside the permitted area of the CCD HFG event shall not be carried or taken out of the CCD HFG event area.
8. Only one special event permit may be issued to encompass the entire regular football game season.
9. The special 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. All permit applications must be submitted to the city manager or designee, along with the fee as set out in Appendix A of this Code at least 30 days prior to the event.
10. The special event permit application shall include a report detailing the estimated number of people expected to attend, the capacity of any proposed temporary structures, whether there will be outdoor entertainment, the installation of temporary sanitary facilities, a plan for the storage and pickup of garbage during and after the CCD HFG event, and a public safety plan detailing how the permittee will maintain crowd control and public safety, and comply with the city's noise ordinance.
11. The special 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, and the effect that the use and activity will

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have on surrounding uses, particularly where the adjoining use is residential

12. The permit may be approved, approved with conditions or denied by the city manager or designee based on the factors referenced in this subsection.

(5) Exception: Special event in a semi-public parking facility.

a. The temporary outdoor sale of beer, as defined in F.S. § 563.01, and/or wine, as defined in F.S. § 564.01, within a semi-public parking facility is authorized by a special event permit issued by the city manager or designee under the following conditions:

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

2. The special event shall occur on a semi-public parking facility of an establishment which is not ordinarily licensed for the sale and/or consumption of beer and wine or other alcoholic beverage either by state statute or city ordinance.

3. The special event permit shall have a duration of no longer than two days (48 hours); however, the number and schedule of hours during which the sale, dispensing and consumption of beer and wine may occur each day shall be determined by the city manager or designee.

4. The persons responsible for dispensing the beer and wine shall comply with all local, state and federal laws related to the sale, dispensing and consumption of the beer and wine.

5. Only one special event permit may be used within any calendar year (12-month period) to any person, corporation, company, association, organization or group of any type for the same location.

(c) *Florida Field, sidewalk cafes, and city garage.*

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

(2) *Sidewalk cafe.* The sale, dispensing and consumption of alcoholic beverages is permitted within a licensed sidewalk cafe, or within the defined area of a properly issued boundary extension permit issued by the city manager/designee. No more than six boundary extension permits shall be issued by the city manager during any calendar year and operated in strict accordance with the regulations established therefor.

(3) *Retail space in public parking garage.* The sale, dispensing and consumption of alcoholic beverages is permitted within the properly licensed enclosed facility located in the retail space of the city parking garage located at 105 SW 3rd Street, Gainesville, Florida, provided the alcoholic beverage is dispensed by a person duly licensed under the laws of the state and otherwise

conflicts with all local, state, and federal laws.

(d) *Penalties.* The provisions of this section for consumption of an alcoholic beverage or possession of an open container, 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.

(Code 1960, § 4-11; Ord. No. 3066, § 1, 10-8-84; Ord. No. 3373, § 1, 9-21-87; Ord. No. 3762, § 1, 4-20-92; Ord. No. 3784, § 1, 7-20-92; Ord. No. 970260, § 1, 10-27-97; Ord. No. 980349, § 1, 10-26-98; Ord. No. 981162, § 1, 4-26-99; Ord. No. 002382, § 1, 9-23-02; Ord. No. 040669, § 1, 1-10-05; Ord. No. 080931, § 1, 7-2-09; Ord. No. 090624, § 1, 3-18-10; Ord. No. 100217, § 1, 2-17-11; Ord. No. 110017, § 1, 8-18-11)

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. immediately following on Tuesday, Wednesday, Thursday, Friday, or Saturday, or between the hours of 2:00 a.m. and 1:00 p.m. on Sunday, or between the hours of 11:00 p.m. on Sunday and 7:00 a.m. immediately following on Monday. All time is Eastern standard time or Eastern daylight saving 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)

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.

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(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. 4-6. - 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.