

Legislative #

210005

ORDINANCE NO. 210005

An ordinance of the City of Gainesville, Florida, amending Sections 4-1 and 4-4 of the City Code of Ordinances relating to the sale, dispensing, possession and consumption of alcohol; amending Section 18-20 of the City Code of Ordinances relating to the purchase or sale of alcohol in parks; and amending Section 2-339 of the City Code of Ordinances relating to civil citation for the possession or consumption of an open container of an alcoholic beverage; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, the City Commission adopted Ordinance No. 200250 to suspend enforcement of the City’s open container prohibitions during the COVID-19 pandemic; and;

WHEREAS, the City Commission finds that there was not any substantial increase in crime or public disorder during the time period of suspension of enforcement of the City's open container prohibitions; and

WHEREAS, the City Commission believes that the open container prohibition is antiquated and no longer necessary in the City except between the hours of 2:30 a.m. and 7:00 a.m.; and

WHEREAS, the City Commission wants to allow the public possession of open containers and consumption of alcohol on city property and public right-of-way on a permanent basis, except between the hours of 2:30 a.m. and 7:00 a.m. each day; and

WHEREAS, the City also desires to make revisions to the Code regarding the sale and dispensing of alcoholic beverages; and

1 **WHEREAS**, at least 10 days' notice has been given once by publication in a newspaper
2 of general circulation notifying the public of this proposed ordinance and of public hearings to be
3 held in the City Commission Auditorium, City Hall, City of Gainesville; and

4 **WHEREAS**, the public hearings were held pursuant to the published notice described at
5 which hearings the parties in interest and all others had an opportunity to be and were, in fact
6 heard.

7 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE**
8 **CITY OF GAINESVILLE, FLORIDA:**

9 **Section 1.** Section 4-1 in Article I of Chapter 4 of the Code of Ordinances of
10 Gainesville, Florida is hereby amended to read as follows:

11 **Chapter 4 – ALCOHOLIC BEVERAGES**

12 **Article I. IN GENERAL**

13 **Section 4-1. Definitions**

14 (a) The definitions contained in the beverage law of the state, as defined in F.S. chs.
15 561, 563 and 564, and interpreted by the courts of this state and the state director
16 of the division of alcoholic beverages and tobacco of the department of business
17 and professional regulation, shall apply to the terms in this chapter.

18 (b) ~~Open container shall mean any bottle, can, glass, cup or other vessel, other than~~
19 ~~the original unbroken sealed container or a bottle of wine resealed pursuant to~~
20 ~~F.S. § 564.09, containing an alcoholic beverage; provided however, that if a bottle~~
21 ~~of wine resealed pursuant to F.S. § 564.09 is transported in a motor vehicle, the~~
22 ~~resealed bottle shall be considered an open container unless it is placed in a~~

1 ~~locked glove compartment, a locked trunk, or the area behind the last upright seat~~
2 ~~of a motor vehicle that is not equipped with a trunk.~~

3 (b) Open container shall mean any bottle, can, glass, cup or other vessel, other than
4 the original unbroken sealed container or a bottle of wine resealed pursuant to
5 F.S. § 564.09, containing an alcoholic beverage; provided however, that if a bottle
6 of wine resealed pursuant to F.S. § 564.09 is transported in a motor vehicle, the
7 resealed bottle shall be considered an open container unless it is placed in a
8 locked glove compartment, a locked trunk, or the area behind the last upright seat
9 of a motor vehicle that is not equipped with a trunk.

10 (c) *Alcohol event permit* means a permit issued pursuant to section 4-4 of this Code
11 that allows the temporary sale of beer, wine or other alcoholic beverages.

12 (d) *Not-for-profit entity* means an entity qualified under Section 501(c)(3) of the
13 Internal Revenue Code and registered pursuant to F.S. ch. 496.

14 **Section 2.** Section 4-4 in Article I of Chapter 4 of the Code of Ordinances of
15 Gainesville, Florida is hereby amended to read as follows:

16 **Chapter 4 – ALCOHOLIC BEVERAGES**

17 **Article I. IN GENERAL**

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

19 (a) *Generally.*

20 ~~(1) Except as specifically allowed by this section, it shall be unlawful for any~~
21 ~~person to sell, distribute, consume or possess any alcoholic beverage in any open~~
22 ~~container on any property owned by the city or on any public right-of-way, including~~

1 ~~without limitation, streets, thoroughfares, highways or sidewalks,~~ Any person or legal
2 entity that is allowed to sell or dispense alcoholic beverages pursuant to this section
3 shall comply with all applicable federal, state and local laws related to the sale or
4 dispensing of alcoholic beverages. The city manager is authorized to promulgate
5 written administrative procedures to implement this section and any alcohol event
6 permits authorized herein.

7 (b) *City-owned property.* It shall be unlawful for any person to sell; or dispense, ~~possess or~~
8 ~~consume~~ any alcoholic beverages on any property owned by the city at any time, or consume
9 or possess any alcoholic beverage in any open container between the hours of 2:30 a.m. and
10 7:00 a.m. each day, except as follows:

- 11 (1) At the airport terminal facility and the municipal golf course facility when being sold or
12 dispensed by the facility owner or by a natural person or legal entity that is under contract
13 with the facility owner;
- 14 (2) Within the rental event space at the Thomas Center, the Thelma Bolton Center, Boulware
15 Springs, and the Senior Recreation Center, dispensing, but not sale, for consumption
16 during an event for which the space is rented. A fundraising event sponsored by a
17 governmental or other public entity or a not-for-profit entity that charges admission for
18 the event, but does not charge for the purchase of the alcoholic beverages, is not
19 considered the sale of alcoholic beverages. The rental agreement may specify such terms
20 and conditions as may be required by the city in its sole discretion as owner of the
21 property.

1 (3) During a special event produced by the city, pursuant to written policy of the city. The
2 city manager is authorized to promulgate a written policy to govern the process and
3 contract terms and conditions under which the city may select not-for-profit entities to
4 sell or dispense alcoholic beverages during a city produced special event.

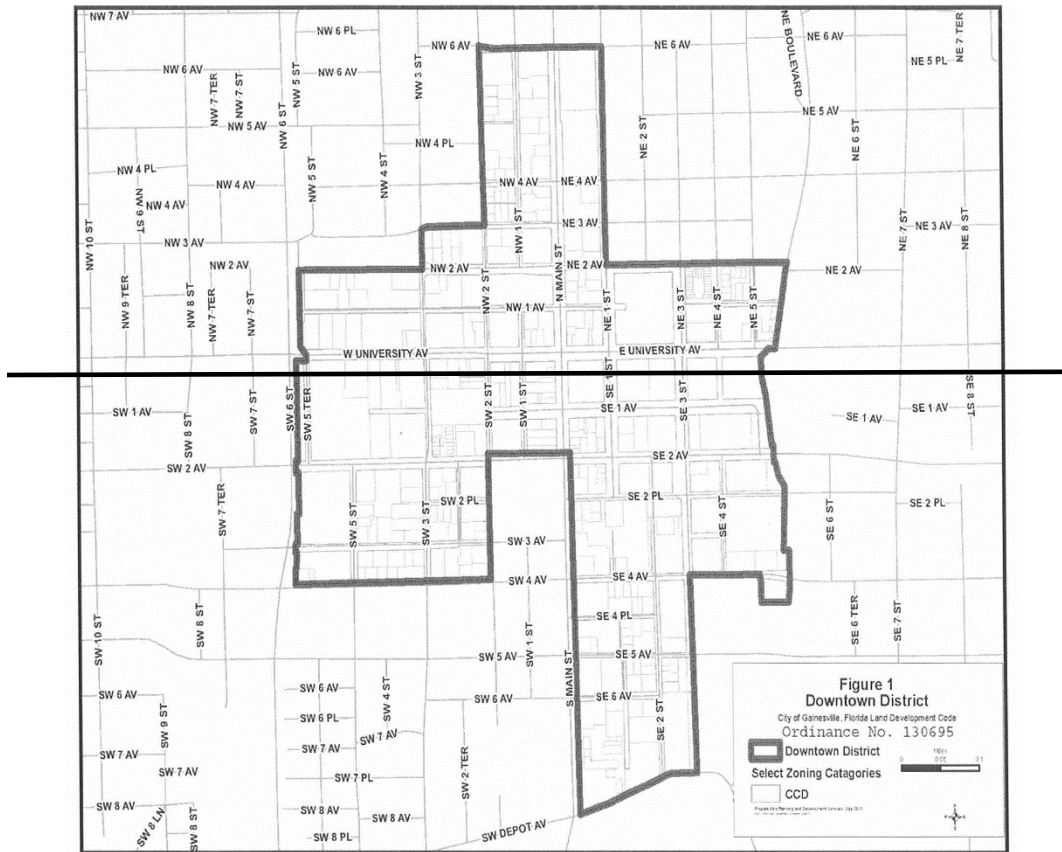
5 (4) On other property that the city makes available for special events produced by private
6 parties, pursuant to written policy of the city. The city manager is authorized to
7 promulgate a written policy to govern the process and terms and conditions under which
8 the city may issue an alcohol event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

12 (5) On property that is leased to a private party pursuant to the city's real estate policy, if the
13 sale, dispensing, possession and consumption of alcoholic beverages is expressly allowed
14 under the terms of the lease agreement. The lease may specify such terms and conditions
15 as may be required by the city in its sole discretion as owner of the property.

16 (c) *Public right-of-way.* It shall be unlawful for any person to sell, or dispense ~~distribute, consume~~
17 ~~or possess~~ any alcoholic beverage in any open container on any city or other public right-of-
18 way, including without limitation, streets, thoroughfares, highways or sidewalks at any time,
19 or consume or possess any alcoholic beverage in any open container between the hours of
20 2:30 a.m. and 7:00 a.m. each day, except as follows:

21 (1) Within a sidewalk café that is licensed in accordance with the city's Land Development
22 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~~ ((Note to codifier: delete this figure))

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~~ Chapter 15. Noise of this Code.
- 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.

- 1 e. ~~Only two alcohol event permits may be issued per calendar year per applicant.~~
2 ~~However, one alcohol event permit may include all of the University of Florida home~~
3 ~~football games for the school year.~~
- 4 f. Each alcohol event permit issued shall be subject to the following conditions,
5 requirements and limitations, as well as any other special conditions stated in the
6 permit.
- 7 1. A sufficient number of off-duty law enforcement officers and ~~EMS~~ fire-rescue
8 personnel, as determined by the city, shall be employed by the permittee to
9 provide security, crowd control and emergency medical services for the event.
- 10 2. The permittee shall indemnify the city, its elected and appointed officers,
11 employees, and agents from any claim for personal injury, including death, or
12 property damage, including destruction, associated with the event. This
13 indemnification shall be in the form of an insurance policy acceptable to the
14 city's risk manager, that names the city as an additional insured and is endorsed
15 to provide a separate aggregate of a minimum of \$1,000,000.00 for the event. In
16 addition, the permittee shall procure a liquor liability policy with not less than
17 \$1,000,000.00 of coverage that also names the city as an additional insured.
- 18 3. The event may only be held on such streets, sidewalks and rights-of-way as the
19 city deems appropriate for temporary closure in its sole discretion.
- 20 4. The event may be open to the public only during such hours as the city deems
21 appropriate in its sole discretion. Each event shall be limited to a maximum of
22 72 consecutive hours, inclusive of time for set-up and clean-up.

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

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

11 (1) ~~Within a patio or porch~~ an outdoor seating area that is part of an approved use ~~the~~
12 ~~permanent building on~~ of property which is zoned; and permitted for the consumption of
13 alcoholic beverages ~~and operated: a) as an alcoholic beverage establishment within the~~
14 ~~central city district; or b) as an eating place; or c) for the manufacturing of alcoholic~~
15 ~~beverages.~~

16 (2) On property owned and managed/operated by the State of Florida, University of Florida,
17 Santa Fe College or Alachua County, provided the state, university, college or the county
18 (as applicable) ensures the protection of the public health, safety and general welfare. In
19 particular, attention should be given to traffic flow and control, auto and pedestrian safety,
20 noise and the effect that the use and activity will have on surrounding uses, particularly
21 where the adjoining or nearby use is residential.

1 (3) At a temporary outdoor event on property that is located in a ~~business, mixed-use or~~
2 ~~industrial~~ zoning district where sale, distribution, and consumption of alcoholic beverages
3 is permitted, as classified in the city's land development code; or at a temporary outdoor
4 event on property that is zoned planned development (provided the planned development
5 ordinance allows commercial or mixed-uses and not solely residential uses); or in
6 connection with a temporary sale for fundraising by a nonprofit agency ~~that is permitted~~
7 ~~under section 30-107 of the city's land development code~~. Any such events shall require
8 an alcohol event permit issued by the city manager or designee as follows:

- 9 a. All alcohol event permit applications shall be submitted by the event organizer to the
10 city, on the form provided by the city, along with payment of the fee set forth in
11 Appendix A of this Code. If the event is conducted within common area, the
12 applicant must obtain the written consent of the owner(s) or manager (if the owners
13 utilize a manager for such purposes) of the common area on the permit application.
- 14 b. All alcohol event permit applications must include a site plan sketch showing the
15 location, access, barriers delineating the temporary sale from other public areas and
16 all other details of the site; a report detailing the dates and times during which the
17 event will be conducted, the estimated number of people expected to attend, the
18 capacity of any proposed temporary structures, the capacity of the event site, whether
19 there will be outdoor entertainment, a plan for the installation of temporary sanitary
20 facilities, a plan for the storage and pickup of solid waste during and after the event;
21 and a public safety plan detailing how the applicant will maintain crowd control and

1 public safety, and comply with Chapter 15. Noise of this Code ~~the city's noise~~
2 ~~ordinance.~~

3 c. Alcohol event permit applications shall be examined by the appropriate departments
4 of the city to ensure protection of the public health, safety and general welfare. In
5 addition to normal concerns of each such department, particular attention will be
6 given to traffic flow and control, auto and pedestrian safety, noise and the effect that
7 the use and activity will have on surrounding uses, particularly where the adjoining
8 use is residential.

9 d. The alcohol event permit may be approved or denied by the city manager or designee
10 based on compliance with this subsection. The city manager or designee may impose
11 additional special conditions as deemed necessary to protect the public health, safety
12 and general welfare.

13 ~~e. Only six (6) alcohol event permits may be issued per calendar year per applicant per~~
14 ~~location. However, one alcohol event permit may include all of the University of~~
15 ~~Florida home football games for the school year.~~

16 ~~f.~~ Each alcohol event permit issued shall be subject to the following conditions,
17 requirements and limitations, as well as any other special conditions stated in the
18 permit.

19 1. A sufficient number of off-duty law enforcement officers and ~~EMS~~ fire-rescue
20 personnel, as determined by the city, shall be employed by the permittee to
21 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 the Code, or by criminal citation, as provided in section 1-9 of the 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.

Section 3. Section 18-20 in Article II of Chapter 18 of the Code of Ordinances of Gainesville, Florida is hereby amended as follows. Except as amended herein, the remainder of Section 18-20 remains in full force and effect.

CHAPTER 18. PARKS, RECREATION AND CULTURAL AFFAIRS

ARTICLE II. PARK REGULATIONS

Sec. 18-20. Prohibited activities.

It shall be unlawful for any person to do any of the following in any park listed in section 18-18 of this article or any other areas officially designated by the city commission as a park and posted as such unless specifically permitted by the appropriate authorization received from the city manager or designee and issued pursuant to this article, except for activities of the City of Gainesville which are undertaken within the scope of its governmental authority:

(16) Except as otherwise provided in this Code of Ordinances, purchase, sell, offer for sale, possess, or consume ~~any alcoholic beverages, illegal drugs or intoxicating substances;~~

(29) Except as otherwise provided in this Code of Ordinances, purchase, sell or offer for sale, any alcoholic beverages.

(30) Except as otherwise provided in this Code of Ordinances, to consume or possess any alcoholic beverage in any open container between the hours of 2:30 a.m. and 7:00 a.m. each day.

Section 4. Section 2-339 in Division 6. of Article V of Chapter 2 of the Code of Ordinances of Gainesville, Florida is hereby amended as follows. Except as amended herein, the remainder of Section 2-339 remains in full force and effect.

CHAPTER 2. ADMINISTRATION

ARTICLE V. BOARDS, COMMISSIONS AND COMMITTEES

DIVISION 6. CIVIL CITATIONS

Sec. 2-339. Applicable codes and ordinances.

The following ordinances are enforceable by the procedures described in this division:

Section	Description	Class	Penalty
4-4	Open consumption of and/or possession of an open container of alcoholic beverage	IV	\$200.00
<u>4-4</u>	<u>Open consumption of and/or possession of an open container of alcoholic beverage between the hours of 2:30 a.m. and 7:00 a.m. each day</u>	<u>IV</u>	<u>\$200.00</u>

Section 5. It is the intention of the City Commission that the provisions of Sections 1 through 4 of this ordinance will become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that the sections and paragraphs of this ordinance may be renumbered or relettered in order to accomplish such intentions.

Section 6. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding will not affect the other provisions or application of the ordinance which can be given

1 effect without the invalid or unconstitutional provisions or application, and to this end the
2 provisions of this ordinance are declared severable.

3 **Section 7.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
4 such conflict hereby repealed. In addition, this Ordinance repeals non-codified Ordinance No.
5 200250.

6 **Section 8.** This ordinance shall become effectively immediately upon adoption.

7 **PASSED AND ADOPTED** this day of August, 2021.

8
9
10 _____
11 LAUREN POE, MAYOR

12 Attest:

Approved as to form and legality:

13
14 _____
15 OMICHELE D. GAINES,
16 CITY CLERK

17 _____
18 NICOLLE M. SHALLEY,
19 CITY ATTORNEY

20 This ordinance passed on first reading this day of August, 2021.

21 This ordinance passed on second reading this day of August, 2021.