

Chapter 4 - ALCOHOLIC BEVERAGES

Footnotes:

--- (1) ---

Cross reference— *Adult performance establishment, escort service and escort licenses, § 14.5-52 et seq.; drunkenness, § 17-8; land development regulations relating to alcoholic beverage establishments, § 30-105.*

State Law reference— *Beverage law, F.S. Ch. 561 et seq.*

ARTICLE I. - IN GENERAL

Sec. 4-1. - Definitions.

The definitions contained in the alcoholic beverage laws 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, apply to the terms in this chapter. In addition, the following words and phrases have the meaning indicated:

- (a) *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.
- (b) *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.
- (c) *Open container* means any bottle, can, glass, cup, or other vessel containing an alcoholic beverage, other than: 1) the original unbroken sealed container; or 2) a container of an alcoholic beverage resealed or sealed by the alcoholic beverage licensee pursuant to F.S. §§ 561.20(2)(a)4., 564.09, or 565.045; provided however, that if a container of alcoholic beverage that is resealed or sealed by the alcoholic beverage licensee pursuant to F.S. §§ 561.20(2)(a)4., 564.09, or 565.045 is transported in a motor vehicle, the resealed container is 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.
- (d) *Public right-of-way* means land dedicated or deeded to, made available to, or used by the general public as a street, alley, walkway, sidewalk, boulevard, or for public ingress or egress.

(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; Ord. No. 210005, § 1, 8-19-21; Ord. No. 2023-1144, § 1, 12-14-23)

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.* 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; city or county-owned parking lots and garages.* It is unlawful for any person to sell, dispense, possess, or consume any alcoholic beverage open container on any property owned by the city, or on any parking lot or garage owned by the city or Alachua County, 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) Dispensing, possession, and consumption, but not sale, within the rental event space during an event at the Thomas Center, the Thelma Bolton Center, Boulware Springs, and the Senior Recreation Center. 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) 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.
 - (4) Within city-owned public parks as may be authorized by article IV (arts, culture, and entertainment districts) of chapter 4 of the Code of Ordinances or by section 18-20 of chapter 18 of the Code of Ordinances.
 - (5) Within property that is part of a special event as may be authorized by the Code of Ordinances.
- (c) *Public right-of-way.* It is unlawful for any person to sell, dispense, consume, or possess any alcoholic beverage open container on any public right-of-way, except as follows:
- (1) Within a sidewalk café that is licensed in accordance with the city's Land Development Code.
 - (2)

Within any arts, culture, and entertainment districts as may be authorized by article IV of chapter 4 of the Code of Ordinances.

- (3) Within property that is part of a special event as may be authorized by the Code of Ordinances.
- (d) *Outdoors on property owned by parties other than the city.* It is unlawful for any person to sell any alcoholic beverage open container outdoors on any property owned by a party other than the city, except as follows:
 - (1) Within an outdoor seating area that is part of an approved use of property which is zoned and permitted for the consumption 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) Within property that is part of a special event as may be authorized by the Code of Ordinances.
- (e) *Alcohol special event permits.* The city manager or designee may approve an alcohol special event permit pursuant to this section to allow: 1) the sale, dispersion, possession, or consumption of alcoholic beverage open containers on city-owned property or public rights-of-way; or 2) the sale of alcoholic beverage open containers outdoors on property owned by a party other than the city. Alcohol special event permits are allowable only on property that is located in a business, mixed-use, or industrial zoning district as classified in the city's land development code, or on property that is zoned planned development (provided the planned development ordinance allows commercial or mixed-uses and not solely residential uses). Any such event requires an alcohol special event permit issued by the city manager or designee as follows:
 - (1) All alcohol event permit applications must 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 use a manager for such purposes) of the common area on the permit application.
 - (2) All alcohol special 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, and the capacity of any proposed temporary structures and 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; a public safety plan detailing how the applicant will maintain crowd control and public safety; and a plan detailing how the applicant will comply with the city's noise ordinance.

- (3) Alcohol special event permit applications must 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 any adjacent areas are residential.
- (4) The alcohol special event permit may be approved or denied by the city manager or designee based on compliance with this subsection. The city manager or designee has the sole discretion to determine whether the temporary closure of city-owned property or public rights-of-way is appropriate for an alcohol special event permit.
- (5) Each alcohol special event permit issued will be subject to the following conditions, requirements, and limitations, as well as any additional special conditions that the city manager or designee may impose as deemed necessary to protect the public health, safety, and general welfare.
 - a. A sufficient number of off-duty law enforcement officers and EMS personnel, as determined by the city, must be employed by the permittee to provide security, crowd control, and emergency medical services for the event.
 - b. 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 is limited to 72 consecutive hours, inclusive of time for set-up and clean-up. The city manager or designee may further restrict the hours and duration as necessary to protect the public health, safety, and general welfare.
 - c. 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.
 - d. 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. In addition, the permittee shall provide an

insurance policy acceptable to the city's risk manager, which 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. The permittee shall also provide a liquor liability policy with not less than \$1,000,000.00 of coverage, which names the city as an additional insured.

- (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. Each violation shall be considered a separate offense, which can be prosecuted separately.

(Ord. No. 130695, § 4, 3-6-14; Ord. No. 160080, § 1, 9-15-16; Ord. No. 160381, § 1, 10-20-16; Ord. No. 210005, § 2, 8-19-21; Ord. No. 2023-1144, § 2, 12-14-23)

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.

- (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.

ARTICLE II. - BOTTLE CLUBS

DIVISION 1. - GENERALLY

Sec. 4-21. - Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Bottle club means a business establishment not licensed to sell alcoholic beverages providing facilities for the consumption of alcoholic beverages by its patrons on the premises, but without regard as to whether the patrons are required to be members of the bottle club. A bottle club does not include a social, fraternal or civic association or organization not licensed to sell alcoholic beverages which only incidentally, as opposed to primarily, provides facilities for on-premises consumption of alcoholic beverages by its

members and their guests. A bottle club can be a private club or a public business establishment in which the principal revenue would be derived from the sale of setups, mixers, ice, water and charges for any entertainment provided.

Operator means the person, corporation, partnership, joint venture or other group enterprise legally responsible for the day-to-day operation of the bottle club, having, as part of his/her or its responsibilities the making of policy decisions and the implementation of those policy decisions.

Owner means the person, corporation, partnership, joint venture or other group enterprise having lawful possession of the premises upon which the bottle club is to be or is being operated, which lawful possession is by right of purchase, gift, lease or otherwise.

(Code 1960, § 14A-1)

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

Sec. 4-22. - Right of entry.

Any license issued by the city pursuant to this article shall hereby grant the right of inspection of the licensed premises by any law enforcement agency, when such inspection is so considered essential for the betterment and preservation of the safety, health and morals of the citizens of the city. A licensee, by the acceptance of a license issued pursuant to the provisions of this article, agrees that the premises licensed shall always be subject to being inspected and searched without search warrants by police officers during business hours or at any time such premises are occupied by the licensee or other persons.

(Code 1960, § 14A-3)

Sec. 4-23. - Prohibited acts.

As relates to a bottle club, the following are prohibited:

- (1) Possession on the premises of the bottle club of untaxed beverages as defined in F.S. § 562.01;
- (2) Storage on the premises of the bottle club of alcoholic beverages as defined in F.S. § 561.01 during the hours when the premises are closed;
- (3) The entry and presence of persons under 21 years of age during the hours when alcoholic beverages are permitted on the premises of the bottle club;
- (4) Employment of any person under 18 years of age, excepting those persons described in F.S. § 562.13(2);
- (5) Operating or being licensed as a dance hall, as defined in section 14.5-101 of this Code; or a smoking lounge, defined as an establishment which is licensed as a retail tobacco products dealer by the Florida Department of Business and Professional Regulation. Division of alcohol

beverages and tobacco, which is dedicated, in whole or in part, for on-site smoking of tobacco products, electronic cigarettes, or other smoked or vaporized substances. The term includes establishments such as cigar lounges, which primarily sells, serves, or dispenses cigars to customers from an inventory of at least 5,000 cigars; hookah lounges where customers inhale smoked or vaporized tobacco or a similar smoking product from one or more hookahs placed throughout the establishment; and vapor bars or lounges. The term does not include:

- a. A place owned and operated by the federal, state, or local government;
 - b. A place owned and operated on a non-commercial basis by a bona fide religious organization, created, organized, existing and recognized as such pursuant to all applicable laws;
- (6) Allowing any non-employee on or in the premises between 2:00 a.m. and 7:00 a.m.;
 - (7) Exceeding the posted occupancy limits;
 - (8) Allowing the assembly or congregation of individuals in crowds on the premises in such numbers as to block the use of any sidewalk or parking area under ownership and control of the business as to prevent access to the premise by emergency or law enforcement vehicles or personnel;
 - (9) Allowing the possession or consumption of alcoholic beverages outside of the premises building on property owned and controlled by the business.

(Code 1960, § 14A-7; Ord. No. 3061, § 1, 9-24-84; Ord. No. 2024-517, § 1, 8-1-24)

Secs. 4-24—4-35. - Reserved.

DIVISION 2. - LICENSE

Sec. 4-36. - Required; fee.

The owner or operator of a bottle club shall obtain from the city tax and license division a license after completing in its entirety and filing the application hereinafter described, and upon payment of a fee as prescribed in the schedule in Appendix A, or such different fee amount as shall be determined by an appropriate amending ordinance. Half-year licenses may be issued by the tax and license division under the provisions of this article for the period from April 1 to September 30, upon payment of one-half of the fee fixed as the amount of such license for one (1) year.

(Code 1960, § 14A-2(a); Ord. No. 3044, § 1, 8-20-84)

Sec. 4-37. - Application.

In obtaining a bottle club license the owner or operator shall submit to the department of financial services an application containing the following:

- (1) The name and address of the operator and also the name and address of the owner of the premises in or upon which the bottle club will be operated, if the operator is not the owner;
- (2) The street address of the premises to be licensed;
- (3) A certificate in writing from the city manager certifying that the premises to be licensed carries a land use zoning classification that will permit the operation of a bottle club from such premises. This certificate must be attached to the application before the application will be received for filing;
- (4) A certificate of the state department of health and rehabilitative services or the county health department that the place of business wherein the bottle club business is to be conducted meets all of the sanitary requirements of the state;
- (5) Proof of the issuance of a State of Florida Bottle Club License (14BC) issued to the business for the premise;
- (6) A statement in writing from the city manager or his/her designee that both the owner and operator:
 - a. Is not less than 19 years of age;
 - b. Has not been convicted within the last past five years of any offense against the beverage laws of this state, the United States, or any other state;
 - c. Has not been convicted within the last past five years in this state, or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place or illegally dealing in narcotics;
 - d. Has not been convicted in the last past five years of any felony in this state, and has not been convicted in any other state or the United States, of any offense designated as a felony by such state or the United States;
 - e. If the owner and/or operator is a firm, corporation, partnership, joint venture or other group enterprise, then the provisions set forth in subsections (5)a. through d. above shall be applicable to:
 1. Each officer or shareholder of the corporation holding more than a ten percent ownership interest thereof; and
 2. Each member of the other group enterprises listed who have an ownership interest therein of more than ten percent;
 - f. As used herein, the term "conviction" shall include an adjudication of guilt of a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

- (7) Written confirmation from the department of sustainable development, building division that the licensed premises meets the applicable building, fire, and life safety codes for the intended occupancy.

(Code 1960, § 14A-2(b); Ord. No. 2024-517, § 1, 8-1-24)

Sec. 4-38. - Transfer.

Transfer of a license issued pursuant to this division either by sale, lease or by any other means is prohibited.

(Code 1960, § 14A-4)

Sec. 4-39. - Renewal.

- (a) A licensee under this division must renew his/her annual license from year to year on or before October first of each year by providing proof that the licensee continues to meet all of the requirements set forth in section 4-37 for issuance of a permit and by paying the annual license fee established by the city.
- (b) A license may be renewed subsequent to expiration each year only upon making to the tax and license division a delinquent application for approval, including providing proof of continuing to meet the requirements set forth in section 4-37, accompanied by an affidavit stating that no bottle club activities were conducted subsequent to the expiration of the license and upon payment of a penalty of \$5.00 for each month or fraction of a month of delinquency or upon payment of a penalty of five percent of the license fee, whichever amount is the greater. Any license not renewed within 60 days of expiration will be cancelled by the tax and license division unless such permit is involved in litigation.

(Code 1960, § 14A-5; Ord. No. 2024-517, § 1, 8-1-24)

Sec. 4-40. - Revocation.

- (a) The city manager is hereby authorized to revoke any bottle club license issued pursuant to this division whenever it is determined that the owner of the licensed property or the operator of the bottle club, their agents or employees, have committed, or have been convicted of, or have allowed or caused or permitted to exist any one or more of the following:
- (1) An indictment, information, or a conviction regarding an act amounting to a felony under the laws of the state, or the United States of America;
 - (2) The maintaining of a nuisance or the allowing of unsanitary conditions to exist on the property upon which a bottle club is being conducted;
 - (3)

Engaging in or permitting disorderly conduct on the property upon which a bottle club is being conducted;

- (4) Failure to comply with any of the provisions of the fire prevention code after having received reasonable notice to eliminate or correct any condition existing on the property upon which a bottle club is being conducted;
 - (5) Failure to comply with any of the provisions of the health and sanitation ordinances of the city or laws of the state, after having received reasonable notice to eliminate or correct any condition existing on the property upon which a bottle club is being conducted;
 - (6) Conviction for giving, selling or permitting to be served alcoholic beverages to persons under 21 years of age or permitting a person under 21 years of age to possess or consume alcoholic beverages on the property upon which a bottle club is being conducted;
 - (7) Conviction for conducting an act prohibited by section 4-23;
 - (8) Failure to maintain a current State of Florida Bottle Club License (14BC).
- (b) Should the city manager revoke a bottle club license pursuant to the authority hereinabove set forth, the aggrieved party, whether the owner or operator, may appeal the written notice of revocation to the city commission. An appeal shall be filed within ten days of the execution of the written notice by the city manager and such notice of appeal shall be filed with the city clerk. The city commission shall consider either initially or finally the appeal at its next meeting. The city commission may continue final action on the appeal for a reasonable period to facilitate the presentation of the matter to the city commission.

(Code 1960, § 14A-6; Ord. No. 210562, § 15, 6-16-22; Ord. No. 2024-517, § 1, 8-1-24)

Secs. 4-41—4-49. - Reserved.

ARTICLE III. - UNDERAGE PROHIBITION IN ALCOHOLIC BEVERAGE ESTABLISHMENTS

Sec. 4-50. - Title.

This article shall be known and cited as the "Underage Prohibition in Alcoholic Beverage Establishments Act."

(Ord. No. 070941, § 1, 2-5-09)

Sec. 4-51. - Definitions.

For the purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Alcoholic beverage establishment means any establishment that possesses any alcoholic beverage license from the Division of Alcoholic Beverages and Tobacco Bureau of Licensing which permits the consumption or alcohol on premises and includes any place or location, licensed or unlicensed, within the city where a person may exchange something or pay another for an article or product that is alcoholic in nature or where an article or product for a consideration is sold, dispensed, served or provided, with the knowledge, actual or implied, that the article or product will be, or is intended to be, mixed, combined with or drunk on or about the premises in connection or combination with an alcoholic beverage.

Quarter means, for purposes of this article, the period January 1st through March 31st, April 1st through June 30th, July 1st through September 30th and October 1st through December 31st.

Underage drinking incident means any physical arrest or notice to appear (NTA) issued for possession or consumption of an alcoholic beverage by a person under the age of 21 which results in an adjudication of guilt, finding of guilt with adjudication withheld, waiver of right to contest the violation, plea of no contest including, but not limited to, payment of fine or civil penalty, or entering into an agreement for deferred prosecution.

Underage prohibition order means an order issued by the city manager or designee which prohibits an alcoholic beverage establishment as herein defined, from admitting patrons under the age of 21 into such establishment during specified times.

(Ord. No. 070941, § 1, 2-5-09)

Sec. 4-52. - Prohibition.

It shall be unlawful for any person under the age of 21 years to enter or remain in any alcoholic beverage establishment as defined in this article, or to be permitted to enter and remain in any alcoholic beverage establishment from 9:00 p.m. to 2:00 a.m. the following day by an owner, manager, employee, independent contractor or promoter of such alcoholic beverage establishment, if an underage prohibition order is issued to such alcoholic beverage establishment in accordance with the provisions of this article. An underage prohibition order shall become effective on the 11th day after the date of service of the order if no appeal is filed, or if a request for an administrative hearing is filed, on the 17th day after all administrative action has been concluded, or if appeal is made to a court of competent jurisdiction, after a final order has been entered by that court.

(Ord. No. 070941, § 1, 2-5-09)

Sec. 4-53. - Underage prohibition order.

- (a) An alcoholic beverage establishment shall be issued an underage prohibition order if the following number of underage drinking incidents have occurred at such alcoholic beverage establishment during any quarter as the term is defined herein:

- (1) Aggregate occupancy load less than 201: Five or more.
- (2) Aggregate occupancy load of 201 or greater: Ten or more.
- (b) The final disposition of any underage drinking incident which may subject an alcoholic beverage establishment to an underage prohibition order, need not occur within the quarter of the underage drinking incident; however, the city manager or designee shall comply with the 45-day limit set forth in subsection (c)(1).
- (c) If an alcoholic beverage establishment is the site of the requisite number of underage drinking incidents as provided in subsection (a) above, the following procedure shall be followed:
 - (1) The city manager or designee shall issue the underage prohibition order against the alcoholic beverage establishment within 45 days from the date that such alcoholic beverage establishment has been the site of the requisite number of underage drinking incidents under subsection (a). The order shall contain notice that the establishment may request an administrative hearing as provided in paragraph (2) below. Service shall be deemed complete if personally delivered upon the owner or agent of the alcoholic beverage establishment by any officer authorized by law to serve process or a duly appointed law enforcement officer of the city police department. The person serving process shall make proof of service within the time during which the person served must respond to the process. If service cannot be personally made within the city, then service may be made by notice to a registered agent of the alcoholic beverage establishment.
 - (2) The owner or agent of the alcoholic beverage establishment shall have ten days from the date of service to file a request for an administrative hearing to contest the issuance of the underage prohibition order. The request shall be filed at the office of the city manager.
 - (3) Upon the timely filing of request for a hearing, the city attorney is authorized to arrange for the services of a hearing officer.
 - (4) In conducting the hearing, the hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, paper, and other documents, and receive evidence. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the hearing officer's recommended order, and to be represented by counsel. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The lack of actual knowledge of, acquiescence to, participation in, or responsibility for any underage drinking incident for this hearing on the part of the owner or agent shall not be defense by such owner or agent.

(5)

If the hearing officer finds, by a preponderance of the evidence, that (a) the requisite number of underage drinking incidents have occurred within a quarter to subject the alcoholic beverage establishment to issuance of the underage prohibition order; (b) the city complied with the procedural requirements of subsection (c)(1); and (c) none of the exceptions of section 4-54 are applicable, then the hearing officer shall prepare a recommended order that upholds the issuance of the underage prohibition order.

- (6) If the hearing officer finds that the criteria of paragraph (5) above have not been met, then the hearing officer shall prepare a recommended order to rescind the underage prohibition order.
- (7) The hearing officer's recommended order shall consist of findings of fact and conclusions of law and recommended action. The hearing officer shall transmit the recommended order to the city manager and the owner or agent of the alcoholic beverage establishment. The owner or agent shall have ten days from the date of the hearing officer's order to submit written exceptions to the hearing officer's recommended order. The city manager shall review such order and any written exceptions by the owner or agent and may set forth any deficiencies he/she finds with respect to the order. Said deficiencies shall be limited to determinations that the findings were not based upon competent, substantial evidence, or that the proceedings on which the findings were based did not comply with the essential requirements of law. In reviewing such recommended order, the city manager shall not have the power to receive or consider additional evidence and shall not have the power to reject or modify the findings of fact or conclusions of law contained in the recommended order. The city manager may remand the recommended order along with the delineated deficiencies back to the hearing officer for consideration of the deficiencies. The hearing officer shall address the deficiencies in an addendum to the recommended order. The city manager shall then either:
 - a. Adopt the recommended order and addendum, if applicable, in its entirety; or
 - b. Adopt the findings of fact and conclusions of law in the recommended order and addendum, if applicable, and accept, reject or modify the recommended action.

The action of the city manager shall be the final administrative action.

- (8) The city manager or designee shall provide written notice of the final administrative order to the alcoholic beverage establishment within five days of the date of the final order.
- (9) The final administrative order of the city is subject to certiorari review in a court of competent jurisdiction in Alachua County, Florida by the timely filing of a petition.
- (10) Upon the effective date of the underage prohibition order, the owner or agent of the alcoholic beverage establishment shall:
 - a.

Conspicuously post a sign with the following wording in at least one-inch black letters with white background at each public entrance: "UNDERAGE PROHIBITION ORDER - No One Under 21 Permitted Inside from 9:00 p.m. to 2:00 a.m.". The sign(s), shall remain posted for the duration of the underage prohibition order.

- b. Cease permitting persons under the age of 21 to enter the alcoholic beverage establishment from 9:00 p.m. to 2:00 a.m. the following day, except as provided in section 4-54 of this article.

(11) Duration of underage prohibition order.

- a. First order: 90 days.

If a second underage prohibition order is issued within three years of the first issued and effective underage prohibition order, then the second order shall have the following duration:

- b. Second order: 180 days.

If a third underage prohibition order is issued within three years of the first issued and effective underage prohibition order, then the third order shall have the following duration:

- c. Third and subsequent orders: 365 days.

(12) Any underage drinking incident which occurs while an alcoholic beverage establishment is subject to an underage prohibition order shall count toward another violation. Any prohibition against admittance of patrons under 21 which results from an underage prohibition order issued while an underage prohibition order is already in effect against the owner, agent or establishment shall run consecutively.

(13) Consecutive penalty. Notwithstanding section 4-52, an underage prohibition order which is finalized during an active underage prohibition order penalty shall become effective the day after expiration of the active underage prohibition order.

(14) Any underage prohibition order, once effective, shall be valid against the owner or agent of the alcoholic beverage establishment and any alcoholic beverage establishment operating at the same premises.

(Ord. No. 070941, § 1, 2-5-09)

Sec. 4-54. - Exceptions.

- (a) The prohibition in section 4-52 shall not apply to:

- (1) Persons employed by an alcoholic beverage establishment during such hours as they are performing their duties for the establishment.

- (2)

Persons employed to deliver goods or services to the establishment during such hours as they are performing such duties.

- (3) Persons accompanied by either of their parents (natural, adoptive or stepparent) or a legal guardian.
- (4) Police, fire or emergency medical personnel during such hours as they are performing their duties in such capacities.
- (5) An alcoholic beverage establishment during any time period in which it is not serving or selling alcoholic beverages to the public.

(Ord. No. 070941, § 1, 2-5-09)

Sec. 4-55. - Penalty.

(a) In addition to the underage prohibition order, the provisions of this article may be enforced by civil citation as provided in Chapter 2, Division 6 of this Code, or as otherwise provided in section 1-9 of this Code. Any person not in compliance with this article shall be subject to the penalties designated in section 2-339 or section 1-9. Each violation shall be considered a separate offense, which can be prosecuted separately.

(b) *Findings and intent.*

- (1) It is the intent of this section to protect and preserve the health, safety, and welfare of the citizens of Gainesville by strengthening enforcement methodologies to enforce the prohibition against consumption of alcoholic beverages by underage patrons.
- (2) Admission of persons under the age of 21 to an alcoholic beverage establishment that has, by its actions, demonstrated an inability to reasonably prevent underage consumption on its premises presents a serious threat to the public health, safety, or welfare of the youth of our community and the citizenry at large.
- (3) An enforcement officer shall not be required to provide a reasonable time period to correct a violation of this section prior to issuing a citation to a person that the officer has reasonable cause to believe has violated this section.

(Ord. No. 070941, § 1, 2-5-09)

Sec. 4-56. - Injunctive relief.

In addition to the procedures provided herein, the city attorney is authorized to seek injunctive relief in a court of competent jurisdiction against any alcoholic beverage establishment not in compliance with the requirements of this article.

(Ord. No. 070941, § 1, 2-5-09)

ARTICLE IV. - ARTS, CULTURE, AND ENTERTAINMENT DISTRICTS

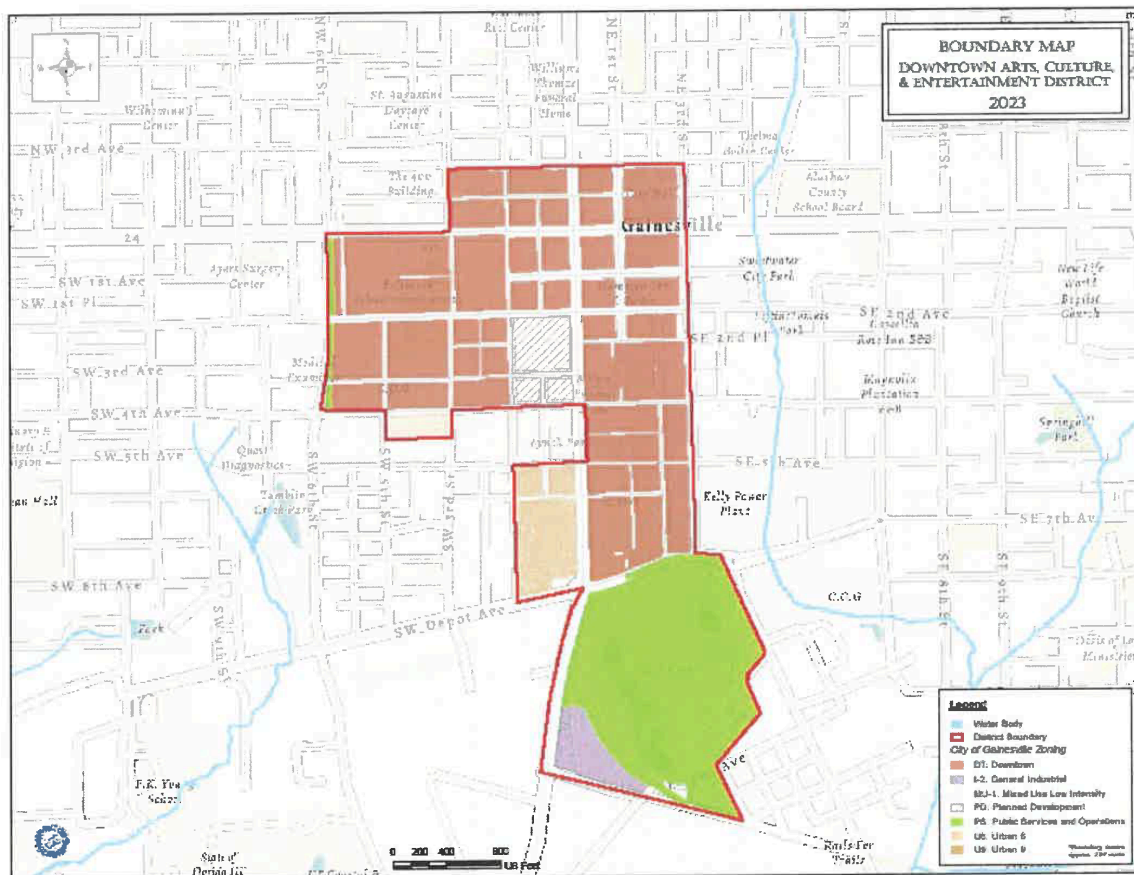
Sec. 4-57. - Purpose.

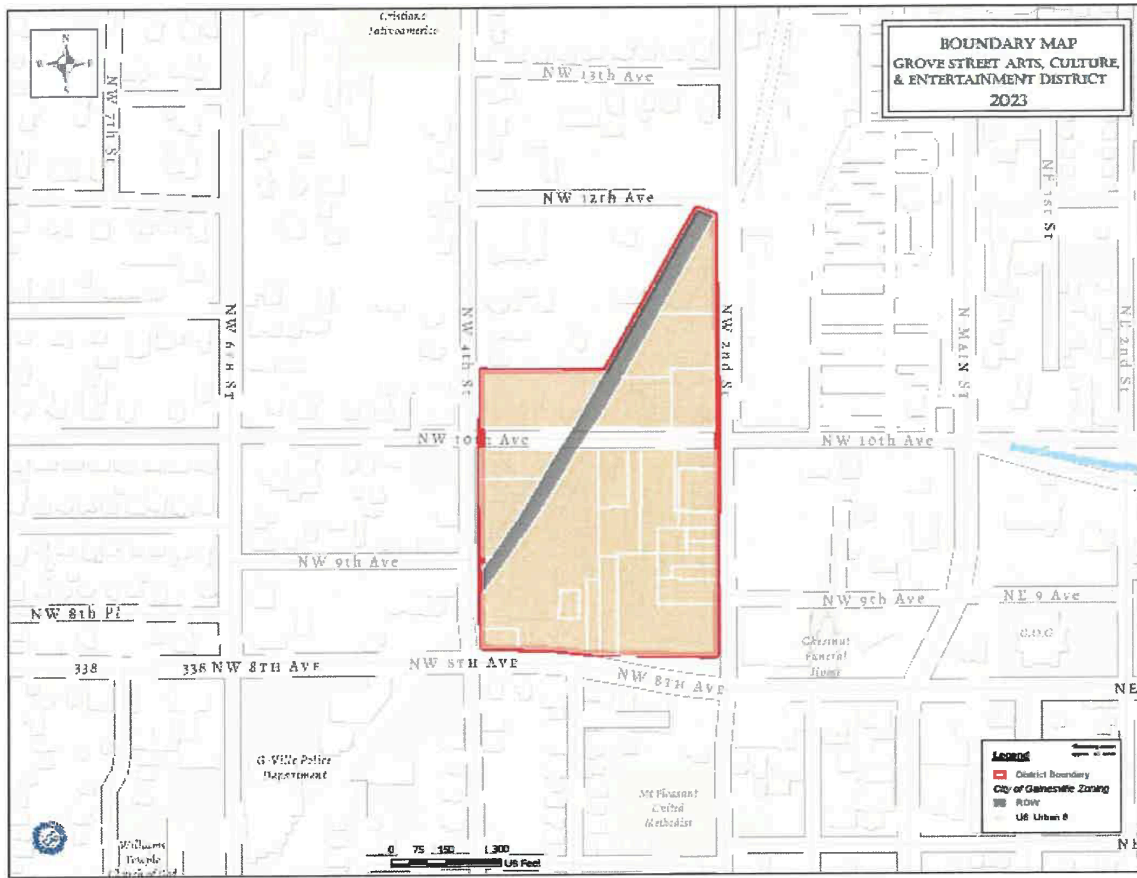
The purpose of this article is to encourage community vibrancy and the economic success of entertainment, retail, and restaurant uses within a limited defined area of the city, hereafter referred to as the entertainment district(s). The regulations within this article are intended to support and enhance cultural event programming, restaurants, music venues, and arts institutions located within the arts, culture, and entertainment districts while promoting pedestrian use, provide for more efficient and effective public safety enforcement in a defined area, foster a mutual relationship among commercial merchants and property owners, and encourage private development of entertainment facilities which enhance and complement the use of public facilities.

(Ord. No. 2023-1144, § 3, 12-14-23)

Sec. 4-58. - District boundaries.

The arts, culture, and entertainment districts subject to the provisions of this article are depicted in the following maps attached to and included within this section.





(Ord. No. 2023-1144, § 3, 12-14-23)

Sec. 4-59. - Definitions.

As used in this article, the following words and phrases have the meanings indicated:

Alcoholic beverage(s) means those alcoholic beverages as defined in F.S. Chs. 561, 563, and 564, and as 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, and includes beer, wine, and liquor, or any beverage containing any of the foregoing.

Alcoholic beverage establishment means an alcoholic beverage dispensing establishment located within any arts, culture, and entertainment district and which is licensed and permitted under state law to sell alcoholic beverages.

Arts, culture, and entertainment district(s) means the distinct area(s) within the boundaries of the arts, culture, and entertainment district(s) as set forth in section 4-58.

Open container means as that term is defined in section 4-1 of the Code of Ordinances.

Outside means all sidewalks, streets, alleyways, designated street crossing paths, public rights-of-way, and city-owned parks, unless specifically excluded by the city manager or designee to ensure protection of the public health, safety, and general welfare, which are within the boundaries of any arts, culture, and entertainment district and beyond the premises of a licensed alcoholic beverage establishment. The

boundaries of all arts, culture, and entertainment districts include the entirety of the particular public right-of-way making up the boundary, including as applicable the sidewalks located on both sides of the public right-of-way boundary. This definition does not include any areas within any parking lots or garages owned by either the city or Alachua County.

(Ord. No. 2023-1144, § 3, 12-14-23)

Sec. 4-60. - Outside consumption of alcoholic beverages.

Notwithstanding any provision to the contrary within the Code of Ordinances, persons of legal age to purchase and consume alcoholic beverages may, within the boundaries of the arts, culture, and entertainment districts, possess and consume an open container of an alcoholic beverage outside of the premises of alcoholic beverage establishments, subject to the following regulations:

- (a) *Hours.* A person may possess and consume an open container of an alcoholic beverage outside of the licensed premises of an alcoholic beverage establishment, only within the hours of 8:00 a.m. to 12:00 a.m. Extended hours of consumption for special events may be granted pursuant to applicable sections of the Code of Ordinances.
- (b) *Glass container prohibition.* Open containers of alcoholic beverages possessed or consumed outside within the arts, culture, and entertainment districts must not be made of glass.
- (c) *Notice of boundaries.* Alcoholic beverage establishments shall post, at all points of egress from the licensed premises, a map of the boundaries of the arts, culture, and entertainment district in which it is located. Alcoholic beverage establishments shall also provide, either in electronic or paper form, a map of the arts, culture, and entertainment district upon request.
- (d) *Enforcement.* Any person or alcoholic beverage establishment not in compliance with any provision of this article will be subject to the penalties designated in section 1-9 or 2-339 of the Code of Ordinances. Each violation will be considered a separate offense, which can be prosecuted separately.

(Ord. No. 2023-1144, § 3, 12-14-23)