

## Chapter 4 ALCOHOLIC BEVERAGES<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 4-1. Definitions.

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

(Code 1960, § 4-1; Ord. No. 3307, § 1, 12-15-86; Ord. No. 3311, § 1, 1-5-87; Ord. No. 4067, § 1, 3-27-92; Ord. No. 050369, § 1, 10-24-05; Ord. No. 130695, § 2, 3-6-14; Ord. No. 210005, § 1, 8-19-21)

Cross reference(s)—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)

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<sup>1</sup>Cross reference(s)—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(s)—Beverage law, F.S. Ch. 561 et seq.

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State law reference(s)—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(s)—Land development regulations relating to alcoholic beverage establishments, § 30-105.

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

**Sec. 4-4. Sale and 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.* It shall be unlawful for any person to sell or dispense any alcoholic beverages on any property owned by the city at any time, or 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, except as follows:
  - (1) At the airport terminal facility and the municipal golf course facility when being sold or dispensed by the facility owner or by a natural person or legal entity that is under contract with the facility owner.
  - (2) Within the rental event space at the Thomas Center, the Thelma Bolton Center, Boulware Springs, and the Senior Recreation Center, dispensing, but not sale, for consumption during an event for which the space is rented. A fundraising event sponsored by a governmental or other public entity or a not-for-profit entity that charges admission for the event, but does not charge for the purchase of the alcoholic beverages, is not considered the sale of alcoholic beverages. The rental agreement may specify such terms and conditions as may be required by the city in its sole discretion as owner of the property.
  - (3) During a special event produced by the city, pursuant to written policy of the city. The city manager is authorized to promulgate a written policy to govern the process and contract terms and conditions

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under which the city may select not-for-profit entities to sell or dispense alcoholic beverages during a city produced special event.

- (4) On other property that the city makes available for special events produced by private parties, pursuant to written policy of the city. The city manager is authorized to promulgate a written policy to govern the process and terms and conditions under which the city may issue an alcohol event permit for the sale or dispensing of alcoholic beverages on particular parcels of city-owned property. The city commission shall determine which particular parcels, if any, are made available for such events.
  - (5) On property that is leased to a private party pursuant to the city's real estate policy, if the sale, dispensing, possession and consumption of alcoholic beverages is expressly allowed under the terms of the lease agreement. The lease may specify such terms and conditions as may be required by the city in its sole discretion as owner of the property.
- (c) *Public right-of-way.* It shall be unlawful for any person to sell or dispense any alcoholic beverage in any open container on any city or other public right-of-way, including without limitation, streets, thoroughfares, highways or sidewalks at any time, or 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, except as follows:
- (1) Within a sidewalk café that is licensed in accordance with the city's Land Development Code.
  - (2) At an outdoor event pursuant to an alcohol event permit.

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 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.
- e. Each alcohol event permit issued shall be subject to the following conditions, requirements and limitations, as well as any other special conditions stated in the permit.
  1. A sufficient number of off-duty law enforcement officers and fire-rescue personnel, as determined by the city, shall be employed by the permittee to provide security, crowd control and emergency medical services for the event.

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2. The permittee shall indemnify the city, its elected and appointed officers, employees, and agents from any claim for personal injury, including death, or property damage, including destruction, associated with the event. This indemnification shall be in the form of an insurance policy acceptable to the city's risk manager, that names the city as an additional insured and is endorsed to provide a separate aggregate of a minimum of \$1,000,000.00 for the event. In addition, the permittee shall procure a liquor liability policy with not less than \$1,000,000.00 of coverage that also names the city as an additional insured.
  3. The event may only be held on such streets, sidewalks and rights-of-way as the city deems appropriate for temporary closure in its sole discretion.
  4. The event may be open to the public only during such hours as the city deems appropriate in its sole discretion. Each event shall be limited to a maximum of 72 consecutive hours, inclusive of time for set-up and clean-up.
- (d) *Outdoors on property owned by parties other than the city.* It shall be unlawful for any person to sell any alcoholic beverage in an open container outdoors on any property owned by a party other than the city, except as follows:
- (1) Within 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 State of Florida, University of Florida, Santa Fe College or Alachua County, provided the state, university, college or the county (as applicable) ensures the protection of the public health, safety and general welfare. In particular, attention should be given to traffic flow and control, auto and pedestrian safety, noise and the effect that the use and activity will have on surrounding uses, particularly where the adjoining or nearby use is residential.
  - (3) At a temporary outdoor event on property that is located in a zoning district where sale, distribution, and consumption of alcoholic beverages is permitted, as classified in the city's land development code; or at a temporary outdoor event on property that is zoned planned development (provided the planned development ordinance allows commercial or mixed-uses and not solely residential uses); or in connection with a temporary sale for fundraising by a nonprofit agency. Any such events shall require an alcohol event permit issued by the city manager or designee as follows:
    - a. All alcohol event permit applications shall be submitted by the event organizer to the city, on the form provided by the city, along with payment of the fee set forth in Appendix A of this Code. If the event is conducted within common area, the applicant must obtain the written consent of the owner(s) or manager (if the owners utilize a manager for such purposes) of the common area on the permit application.
    - b. All alcohol event permit applications must include a site plan sketch showing the location, access, barriers delineating the temporary sale from other public areas and all other details of the site; a report detailing the dates and times during which the event will be conducted, the estimated number of people expected to attend, the capacity of any proposed temporary structures, the capacity of the event site, whether there will be outdoor entertainment, a plan for the installation of temporary sanitary facilities, a plan for the storage and pickup of solid waste during and after the event; and a public safety plan detailing how the applicant will maintain crowd control and public safety, and comply with chapter 15, noise, of this Code.
    - c. Alcohol event permit applications shall be examined by the appropriate departments of the city to ensure protection of the public health, safety and general welfare. In addition to normal concerns of each such department, particular attention will be given to traffic flow and control, auto and pedestrian safety, noise and the effect that the use and activity will have on surrounding uses, particularly where the adjoining use is residential.

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- d. The alcohol event permit may be approved or denied by the city manager or designee based on compliance with this subsection. The city manager or designee may impose additional special conditions as deemed necessary to protect the public health, safety and general welfare.
  - e. Each alcohol event permit issued shall be subject to the following conditions, requirements and limitations, as well as any other special conditions stated in the permit.
    - 1. A sufficient number of off-duty law enforcement officers and fire-rescue personnel, as determined by the city, shall be employed by the permittee to provide security, crowd control and emergency medical services for the event.
    - 2. The event may be open to the public only during the hours 10:00 a.m. to 2:00 a.m. the following day. Each event shall be limited to 48 consecutive hours, inclusive of time for set-up and clean-up.
  - (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.* Any person not in compliance with any section of this article shall be subject to the penalties designated in section 1-9 or 2-339 of this Code. Each violation shall be considered a separate offense, which can be prosecuted separately.

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

Editor's note(s)—Ord. No. 130695, adopted March 6, 2014, repealed § 4-4 and enacted a new section as set out herein. The former § 4-4 pertained to consumption, sale and possession generally, and special events, and derived from § 4-11 of the 1960 Code; Ord. No. 3066, § 1, adopted Oct. 8, 1984; Ord. No. 3373, § 1, adopted Sept. 21, 1987; Ord. No. 3762, § 1, adopted April 20, 1992; Ord. No. 3784, § 1, adopted July 20, 1992; Ord. No. 970260, § 1, adopted Oct. 27, 1997; Ord. No. 980349, § 1, 10-26-98; Ord. No. 981162, § 1, 4-26-99; Ord. No. 002382, § 1, adopted Sept. 23, 2002; Ord. No. 040669, § 1, adopted Jan. 10, 2005; Ord. No. 080931, § 1, adopted July 2, 2009; Ord. No. 090624, § 1, adopted March 18, 2010; Ord. No. 100217, § 1, adopted Feb. 17, 2011; Ord. No. 110017, § 1, adopted Aug. 18, 2011; and Ord. No. 120767, § 1, adopted Feb. 21, 2013.

Cross reference(s)—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)

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**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(s)—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***

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## **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(s)—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 during the hours when the premises are closed of alcoholic beverages as defined in F.S. § 561.01;
- (3) The entry and presence of persons under nineteen (19) years of age during the hours when alcoholic beverages are permitted on the premises of the bottle club;
- (4) Employment of any person under eighteen (18) years of age, excepting those persons described in F.S. § 562.13(2);
- (5) A bottle club also operating as a teen center must close for four (4) hours after operating as a teen center and before doing business as a bottle club.

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

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**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 city tax and license division 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. All bottle clubs legally existing on May 21, 1984, and which were in existence prior to the moratorium of October 24, 1983, may continue as valid existing uses;
- (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) A statement in writing from the city manager or his/her designee that both the owner and operator:
  - a. Is not less than nineteen (19) years of age;
  - b. Has not been convicted within the last past five (5) 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 (5) 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 (5) 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:



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1. Each officer or shareholder of the corporation holding more than a ten (10) percent ownership interest thereof; and
  2. Each member of the other group enterprises listed who have an ownership interest therein of more than ten (10) 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.

(Code 1960, § 14A-2(b))

#### **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 shall be entitled to a renewal of his/her annual license from year to year on or before October first of each year as a matter of course 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, 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 five dollars (\$5.00) for each month or fraction of a month of delinquency or upon payment of a penalty of five (5) percent of the license fee, whichever amount is the greater. Any license not renewed within sixty (60) days of expiration will be cancelled by the tax and license division unless such permit is involved in litigation.

(Code 1960, § 14A-5)

#### **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 (1) 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;

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- (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 nineteen (19) years of age or permitting a person under 19 years of age to 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.
- (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)

**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 1<sup>st</sup> through March 31<sup>st</sup>, April 1<sup>st</sup> through June 30<sup>th</sup>, July 1<sup>st</sup> through September 30<sup>th</sup> and October 1<sup>st</sup> through December 31<sup>st</sup>.

*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,

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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 11<sup>th</sup> 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 17<sup>th</sup> 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.

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- (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:

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- 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)

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**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)