

ORDINANCE NO. 2023-622

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

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

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

WHEREAS, the City Commission adopted Ordinance No. 210005 which amended the City’s open container prohibitions post-COVID pandemic to limit only the hours the prohibition would be in place;

WHEREAS, the City Commission finds that there has been a substantial increase in crime or public disorder during the time period since the passing of Ordinance No. 210005, in part due to allowing open consumption and possession of open containers of alcohol on City properties and right of ways, and believes that limiting the hours that the possession and consumption of open containers of alcohol are allowed on public right-of-ways and prohibiting open glass containers of alcohol during the times and places it is lawful to possess open containers of alcohol; and by prohibiting possession of open containers of alcohol on city owned

1 parking lots, parking garages and buildings at all times, are necessary for public safety reasons;
2 and

3 **WHEREAS**, the City Commission wants to prohibit the public possession of open
4 containers and consumption of alcohol on city parking lots, parking garages and buildings; and
5 limit the time periods in which the public possession of open containers and consumption of
6 alcohol on public right-of-way on a permanent basis, except upon the issuance of special alcohol
7 permits; and

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

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

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

16 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE**
17 **CITY OF GAINESVILLE, FLORIDA:**

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

20 **Chapter 4 – ALCOHOLIC BEVERAGES**

21 **Article I. IN GENERAL**

22 **Section 4-1. Definitions**

1 (a) The definitions contained in the beverage law of the state, as defined in F.S. chs.
2 561, 563 and 564, and interpreted by the courts of this state and the state director
3 of the division of alcoholic beverages and tobacco of the department of business
4 and professional regulation, shall apply to the terms in this chapter.

5 (b) Open container shall mean any bottle, can, glass, cup or other vessel, other than
6 the original unbroken sealed container or a bottle of wine, beer or liquor, resealed
7 pursuant to F.S. § 561.20(2)(a)4., 564.09 or F.S.S. 565.045, ~~containing an~~
8 ~~alcoholic beverage~~ provided however, that if a bottle of wine alcoholic beverage
9 is resealed pursuant to F.S. § 561.20(2)(a)4., 564.09 or F.S.S. 565.045, is
10 transported in a motor vehicle, the resealed bottle shall be considered an open
11 container unless it is placed in a locked glove compartment, a locked trunk, or the
12 area behind the last upright seat of a motor vehicle that is not equipped with a
13 trunk.

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

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

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

20 **Chapter 4 – ALCOHOLIC BEVERAGES**

21 **Article I. IN GENERAL**

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

1 (a) *Generally.* Except as specifically allowed by this section, it shall be unlawful for any
2 person to sell, distribute, consume or possess any alcoholic beverage in any open container
3 on city owned parking lots and city owned parking garages at any time; or to sell,
4 distribute, consume or possess any alcoholic beverage in any open glass container on any
5 public right-of-way, including without limitation, streets, thoroughfares, highways or
6 sidewalks. Any person or legal entity that is allowed to sell or dispense alcoholic
7 beverages pursuant to this section shall comply with all applicable federal, state and local
8 laws related to the sale or dispensing of alcoholic beverages. The city manager is
9 authorized to promulgate written administrative procedures to implement this section and
10 any alcohol event permits authorized herein.

11 (b) *City-owned property.* It shall be unlawful for any person to sell, ~~or dispense,~~ possess or
12 consume any alcoholic beverage on any property owned by the city, including any city owned
13 parking, city owned parking garages and city owned buildings at any time, ~~or consume or~~
14 ~~possess any alcoholic beverage in any open container between the hours of 2:30 a.m. and~~
15 ~~7:00 a.m. each day,~~ except as follows:

16 (1) At the airport terminal facility and the municipal golf course facility when being sold or
17 dispensed by the facility owner or by a natural person or legal entity that is under contract
18 with the facility owner;

19 (2) Within the rental event space at the Thomas Center, the Thelma Bolton Center, Boulware
20 Springs, and the Senior Recreation Center, dispensing, but not sale, for consumption
21 during an event for which the space is rented. A fundraising event sponsored by a
22 governmental or other public entity or a not-for-profit entity that charges admission for
23 the event, but does not charge for the purchase of the alcoholic beverages, is not

Words ~~stricken~~ are deletions; words underlined are additions.

1 considered the sale of alcoholic beverages. The rental agreement may specify such terms
2 and conditions as may be required by the city in its sole discretion as owner of the
3 property.

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

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

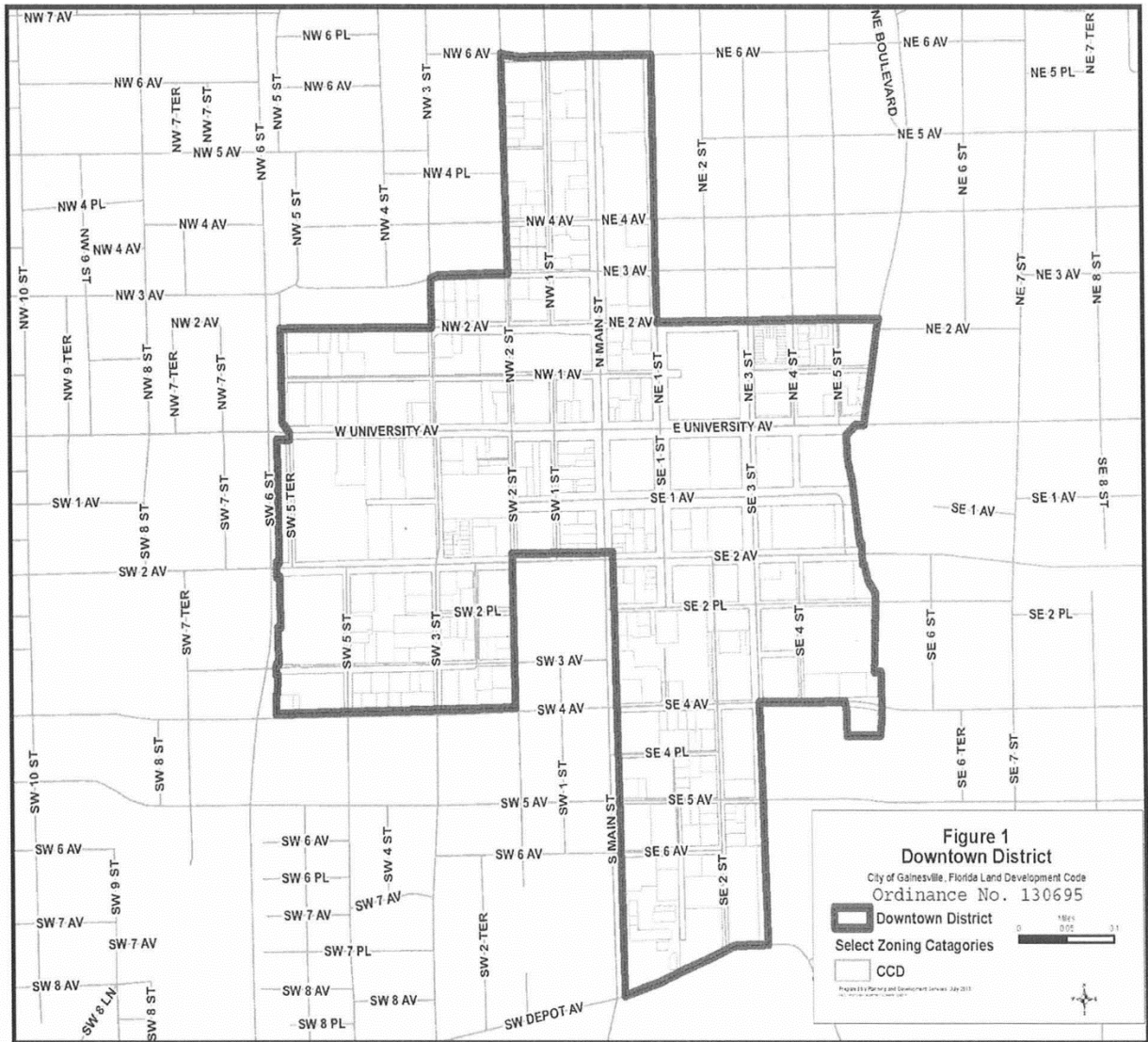
15 (5) On property that is leased to a private party pursuant to the city's real estate policy, if the
16 sale, dispensing, possession and consumption of alcoholic beverages is expressly allowed
17 under the terms of the lease agreement. The lease may specify such terms and conditions
18 as may be required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

19 (6) As otherwise provided in this Code of Ordinances

20 (c) *Public right-of-way.* It shall be unlawful for any person to sell, ~~or~~ dispense, consume or
21 possess any alcoholic beverage in any open glass container on any city or other public right-
22 of-way, including without limitation, streets, thoroughfares, highways or sidewalks at any
23 time; or consume or possess any alcoholic beverage in any open non-glass containers between

1 the hours of ~~2:30 a.m.~~ 11:30 p.m. and ~~7:00~~ 8:00 a.m. each day Monday through Saturday, and
2 between the hours of 8:00 p.m. Sunday night and 8:00 a.m. the next day, except as follows:

- 3 (1) Within a sidewalk café that is licensed in accordance with the city's Land Development
4 Code.
5 (2) At an outdoor event, within the downtown district as shown in Figure 1, pursuant to an
6 alcohol event permit.



7
8 **Figure 1. Downtown District** ((Note to codifier: add this figure))

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

4 a. An alcohol event permit application must be submitted by the event organizer, on the
5 form provided by the city, along with payment of the fee set forth in Appendix A of
6 this Code.

7 b. The alcohol event permit application shall include a site plan sketch showing the
8 location, access, barriers delineating the event site from other public areas and all
9 other pertinent details of the site; a report detailing the dates and times during which
10 the event will be conducted, the estimated number of people expected to attend, the
11 capacity of any proposed temporary structures, the capacity of the event site, whether
12 there will be outdoor entertainment, a plan for the installation of temporary sanitary
13 facilities, a plan for the storage and pickup of solid waste during and after the event;
14 and a public safety plan detailing how the applicant will maintain crowd control and
15 public safety, and comply with Chapter 15. ~~n~~Noise of this Code.

16 c. The alcohol event permit application shall be reviewed by the appropriate
17 departments of the city to ensure protection of the public health, safety and general
18 welfare. In addition to normal concerns of each such department, particular attention
19 will be given to traffic flow and control, auto and pedestrian safety, noise and the
20 effect that the use and activity will have on surrounding uses, particularly where the
21 adjoining or nearby use is residential.

22 d. The alcohol event permit may be approved or denied by the city manager or designee
23 based on compliance with this subsection. The city manager or designee may impose

1 additional special conditions as deemed necessary to protect the public health, safety
2 and general welfare.

3 e. Only two alcohol event permits may be issued per calendar year per applicant.
4 However, one alcohol event permit may include all of the University of Florida home
5 football games for the school year.

6 ef. Each alcohol event permit issued shall be subject to the following conditions,
7 requirements and limitations, as well as any other special conditions stated in the
8 permit.

9 1. A sufficient number of off-duty law enforcement officers and fire-rescue
10 personnel, as determined by the city, shall be employed by the permittee to
11 provide security, crowd control and emergency medical services for the event.

12 2. The permittee shall indemnify the city, its elected and appointed officers,
13 employees, and agents from any claim for personal injury, including death, or
14 property damage, including destruction, associated with the event. This
15 indemnification shall be in the form of an insurance policy acceptable to the
16 city's risk manager, that names the city as an additional insured and is endorsed
17 to provide a separate aggregate of a minimum of \$1,000,000.00 for the event. In
18 addition, the permittee shall procure a liquor liability policy with not less than
19 \$1,000,000.00 of coverage that also names the city as an additional insured.

20 3. The event may only be held on such streets, sidewalks and rights-of-way as the
21 city deems appropriate for temporary closure in its sole discretion.

1 4. The event may be open to the public only during such hours as the city deems
2 appropriate in its sole discretion. Each event shall be limited to a maximum of
3 72 consecutive hours, inclusive of time for set-up and clean-up.

4 5. The sale, dispensing and consumption of beer and wine shall occur only within
5 an area secured by fencing or barricades that are a minimum of four feet in height
6 and with limited points of entry and exit. The permittee shall not allow alcoholic
7 beverages purchased outside of the event to be brought into or consumed inside
8 the permitted event area.

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

12 (1) Within an outdoor seating area that is part of an approved use of property which is zoned
13 and permitted for the consumption of alcoholic beverages.

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

20 (3) At a temporary outdoor event on property that is located in a zoning district where sale,
21 distribution, and consumption of alcoholic beverages is permitted, as classified in the
22 city's land development code; or at a temporary outdoor event on property that is zoned
23 planned development (provided the planned development ordinance allows commercial

1 or mixed-uses and not solely residential uses); or in connection with a temporary sale for
2 fundraising by a nonprofit agency. Any such events shall require an alcohol event permit
3 issued by the city manager or designee as follows:

4 a. All alcohol event permit applications shall be submitted by the event organizer to the
5 city, on the form provided by the city, along with payment of the fee set forth in
6 Appendix A of this Code. If the event is conducted within common area, the
7 applicant must obtain the written consent of the owner(s) or manager (if the owners
8 utilize a manager for such purposes) of the common area on the permit application.

9 b. All alcohol event permit applications must include a site plan sketch showing the
10 location, access, barriers delineating the temporary sale from other public areas and
11 all other details of the site; a report detailing the dates and times during which the
12 event will be conducted, the estimated number of people expected to attend, the
13 capacity of any proposed temporary structures, the capacity of the event site, whether
14 there will be outdoor entertainment, a plan for the installation of temporary sanitary
15 facilities, a plan for the storage and pickup of solid waste during and after the event;
16 and a public safety plan detailing how the applicant will maintain crowd control and
17 public safety, and comply with Chapter 15. Noise of this Code.

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

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

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

8 fe. Each alcohol event permit issued shall be subject to the following conditions,
9 requirements and limitations, as well as any other special conditions stated in the
10 permit.

11 1. A sufficient number of off-duty law enforcement officers and fire-rescue
12 personnel, as determined by the city, shall be employed by the permittee to
13 provide security, crowd control and emergency medical services for the event.

14 2. The event may be open to the public only during the hours 10:00 a.m. to 2:00
15 a.m. the following day. Each event shall be limited to 48 consecutive hours,
16 inclusive of time for set-up and clean-up.

17 3. The sale and dispensing of alcoholic beverages shall occur only within an area
18 secured by fencing or barricades a minimum of four feet in height and with
19 limited points of entry and exit. The permittee shall not allow alcoholic
20 beverages purchased outside of the permitted area to be brought into or
21 consumed inside the permitted area.

22 (e) *Alcohol event permits, generally.* An application for an alcohol event permit may not be
23 submitted more than six months prior to the first day of the event. If the city manager or

1 designee determines that an event is creating a clear and present danger of a riot or other
2 general public disorder, or substantial injury to persons or to property, the city manager or
3 designee may require the immediate cessation of the sale, dispensing, consumption and
4 possession of alcoholic beverages or may require the immediate cessation of the event. In
5 addition, if the city manager or designee finds that the requirements or conditions of an alcohol
6 event permit have been violated, and not cured within a reasonable time after reasonable notice
7 to the permit holder, the city manager or designee may require the immediate cessation of the
8 sale, dispensing, consumption and possession of alcoholic beverages or may require the
9 immediate cessation of the event.

10 (f) *Penalties.* The provisions of this section regarding the unlawful open consumption of and/or
11 possession of an open container of alcoholic beverage, may be enforced by civil citation as
12 provided in sections 2-236 through 2-339 of the Code, or by criminal citation, as provided in
13 section 1-9 of the Code. Any person not in compliance with any section of this article shall
14 be subject to the penalties designated in sections 1-9 or 2-339 of this Code. Each violation
15 shall be considered a separate offense, which can be prosecuted separately.

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

19 **CHAPTER 18. PARKS, RECREATION AND CULTURAL AFFAIRS**

20 **ARTICLE II. PARK REGULATIONS**

21 **Sec. 18-20. Prohibited activities.**

22 It shall be unlawful for any person to do any of the following in any park listed in section
23

1 18-18 of this article or any other areas officially designated by the city commission as a
2 park and posted as such unless specifically permitted by the appropriate authorization received
3 from the city manager or designee and issued pursuant to this article, except for activities of
4 the City of Gainesville which are undertaken within the scope of its governmental authority:

5 (30) Except as otherwise provided in this Code of Ordinances, to consume or possess any
6 alcoholic beverage in any open glass container at any time; or in non-glass containers
7 between the hours of ~~2:30 a.m.~~ 11:30 p.m. and ~~7:00 a.m.~~ 8:00 a.m. each day Monday
8 through Saturday; and 8:00 p.m. Sunday through 8:00 a.m. the next day.

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

12 **CHAPTER 2. ADMINISTRATION**

13 **ARTICLE V. BOARDS, COMMISSIONS AND COMMITTEES**

14 **DIVISION 6. CIVIL CITATIONS**

15 **Sec. 2-339. Applicable codes and ordinances.**

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

17

Section	Description	Class	Penalty
4-4	Open consumption of and/or possession of an open container of alcoholic beverage between the hours of 2:30 a.m. <u>11:30 p.m.</u> and 7:00 a.m. <u>8:00 a.m.</u> each day <u>Monday through Saturday and 8:00 p.m. Sunday night through 8:00 a.m. Monday Morning.</u>		\$200.00

18

19 **Section 5.** It is the intention of the City Commission that the provisions of Sections 1
20 through 4 of this ordinance will become and be made a part of the Code of Ordinances of the

1 City of Gainesville, Florida, and that the sections and paragraphs of this ordinance may be
2 renumbered or relettered in order to accomplish such intentions.

3 **Section 6.** If any word, phrase, clause, paragraph, section or provision of this ordinance or
4 the application hereof to any person or circumstance is held invalid or unconstitutional, such
5 finding will not affect the other provisions or application of the ordinance which can be given
6 effect without the invalid or unconstitutional provisions or application, and to this end the
7 provisions of this ordinance are declared severable.

8 **Section 7.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
9 such conflict hereby repealed.

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

11 **PASSED AND ADOPTED** this ____ day of _____, 2023.

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Attest:

HARVEY L WARD, JR., MAYOR

Approved as to form and legality:

17

18

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21

KRISTEN BRYANT,
INTERIM CITY CLERK

DANIEL M. NEE,
CITY ATTORNEY

22 This ordinance passed on first reading this ____ day of _____, 2023.

23 This ordinance passed on second reading this ____ day of _____, 2023.