



City of Gainesville

Office of the City Manager

City Manager Memorandum No. 230081

To: The Honorable Mayor and City Commission

From: Cynthia W. Curry, City Manager

Date: September 5, 2023

Re: Potential Ordinance Revisions for Discussion and Direction Relating to Nuisance Abatement, Bottle Clubs, and Hookah Lounges and Information Related to Ongoing Crowd Manager Training and Crowd Control Enforcement.

The purpose of this memorandum is to follow up on a discussion led by Commissioner Ed Book at a sunshine meeting that occurred on July 6, 2023. Commissioner Book highlighted the need for the City Commission to consider potential amendments to several ordinances along with discussing crowd manager training and crowd control enforcement. The potential amendments are intended to reduce the incidents of gun violence in our community and to provide more options for the Gainesville Police Department (GPD) to address properties where unwanted or unpermitted activities are frequently occurring.

The items initially discussed included:

Open Container – Currently under review by the City Commission

Public Nuisance Abatement Ordinance – Under staff review

Bottle Club Ordinance – Under staff review

Crowd Management Training and Enforcement – Ongoing

The items under staff review have been reviewed and recommendations are included for further consideration by the City Commission in the attached memo. GPD staff is also recommending the Commission consider adoption of a Hookah Lounge ordinance in addition to the items brought forward by Commissioner Book. Once staff receives feedback and direction from the Commission, staff will work with the City Attorney's office to prepare ordinance revisions for subsequent Commission action.

1. **Open Container** – At the August 17th City Commission meeting, the Commission directed staff to prepare an ordinance reinstating the open container prohibitions in place prior to 2020 and to prepare an ordinance creating and instituting an entertainment district within downtown Gainesville.

2. **Entertainment District** - The proposed entertainment district ordinance is modeled after the Savannah, GA ordinance which allows a more limited version of open container within Savannah's downtown historic district. The draft ordinance includes proposed regulations that differentiate the entertainment district from existing open container allowances in several key ways:
 1. Alcoholic beverages must be purchased from a licensed establishment and can only be held in allowable containers which are limited to a single (one per person) paper, aluminum, or plastic cup. No glass, aluminum cans or bottles are permitted. Cups must be 16 oz. or less. This means that no outside alcohol is permitted to be possessed or consumed in an open container unless purchased from a bar or restaurant.
 2. Entertainment district hours are 8:00am to 11:30pm.
 3. The proposed boundaries are consistent with the downtown district (see attached) where open container possession and consumption was allowed with a permit under the original ordinance. The boundary was expanded to include Depot Park and the remainder of the Power District.
 4. Implementation of the entertainment district will require placement of signage at various locations at the boundaries of the district. The district regulations also require licensed establishments to post a map of the district boundaries for patrons to help supplement physical signage.

3. **Bottle Clubs** – Chapter 4, Article II, of the City Code of Ordinances, regulates the operation of bottle clubs within the City through a mandatory licensing program. Bottle clubs are business establishments that are not licensed to sell alcoholic beverages but instead provide facilities for the consumption of alcoholic beverages by its patrons on the premises.

In addition to obtaining a license through the City of Gainesville, bottle clubs are also required to hold a Bottle Club License (14BC) issued by the Florida Department of Business and Professional Regulation (DBPR) Division of Alcoholic Beverages and Tobacco. Currently, Painting with a Twist, a retail art studio where patrons bring wine or beer to consume on premise while receiving art instruction is the only licensed bottle club currently operating within the City of Gainesville. However, GPD has experienced crowd management issues with unlicensed businesses that operate as after-hours (post 2 a.m.), de-facto bottle clubs. These establishments attract large numbers of patrons after bars and clubs are required to close by local ordinance. Often these establishments are not built to meet the required life and fire safety code requirements for assembly

occupancies that are required of bars, restaurants, and clubs. As a result, large gatherings pose a risk to patrons and a drain on GPD resources and staffing.

To address these concerns, GPD has identified the following recommendations for amendments to the City's Bottle Club ordinance:

1. Limit hours of operation to be consistent with the alcohol establishments (2 a.m. closing).
 2. Restrict accessory uses allowed in conjunction with a licensed bottle club such as:
 - a. Hookah Lounges
 - b. Dance Halls
 - c. Other similar assembly occupancies
 3. Require that all licensed bottle clubs possess a valid occupancy permit from the Sustainable Development Department, Building Division and have it displayed in the building.
 4. Require proof of a state issued permit (14BC license) from Florida Department of Business and Professional Regulation for a bottle club to operate.
4. **Public Nuisance Abatement** – Chapter 16, Article V, of the City Code of Ordinances provides regulations for addressing abatement of declared public nuisances. The intent of this article is to promote, protect, and improve the health, safety, and welfare of the citizens of the City of Gainesville by imposing administrative fines and other non-criminal penalties to provide an equitable, expeditious, effective, and inexpensive method of abating drug, prostitution, criminal street gang and stolen property related nuisances. This article is enacted pursuant to F.S. § 893.138 of Florida Statutes. Currently, the City ordinance addresses illegal drug sale/usage/manufacturing's, prostitution, gang activity and dealing in stolen property.

This statute was amended during the 2020 Florida Legislative Session by HB 625, which significantly expanded the basis by which local governments can bring nuisance abatement actions against private-property owners. Properties with repeated violations of instances of assault and battery, burglary and theft, or violent offences such as murder or aggravated assault can be declared public nuisances subject to abatement actions under the law. To this end, GPD recommends the ordinance be amended to be consistent with changes in state law in order to provide additional opportunities to address nuisance properties within the City including but not limited to:

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1. Repeat violations within a six-month period of City ordinances or State statutes relating to operation of a Bottle Club or Dance Hall.
 2. Repeat violations within a six-month period of City ordinances and or State statutes regarding the operation of alcoholic beverage establishments.
 3. Repeat violations within a six-month period of overcrowding, fire or life safety or occupancy violations associated with operations of the establishment.
 4. Repeat violations within a six-month period of Chapter 15 – Noise, of the City code of ordinances from business activities or activities occurring on a site owned or leased in association with a business found in violation of Chapter 15..
 5. On more than two occasions within a six-month period, as the site of a violation of any combination of the following:
 1. Section 782.04, relating to murder;
 2. Section 782.051, relating to attempted felony murder
 3. Section 784.045(1) (a) 2. relating to aggravated battery with a deadly weapon; or
 4. Section 784.021(1)(a), relating to aggravated assault with a deadly weapon without intent to kill.
 5. Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery.
 6. Section 810.02, relating to burglary.
 7. Section 812.014, relating to theft.
 8. Section 812.131, relating to robbery by sudden snatching.
5. **Crowd Management** - Gainesville Fire Rescue (GFR) offers crowd manager certification training several times a year through a third party service. Crowd manager training is required by all national fire code standards in public assemblies such as nightclubs, auditoriums, ballrooms and arenas. To become a certified crowd managers, interested managers pay a fee and are enrolled in a 2-hour class. Upon successful completion of a final exam, GFR provides a unique certificate that is valid for a period of two years.

GFR also monitors fire and life safety issues associated with overcrowding through the work of the Risk Reduction Bureau. GFR Fire Safety Inspectors conduct night inspections during Fall and Spring semesters of local colleges. Fire Inspectors are also out near midtown during home football games. One of the priorities of night inspections is checking inside of assembly occupancies for overcrowding. Overcrowding is defined as exceeding the posted occupant load limit, which is calculated based on the Florida Fire Prevention Code. Most night inspections are conducted Wednesday, Thursday,

Friday or Saturday nights from 9:30 p.m. until around 02:00AM. In a typical week, 1-2 Fire Inspectors will be out on one of the nights indicated.

Fire Inspectors are trained to identify overcrowded conditions. The first step is typically to ask the door attendant for their count. When they are discovered not to be counting, seem unsure of the number or don't know how many they can safely let inside the building, Fire Inspectors know they need to conduct a count. If they observe a densely packed crowd with little to no space between patrons or the number provided is inconsistent with the Inspector's observations, he or she will always go inside the building to conduct a count.

If the Fire Inspector's crowd count exceeds the posted limit, the Fire Inspector will quickly determine the best response, based on GFR records, personal experience with the business, and the level of cooperation from the manager. Because exit capacity is based on the calculated occupant load, overcrowding is considered an "imminent hazard" requiring immediate mitigation. Without prior issues, light overcrowding is typically addressed by allowing management a short amount of time to reduce the crowd by the number of people over the posted limit. Moderate or gross overcrowding requires an immediate and full evacuation of the building. For documentation and evidence, each person is counted again as they exit the building. Once everyone is out of the building, the Fire Inspector conducts a quick safety check, some additional education with staff and completes any required paperwork. At that point, the business is approved to reopen to the public.

A civil citation is typically issued for overcrowding. Pursuant to GCO Sec. 2-339: The first violation is a \$250.00 fine. The second violation is a \$500.00 fine. Third and subsequent violations result in a mandatory court appearance. Repeated overcrowding will result in required temporary evacuation at lower numbers. In cases of rare extreme overcrowding or consistent repeated overcrowding, evacuation for the remainder of the night would be required. If motivation efforts do not result in solving the problem, as a method of last resort, GPD could be requested to issue a notice to appear (NTA), which is a criminal misdemeanor pursuant to GCO Sec. 1-9.

6. **Hookah Lounges** – Hookah lounges are licensed by DBPR as retail tobacco products dealers (RTPD) whereby establishments are authorized for the retail sale of tobacco products and nicotine products to consumers. These businesses are retail establishments and are typically permitted for mercantile occupancy under the Florida Building and Life Safety Codes. Additionally, the City's code

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of ordinances does not currently provide for specific regulations of hookah lounges.

GPD has repeatedly experienced challenges with adequately addressing issues stemming from the operation of hookah lounges inside the City. This lack of regulatory clarity often results in hookah lounges operating as de-facto, after-hours clubs in spaces that lack the life safety and fire code building modifications required of permitted assembly occupancies. Since hookah lounges have no limitations on hours of operation, are often marketed as “lounges, bars, or cafés” which are typically assembly occupancies, and have minimal permitting requirements, these establishments are relatively easy to establish, but can create unintended impacts without reasonable limits on operations.

In order to address these issues, GPD recommends the City Commission provide direction to staff to develop a hookah lounge ordinance designed to address regulatory issues such as:

1. Hours of Operations
2. Permitting and occupancy
3. Loitering and site security
4. Ventilation and fire code
5. Limits on accessory uses such as Bottle Clubs and Dance Halls