

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

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<sup>1</sup>State law reference(s)—Alcoholic beverages, F.S. ch. 561 et seq.; municipal regulation of hours, location and sanitation of alcoholic beverage businesses, F.S. § 562.45; Municipal Home Rule Powers Act, F.S. ch. 166.

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## Sec. 4-1. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alcoholic beverage* means any beverages containing more than one percent of alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.

*Beer* means a brewed beverage that meets the federal definition of beer in 27 C.F.R. § 25.11 and contains less than six percent alcohol by volume.

*Bottle club* means a commercial establishment, operated for a profit, whether or nonprofit is actually made, wherein patrons consume alcoholic beverages which are brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises, and which is located in a building or other enclosed permanent structure. The term "bottle club" does not apply to sporting facilities where events sanctioned by nationally recognized regulatory athletic or sports associations are held, bona fide restaurants licensed by the division of hotels and restaurants of the department of business and professional regulation whose primary business is the service of full course meals, or hotels and motels licensed by the division of hotels and restaurants of the department of business and professional regulation.

*Club* means persons associated together as a chartered or incorporated club, including social clubs incorporated by orders of circuit judges after their charters have been found to be for objects authorized by law and approved by such judges as organized for lawful purposes and not for the purpose of evading license taxes on dealers in alcoholic beverages, as defined in this section, which organizations are bona fide clubs, and at the time of application for license hereunder, shall have been in continuous active existence and operation for a period of not less than two years.

*Container* means any can, cup, bottle, glass or other receptacle containing an alcoholic beverage.

*Intoxicating beverage or intoxicating liquor* means only those alcoholic beverages containing more than 3.2 percent of alcohol by weight.

*Malt beverage* means any brewed beverage containing malt.

*Manufacturer* means all persons who make alcoholic beverages except those who make beer or wine for personal or family consumption pursuant to F.S. § 562.165.

*Motor vehicle* means any self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, or moped.

*Nightclub* means any place of business operating after 11:00 p.m. and where food, alcoholic beverages and refreshments are served and sold to the public in connection with dancing, theatrical or similar entertainment; and where, in addition to the space occupied by chairs and tables for service of meals, there shall be provided a floor space of at least 400 square feet, suitably prepared for dancing, and a band, orchestra or other form of music or musical entertainment is provided.

*Restaurant* means a business licensed as a restaurant by the state division of hotels and restaurants and by the city to be a place where full-course meals are prepared, in a full-service kitchen with a commercial stove, refrigerator and oven, which facility provides seating for at least 20 patrons with standard height dining room tables or booths of adequate size to accommodate the service of full-course meals in accordance with the number of chairs found at the table, with such seating exclusive of seating at bars, counters, or cocktail tables and has a city local business tax receipt as a restaurant. The primary operation of the restaurant shall be for the serving of full-course meals.

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*Sale or sell* means any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under F.S. chs. 561—568.

*Wine* means all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine

(Code 1960, § 3-1(a)—(g); Code 1983, § 3-1; Ord. No. L-216, § 1, 7-5-2011)

State law reference(s)—Similar provisions, F.S. §§ 561.01, 563.01, 564.01.

#### **Sec. 4-2. Consumption of alcoholic beverages—In public places generally.**

It is unlawful for any person to consume, and for any person other than the licensed beverage salesman or agent, to carry in any cup, can or other open or unsealed container any alcoholic beverage on the streets and sidewalks within the city, except as elsewhere provided in chapter 32.

(Code 1960, § 3-12; Code 1983, § 3-2; Ord. No. K-07, § 3, 4-17-2000)

#### **Sec. 4-3. Consumption of alcoholic beverages—At curb or drive-in stands.**

It is unlawful for any person to consume any alcoholic beverage at curb or drive-in stands, except within the building which is the address of the person holding a license for the sale or consumption of such alcoholic beverages on the premises.

(Code 1960, § 3-11; Code 1983, § 3-3)

#### **Sec. 4-4. Preservation of existing business.**

Businesses under this chapter in existence on September 30, 1971, but in conflict with the provisions of section 4-6, may continue in business until such time as the present owner of such establishments terminates operations or business, whereupon such nonconforming use shall not thereafter be reestablished.

(Code 1960, § 3-5; Code 1983, § 3-4)

#### **Sec. 4-5. Voluntary relocation.**

A business in existence on September 30, 1971, may be voluntarily relocated to a second site if:

- (1) Such site is within the zoning area as designated in section 125-401; and
- (2) Such site is within the distance restrictions as provided in section 4-6.

(Code 1960, § 3-6; Code 1983, § 3-5; Ord. No. L-216, § 3, 7-5-2011)

#### **Sec. 4-6. Areas for sale of alcoholic beverages—Distance restrictions established for consumption on- or off-premises.**

- (a) *Minimum requirements.* Establishments located in the zoning districts outlined in section 125-401 shall meet the minimum distance requirements identified in Table 1.

Minimum Distance Requirements for Consumption On- or Off-Premises
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	Consume	Church	School	Other Licensed Establishment
Restaurant	On-premises	N/A	N/A	N/A
Bar/lounge	On-premises	1,000 feet	1,000 feet	N/A
Nightclub	On-premises	1,000 feet	1,000 feet	N/A
Liquor store	Off-premises	500 feet	500 feet	N/A
Grocery	Off-premises	500 feet	500 feet	N/A

- (b) *Exceptions.* Hotels or motels with 100 rooms or more and restaurants with a minimum seating capacity of 200 and containing a minimum of 4,000 square feet shall not be subject to distant restrictions.
- (c) *Distance restrictions established for consumption on- or off-premises.* Distance restrictions as established in this chapter for consumption on- or off-premises shall not apply to properties identified in the downtown business and entertainment overlay district and properties fronting US Highway-1, Okeechobee Road, and Orange Avenue (with the exception of those in the Peacock Arts District).
- (d) *Subsequent establishment of religious institution or school.* Whenever a vendor of alcoholic beverages has procured a license certificate permitting the sale of alcoholic beverages and thereafter a religious institution or school has been established within 500 feet of the vendor of alcoholic beverages, the establishment of the religious institution or school shall not be cause for the discontinuance or classification as a non-conforming use of the business as a vendor of alcoholic beverages.

(Code 1960, § 3-3; Code 1983, § 3-7; Ord. No. J-49, § 1, 9-7-1993; Ord. No. L-216, § 5, 7-5-2011; Ord. No. 21-007, § 1, 4-5-2021)

**Sec. 4-7. Areas for sale of alcoholic beverages—Measurement of distance restrictions.**

- (a) The manner of measurement of the distance referred to in section 4-6 shall be as follows: Begin at the main entrance of the church or school building or licensed premises, regardless of which zoning they are in, thence run to the centerline of the street right-of-way in front of such entrance, thence along the centerline of such street right-of-way to a point immediately opposite the main entrance of the proposed licensed premises, thence to the center of the main entrance of the building of the proposed licensed premises.
- (b) If there is more than one public entrance to an establishment, the main entrance shall be construed to mean the principal or leading entrance to the premises involved and to which the traffic route, whether vehicular or pedestrian, of those going to and from said premises chiefly directs itself.

(Code 1960, § 3-4; Code 1983, § 3-8)

**Sec. 4-8. Waiver of distance procedure.**

Any person whose location or place of business does not meet the distance restrictions in section 4-6(a) and who is applying to the state division of alcoholic beverages and tobacco for a license may have this distance waived in the following manner:

- (1) A request for waiver may be initiated by filing an application in writing for such waiver in the office of the department of planning and development.
- (2) The department of planning and development shall refer such application to the city planning board for review and report after conferring with affected city departments. Such recommendation and report shall be forwarded to the city commission within 90 days of the receipt of a complete application.
- (3) Upon receipt of the report from the planning board, the city commission shall conduct a public hearing thereon giving at least 15 days' notice thereof in a newspaper having general circulation in the city.

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- (4) Before consideration of a request for waiver by the city commission pursuant to this section, notice by mail shall be given pursuant to section 125-37.
  - (5) Before any action is taken upon any application as provided in this section, either by the planning board or the city commission, the applicant shall deposit with the city a fee established by the city commission by resolution to cover the approximate cost of the procedure and such sum is not refundable in any event.

(Code 1960, § 3-10; Code 1983, § 3-9; Ord. No. I-60, § 1, 4-16-1984; Ord. No. I-104, § 1, 3-18-1985; Ord. No. J-49, § 2, 9-7-1993; Ord. No. L-86, § 1, 7-20-2009; Ord. No. L-216, § 6, 7-5-2011; Ord. No. 20-006, § 1, 3-16-2020)

#### **Sec. 4-9. Hours—Delivery by wholesale vendor.**

It shall be unlawful for any wholesale vendor to sell or deliver or attempt to sell or deliver, to any retail vendor any alcoholic beverage on Sunday between the hours of 12:00 midnight on Saturday and 12:00 midnight on Sunday.

(Code 1960, § 3-7; Code 1983, § 3-10)

#### **Sec. 4-10. Hours—Sale, etc.**

No alcoholic beverages may be sold, consumed, served or permitted to be served or consumed in any place holding a license under the division of alcoholic beverages and tobacco of the state department of business and professional regulation for the sale of alcoholic beverages regardless of alcoholic content, between the hours of 2:00 a.m. and 7:00 a.m. each day.

(Code 1960, § 3-8; Code 1983, § 3-11; Ord. No. J-41, § 2, 4-19-1993; Ord. No. K-51, § 1, 12-4-2000; Ord. No. L-40, §§ 1, 2, 9-15-2008)

#### **Sec. 4-11. Hours—Notification of violation.**

The city clerk shall, upon conviction of any person for the violation of any of the terms of section 4-10, notify by certified mail within five days the director of the state division of alcoholic beverages and tobacco of such conviction, giving the name of the person so convicted, the date of conviction, the date of the violation and other such information as shall be necessary to properly apprise the director of the circumstances of the violation and conviction.

(Code 1960, § 3-12; Code 1983, § 3-1)

#### **Sec. 4-12. Bottle clubs.**

- (a) *Definition.* For the purposes of this section, the term "bottle club" means a business establishment providing facilities for the consumption of alcoholic beverages by its patrons on the premises, but not licensed to sell alcoholic beverages, without regard as to whether the patrons are required to be members of the bottle club. The term "bottle club" does not include a social, fraternal or civic association or organization which only occasionally or intermittently provides facilities for on-premises consumption of alcoholic beverages by its members and their guests and is not licensed to sell alcoholic beverages. 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 and water, and charges for any entertainment provided.
- (b) *Prohibited.* No bottle clubs, as defined in subsection (a) of this section, will be licensed or authorized to do business within the city.

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### **Sec. 4-13. Minimum requirements for on-premises consumption.**

- (a) An applicant holding a "beer and wine—consume on premises and package sales" license must be engaged in conducting a bona fide restaurant establishment, for which such waiver is sought, and to qualify as a bona fide restaurant the restaurant must:
  - (1) Have tables capable of seating not fewer than 20 persons simultaneously, for the purpose of serving meals;
  - (2) Dispense sales of beer and wine only to persons patronizing the establishment for the main purpose of ordering and consuming food;
  - (3) Have permanent kitchen facilities with a commercial stove, refrigerator and oven located within the premises in which meals are regularly prepared for service to patrons of the establishment.
- (b) An applicant holding a "beer, wine and liquor—consume on premises and package sales" license must demonstrate that any parking area provided for is illuminated by not less than three footcandles per square foot of parking lot area.

(Code 1983, § 3-14; Ord. No. L-216, § 7, 7-5-2011)

### **Sec. 4-14. Minimum standards for review for waiver of distance.**

The city commission shall determine if the health, safety, or general welfare has been provided with any waiver request and may impose any condition which it finds to be necessary to protect the best interest of the surrounding property of the city.

- (1) The actual location and distance of the proposed establishment with respect to other places of business licensed to sell intoxicating beverages, whether on or off the premises, as well as churches and schools;
- (2) The type and size of the establishment, including any bar floor space and seating capacity, and whether, in view of such type or size, the proposed establishment is likely to create a public nuisance or traffic impediment by drawing crowds or persons milling about outside the building;
- (3) Whether adequate parking and landscaping for the facility is provided so as to meet the requirements set forth in sections 125-314 through 125-316;
- (4) Whether the facility is physically separated or well buffered from all adjacent residentially zoned areas;
- (5) Whether traffic generated by patrons or pickup/delivery vehicles will pass through low or moderate density residentially zoned neighborhood;
- (6) Whether, if the facility is located within 1,600 feet of a church or school, it will generate traffic which may adversely affect the safety of persons attending such church or school;
- (7) Before any action is taken upon any application as provided in this section, either by the planning board or the city commission, the applicant shall deposit with the city a fee established by the city commission by resolution to cover the approximate cost of the procedure and such sum is not refundable in any event.

(Code 1983, § 3-15; Ord. No. L-216, § 8, 7-5-2011)

### **Sec. 4-15. Waiver exemptions.**

A location that has been granted a waiver of distance by the city commission shall not be required to obtain a new waiver of distance as a result of a change in tenancy, ownership or management unless a change in use occurs for a time period of 12 months or more.

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(Code 1983, § 3-16; Ord. No. L-216, § 9, 7-5-2011)

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