

ARTICLE IV. - ALCOHOLIC BEVERAGES

Sec. 74-182. - Definitions.

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

Alcoholic beverages means any beverage containing alcohol of more than one-half of one percent or more by weight.

Beer or malt beverage shall have the meaning ascribed in F.S. § 563.01, as it may be amended from time to time.

Beverage law means F.S. chapters 561, 562, 563, 564, 565, 567, and 568.

Consumption off premises means the selling of alcoholic beverages in the original unbroken containers, to be taken by the purchaser off the premises, where sold, before being consumed.

Consumption on premises means consumption of any alcoholic beverages, or the right to sell alcoholic beverages by the drink and/or bottle for consumption.

Intoxicating beverage and *intoxicating liquor* shall have the meaning ascribed in F.S. § 561.01, as it may from time to time be amended.

Liquor or distilled spirits includes all spirituous beverages created by distillation and by mixture of distilled beverages by what is commonly termed blending, shall have the meaning ascribed in F.S. § 561.01, as it may be amended from time to time.

Live entertainment shall mean and include any event to which the public is invited or allowed to watch, listen to, or participate in; or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons or guests, including, but not limited to any of the following:

- (1) Dancing by patrons to live or recorded music on an open floor area;
- (2) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ';
- (3) The presentation of live music whether amplified or unamplified;
- (4) The presentation of music concerts, or other similar forms of musical entertainment from any source; or
- (5) Any other live performance, including, but not limited to, presentations by single or multiple performers, such as hypnotists, comedians, dance arts, concerts, dances, and live bands.

Retail means a sale of any alcoholic beverage(s) to the ultimate consumer and not for purposes of resale.

Sale and *sell* mean any transfer of any alcoholic beverage(s) 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 business licensed under F.S., Chs. 561—568.

Vendor shall include all persons or businesses selling or keeping with the intention of selling, or dealing in sale of, alcoholic beverages.

Wholesale means a sale of any alcoholic beverage(s) to a dealer, vendor or other person for the purpose of resale.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(a)), 8-22-2007; Ord. No. 2016-23, § 2, 9-28-2016; Ord. No. 2022-04, § 2, 3-23-2022)

Sec. 74-183. - Classification of vendors.

For purposes of regulating the retail and wholesale sale and distribution of alcoholic beverages within the city, as specified in this article, vendors are hereby classified as follows:

- (1) *Package store*. A package store is a retail vendor of alcoholic beverages sold in sealed containers for consumption off premises only.
- (2) *Retail store*. A retail store is a retail vendor of alcoholic beverages for consumption off the premises, which primarily offers for sale products others than alcoholic beverages. Retail stores include, without limitation, grocery stores, specialty stores, convenience stores, and gas stations/filling stations.
- (3) *Consumption-on-premises vendors*. A consumption-on-premises vendor is a retail vendor of alcoholic beverages, with the corresponding state licensure, for consumption on premises, such as, without limitation:
 - (a) *Restaurant*. Restaurant is a business with full kitchen facilities, which primarily serves full meals and alcoholic beverages (through a corresponding state license) for consumption on premises.
 - (b) *Alcoholic beverage establishment*. Alcoholic beverage establishment is a business primarily devoted to serving alcoholic beverages for consumption on premises, including, without limitation, bars, pubs, tasting rooms, and wine cafes.
 - (c) *Convenience store*. A store that is part of a gas station that stocks a range of everyday items such as snack foods, soft drinks, beer or malt beverage, wine, newspaper and magazines.
 - (d) *Entertainment establishment*. Entertainment establishment is a business primarily devoted to serving alcoholic beverages and in which the service of food and/or entertainment is secondary to the consumption of alcoholic beverages. Entertainment

establishments include, without limitation, dance halls, nights clubs, adult entertainment venues, and any commercial establishment determined to meet the following factors:

1. If the establishment regularly charges a cover charge, door charge, required contribution, or one time membership fee which is paid at the door or has a minimum drink requirement;
2. If none of the factors listed in subsection (c)(1) above are present, then if all six of the following conditions exist, then the establishment may also qualify as an "entertainment establishment":
 - a. The establishment has a dance floor or other open area used by patrons for dancing or for viewing of entertainment (such dance floor or open space may be established by the removal or rearrangement of furniture or tables);
 - b. The hours of operations during which the use is open to the public include time between 1:00 a.m. and 4:00 a.m.;
 - c. The maximum capacity for the establishment as set by the building and fire officials through fire, building, structure, and other relevant regulatory considerations is 150 or more persons. [The fact that the facility may restrict its capacity to some number shall not prevent the building official from applying Code provisions that determine a different and increased capacity. The building and fire officials may use various codes for this purpose (i.e., fire code provisions)];
 - d. Alcohol is sold and consumed on the premises of the establishment at any time;
 - e. Advertisements for the establishment describe specific entertainment events or engagements (e.g. "House Party Saturday Night"; "DJ Saturday night"; "Live Music tonight"); or
 - f. The establishment features a platform or musical staging area used in connection with performances or entertainment. The presence of karaoke machines shall not be deemed entertainment for the purpose of this subsection. The presence of live entertainment provided by one person, not utilizing pre-recorded music, incidental to a restaurant or bar shall not be deemed entertainment for the purpose of this subsection.
 - g. The playing of background music, where the background music is played at a low volume and cannot be heard beyond the limits of the premises to complement the dining experience shall not be deemed entertainment.
3. Businesses identified as entertainment venues, though they might meet factors in subsection (2) herein, shall not be deemed entertainment establishments.

(e)

Entertainment venues. Entertainment venues are businesses or other locations primarily devoted to an entertainment purpose or use in which the serving of food and alcoholic beverages is secondary to the entertainment purpose or use. Entertainment venues including, without limitation, art galleries, theaters, state-chartered not-for-profit theaters with live performances, movie theaters, museums, banquet halls, bowling allies, billiard halls (excludes dancing by patrons of the establishment) and other amusement facilities as determined by the planning and zoning director or his or her designee.

- (4) *Manufacturer of alcoholic beverages.* A manufacturer of alcoholic beverages is a business engaged in the production of alcoholic beverages, including, without limitation, the fermentation of cider, beer, or other malted beverages, and/or wine, the distilling of spirits and/or liquors, or the blending of alcoholic beverages to make a derivative product, for the purpose of sale through an alcoholic beverage distributor or at retail, as regulated by state statute. A manufacturer of alcoholic beverages may sell alcoholic beverages in open containers for consumption on premises and in sealed containers for consumption off premises. Manufacturers of alcoholic beverages include, without limitation, breweries, distilleries, brewpubs, and/or similar uses as determined by the planning and zoning director or his or her designee.
- (5) *Private club.* A private club is a charter or incorporated club or lodge, organized for lawful purposes and not for the purpose of evading beverage laws, vending alcoholic beverages and intoxicating liquors at retail to members and their guests only for consumption on the premises.
- (6) *Alcoholic beverage distributor.* An alcoholic beverage distributor is a distributor and vendor, at wholesale only, of alcoholic beverages in sealed containers.
- (7) *Hotels and motels.* Hotels and motels are businesses that provide temporary lodging on daily or short-term basis and may sell alcoholic beverages to guests as part of food and beverage offerings. These food and beverage offerings, including alcoholic beverages, may be offered independent of any restaurant, alcoholic beverage establishment, and/or entertainment establishment that may be located within the hotel or motel or on the same premises as the hotel or motel.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(b)), 8-22-2007; Ord. No. 2016-23, § 2, 9-28-2016; Ord. No. 2022-04, § 2, 3-23-2022)

Sec. 74-184. - Administrative review; special exception by council approval.

- (a) Administrative review by the planning and zoning director, or his/her designee, is required for the issuance of all alcoholic licenses to all vendors. The planning and zoning director is authorized to mandate the provision of documentation to substantiate the satisfaction of conditions associated with each category of use.

(b)

Uses that are not specifically authorized in this article or requests for licensing which deviate from the requirements of the section may be approved by the city council by special exception, upon application by a potential vendor and after administrative review by the planning and zoning director or his/her designee

In approving such facilities, the city council may impose appropriate conditions and safeguards to protect the public health, safety and welfare.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(c)(1)), 8-22-2007; Ord. No. 2016-23, § 2, 9-28-2016)

Sec. 74-185. - Entertainment venues.

In order for an entertainment venue to qualify for an alcoholic beverage license under this section, the following minimum requirements shall be met, in addition to other requirements set out elsewhere in this chapter and applicable state law:

- (1) That the entertainment venue shall have a valid certificate of use and business tax receipt.
- (2) The sale of alcoholic beverages shall be only incidental to the primary function of the entertainment venue.
- (3) Total receipts from the sale of alcoholic beverages shall not exceed 25 percent of the total annual gross receipts of any entertainment venue. It shall be the responsibility of the entertainment venue operator to maintain records open for inspection by the city to demonstrate compliance with this requirement.
- (4) Entertainment venues holding a state alcoholic beverages license shall always be subject to inspection by the city manager or his/her designee for the purpose of determining that such entertainment venues are in compliance with the existing requirements.

(Ord. No. 2016-23, § 2, 9-28-2016)

Editor's note— Ord. No. 2016-23, § 2, adopted Sept. 28, 2016, repealed the former § 74-185 and enacted a new § 74-185 as set out herein. The former § 74-185 pertained to nonrestaurant facilities and derived from Ord. No. 2007-12, exh. A(ch. VI, § 5(c)(2)), adopted August 22, 2007.

Sec. 74-186. - Alcoholic beverage establishments in hotels.

Alcoholic beverage establishments that have been authorized to operate in a hotel or motel shall be issued a license that shall not be separable from the hotel license in conjunction with which it is issued. To be clear, the alcoholic beverage establishments license differs from that license which the hotel/motel may have issued to it in order to directly sell alcohol to patrons as part of the hotels/motels food and beverage offerings (i.e. room service, in-room offerings, and concierge services).

(Ord. No. 2016-23, § 2, 9-28-2016)

Editor's note— Ord. No. 2016-23, § 2, adopted Sept. 28, 2016, repealed the former § 74-186 and enacted a new § 74-186 as set out herein. The former § 74-186 pertained to retail stores in hotels; exterior entrance and advertising prohibited and derived from Ord. No. 2007-12, exh. A(ch. VI, § 5(d)), August 22, 2007.

Sec. 74-187. - Package stores in alcoholic beverage establishments; exterior advertising prohibited.

Alcoholic beverage establishments that contain package stores, licensed by the state pursuant to state law, shall have no signs advertising such package store, or the sale of alcoholic beverages therein, upon the exterior, or to be visible from the exterior of any such alcoholic beverage establishment. No such package store license shall ever be severable from the alcohol beverage establishment license in conjunction with which it is issued.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(e)), 8-22-2007; Ord. No. 2016-23, § 2, 9-28-2016)

Sec. 74-188. - Possession of untaxed beverages.

It is unlawful for any person to own, possess, purchase, sell, serve, distribute or store any alcoholic beverages unless such person has fully complied with the pertinent provisions of the beverage law relating to the payment of excise taxes.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(f)), 8-22-2007)

Sec. 74-189. - Possession of beverages not permitted to be sold under license.

It is unlawful for a licensee under the beverage law or his agent to have in his possession, or permit anyone else to have in his possession at or in the place of business of such licensee, alcoholic beverages not authorized by law to be sold by such licensee.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(g)), 8-22-2007)

Sec. 74-190. - Storage on licensed premises.

It is unlawful for any vendor to store or keep any alcoholic beverages except for the personal consumption of the vendor, his family and guest in any building or room other than the building or room shown in the diagram accompanying his license application.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(h)), 8-22-2007)

Sec. 74-191. - Sale only on licensed premises.

Each application for the sale of alcoholic beverages shall describe the location of the place of business where such beverage may be sold. It is unlawful to sell, or permit the sale of or distribute such beverage except on the premises covered by the license as described in the application therefore.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(i)), 8-22-2007)

Sec. 74-192. - Compliance with state law.

A state alcoholic beverage license must be obtained by all vendors. Vendors and distributors classified in section 74-183 shall comply with all provisions and regulations of the beverage laws of the state applicable to their particular businesses.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(j)), 8-22-2007; Ord. No. 2022-04, § 2, 3-23-2022)

Sec. 74-193. - Location restrictions.

Vendors of alcoholic beverages shall comply with the following distance restrictions, as applicable:

- (1) *Distance from education facilities.* Unless otherwise specified herein, or approved as a special exception, no alcoholic beverages shall be offered or sold at retail, for consumption on or off the premises, where a proposed place of business intended for such use is located less than 2,500 feet from an education facility. For purposes of this section, an education facility is defined as any building or structure used by a public, private or charter school in which the education of children in grades kindergarten through 12th grade takes place. Post-secondary education facilities, such as colleges, universities and trade schools, are exempt from this spacing requirement. Vendors classified as Restaurants, as defined herein, and any properly licensed business selling exclusively online, are exempt from this section.
- (2) *Distance from places of worship.* Unless otherwise specified herein, or approved as a special exception, no alcoholic beverages shall be offered or sold at retail, for consumption on or off the premises, where the proposed place of business intended for such use is located less than 2,500 feet from a place of worship. Vendors classified as Restaurants, as defined herein, and any properly licensed business selling exclusively online, are exempt from this section.
- (3) *Distance in DMU, CMU, and TND districts.* In downtown mixed use (DMU), community mixed use (CMU), traditional neighborhood (TND) districts—mixed uses districts in which the density and intensity of uses is higher than in single use districts, the spacing between two similar alcoholic uses is zero feet and the distance between an alcoholic use and an education facility or place of worship is 500 feet.
- (4) *Measurement methodology—Education facilities and places of worship.* For purposes of measuring the spacing requirements from education facilities and places of worship, the distance shall be measured by following the shortest roadway path from the front door of the proposed place of business where alcoholic beverages will be sold to the nearest point on the property boundary line on which the education facility or place of worship is located.
- (5)

Measurement methodology—Similar uses. For purposes of measuring the spacing restrictions between similar uses, below, the distance shall be measured by following the shortest roadway path from the front door of the proposed place of business in which alcoholic beverages will be sold and the front door of the existing place of business in which alcoholic beverages are sold.

(6) *Distance between similar uses.* Unless otherwise specified herein, or approved as a special exception, no alcoholic beverages shall be offered or sold at retail, for consumption on or off the premises, where the proposed place of business is located closer to a similar use than the minimum distance specified for each category of use as follows:

Use		Distance from similar use
Package Stores		
Stand-alone		1,500 feet
Associated with and adjacent to Retail Stores		500 feet
Retail Stores		0 feet
Private clubs		0 feet
Hotels and motels (does not include a restaurant or alcoholic beverage establishment located within the hotel/motel)		0 feet
Restaurants		
1—50 seats	Beer and wine; on premises only:	0 feet
	When bar or cocktail lounge serving intoxicating liquors present:	500 feet
	When bar or cocktail lounge serving intoxicating liquors present; in the Downtown Mixed Use (DMU), Community Mixed Use (CMU), and Traditional Neighborhood (TND) Districts	0 feet
51—120 seats	Beer and wine; on premises only:	0 feet
	When bar or cocktail lounge serving intoxicating liquors present:	1,000 feet
	When bar or cocktail lounge serving intoxicating liquors present; in the Downtown Mixed Use (DMU), Community Mixed Use (CMU), and Traditional Neighborhood (TND) Districts	0 feet
121+ seats	Beer and wine; on premises only	0 feet
	When bars or cocktail lounges serving intoxicating liquors present, bar or lounge area may not exceed 15% of total restaurant area	1,500 feet
	When bar or cocktail lounge serving intoxicating liquors present; in the Downtown Mixed Use (DMU), Community Mixed Use (CMU), and Traditional Neighborhood (TND) Districts	0 feet

Alcoholic beverage establishments (generally; includes bars, pubs, lounges, and nightclubs)		1,500 feet
Wine Café 1—50 seats	Beer and wine; on premises only	0 feet
Wine Café 51+ seats	Beer and wine; on premises only	500 feet
Wine Café	Beer and wine; on and off premises	1,500 feet
Entertainment Establishments		1,500 feet
Golf Course Clubhouse		1,500 feet
Entertainment Venue		1,500 feet
Entertainment venues located in Downtown Mixed Use District (DMU)		0 feet
Entertainment Establishment—Adult Entertainment Venue		2,500 feet

(Ord. No. 2007-12, exh. A(ch. VI, § 5(k)), 8-22-2007; Ord. No. 2008-01, exh. A(amd. 12), 2-27-2008; Ord. No. 2016-23, § 2, 9-28-2016; Ord. No. 2022-04, § 2, 3-23-2022)

State Law reference— Authority to regulate location, F.S. § 562.45.

Sec. 74-194. - Alcohol temporary special event permit.

Special events where alcohol will be sold or included with the price of admission, shall comply with the following:

- (a) A temporary permit or special sales license must be acquired from the State of Florida and be submitted to the city.
- (b) The applicant must provide the city with a liquor liability endorsement for activities involving the sale and consumption of alcoholic beverages. Said endorsement shall provide a coverage limit of no less than \$1,000,000.00 for each occurrence.
- (c) The applicant must to the fullest extent permitted by law, indemnify, defend and hold harmless the city, and all officials, agents and employees of the city, from and against all claims, including but not limited to expenses of whatever kind or nature which the city may sustain, suffer or incur, or be required to pay due to damages or losses suffered by any person, including without limitation, the employees, contractors, subcontractors, invitees and guests of the permittee arising out of the issuance of the special events permit, which may result from allowing permittee to utilize the public right-of-way or city-owned park.
- (d) The applicant must submit to the planning and zoning director for approval a description of the control measures to be imposed and where alcohol will be stored, served and sold.
- (e) The applicant must submit a signed consent form stating that law enforcement and authorized city representatives shall have the unrestricted right to enter and inspect the premises during the event to ensure compliance with state law and city ordinance.

(Ord. No. 2022-04, § 2, 3-23-2022)

Editor's note— Ord. No 2022-04, § 2, adopted Mar. 23, 2022, renumbered the former § 74-194 as § 74-195, and enacted a new § 74-194 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 74-195. - Hours of sale and consumption.

- (1) Except as provided in subsections (3) and (4) of this section no intoxicating liquors or intoxicating beverages, including all malt beverages and wine, consumed, served or permitted to be served, or consumed at the following businesses or venues after 1:00 a.m. or before 7:00 a.m.:
 - (a) Manufacturers of alcoholic beverages;
 - (b) Package store retail stores;
 - (c) Restaurants;
 - (d) Hotels/motels;
 - (e) Golf course clubhouses;
 - (f) Other businesses or venues not specifically delineated in this ordinance that hold a license from the state and the city to sell alcoholic beverages.
- (2) Convenience stores may make sales of beer and wine in sealed containers for consumption of the premises during such hours as the stores legally remain open for the sale of other goods.
- (3) Entertainment venues, entertainment establishments, alcoholic beverage establishments shall be authorized to sell alcoholic beverages for consumption on the premises until 2:00 a.m. and no earlier than 8:00 a.m.

Such restrictions in subparagraphs (1) and (2) are applicable to owners, operators, and managers, of such establishments, and their employees, contractors and agents.

- (4) For New Year's Eve, December 31, the prohibited hours of sale shall be 5:00 a.m. to 7:00 a.m. on the following day, January 1.
- (5) *Extended hours permit.* An entertainment venue, entertainment establishment, alcoholic beverage establishment and restaurants located in a downtown mixed used district or that satisfy the criteria in section 74-183(3)(d) and (e) may apply to remain open for business for the purposes of selling, offering for sale, delivering, serving or permitting consumption of alcoholic beverages after the hours specifically authorized in this ordinance only pursuant to an extended hours permit issued in accordance with this subsection.
 - (a) *Permit application.* An application form shall be provided by the city to be completed by the establishment dealing in alcoholic beverages. The applicant shall provide all information requested.
 - (b)

Permit issuance and renewal. The city manager shall review the application. An application for an extended hours license shall be submitted, on a form furnished by the department of planning and zoning, along with a nonrefundable application fee in an amount established by resolution of the city council. The application shall include the following:

1. A copy of the vendor's local business tax receipt and certificate of use.
2. A copy of the vendor's State of Florida alcoholic beverage license.

(c) *Review criteria.* An application for an extended hours license shall be submitted for review and comment of the planning and zoning department and police department. Review of the application shall be based upon the following criteria:

1. Compliance with applicable zoning and use requirements.
2. Mitigation of adverse effects, if any, that the extended hours of operation or other applicable issues will have on neighboring properties, especially with respect to patron activities, including, but not limited, light and noise from music and/or patrons that may disturb surrounding properties.
3. A safety and security plan must be reviewed and approved by the police department.
4. Upon determination that the application is complete, and the establishment meets all requirements of applicable federal, state, and local law, including Land Development Code requirements for alcoholic beverage use, and the permit fee is submitted, the city manager shall place the permit application on the council agenda together with a staff recommendation. The initial extended hours permit application must be approved by the city council. The city council may approve, approve with conditions or deny the extended hours application. Once the initial extended hours application has been approved by the city council the annual renewal may be approved administratively by the city manager. The permit must be renewed annually by October 1. If the establishment dealing in alcoholic beverages fails to renew the permit, the establishment shall lose all extended hours privileges immediately upon expiration of the permit.
5. The extended hours permit shall be valid for one year from the date of issuance. Businesses approaching their renewal date are responsible for submitting a renewal application form approximately 60 to 90 days before their license is set to expire. Prior approval of an extended hours permit does not create or confer any rights to any permittee. Renewal of the extended hours permit is subject to demonstrated compliance with all local, state, and federal laws concerning alcoholic beverages, and all applicable city code provisions.

(d) *Obligation to amend permit information.* Permit holders are required to amend their extended hours permit application within 30 days of any change in the information set forth on the application form. If there is a change in ownership or a change in location of the

establishment, the city must be notified immediately, and a new application must be processed.

- (e) *Extended hours of operation permit requirements.* The permit holder shall be authorized to sell alcoholic beverages for consumption on the premises until 3:50 a.m., subject to each of the following requirements:
1. *Permit posting.* The permit holder shall post and maintain the permit within the establishment in a place where it may be seen at all times.
 2. *Security cameras.* The permit holder shall install and maintain a security camera to record all entrance and exit points (excluding emergency exits) used by patrons of the establishment. Security camera recordings shall be retained by the establishment for a minimum of 45 days from the date of recording and shall be made available to the city within three business days of a written request.
 3. *Security.* The permit holder shall maintain on and outside the premises adequate private security or at least one outside duty guard during the extended hours of operation and until all patrons have left the premises, to assure the lawful and orderly conduct of patrons as they arrive at the establishment, during the extended hours of operation, and as they depart.
 4. *Intrusive exterior lighting.* The permit holder shall prevent intrusive exterior lighting on neighboring residential properties emanating from the establishment dealing in alcoholic beverages during the extended hours of operation.
 5. *Compliance with local, state, or federal law.* The permit holder shall fully comply with all local, state, and federal laws with regard to the establishment dealing in alcoholic beverages, and all applicable City Code provisions.
- (f) *Closing requirements.*
1. After 3:50 a.m., no alcoholic beverages shall be sold at the establishment, and no customers shall be permitted to enter the premises; and
 2. After 3:50 a.m., all lighted signage on the exterior of the premises shall be turned off. However, any exterior lighting used to illuminate common areas such as walkways, parking lots, sidewalks, or areas of customer ingress and egress may remain lit; and
 3. At no later than 4:00 a.m., the permit holder shall require that all persons, other than employees or agents of the permit holder, leave the establishment; and
 4. Thereafter all licensees shall remove or cause to be removed all alcoholic beverages from the area of the premises utilized by customers, patrons, and invitees; all alcoholic beverages shall be stored in original containers or storage containers on a shelf or

cabinet; no alcoholic beverages shall be furnished to, consumed by, or possessed by any person within the premises; and the premises shall remain closed for business until the beginning hours of operation; and

5. From 4:00 a.m. until no earlier than 8:00 a.m., the permit holder shall prohibit entry into the establishment by customers or members of the public.

(g) *Grounds for permit suspension or imposition of permit conditions.* The ability to remain open and sell or permit the consumption of alcoholic beverages beyond 1:00 a.m. or 2:00 a.m. is a privilege, and no establishment may reasonably rely on a continuation of that privilege. As a condition of this privilege establishments dealing in alcoholic beverages are required to comply with the permit requirements of this chapter and take all necessary and reasonable steps to minimize the negative impacts that their establishments may cause in nearby residential or commercial neighborhoods. Violations of this chapter may result in suspension of the extended hours permit or the imposition of permit conditions based on any of the following grounds:

1. *Excessive illegal parking.* Three or more instances of illegal parking violations associated with the establishment, during or within a consecutive one-year period.

Illegal parking associated with the establishment means that employees or others associated with the establishment, or patrons of the establishment, have parked illegally on private or public property in nearby commercial areas or residential neighborhoods.

2. *Excessive law enforcement calls for service.* Three or more instances of a law enforcement call for service associated with the establishment, during or within one month after the extended hours of operation service, within a consecutive one-year period.

Law enforcement call for service associated with the establishment means a call for service to the establishment's property, or to a location in close proximity thereto, for illegal activity of any kind committed by employees or others associated with the establishment, or for vandalism, underage drinking, violation of open container laws, or crimes of violence such as rape, robbery, aggravated assault, and battery committed by patrons of the establishment.

3. *Adverse impacts on neighboring properties.* Three or more instances of an adverse impact on neighboring properties associated with the establishment, during or within one hour after the extended hours of operation, within a consecutive one-year period.

Adverse impact on neighboring properties associated with the establishment means that employees or others associated with the establishment, or patrons of the establishment, have committed any of the following instances:

a. Disorderly conduct pursuant to section 62-37 of this Code, impacting a neighboring residential property owner,

- b. Trespass on a neighboring residential property,
- c. Parking on a neighboring residential property without permission of the owner or occupant,
- d. Vandalism of a neighboring residential property, or
- e. Generation of trash or garbage, including human waste, on a neighboring residential property.

Neighboring residential property is defined as a residential property located within 1,000 feet from the establishment alleged to be in violation.

4. *Selling alcoholic beverages at unauthorized times.* Three violations of selling alcoholic beverages after the permitted time within a consecutive one-year period shall result in the suspension of the extended hours permit.
5. *Procedure for notice, hearing, and permit suspension or imposition of conditions.* An extended hours permit may be suspended, or conditions may be imposed on the permit holder, in accordance with the following procedure:
 - a. *Notice.* A notice of grounds for permit suspension or imposition of conditions may be issued by law or code enforcement officers to any establishment based on the occurrence of grounds for permit suspension or imposition of conditions as established in this subsection. The notice will specifically identify the grounds relied upon, and will be left with the owner, operator, manager, or highest-ranking employee then on the premises. A copy of the notice will also be mailed via U.S. mail, certified, return receipt requested, to the establishment at the street address provided in the permit. Proof of delivery by either of these two methods (hand delivery or certified mail) shall be sufficient to establish receipt by the permit-holder. Notices sent by certified mail that are returned or not accepted for any reason shall be deemed proper notice of the violation, provided that the notice is sent to the person and address named on the permit.
 - b. *Hearing.* If a permit holder fails to cure the grounds for permit suspension or imposition of conditions identified in any notice issued under this subsection, within ten days from the date of the notice; or if an additional instance of: (i) illegal parking associated with the establishment, (ii) a law enforcement call for service associated with the establishment, (iii) an adverse impact on neighboring properties, or (iv) violation of this subsection occur within 90 days from the date of notice for any such grounds; the matter shall be sent to the special magistrate. The notice of hearing shall also advise the establishment alleged to be in violation of the right to be heard, of the right to be represented by counsel, of the right to present sworn testimony on the establishment's behalf, and the right to appeal to circuit court.

- c. *Decision.* After allowing the establishment to be heard, the special magistrate shall consider the matter and may, as it deems appropriate, take no action, suspend the establishment's extended hours permit, or impose conditions on the permit holder. The special magistrate shall base its decision on whether there is substantial, competent evidence supporting a finding of grounds for suspension or imposition of conditions as identified in the notice, and grounds supporting the notice of hearing.
 - i. The maximum suspension for a first appearance by an establishment before the special magistrate shall be 30 days, 60 days for a second appearance, and one year for all appearances thereafter.
 - ii. In addition to suspension, or as an alternative to suspension, the special magistrate may levy a fine. The fine imposed shall not exceed \$1,000.00 per day for a first violation and shall not exceed \$5,000.00 per day for a recurring or repeat violation.
 - iii. The special magistrate may condition the continuation of the establishment's extended hours permit on compliance with any reasonable requirements deemed necessary to mitigate or eliminate the adverse effects of the establishment's extended hours of operation. These conditions may include, without limitation, required provision by the establishment, at its expense, of additional off-street parking, security personnel, trash maintenance, or screening and buffering from nearby properties.
- 6. *Name changes.* Any establishment dealing in alcoholic beverages that has had an extended hours permit suspended or conditioned cannot avoid the consequences of the suspension or conditions by changing its name or corporate status. If a change in name or corporate status occurs regarding a location that is subject to suspension or conditions, the new entity must submit an application for an extended hours permit and request a hearing before the city council to determine whether there has been a legitimate change in ownership at the location. A hearing shall be promptly scheduled. Upon determination that a legitimate change of ownership has occurred, the city commission may allow an extended hours permit to issue for the site, subject to applicable conditions, if any, to prevent a recurrence of the harms that caused the earlier action.
- 7. *Fees.*
 - a. The fee for an extended hours permit and each renewal shall be \$1,000.00, or such other amount as established from time to time by resolution.
- 8. *Emergency revocation, suspension, or restriction of an extended hours permit.* The city manager, the police chief and/or their designee may without a hearing, revoke, suspend, or restrict a permit holder's privilege to extended hours of operation as provided in this

subsection, if the establishment's operation presents a demonstrated danger to the health, safety, or welfare of the public.

- a. *Notice.* The city shall provide written notice to the establishment of the emergency revocation, suspension, or restriction. The notice will specifically identify the grounds relied upon, and will be left with the owner, proprietor, or highest-ranking employee then on the premises. The notice shall advise the establishment alleged to be in violation, of the right to be heard, of the right to be represented by counsel, of the right to present sworn testimony on the establishment's behalf, and the right to appeal to circuit court. Said notice shall be served upon the licensee by:
 - i. Personal service; or
 - ii. Certified mail; or
 - iii. Posting of the notice in a conspicuous place on the property subject to the extended hours license.

The notice shall afford the licensee with reasonable notice of the facts or conduct which warrants the revocation and shall advise the licensee of his/her rights to an appellate hearing as provided herein.

- b. *Hearing on, or termination of, emergency revocation, suspension, or restriction.* Within three business days after service of notice of an emergency revocation, suspension, or restriction of an extended hours permit:
 - i. A special magistrate appointed by the city shall hold a hearing to consider termination, extension, or modification of the emergency revocation, suspension, or restriction of the establishment's extended hours permit as necessary. Notice of the hearing date, time, and location shall be delivered to the permit holder no later than 24 hours in advance; or
 - ii. The emergency revocation, suspension, or restriction of the establishment's extended hours permit shall terminate as of 12:00 a.m. on the fourth business day after the notice of emergency revocation, suspension, or restriction.
- c. *Decision by special magistrate.* After allowing the establishment to be heard, the special magistrate shall consider the matter and may, as he or she deems appropriate, terminate the emergency revocation, suspension, or restriction; suspend the establishment's extended hours permit; or restrict operation during extended hours by imposing conditions on the permit holder. The special magistrate shall base his or her decision on whether there is substantial, competent evidence supporting a finding that the establishment's operation presents a demonstrated danger to the health, safety, or welfare of the public, as identified in the notice, and that revocation, suspension, or imposition of conditions is necessary to alleviate the danger.

- d. *Other business operations.* Nothing contained in subsections a. or b. of this section shall prevent a business from operating any licensed function unconnected to its operation as an establishment dealing in alcoholic beverages during any lawful hour.
9. No suspended extended hours license shall be reinstated until any applicable condition of the license or condition of the suspension is met and the payment of pending and unpaid fines and the reinstatement fee in an amount established by resolution of the city council is made.
10. Any person, vendor or establishment whose application for an extended hours license was denied or whose extended hours license was revoked shall not be eligible to apply for said license for 12 consecutive months from the effective date of the revocation or denial.
- (6) *Enforcement.* Fines imposed by code compliance shall not exceed \$1,000.00 for a first violation and shall not exceed \$2,500.00 for a recurring or repeat violation. However, each sale of alcoholic beverages at unauthorized times constitutes a separate offense for which separate notices of violation and fines may be issued.
- (7) *Effective date.* This section shall take effect and be in force on October 1, 2022.

(Ord. No. 2007-12, Exh. A(ch. VI, § 5(l)), 8-22-2007; Ord. No. 2016-23, § 2, 9-28-2016; Ord. No. 2021-35, § 1, 11-10-2021; Ord. No. 2022-04, § 2, 3-23-2022)

Editor's note— See the editor's note to § 74-194 and § 74-196.

State Law reference— Authority to regulate hours of sale, F.S. § 562.14.

Sec. 74-196. - Consumption in public places and certain private places not permitted.

- (a) *Public place*, when used in this section, means streets, sidewalks except the approved outdoor dining areas, parkways, parks, playgrounds, ball fields, school buildings, school yards, city hall, libraries, stadiums and any other property owned or in the possession of the city or any other state, county or other governmental agency in which property is used or intended for use by city or government employees or by members of the general public.
- (b) It shall be unlawful for any person, without the consent of the city manager or his/her designee, to drink alcoholic beverages in any public place in the city. It shall further be unlawful for any person to drink alcoholic beverages in or upon any automobile, truck, motorcycle or other vehicle, when such vehicle is parked upon any public place without the consent of the city manager or his designee. Such consent shall be given by the city manager or his designee upon a showing that there is compliance with chapter 35, pertaining to special events.
- (c) It shall be unlawful for any person to consume any alcoholic beverage on private premises without the consent of the owner, tenant, or other person lawfully in possession of such private premises. It shall further be unlawful for any person to drink alcoholic beverages in or upon any

automobile, truck, motorcycle or other vehicle, when such vehicle is parked upon any private premises without the consent of the owner, tenant, or other person lawfully in possession of such private premises.

(d) Nothing in this section prevents the possession or consumption of alcoholic beverages in compliance with F.S. § 316.1936.

(Ord. No. 2007-12, exh. A(ch. VI, § 5(m)), 8-22-2007; Ord. No. 2008-01, exh. A(amd. 12), 2-27-2008; Ord. No. 2016-23, § 2, 9-28-2016; Ord. No. 2021-35, § 1, 11-10-2021; Ord. No. 2022-04, § 2, 3-23-2022)

Editor's note— Ord. No 2022-04, § 2, adopted Mar. 23, 2022, repealed the former § 74-196 and renumbered the former § 74-195 as § 74-196 as set out herein. The historical notation has been retained with the amended provisions for reference purposes. The former § 74-196 pertained to extended hours license and derived from Ord. No. 2014-38, § 2, adopted Nov. 12, 2014; Ord. No. 2016-23, § 2, adopted Sept. 28, 2016; and Ord. No. 2021-35, § 1, adopted Nov. 10, 2021.

Secs. 74-197—74-213. - Reserved.