

Chapter 3 - ALCOHOLIC BEVERAGES^[1]

Sec. 3-1. - Definitions.

- (a) The following words, terms 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:

Church shall mean a place where persons regularly assemble for religious instruction.

Club shall mean any group of persons associated together as a duly chartered or incorporated club including social clubs incorporated by order of the circuit judge after their charters have been found to be for objectives authorized by law and approved by the circuit judge as organized for lawful purposes and where such club has not been organized for the purpose of evading license taxes or for the purpose of evading regulations and restrictions placed upon the sale of alcoholic beverages of any alcoholic content. Such bona fide clubs at the time of their application for a license to sell alcoholic beverages shall have been in continuous active existence and operation for a period of not less than two (2) years in the city.

Establishment dealing in alcoholic beverages shall mean any business or establishment licensed by the state for the sale of alcoholic beverages of any alcoholic content or any bottle club, hotel, motel, nightclub or similar establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that the same will be or is intended to be mixed, combined with or drunk in connection or combination with an alcoholic beverage or any area or part of any building or structure in which alcoholic beverages of any alcoholic content are stored, kept for sale, offered for sale, sold, served or dispensed under license issued by the state or any other part of such building or structure or any other building or structure that has any entrance, door or other passageway that could in any manner be used or utilized as a means of access, ingress and egress into the area in which alcoholic beverages of any alcoholic content are kept, offered for sale, sold or dispensed or which is in any other manner capable of access, ingress or egress at any time to the area in which alcoholic beverages of any alcoholic content are kept, offered for sale, sold, served or dispensed. Such term when applied to hotels, clubs or golf clubs and grocery stores licensed to sell alcoholic beverages are kept, sold, served or dispensed when the area is capable of being closed or in some other manner set apart and forbidden to access.

Restaurant shall mean an establishment having necessary equipment to cook and prepare meals and that serves full course meals.

School shall mean a place of instruction or education whether maintained at public or private expense whose primary purpose is the instruction or education of persons under the age of eighteen (18).

- (b) For the purposes of this chapter, the terms manufacturer, distributor, vendor, chartered or incorporated clubs, social clubs and golf clubs shall be defined as the same are defined by F.S. sections 561.01—568.14.

(Code 1964, § 3-20)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 3-2. - Hours of sale.

- (a) It shall be unlawful for any person to sell, offer for sale, serve, give or permit to be served any beverage containing alcohol of more than one (1) percent by weight in the city in any place licensed by the state, county and city for such sale, between the following hours listed on the days indicated:
 - (1) Weekdays between 2:00 a.m. and 8:00 a.m.
 - (2) Sundays between 2:00 a.m. and 11:00 a.m.
 - (3) Christmas day between 2:00 a.m. and 11:00 a.m.
 - (4) Municipal, county, state and federal election days in accordance with the applicable provisions of the state election code.
- (b) Nothing contained in this section shall be construed to prevent a vendor of any establishment dealing in alcoholic beverages from entering, being or remaining in such establishment during prohibited hours when the vendor is actually engaged in duties other than the sale or serving of alcoholic beverages in such establishment, nor shall this section be construed to prevent a firefighter or law enforcement officer from entering, being or remaining in such establishment in the performance of his duties. The closing hours established in this section relate only to the sale of alcoholic beverages. This section shall not be construed to impose a requirement other than that the business establishment may not sell and dispense alcoholic beverages during the hours provided in subsection (a) above.
- (c) Establishments licensed under F.S. sections 563.02(1)(a) and 565.02(1)(a) are specifically included in the provisions of this section with the exception that such establishments shall not dispense:

- (1) Beer or wine between the hours of 2:00 a.m. and 8:00 a.m. each weekday, and between the hours of 2:00 a.m. and 11:00 a.m. on Sundays; or
- (2) Liquor between the hours of 2:00 a.m. and 8:00 a.m. each weekday, and between the hours of 2:00 a.m. and 11:00 a.m. on Sundays.

(Code 1964, § 3-21; Ord. No. 1722, § I, 4-20-2004)

Cross reference— Licenses and business regulations, Ch. 13.

Sec. 3-3. - Premises to be closed during certain hours.

- (a) Establishments dealing in alcoholic beverages shall be closed, and the doors of the place of business shall be locked between the hours when such intoxicating beverages may not be sold; provided, however, that if other businesses are conducted by a licensee in a place separate and apart from the place conducting the business of selling intoxicating beverages, then such place shall be closed off to the public.
- (b) It shall be unlawful for any person to be within such place of business or within such separate place for the sale of alcoholic beverages, as the case may be, during the period of time when alcoholic beverages may not be sold; except that the owner or operator, customary and regular employees and servants, duly constituted law enforcement officers or fire department officials may be within such place.

(Code 1964, § 3-22)

State Law reference— Hours of sale regulated, F.S. § 562.14.

Sec. 3-4. - Indecent exposure at commercial establishments.

- (a) It shall be unlawful for any person maintaining, owning or operating a commercial establishment located within the corporate limits of the city, at which alcoholic beverages are offered for sale for consumption on the premises, to suffer or permit:
 - (1) Any female person, while on the premises of the commercial establishment, to expose to the public view that area of the human female breast at or below the areola;
 - (2) Any female person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate such portions of the human female breast at or below the areola;
 - (3) Any person, while on the premises of the commercial establishment, to expose

to public view his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage;

- (4) Any person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus, anal cleft or cleavage.
- (b) It shall be unlawful for any female person, while on the premises of a commercial establishment located within the corporate limits of the city, at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view that area of the human female breast at or below the areola thereof or to employ any device or covering which is intended to give the appearance or simulate such areas of the female breast.
- (c) It shall be unlawful for any person, while on the premises of a commercial establishment located within the corporate limits of the city, at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage, or to employ any device or covering which is intended to give the appearance of or to stimulate the genitals, pubic area, buttocks, anus or anal cleft or cleavage.

(Code 1964, § 15-25)

Sec. 3-5. - Possession, consumption and sale of alcoholic beverages on public property.

- (a) *Definitions.* For purposes of this section, the following terms shall have the following meanings:

Alcoholic beverages shall mean any beer, wine, spirits, liquor or any other intoxicating beverage defined or alcoholic beverage as defined in F.S. § 561.01, as may be amended from time to time.

Alcoholic beverage special event permit ("ABSEP") shall mean that certain permit issued by the city council pursuant to this section.

Applicant shall mean any incorporated business, company, or corporate entity hosting a special event within the city and applying for an alcoholic beverage special event permit under this section.

Beer shall have the meaning prescribed by F.S. § 563.01, as may be amended from time to time.

City manager shall mean the officer established in article III of the City Charter or his or her designee.

Wine shall have the meaning prescribed by F.S. § 564.01, as may be amended from time to time.

(b) *Prohibition of consumption.*

(1) Unless specifically enumerated in subsection (c), it shall be unlawful for any person to consume or possess an open container of alcoholic beverages on any property owned by the city, public parks, public sidewalks and rights-of-way, street, alley, public or semi-public parking lots or semi-public spaces, including areas used by the public in conjunction with any business, enterprise, commercial establishment, office building, or apartment building, within the city.

(2) It shall be an affirmative defense that the consumption and/or possession of an open container was within the licensed premises as evidenced by the license and/or permit issued by the state.

a. As used in subsection (1), "open container" means any vessel or container containing an alcoholic beverage, including, but not limited to beer or wine, which is immediately capable of consumption or the seal of which has been broken.

b. An open container shall be considered to be in the possession of the person if the container is in the physical control of such person.

(c) *Exceptions.* The following are exempt from the prohibitions of subsection (b) above:

(1) Alcoholic beverages served and consumed at a duly licensed restaurant or sidewalk café pursuant to chapter 7 of the New Port Richey Land Development Code;

(2) Alcoholic beverages served by a duly licensed business entity at the property located along Nebraska Avenue known as "Railroad Square," and consumed within the boundaries of Railroad Square or while safely crossing Nebraska Avenue right-of-way from Grand Boulevard at a designated crosswalk, provided that notice has been provided to the city manager at least thirty (30) days prior to the date of the event and if, in the sole discretions of the city manager, police or other city services are required, the business entity(ies) giving notice of the event shall be solely responsible for all costs of police and other city services;

(3) Alcoholic beverages served by a duly licensed business entity abutting the city owned parking lots located at 5645 Missouri Avenue and on the south side of Missouri Avenue one hundred fifty (150) feet west of Grand Boulevard and consumed within the boundaries of such lots, provided that notice has been

provided to the city manager at least thirty (30) days prior to the date of the event and if, in the sole discretions of the city manager, police or other city services are required, the business entity(ies) giving notice of the event shall be solely responsible for all costs of police and other city services;

- (4) Alcoholic beverages served and consumed at the city's Peace Hall property pursuant to a duly executed lease or rental of the Peace Hall property;
- (5) Alcoholic beverages served and consumed at the city's incubator property pursuant to a duly executed lease or rental of the incubator property;
- (6) Alcoholic beverages served and consumed at the city's historical society property and/or gazebo associated therewith pursuant to a duly executed lease or rental of the historical society property and/or gazebo;
- (7) Beer and/or wine served and consumed pursuant to an alcoholic beverages special event permit (ABSEP) issued by the city in accordance with subsection (d) below; and
- (8) Beer and/or wine and consumed pursuant to the downtown special event boundary in accordance with subsection (e) below.

All service and consumption pursuant to subsections (c)(2) through (6) above must further comply with the insurance requirements enumerated in subsection (d) below and the requirements and conditions enumerated in subsection (d)(3)d. through l., p. through r. below. Nothing contained herein shall be construed as a limitation on the city's ability to impose additional or different requirements to ensure the health, safety, and welfare of the city and the public at the direction of the city manager in consultation with the police chief.

- (d) *Alcoholic beverages special event permit.* The city council may grant permission for the consumption or possession of beer or wine only on any city owned property, public parks, and/or public sidewalks and rights-of-way by approving an ABSEP application properly filed by an applicant pursuant to this subsection and for city sponsored events, except no such permit may be approved for the New Port Richey Recreation and Aquatic Center or any of the satellite facilities or recreational areas or grounds pertaining thereto.

(1) *Applicant requirements.*

- a. An applicant must be an incorporated non-profit business, company, or corporate entity.
- b. An applicant must be duly licensed by the State of Florida and any other governing entity to serve beer and wine within the city.

- c. An applicant must enter into a written lease agreement and/or an indemnification agreement to indemnify and save harmless the city from any and all liability which may arise as a result of its special event and/or the service of beer and wine through an ABSEP.
- d. An applicant must have insurance coverage from an insurance company duly licensed to do business in the State of Florida naming the city as an additional insured and providing the following coverage for each event:
 - 1. Personal injury with limits of not less than one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) per occurrence;
 - 2. Property damage with limits of not less than one million dollars (\$1,000,000.00); and
 - 3. Liquor liability with limits of not less than one million dollars (\$1,000,000.00).

Applicant agrees to indemnify, defend, save and hold harmless the city and its officials, agents and employees from any claim, demand, suit, loss, cost or expense of any damages which may be asserted, claimed or recovered against or from the city or its officials, agents and employees by reason of any damage to property or personal injury, including death, and which damage, injury or death arises out of or is incidental to or in any way connected with your use of the permitted area or the condition of the permitted area including those arising during the set up and breakdown of the event. This indemnification includes, but is not limited to, compliance with the terms and conditions of the special event permit, the applicant's operations and use of the permitted area or any act or omission of the applicant, its agents, servants, contractors, patrons, guests or invitees and includes any costs, attorney's fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof.

(2) *Application process.*

- a. An applicant shall file an application with the city manager on a form provided by the city manager. Such application must be filed not less than forty-five (45) days prior to the start of the proposed special event and no more than one hundred eighty (180) days prior

to the event. The application shall be accompanied by a filing fee, the amount of which shall be prescribed by resolution of the city council.

- b. All applications that are complete, timely filed with all required attachments and payment of the requisite fee, and filed by applicants meeting all requirements of subsection (2)a. above will be forwarded by the city manager to the special event team for review and recommendation to the city council.
 - c. The city council will consider the ABSEP application at a regular meeting after the special event team has reviewed and provided its recommendation. The city manager will give the applicant notice of the date and time when the application will be reviewed by the city council.
 - d. The decision of the council shall be the final determination on the approval or denial of an ABSEP application. In considering the application, the city council will consider the conditions in subsection (3) below as well as any other factors it deems necessary in order to render its decision.
- (3) *Conditions for ABSEP approval.* The ABSEP shall be subject to the following requirements and conditions as well as any conditions imposed by the city council as part of its ABSEP approval.
- a. No applicant shall be issued more than three (3) ABSEPs per calendar year.
 - b. The applicant shall submit a site plan showing serving areas and shall mark the access point of the serving area with signs informing patrons that beer and wine are not to be taken past the perimeter of the area shown on the site plan, and the applicant shall staff the entrance with such personnel as are necessary to enforce this condition.
 - c. No ABSEP event may exceed three (3) consecutive days in duration.
 - d. The proposed sales and/or consumption of beer and wine must be associated with an event that is open to the public.
 - e. The proposed sales and/or consumption of beer and wine must not unreasonably interfere with or detract from the promotion of public

health, welfare, safety and recreation.

- f. The proposed sales and/or consumption of beer and wine must not entail extraordinary or burdensome expense or police operation by the city.
- g. The sales and/or consumption of beer and wine must not be expected to result in violence, crime or disorderly conduct.
- h. The applicant's representatives and those operating the event must meet state minimum age licensing requirements and have not been convicted of a felony or crime involving moral turpitude.
- i. The applicant shall obtain all necessary federal, state and local permits to engage in the proposed sales and/or consumption of beer and wine.
- j. Hours of operation for the sales and/or consumption of beer and wine shall be limited to noon through 11:00 p.m. for events held on Monday through Saturday and 1:00 p.m. to 9:00 p.m. for events held on Sunday; the applicant shall be fully responsible for enforcing the hours of operation; and the applicant shall be liable for the failure to enforce the hours of operation.
- k. All beer and wine shall be served in plastic containers only, and no cans or glass containers shall be permitted.
- l. The applicant shall provide for proper disposal of litter and waste resulting from the sale and/or consumption of beer and wine.
- m. The applicant shall comply with all ordinances associated with permitting of events upon public property.
- n. The sale, possession and consumption of beer and wine shall be confined to designated and secured areas as illustrated on the site map submitted with the ABSEP application. The sale of beer or wine shall be permitted only in locations indicated on the site map. Alcohol-free zones, if proposed, shall also be illustrated on the site map. The perimeter of the designated area shall be secured for the entire event. Only those alcoholic beverages that are sold by the applicant within the secured areas shall be permitted to be possessed, consumed, or purchased within the said secured areas. It shall be unlawful for any person to bring outside alcoholic beverages that were not purchased or procured through the event into the secured areas. Any person who violates this proscription shall be subject to ejection from the event and shall be subject to arrest.

- o. The applicant shall pay all costs of police and other city services attributable to the sale and/or consumption of beer and wine. On a case by case basis, the city council shall determine the number of city police officers that shall be required for each individual event. The applicant shall reimburse the city for costs incurred in providing such security, including off-duty police officers to be stationed at the playground located in Sims Park at the applicant's expense.
- p. The applicant shall be responsible for ensuring that no person under the age of twenty-one (21) shall be permitted to possess, consume, or distribute any alcoholic beverage at the permitted event. Any person who desires to purchase, possess, or consume alcohol at a permitted event must first present proper identification establishing that such person is of legal age to purchase, possess and consume alcohol in the State of Florida, i.e., age twenty-one (21) or older. After displaying proper proof of legal age, the person desiring to purchase, possess, or consume alcohol shall receive a wristband from the applicant or his/her agent, which shall be attached to the said person's wrist and worn at all times during which that person possesses or consumes an alcoholic beverage at the permitted event. Each wristband shall be constructed of such a material, and in such a manner, that it cannot be removed without destroying or altering the physical form of the wristband.
- q. The applicant is prohibited from serving or selling alcohol to any person who:
 - 1. Appears intoxicated;
 - 2. Is not wearing a wristband; or
 - 3.

Is wearing a wristband that is altered or destroyed.

- r. The applicant shall provide additional rest room facilities (e.g., portable potties) as are necessary to serve patrons of the event.
 - s. Nothing contained herein shall be construed as a limitation on the city council's authority to impose additional or different conditions on an ABSEP.
- (4) *Post event report.* The applicant shall submit a post event report to the city manager, on a form provided by the city manager, not less than ninety (90) days

following the event. It shall contain the total revenue generated from alcohol sales. The report will be forwarded to city council by the city manager.

(e) The "downtown special event alcohol boundary" shall mean the area with the boundaries contained in Exhibit "A" to the ordinance from which this subsection derived [and is on file and available for inspection in the office of the city clerk].

- (1) The "event period" shall mean the time period running from 8:00 a.m. the day of an event to 11:59 p.m. the day of the final day of the event.
- (2) Beer and wine, whether purchased or served from a city-owned or leased location or not, may be consumed within the downtown special event alcohol boundary during an event period on such days as may be approved by resolution of the city council.
- (3) The city council may impose such restrictions upon the ability to consume alcoholic beverages under this subsection as it may deem appropriate in granting such approval. Such restrictions may include but are not limited to any of the matters contained in other portions of section 3-5, City Code and shall be designed to assure public health, safety and order. A violation of any such restriction shall be deemed a violation of this section.

(Code 1964, § 15-24; Ord. No. 1195, § I, 4-18-89; Ord. No. 1320, § 1, 7-6-93; Ord. No. 1387, § 2, 1-2-96; Ord. No. 1503, §§ I, II, 9-21-99; Ord. No. 1731, § I, 10-5-2004; Ord. No. 1780, § 1, 9-20-2005; Ord. No. 1914, § 1, 11-18-2008; Ord. No. 1924, § 1, 11-3-2009; Ord. No. 1928, § 1, 3-16-2010; Ord. No. 1949, § 1, 6-21-2011; Ord. No. 1983, § 1, 2-7-2012; Ord. No. 2014-2027, § 1, 3-13-2014; Ord. No. 2015-2039, §§ 1, 2, 1-6-2015; Ord. No. 2015-2047, § 1, 3-3-2015; Ord. No. 2015-2055, § 2, 4-21-2015; Ord. No. 2016-2065, § 1, 10-20-2015)

Editor's note— Ord. No. 2015-2055, § 2, adopted Apr. 21, 2015, changed the title of § 3-5 from "Possession, consumption and sale of alcoholic beverages" to read as set out herein.

Cross reference— Parks and recreation, Ch. 16.