

beverages is permitted, if the place of business is nearer than 1,000 feet to the place of business of any other vendor wherein on-premises consumption of alcoholic beverages is permitted. This distance shall be measured by following the shortest route of ordinary pedestrian travel, nearest and between the main entrance of the places of business of the vendors. The 1,000-foot distance shall not apply to restaurants. (Code 1988, § 4-3)

Sec. 6-4. Hours of sale.

(a) Alcoholic beverages may be sold, consumed or served or permitted to be served or consumed in any establishment holding a state alcoholic beverage license between the following hours:

- (1) Restaurants, bars, and other on-premises drinking establishments:
All days: 7:00 a.m. until midnight.
- (2) Package sale vendors:
All days: 7:00 a.m. until 2:00 a.m. the next day.
- (3) Any beer, wine or alcoholic beverage, regardless of content, ordered by a patron at an on-premises drinking establishment may be consumed on licensed premises by a patron until no later than midnight. Patrons may continue to occupy the premises until the establishment closes, but may not consume any previously-purchased alcoholic beverage after midnight, except as allowed by an extension of hours permit as defined in section 6-9 below.

(b) Within the meaning of this section, a sale shall be regarded as being made if the alcoholic beverage is delivered to any person during prohibited hours, regardless of whether payment therefor is made at some other time. If any such licensed vendor is a corporation, the officers of such corporation shall be regarded as the owner thereof for purposes of enforcement of this section. No later than one-half hour prior to the latest times listed in section (a) above, the proprietor or his/her designee shall announce a last call for consuming alcoholic beverages, whereby customers may be permitted to complete the consumption of a previously-ordered alcoholic

beverage. Customers shall not be required to vacate the premises, but consumption of said beverages shall occur no later than the latest times listed in section (a) above. Nothing contained in this chapter shall be construed so as to permit any place of business to sell or serve or permit alcoholic beverages to be sold or served during prohibited hours.

(c) However, licensees for the sale of alcoholic beverages in the city shall, on that date known as New Year's Eve (December 31), be permitted to remain open for such sales until 3:00 a.m. the next morning.

(d) At all times that a restaurant serves, sells, or allows consumption of alcoholic beverages, it shall offer a full course menu of food items that have been prepared on-site within the restaurant's commercial kitchen and provide full food service to its customers. A restaurant shall discontinue service, sale and allowed consumption of alcoholic beverages during those hours when the requirement of this section cannot be met. This section cannot be satisfied by allowing customers or the restaurant on behalf of its customers to order and have delivered food from off-site establishments or facilities. This section cannot be satisfied by the restaurant providing ice, beverages with or without garnishment, popcorn, or prepackaged food items sold without additions or preparation.

(e) *Responsible beverage service training.* The following information shall be submitted by any on-premises drinking establishment upon applying for a new business tax receipt or at time of business tax receipt renewal. Applicants shall submit any information that confirms compliance with this section including, but not limited to, certification(s) of training completion and/or an affidavit signed by the establishment's owner or official corporate officer. Additionally, city staff may, at their discretion, request that the establishment resubmit or update this information at any point during the effective term.

- (1) All on-premises drinking establishments shall provide proof that at least one member of staff working on every shift has completed a responsible beverage service training program within the previ-

ous 12 months. Programs provided through other regulatory agencies or commercial providers that substantially cover the same core training material will be accepted for purposes of this requirement. The standards and curriculum of alcohol server education courses reflect industry best practices and shall include but not be limited to the following:

- a. Alcohol as a drug and its effects on the body and behavior, especially driving ability;
- b. Effects of alcohol in combination with commonly used legal, prescription or nonprescription, drugs and illegal drugs;
- c. Recognizing the problem drinker and community treatment programs and agencies;
- d. State alcohol beverage laws such as prohibition of sale to minors and sale to intoxicated persons, sale for on-premises or off-premises consumption, hours of operation and penalties for violation of the laws;
- e. Drunk driving laws and liquor liability statutes;
- f. Intervention with the problem customer including ways to cut off service, ways to deal with the belligerent customer and alternative means of transportation to get the customer safely home;
- g. Advertising and marketing for safe and responsible drinking patterns;
- h. And standard operating procedures for dealing with customers.

(f) Upon application for a new city business tax receipt, the applicant must submit a copy of their menu(s), a copy of their seating establishment license from DBPR's division of hotels and restaurants, proof that the establishment meets the requirements for responsible beverage service training as described in section 6-4(e) above, and sign an affidavit attesting that the sale of food and nonalcoholic beverages consumed on the licensed premises will exceed 51 percent of the

gross revenue of the business. To keep or renew this designation, each year at time of business tax receipt renewal, the applicant must submit to the city a copy of their menu(s), annual point of sale (POS) receipts, as well as a summary that provides the percentage of revenue derived from food and nonalcoholic beverages and the percentage of revenue derived from alcoholic beverages within the preceding 12-month period. In lieu of providing POS receipts and percentages as required above, an establishment may instead submit a signed affidavit from the establishment's owner or official corporate officer stating that the percentage of food and nonalcoholic beverage sales exceeded 51 percent of the annual revenue within the preceding 12-month period, with the condition that city staff may, at their discretion, request additional sales information be provided in-person for review. If a restaurant's menu changes significantly at any time during the year, new menus shall be provided to the city to be reviewed by staff for conformance with this chapter and kept on file with the applicant's business tax receipt.

The city shall have access and the right to examine all records and source documents used to determine compliance with this rule. Licensees must give the city the means, facilities, and opportunity to verify the accuracy of these records. If a business holding a license to sell alcohol with the State of Florida sells less than 51 percent food for consumption of food on the premises compared with sales of alcohol in any year the business is ineligible to be deemed a restaurant pursuant to this section and may not be deemed a restaurant pursuant to this section until the business meets the definition of a restaurant in this section for 12 consecutive months after examination of the records by the city. A hearing before the city's code enforcement board or a hearing officer appointed by the city will be held whenever grounds for revocation of an establishment's restaurant classification exists pursuant to this section.

All audits provided by the licensee must conform to the requirements of the State of Florida, Department of Business and Professional Regulation.

(g) *Intoxicated persons.* It shall be unlawful for any intoxicated person to loiter in and about the business premises used or occupied by any person licensed under the state beverage law. It shall be unlawful for the operator of such premises to allow any such person to remain thereon.

All audits provided by the licensee must conform to the requirements of the State of Florida, Department of Business and Professional Regulation.

(Code 1988, § 4-4; Ord. No. 05-28, § 3, 7-14-05; Ord. No. 08-54, § I, 11-13-08; Ord. No. 24-40, § 4, 11-14-24)

Sec. 6-5. Possession, consumption or display of alcoholic beverages on public property or on premises of unlicensed commercial establishments.

(a) Except as may otherwise be approved by the city commission special event permit, it is unlawful for anyone to possess, consume or display an open container of alcoholic beverages on public sidewalks, streets or other public property. City commission approval is not required if alcohol is served as part of a special event that has been administratively approved by city staff at city-owned venues

(b) No person or business shall sell alcoholic beverages, offer alcoholic beverages as an added benefit or condition of another sale or paid service, or cause alcoholic beverages to be added to any other beverage for sale on the premises of any commercial establishment unless the owner of the establishment is licensed to sell alcoholic beverages to be consumed on the premises or the alcohol is sold as part of an approved special event by a third party vendor who holds a valid catering license. For the purpose of this section, the term "alcoholic beverages" shall include all beverages containing more than one percent alcohol by weight; and the term "premises" shall include the parking area of the commercial establishment.

(c) *Winter Garden Theatre.* The Winter Garden Theatre existing upon city owned property located at 160 West Plant Street, having Orange County Tax Parcel Identification #23-22-27-2888-03-034

is permitted to sell and serve alcoholic beverages for on-premises consumption in accordance with its state alcoholic beverage license during hours in which the Winter Garden Theatre is open to patrons to attend screenings, shows, productions, and performances, provided that such hours are not inconsistent with section 6-4(a).

(Code 1988, § 4-5; Ord. No. 01-08, § I, 1-11-01; Ord. No. 05-28, § 4, 7-14-05; Ord. No. 24-40, § 5, 11-14-24)

Cross reference—Streets and sidewalks, ch. 62.

Sec. 6-6. Bottle clubs.

(a) For purposes of this section, the term "bottle club" means a business establishment to which patrons bring with them alcoholic beverages to be consumed on the business premises in connection with the viewing for a consideration of entertainment or to be consumed with a mixer or other beverage furnished by the business establishment for a consideration, but which business establishment is not licensed to sell alcoholic beverages.

(b) The operation of bottle clubs within the city is prohibited.

(c) Reserved.

(Code 1988, § 4-6; Ord. No. 05-28, § 5, 7-14-05)

State law reference—License required for bottle clubs, F.S. § 561.14(6).

Sec. 6-7. Package sale vendors.

(a) *Package sale vendor distance requirements established.* For all those certain areas of land in the city that lie within 5,000 feet of a package sale vendor's place of business as established, located and licensed, regardless of whether such established place of business is located within or outside of the city, no other new relocated package sale vendor shall be permitted to open and/or start the business of package sales within that distance except as provided in subsection (e).

(b) *Package sales within distance requirements restricted.* The purpose of creating the distance requirements mentioned in subsection (a) of this section is to provide and require that no package sale vendor which is located or proposes to locate in the city shall be permitted to operate at a new location within a distance of

5,000 feet of the location of any package sale vendor which is both pre-existing at the time of the package sale vendor's application to operate at the new location and is located in any area of the city.

(c) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirements set forth in subsections (a) and (b) shall not be applied to the location of an existing package sale vendor when there is:

- (i) A renewal of an existing license;
- (ii) A transfer in ownership;
- (iii) A change in business name; or
- (iv) A change in a state issued 4COP license for an existing package and lounge business to a 3PS license, and any decrease in the numerical designation of a state issued license which is of the same series (type); provided the physical location of the package sale vendor establishment does not change. No increase in the numerical designation of a series (type) of a state issued license which is of the same series (type) shall be permitted at or for a location (new or existing) except in compliance with the provisions of section 6-8.

(d) *Measurement of distances.* The distances provided in this section shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the proposed main entrance of a package sale vendor who proposes to operate the place of business and is licensed under the Beverage Law [F.S. chs. 561—568] to the main entrance of any other package sale vendor who is operating such business.

(e) *Incidental package sales with grocery stores.* A package sale vendor place of business that meets the following requirements is not required to comply with the 5,000-foot distance separation requirement of subsection (a) and (b) above:

- (1) The package sale vendor place of business is under the same ownership and operating under the same business name

as a grocery store having at least 30,000 square feet of retail space and that is operating within 500 feet of such package sale vendor place of business;

- (2) The grocery store must have as its primary business the retail sales of food and household items, and the sale of alcoholic beverages must be an incidental portion of the business. Alcoholic beverage sales must not exceed ten percent of overall revenue for the combined grocery store and package sale vendor place of business;
- (3) The package sale vendor place of business must not be open for business when the grocery store is closed for business. If the grocery store ever ceases operations, then the package sale vendor place of business must close;
- (4) The package sale vendor's sale and display area must not be larger than ten percent of the retail space square footage of the grocery store; and
- (5) The package sale vendor place of business must comply with any other applicable requirements of state and local laws, regulations, codes, and ordinances, including any other applicable distance separation requirements.

(Ord. No. 15-21, § II, 2-26-15; Ord. No. 24-40, § 6, 11-14-24)

Section 6-8. Violations.

Any violation of this chapter is a misdemeanor of the second degree and any person found guilty of violating this chapter shall be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days. Each violation of any section of this chapter shall constitute a separate offense.

In addition, the city commission may, when it deems it to be in the public interest and following a public hearing, rescind the occupational license issued under section 66-104 to any person convicted of a violation of this chapter or of any

business whose agent is convicted of violating this chapter within the scope of his employment. (Ord. No. 05-28, § 6, 7-14-05; Ord. No. 15-21, § III, 2-26-15)

Sec. 6-9. Extended hours of sale.

(a) Hours of sale may be extended by permit only so that alcoholic beverages may be sold, consumed or served or permitted to be served or consumed in any restaurants, bars, and other on-premises drinking establishment holding a state alcoholic beverage license between the following hours:

- (1) City-wide:
All days: midnight until 2:00 a.m.
- (2) With an approved extension of hours permit, any beer, wine or alcoholic beverage, regardless of content, may be consumed on licensed premises by a patron until no later than 2:00 a.m. As a condition of the extension of hours permit, at 2:00 a.m. the establishment shall close to the public and patrons must immediately vacate the premises and the establishment may not reopen to the public until 7:00 a.m.

(b) *Permit required.* Any establishment within the city that is licensed under the state beverage laws and desires to remain open for the purpose of the sale, service, or consumption of alcoholic beverages between the hours of midnight and 2:00 a.m., may make an application with the city for an extension of hours permit. However, motion picture theaters as defined by F.S. ch. 540, are exempted from the permit requirement so long as their principal business is not the sale, service, or consumption of alcoholic beverages. No permit may be issued to an establishment that has any outstanding obligations to the city, including but not limited to any code violations or liens.

(c) *Application form.* The application form for the extension of hours permit shall be provided by the city and will require information about the establishment, including, though not exclusively, the name and address of the establishment, the name(s), address(es), and telephone number(s) of the owner(s) of the establishment and the property on which the establishment is

located, the name(s) and telephone number(s) of the responsible person(s), the maximum occupancy of the establishment, the type of alcohol license possessed by the establishment, and the name and address where notices related to enforcement of this section are to be mailed or delivered. By applying for an extension of hours permit, an applicant and its establishment agrees to comply with any requirements of this chapter as well as city code, state, and federal law as a condition of receiving such permit. Permit holders are required to amend the permit application that is on file with the city within ten days of any change in the information set forth on the application form. All extension of hours permits shall require the signed approval of the city manager and the initialed approval of all members of the reviewing committee.

(d) *Permit application fee.* Prior to the issuance of a renewal or new extension of hours permit under this section, the applicant shall be required to pay a fee in the amount of \$250.00. The application fee will be utilized to reimburse the city for its costs to administer the permit program, as well as inspecting and regulating the use that has been authorized under the permit.

(e) *Public safety measures.* The chief of police in conjunction with city staff shall determine whether and to what extent state-licensed private security or police protection is reasonably necessary inside and outside of permitted establishments for the purpose of traffic control and public safety. The chief of police in conjunction with city staff shall base this decision on the occupancy, type of alcohol license, traffic control, history of incidents that have previously occurred at or were related to the establishment, and any other factor reasonably related to public safety. If such police protection or security is deemed necessary by the chief of police in conjunction with city staff, the city will inform the permit applicant, specifying the number of state-licensed security that are necessary to be placed inside the establishment, the number of police officers that are necessary to be placed outside of the establishment and the number, and the particular time and days that such state-licensed security or police officers are required.

Officers placed outside the establishment may be deployed anywhere within the city by the chief of police, or his or her designee, to most effectively provide for traffic control and public safety. For state-licensed private security protection, the details and documentation shall be provided to the chief of police in conjunction with city staff for review. The applicant shall secure the police protection or state-licensed private security deemed necessary by the chief of police in conjunction with city staff at the sole expense of the applicant.

(f) *Permit review.* The city manager, or his or her designee, shall convene a committee to review all applications for extension of hours permits. The committee shall consist of city staff including, at a minimum, the city manager, police chief, fire chief, planning director, public services director, and economic development director. The committee shall review the permit application and, if the application is complete and is approved by the committee, a permit may be issued to the establishment authorizing it to sell alcohol between the hours of midnight and 2:00 a.m., subject to the conditions of the permit, as well as the provisions of this section and applicable laws, rules, and regulations.

(g) *Conditions of permit.* Each establishment must abide by all reasonable conditions placed upon the extension of hours permit, including, but not limited to the public safety measures outlined in this section, the requirements of this chapter, and any requirements associated with such establishment's retail beverage license and F.S. ch. 562.

(h) *Permit effective term.* The permit is effective for an annual term of October 1 to September 30 to coincide with issuance or renewal of the establishment's business tax receipt, unless revoked or suspended as provided herein, or in the event the establishment ceases to operate at the permit location. Each permit issued under this section must be renewed annually at time of business tax receipt renewal. The permit application fee may be prorated if a new permit is issued before October 1 of that year. In addition, within ten days after a change in ownership or a change

in location of the establishment during the term, the establishment must submit a new application for permit.

(i) *Display of decal.* Upon the issuance of a permit under this section, the city shall also issue a decal to the establishment indicating the establishment's hours of operation, occupancy, and the expiration of the permit. Such decal shall be conspicuously displayed at or about the primary place of ingress of the establishment in a fashion that it is visible from outside the establishment.

(j) *Prohibition.* Except as otherwise provided in this section, no establishment may sell, serve, or permit to be served or consumed, alcoholic beverages between the hours of midnight and 2:00 a.m. unless it is operating under a valid and effective extension of hours permit.

(k) *Prior to midnight.* The provisions of this section shall not impair or impact an establishment's right to remain open and sell, serve, or permit to be served or consumed, alcohol between the hours of 7:00 a.m. and midnight, if otherwise authorized by law.

(l) *No right to permit.* The ability to sell, offer for sale, provide service, or permit to be served or consumed upon the premises of any establishment, any alcoholic beverage between the hours of midnight and 2:00 a.m. within the city is hereby declared to be and is a privilege subject to suspension or revocation by the city, and no person may reasonably rely on a continuation of that privilege.

(m) *Suspension of permit.*

(1) As a condition of being allowed the privilege of serving alcohol between the hours of midnight and 2:00 a.m., establishments shall be required to take all necessary steps to minimize the negative impacts that their establishments may cause in and around their licensed premises as well as in nearby residential or commercial areas. The code enforcement board or hearing officer appointed

by the city shall consider the following in deciding whether to suspend, condition, or revoke the privilege:

- a. Illegal activities on the establishment's licensed premises during the extra hours of operation, both outside and inside the permitted location, with particular emphasis on vandalism, the establishment's employees allowing underage drinking, violations of open container laws, and allowing loitering by intoxicated individuals on the premises.
 - b. Complaints verified by law enforcement officers arising from adverse effects extended hours of operation have upon neighboring properties, including complaints concerning the effects of noise, vandalism, generation of trash or garbage, and/or loitering by intoxicated persons. It shall be a defense to the applicability of this section that the establishment has secured adequate security personnel or police protection per section 6-9(e) above to assure the orderly conduct of patrons both on and off-premises.
 - c. Violation of any provisions of the City of Winter Garden Code of Ordinances, state or federal law.
 - d. Failure to obtain an extension of hours permit or failure to renew the permit as required by section 6-9(h) above.
- (2) In order to invoke the enforcement provisions of this section, the activities described herein must be traceable to the particular establishment against whom action is being taken. Although not required, law enforcement officers can, at their discretion, issue warnings that shall not be considered a notice of violation, to put the establishment on notice that a particular problem or problems must be addressed and could result in a notice of violation if not corrected.
- (3) Within any consecutive three month period, if an establishment meets, or where applicable, fails to meet the criteria established in sections 6-9(m)(1)a.—d. above:
- a. On the first occasion, the establishment shall be issued a notice of violation that shall constitute a warning. If no additional violations occur within the consecutive three month time period, then no further action shall be taken by the city against the establishment.
 - b. On the second occasion, the establishment shall be issued a second notice of violation and will be required to have a meeting with city staff including, at a minimum, the city manager, police chief, fire chief, planning director, public services director, and economic development director to discuss the issue. The establishment shall then submit to the city a mitigation plan that outlines how the establishment has cured or is reasonably designed to cure or otherwise prevent future occurrences of the violation(s). If city staff determines that the establishment has a mitigation plan that has cured, is reasonably designed to cure, or otherwise taken reasonable actions to prevent future occurrences of the violation(s), then, in lieu of proceeding to a hearing in front of the code enforcement board or a hearing officer appointed by the city, the city may amend the establishment's extension of hours permit to include, as a condition thereof, the mitigation plan.
 - c. On the third occasion, the establishment shall be issued a third notice of violation and the matter shall be heard in front of the code enforcement board or hearing officer appointed by the city to consider suspension or revocation of the establishment's extension of hours permit.

(n) *Duration of suspension.*

- (1) Suspensions shall be for a period of 30 days, beginning on the date following the finding of suspension by the code enforcement board or hearing officer appointed by the city.
- (2) Should additional grounds for suspension occur while the establishment's permit is suspended, the city shall recommend revocation of the extension of hours permit in a hearing in front of the code enforcement board or hearing officer appointed by the city.
- (3) In determining if the mitigation plan submitted by the establishment has cured or is reasonably designed to cure or otherwise prevent future occurrences of the violation, the city may consider any relevant information, including but not limited to, input from the Winter Garden Police Department, code enforcement, the fire chief, and citizen complaints regarding the establishment.
- (4) No establishment has a right to alter the conditions of the permit in lieu of a hearing or suspension.

(o) *Revocation of permit.* The city shall recommend revocation of the extension of hours permit for the amount of time remaining on the current permit or six months, whichever is greater, if:

- (1) Information provided in the application for the permit, including a renewal permit, is false, deceptive, willfully incorrect, or intentionally misleading; or
- (2) The establishment's extension of hours permit has been suspended as provided for herein two times within a consecutive 12-month period.

(p) *Procedures.* Notice and opportunity to be heard:

- (1) A hearing before the city code enforcement board or a hearing officer appointed by the city will be held whenever grounds for suspension or revocation exist pursuant to this section. The permittee must be advised in writing of the date, time,

and place of such hearing either by personal service upon a responsible person at the establishment or by notice mailed by certified mail to the address provided on the permit, no later than seven days before the date of the hearing.

- (2) The hearing will be conducted in accordance with the principles of due process and shall not be subject to the formal rules of evidence. The city bears the burden to prove the basis for suspension or revocation by a preponderance of the evidence. It is the responsibility of any party wishing to have a transcript of the proceedings to provide a stenographer at their own expense.
- (3) In determining whether to suspend or revoke the permit, the code enforcement board or hearing officer appointed by the city will consider any evidence presented by the establishment that it could not have taken reasonable steps to prevent the applicable violation from occurring, and it may be determined that suspension or revocation is or is not warranted based upon the culpability of the establishment.
- (4) The code enforcement board or hearing officer shall base the order on the criteria listed in this section. For the purposes of suspension or revocation under this section, calculation of the time periods will be construed from the date each violation occurred. Guilty pleas, no contest pleas, default judgments, payment of citations, or any other finding of a violation by a court of competent jurisdiction or by the procedure provided within city Code shall constitute proof of a prior violation, regardless of whether adjudication was withheld or not. Nothing in this section shall be deemed to allow permittees to relitigate previously adjudicated violations. Code enforcement officers, police officers, or other city officials may bring proof of separate violations to the hearing officer which, if proven by a preponderance of