

## **Chapter 66**

### **ALCOHOLIC BEVERAGES**

**[HISTORY: Adopted by the Town Council of the Town of Callahan as indicated in article histories. Amendments noted where applicable.]**

#### **GENERAL REFERENCES**

**Vehicles and traffic — See Ch. 173.**

#### **ARTICLE I Vendor Licensing [Adopted 12-3-1951 by Ord. No. AB-1]**

##### **§ 66-1. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**ALCOHOLIC BEVERAGES** — Includes all beverages containing more than 1% of alcohol by weight.

**BEER** — Extends to and includes all brewed beverages containing malt.

**DISTILLER** — Any person who owns, occupies, carries on, works in, conducts or operate any distillery, either by himself or by his agent.

**INTOXICATING BEVERAGE** and **INTOXICATING LIQUOR** — Includes only those liquors, wines and beers containing more than three and 3.2% of alcohol by weight.

**LIQUOR** — Includes any and all distilled or rectified spirits, brandy, rum, gin, cordial or similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing.

**PERSON** — An individual, company, firm, copartnership or association.

**VENDOR** — Any person, firm or corporation selling or offering for sale or keeping with the intention of selling liquor, beer or wine as defined herein.

**WINE** — The product of the normal alcoholic fermentation of fresh fruit with the usual treatment and necessary additions to correct defects, including champagne, sparkling and fortified wines of any alcoholic content not to exceed 24% by volume.

##### **§ 66-2. License required.**

- A. From and after the date when this article becomes effective, no person shall engage in, manage, operate or cause to be operated the business of vendor, as defined herein, without first procuring a Town license therefor as herein provided and pay the amounts hereinafter fixed and required by this article. He shall make sworn application to the Town Council through the Town Clerk, which application shall show the name, occupation and place of

business, together with such information as may be required by the Town Council, and the said applicant for such license shall give the names of five business or professional references from the community who may be called upon by the Town Council of Callahan for information as to the character, business integrity and past history of the person, firm or corporation applying for said license under the terms of this article.

- B. Such application, together with a notice as to when said application will be considered by the Town Council, shall be posted at the Town Hall for a period of two weeks immediately prior to the date of the hearing thereof, at which time any person interested may appear and object to the granting of said license to said applicant. Thereafter, the Town Council shall consider said application and either grant or reject the same according to its best judgment and discretion.
- C. Where such applicant shall have been issued a license under this article or prior ordinances and such licenses and continuations thereof have not been revoked and his qualifications not impaired, such applicant shall be entitled to receive licenses for succeeding years as a matter of course by application to the Town Clerk and the payment of the required tax.

**§ 66-3. Term of license; nontransferability.**

- A. No license shall be issued except annual licenses, which shall be paid for on or before October 1 and shall expire the last day of the succeeding September, provided that any person beginning business on or after the first of April of any year may procure a license expiring the last day of September of the same year on the payment of 1/2 of the annual license tax; provided, however, that vendors may at any time obtain licenses for periods of six months from the date of the license upon payment of 2/3 of the annual license tax herein required.
- B. No license or licenses issued under the provisions of this article shall be transferable or assignable from one person to another nor from one location to another, except where such business must be removed to another location for reasons beyond the control of the licensee and then only upon express permit of the Town Council of the Town of Callahan.

**§ 66-4. through § 66-5. (Reserved) <sup>1</sup>**

**§ 66-6. No exemptions of license tax.**

There shall be no exemptions from license taxes herein provided to any person, firm or corporation or association of persons, any other law to the contrary notwithstanding.

**§ 66-7. (Reserved) <sup>2</sup>**

**§ 66-8. Curb services prohibited.**

No liquor or intoxicating beverages, except beer and ale, shall be sold or served to persons in

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1. Editor's Note: Former §§ 66-4, Location restrictions, and 66-5, Number of licenses to be issued, were repealed 7-21-2008 by Ord. No. 2008-11.

2. Editor's Note: Former § 66-7, Sale prohibited in certain places, was repealed 7-21-2008 by Ord. No. 2008-11.

automobiles, and all curb service of liquors and intoxicating beverages, except beer and ale, is hereby prohibited.

**§ 66-9. (Reserved) <sup>3</sup>**

**§ 66-10. Issuance to persons convicted of felony prohibited.**

No license shall be issued under the terms of this article to any person convicted of felony.

**§ 66-11. through § 66-13. (Reserved) <sup>4</sup>**

**§ 66-14. Games of chance on premises.**

No vendor licensed to sell intoxicating beverages for consumption on or off the premises shall allow any games of chance or skill or punch or draw boards to be located, played or used in any room connecting directly or indirectly therewith through stairways, hallway doors or other means of ingress or egress.

**§ 66-15. (Reserved) <sup>5</sup>**

**§ 66-16. Stamps, marks and labels required.**

No liquor, wine, beer, ale or intoxicating beverage shall be sold by any person, firm or corporation under this article where the container thereof does not have and bear the stamps, marks and labels required by the laws of the State of Florida and of the United States relating to intoxicating beverages.

**§ 66-17. Possession of alcohol restricted by weight.**

The possession by a licensee under this article or a licensee under any other existing ordinance of the Town of Callahan of beverages containing more than 1% of alcohol by weight not permitted to be sold by said licensee shall be *prima facie* evidence that such beverages are being sold by such licensee.

**§ 66-18. (Reserved) <sup>6</sup>**

**§ 66-19. Each day to constitute separate violation.**

Each days' selling or disposing of beverages covered by this article without first complying with the provisions of this article will constitute a separate and distinct violation of this article.

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3. Editor's Note: Former § 66-9, Sale to certain persons prohibited, was repealed 7-21-2008 by Ord. No. 2008-11.

4. Editor's Note: Former §§ 66-11, Other limitations, 66-12, Election days, and 66-13, Hours of sale, were repealed 7-21-2008 by Ord. No. 2008-11.

5. Editor's Note: Former § 66-15, Structural requirements, was repealed 7-19-2010 by Ord. No. 2010-08.

6. Editor's Note: Former § 66-18, Sale of other merchandise prohibited, was repealed 7-21-2008 by Ord. No. 2008-11.

**§ 66-20. Separate license for each location.**

From and after the date of adoption of this article, no person, firm or corporation shall engage in or manage, carry on or conduct the business of vendor, distiller, rectifier, winery or club without first having obtained a separate annual license for each location in the Town of Callahan and having paid the tax for said annual license as provided for in the general laws of the State of Florida.

**§ 66-21. Amount of license tax.**

The license shall be 50% of the state and county license tax.

**§ 66-22. Right to renew license.**

Nothing in this article shall be deemed to abridge or cancel any privilege or right of renewal of license of any vendor now licensed under existing ordinances of the Town of Callahan.

**§ 66-23. Penalties for offenses.**

Any person or persons, firm or corporation or any member of any firm or corporation violating the provisions of this article shall, upon conviction, be punished by a fine not exceeding \$500 or by imprisonment for a period not exceeding 60 days or by both fine and imprisonment, in the discretion of the Mayor, and in addition thereto the license held by such person or corporation may be revoked, in the discretion of the Town Council.

**ARTICLE II**  
**Seizure of Illegal Apparatus**  
[Adopted 9-6-1954 by Ord. No. 8-1954]

**§ 66-24. Forfeiture of seized apparatus.**

Any vehicle, vessel, aircraft or any animal used in the transportation or removal of, or for the deposit or concealment of, any illicit liquor still or stilling apparatus of any mash, wort, wash or other fermented liquids capable of being distilled or manufactured into an alcoholic beverage containing more than 1% of alcohol by weight or any alcoholic beverage, commonly known and referred to as "moonshine whiskey," where seized by a municipal police officer within the corporate limits of the Town of Callahan, Florida, shall be forfeited, as provided for by the general state law, and all sums received therefrom shall go into the general operating fund of the Town.

**ARTICLE III**  
**Location of Businesses**  
[Adopted 11-25-1974 by Ord. No. 11-1974]

**§ 66-25. Proximity to school or church.** [Amended 7-21-2008 by Ord. No. 2008-11]

No vendor of alcoholic beverages shall be issued a permit to operate a business selling alcoholic beverages within 500 feet of any established school, church, day-care center, or publicly owned park.

**§ 66-25.1. Distance from other establishments selling alcoholic beverages.** [Added 7-21-2008 by Ord. No. 2008-11]

No license shall be issued to a vendor to sell alcoholic beverages that does not derive at least 51% of its gross revenue from the sale of products other than alcoholic beverages within 2,500 feet of another vendor that sells alcoholic beverages that also does not derive at least 51% of its gross revenue from the sale of products other than alcoholic beverages.

**§ 66-25.2. Audit of business records and procedure for establishing revenue percentages.** [Added 7-6-2009 by Ord. No. 2009-05]

- A. Upon written request from the Mayor or the Mayor's designated official, any business that sells alcoholic beverages within the Town of Callahan must allow the Town to inspect its records that establish the total amount of its gross revenue, the amount of its gross revenue derived from the sale of alcoholic beverages, and the amount of its gross revenue derived from the sale of products other than alcoholic beverages.
- B. The request shall specify the documents sought. The vendor shall comply with the request within 30 days of its issuance. Documents requested may include federal and state tax returns, sales tax records, accounting databases or files, invoices, banking records, and cash register records. Other records may be requested in addition to those listed if necessary to determine revenue percentages.
- C. If, in the judgment of the Mayor or the Mayor's designated official, the documents indicate revenue percentages that violate the location restrictions of this chapter or state law, the Town Council shall conduct a public hearing to determine whether the vendor's revenue percentages violate local or state location restrictions. If they do, then the Town Council may immediately revoke the vendor's local license to sell alcoholic beverages or require the vendor to appear at another hearing in six months to determine whether the vendor's revenue percentages still violate location restrictions. If, at the second hearing, the Town Council determines the revenue percentages still violate location restrictions, then the vendor's license shall be immediately revoked.
- D. Failure to comply with the Town's request for records or to maintain adequate records from which the vendor's percentage of revenue derived from the sale of alcoholic beverages may be readily determined shall provide a basis for the Town Council to immediately revoke the vendor's local license to sell alcoholic beverages.
- E. If a vendor does not have a history of sales from which revenue percentages can be ascertained, the vendor must present clear and convincing evidence that its projected revenues will not result in a violation of any location restrictions. Town officials and members of the public may present evidence at the license hearing to rebut the vendor's evidence.
- F. At all hearings, the vendor bears the burden of proving its entitlement to a license and that its licensure will not violate any state or local laws.

**§ 66-26. Existing licenses.** [Amended 7-21-2008 by Ord. No. 2008-11]

Licenses to sell alcoholic beverages that existed on the effective date of this article or any

amendments to this article, as well as the renewal of those licenses, shall not in any manner be affected by this article or any amendments to it, except existing licenses and their renewals shall not be transferred to a new locations in violation of this article.

**§ 66-27. Measurement of distances.** [Amended 7-21-2008 by Ord. No. 2008-11]

The distances provided for by this article concerning the location or proposed location of a business licensed to sell alcoholic beverages shall be measured by following the shortest route of ordinary pedestrian travel along public thoroughfares from the main entrance of the proposed or existing licensee to the main entrance of the other licensee, church, or day-care center or, in the case of schools or public parks, to the nearest point of the real property used for a school or public park.

**§ 66-28. Penalties for offenses.**

Violation of this article shall be punishable by a fine of not more than \$500, or by imprisonment for not more than 60 days.

**§ 66-28.1. Variances.** [Added 7-21-2008 by Ord. No. 2008-11]

Upon the application of a licensee or license applicant, the location restrictions imposed by this article may be varied by the Town Council, subject to the following limitations and requirements:

- A. The variance does not allow the location of a vendor of alcoholic beverages that is not also licensed as a restaurant that derives 51% or more of its gross revenues from the sale of food or nonalcoholic beverages to locate with 500 feet of real property that comprises a public or private elementary school, middle school, or secondary school.
- B. In the case of proximity to churches, schools, or day-care centers, all churches, schools, and day-care centers within 500 feet of the vendor's location must be notified by regular mail of the vendor's proposed location and licensure.
- C. Any request for a variance must be considered in conjunction with a public hearing before the Town Council advertised in accordance with statutory requirements for public hearings on ordinances not involving land use changes.
- D. The Town Council finds that the public welfare is benefited by the variance.
- E. If additional requirements or restrictions governing the variance applicant's sale of alcoholic beverages are necessary to protect the public welfare, the Town Council may impose them.

**ARTICLE IV  
Hours of Sale**

**[Adopted 6-7-1982 by Ord. No. 1982-1 (supersedes Ord. No. 9-1974)]**

**§ 66-29. Definitions.**

For the purposes of this article, the following terms and definitions shall have the meaning given herein:

**ALCOHOLIC BEVERAGES** — All beverages containing more than 1% of alcohol by weight.

**ESTABLISHMENTS** — Any places of business where alcoholic beverages are sold, served or permitted to be served or consumed, and licensed under the Division of Alcoholic Beverages and Tobacco.

**MUNICIPALITY** — The incorporated area of the Town of Callahan, Florida.

**SALE** — Any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with or as a part of a transfer of property, other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage or permitting an alcoholic beverage to be served or consumed in any place holding a license under the Division of Alcoholic Beverages and Tobacco.

**§ 66-30. Hours of sale.**

No alcoholic beverages may be sold, consumed, served or permitted to be served or consumed in or on the grounds of any establishment within the municipality of Callahan, Florida, between the hours of 2:00 a.m. and 2:00 p.m. on any Sunday, or between 2:00 a.m. and 7:00 a.m. on any day other than a Sunday.

**§ 66-31. Penalties for offenses.**

Any person that shall fail to comply with or violate any of the provisions of this article and, upon conviction thereof, shall be fined not more than \$500 and/or imprisoned for a term not exceeding 60 days.

**ARTICLE V**  
**Public Consumption**  
[Adopted 5-16-1988 by Ord. No. 5-0-1988]

**§ 66-32. Public consumption prohibited.**

It shall be unlawful for any person to consume or drink any beer, wine or other intoxicating beverage on any public street, highway, right-of-way, sidewalk, boardwalk, city-owned athletic fields, parks, playgrounds, buildings and recreation centers or other public places not duly licensed to permit consumption of said beverages on the premises in the City of Callahan, Florida. Possession of an open container containing an alcoholic beverage by any person in the areas prohibited by this section shall be *prima facie* evidence of a violation of this section.

**§ 66-33. Penalties for offenses.**

Any person found guilty of violating the provisions of this article shall be fined a sum not to exceed \$100 or shall be imprisoned for a term not exceeding 10 days, or by both such fine and imprisonment.

**ARTICLE VI**  
**Motor Vehicles**  
[Adopted 6-6-1988 as Ord. No. 6-0-1988]

**§ 66-34. Consumption while operating motor vehicle.**

It shall be unlawful for any person to consume any alcoholic beverage while operating a motor vehicle on the public streets of this city. For the purpose of this section, "motor vehicles" means the same as "motor vehicle" as defined in F.S. § 320.01, together with mopeds and any other motorized vehicle. "Alcoholic beverage" means the same as such is defined in F.S. § 561.01.

**§ 66-35. Open containers.**

It shall be unlawful for any person to have in his or her possession any cup, can or other open or unsealed container, without limitation, of any alcoholic beverage, in the passenger compartment or within the reach of any driver or passenger of any motor vehicle while such vehicle is being operated on any of the streets, roads, highways or parking areas or lots within the city. This provision shall not apply to licensed wholesalers, distillers, retailers or jobbers transporting such beverages in the ordinary course of business.