

ORDINANCE NO. _____
0-07-121

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An ordinance of the City of Gainesville, Florida, creating a new Article III of Chapter 4 of the Gainesville Code of Ordinances entitled "Underage Prohibition in Alcoholic Beverage Establishments" which restricts patronage of persons under 21 years of age in alcoholic beverage establishments under certain conditions; providing definitions; providing criteria for issuance of an Underage Prohibition Order; providing for an administrative hearing; providing exceptions; providing penalties; amending section 2-339 of the Code of Ordinances relating to the civil citation table of applicable codes and ordinances; providing for injunctive relief; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

18 WHEREAS, at least 10 days notice has been given once by publication in a newspaper of
19 general circulation notifying the public of this proposed ordinance and of a Public Hearing in the
20 City Commission Auditorium in City Hall, City of Gainesville; and

21 WHEREAS, a Public Hearing was held pursuant to the published notice described at
22 which hearing the parties in interest and all others had an opportunity to be and were, in fact,
23 heard;

24 NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE
25 CITY OF GAINESVILLE, FLORIDA;

26 Section 1. A new Article III of Chapter 4 of the Gainesville Code of Ordinances
27 consisting of Section 4-50 through 4-56 is hereby created and added to the Code of Ordinances to
28 read as follows:

29 Article III. Underage Prohibition In Alcoholic Beverage Establishments.

30 DIVISION 1. GENERALLY.

31 Sec. 4-50. Title.

1 This article shall be known and cited as the "Underage Prohibition in Alcoholic
2 Beverage Establishments Act."

3 **Sec. 4-51. Definitions.**

4 For the purposes of this article, the following terms, phrases, words and their
5 derivations shall have the meanings given herein. When not inconsistent with the context,
6 words used in the present tense include the future; words in the plural number include the
7 singular number. The word "shall" is mandatory and "may" is permissive. Words not
8 defined shall be given their common and ordinary meaning.

9 "Alcoholic beverage establishment" means any establishment that possesses any
10 alcoholic beverage license from the Division of Alcoholic Beverages and Tobacco Bureau of
11 Licensing which permits the consumption or alcohol on premises and includes any place or
12 location, licensed or unlicensed, within the city where a person may exchange something or
13 pay another for an article or product that is alcoholic in nature or where an article or product
14 for a consideration is sold, dispensed, served or provided, with the knowledge, actual or
15 implied, that the article or product will be, or is intended to be, mixed, combined with or
16 drunk on or about the premises in connection or combination with an alcoholic beverage.

17 "Quarter" means , for purposes of this Article, the period January 1st through March
18 31st; April 1st through June 30th; July 1st through September 30th and October 1st through
19 December 31st.

20 "Underage Drinking Incident" means any physical arrest or notice to appear (NTA)
21 issued for possession or consumption of an alcoholic beverage by a person under the age of
22 21 which results in an adjudication of guilt, finding of guilt with adjudication withheld, waiver of

1 right to contest the violation, plea of no contest including, but not limited to, payment of fine or civil
2 penalty, or entering into an agreement for deferred prosecution.

3 “Underage Prohibition Order” means an order issued by the city manager or
4 designee which prohibits an alcoholic beverage establishment as herein defined, from
5 admitting patrons under the age of 21 into such establishment during specified times.

6 **Sec. 4-52. Prohibition.**

7 It shall be unlawful for any person under the age of 21 years to enter or remain in any
8 alcoholic beverage establishment as defined in this Article, or to be permitted to enter and
9 remain in any alcoholic beverage establishment from 9:00 p.m. to 2:00 a.m. the following
10 day by an owner, manager, employee, independent contractor or promoter of such alcoholic
11 beverage establishment if an Underage Prohibition Order is issued to such alcoholic beverage
12 establishment in accordance with the provisions of this Article. An Underage Prohibition
13 Order shall become effective on the 11th day after the date of service of the Order if no
14 appeal is filed, or if a request for an administrative hearing is filed, on the 17th day after all
15 administrative action has been concluded, or if appeal is made to a court of competent
16 jurisdiction, after a final order has been entered by that court.

17 **Sec. 4-53. Underage Prohibition Order**

18 (a) An alcoholic beverage establishment shall be issued an Underage Prohibition
19 Order if the following number of Underage Drinking Incidents have occurred at such
20 alcoholic beverage establishment during any quarter as the term is defined herein:

21 (1) Aggregate occupancy load less than 201: five or more.

22 (2) Aggregate occupancy load of 201 or greater: ten or more.

1 **(b) The final result of any Underage Drinking Incident which may subject an**
2 **alcoholic beverage establishment to an Underage Prohibition Order, need not occur within**
3 **the quarter of the Underage Drinking Incident.**

4 **(c) If an alcoholic beverage establishment is the site of the requisite number of**
5 **Underage Drinking Incidents as provided in subsection (a) above, the following procedure**
6 **shall be followed:**

7 **(1) The city manager or designee shall issue the Underage Prohibition**
8 **Order against the alcoholic beverage establishment within 45 days from the**
9 **date that such alcoholic beverage establishment has been the site of the**
10 **requisite number of Underage Drinking Incidents under sec 4-53(a). The**
11 **Order shall contain notice that the establishment may request an**
12 **administrative hearing as provided in paragraph (2) below. Service shall be**
13 **deemed complete if personally delivered upon the owner or agent of the**
14 **alcoholic beverage establishment by any officer authorized by law to serve**
15 **process or a duly appointed law enforcement officer of the city police**
16 **department. The person serving process shall make proof of service within the**
17 **time during which the person served must respond to the process. If service**
18 **cannot be personally made within the city, then service may be made by**
19 **notice to a registered agent of the alcoholic beverage establishment.**

20 **(2) The owner or agent of the alcoholic beverage establishment shall have**
21 **10 days from the date of service to file a request for an administrative hearing**
22 **to contest the issuance of the Underage Prohibition Order. The request shall**
23 **be filed at the office of the city manager.**

1 (3) Upon the timely filing of request for a hearing, the city attorney is
2 authorized to arrange for the services of a hearing officer.

3 (4) In conducting the hearing, the hearing officer shall have the power to
4 administer oaths, issue subpoenas, compel the production of books, paper, and
5 other documents, and receive evidence. All parties shall have an opportunity
6 to respond, to present evidence and argument on all issues involved, to
7 conduct cross-examination and submit rebuttal evidence, to submit proposed
8 findings of facts and orders, to file exceptions to the hearing officer's
9 recommended order, and to be represented by counsel. Hearsay evidence may
10 be used for the purpose of supplementing or explaining other evidence, but it
11 shall not be sufficient in itself to support a finding unless it would be
12 admissible over objection in civil actions. The lack of actual knowledge of,
13 acquiescence to, participation in, or responsibility for any Underage Drinking
14 Incident for this hearing on the part of the owner or agent shall not be a
15 defense by such owner or agent.

16 (5) If the hearing officer finds, by a preponderance of the evidence, that
17 (a) the requisite number of Underage Drinking Incidents have occurred
18 within a quarter to subject the alcoholic beverage establishment to issuance of
19 the Underage Prohibition Order; (b) the city complied with the procedural
20 requirements of Sec. 4-53(d)(1); and (c) none of the exceptions of Sec. 4-54
21 are applicable, then the hearing officer shall prepare a recommended order
22 that upholds the issuance of the Underage Prohibition Order.

1 (6) If the hearing officer finds that the criteria of paragraph (5) above have
2 not been met, then the hearing officer shall prepare a recommended order to
3 rescind the Underage Prohibition Order.

4 (7) The hearing officer's recommended order shall consist of findings of
5 fact and conclusions of law and recommended action. The hearing officer
6 shall transmit the recommended order to the city manager and the owner or
7 agent of the alcoholic beverage establishment. The owner or agent shall have
8 10 days from the date of the hearing officer's order to submit written
9 exceptions to the hearing officer's recommended order. The city manager shall
10 review such order and any written exceptions by the owner or agent and may
11 set forth any deficiencies he/she finds with respect to the order. Said
12 deficiencies shall be limited to determinations that the findings were not based
13 upon competent, substantial evidence, or that the proceedings on which the
14 findings were based did not comply with the essential requirements of law. In
15 reviewing such recommended order, the city manager shall not have the
16 power to receive or consider additional evidence and shall not have the power
17 to reject or modify the findings of fact or conclusions of law contained in the
18 recommended order. The city manager may remand the recommended order
19 along with the delineated deficiencies back to the hearing officer for
20 consideration of the deficiencies. The hearing officer shall address the
21 deficiencies in an addendum to the recommended order. The city manager
22 shall then either:

- 1 a. adopt the recommended order and addendum, if applicable, in
- 2 its entirety; or
- 3 b. adopt the findings of fact and conclusions of law in the
- 4 recommended order and addendum, if applicable, and accept, reject or
- 5 modify the recommended action.

6 The action of the city manager shall be the final administrative action.

7 (8) The city manager or designee shall provide written notice of the final
8 administrative order to the alcoholic beverage establishment within 5 days of
9 the date of the final order.

10 (9) The final administrative order of the city is subject to certiorari review
11 in a court of competent jurisdiction in Alachua County, Florida by the timely
12 filing of a petition.

13 (10) Upon the effective date of the Underage Prohibition Order, the owner
14 or agent of the alcoholic beverage establishment shall:

- 15 a. conspicuously post a sign with the following wording in at
- 16 least one-inch black letters with white background at each public
- 17 entrance: “UNDERAGE PROHIBITON ORDER - No One Under 21
- 18 Permitted Inside from 9:00 p.m. to 2:00 a.m.”. The sign(s), shall
- 19 remain posted for the duration of the Underage Prohibition Order.

- 20 b. cease permitting persons under the age of 21 to enter the
- 21 alcoholic beverage establishment from 9:00 p.m. to 2:00 a.m. the
- 22 following day, except as provided in § 4-54 of this Article.

23 (11) Duration of Underage Prohibition Order.

1 (a) First order: 90 days.

2 If a second Underage Prohibition Order is issued within 3 years of the
3 first issued and effective Underage Prohibition Order, then the second
4 order shall have the following duration:

5 (b) Second order: 180 days.

6 If a third Underage Prohibition Order is issued within 3 years of the
7 first issued and effective Underage Prohibition Order, then the third
8 order shall have the following duration:

9 (c) Third and subsequent orders: 365 days.

10 (12) Any Underage Drinking Incident which occurs while an alcoholic
11 beverage establishment is subject to an Underage Prohibition Order
12 shall count toward another violation. Any prohibition against
13 admittance of patrons under 21 which results from an Underage
14 Prohibition Order issued while an Underage Prohibition Order is
15 already in effect against the owner, agent or establishment shall run
16 consecutively.

17 (13) Consecutive Penalty.

18 Notwithstanding Sec. 4-52 of this ordinance, an Underage Prohibition Order
19 which is finalized during an active Underage Prohibition Order penalty
20 shall become effective the day after expiration of the active Underage
21 Prohibition Order.

1 (14) Any Underage Prohibition Order, once effective, shall be valid against
 2 the owner or agent of the alcoholic beverage establishment and any
 3 alcoholic beverage establishment operating at the same premises.

4 **Sec. 4-54. Exceptions.**

5 (a) The prohibition in section 4-52 above shall not apply to:

6 (1) Persons employed by an alcoholic beverage establishment during such
 7 hours as they are performing their duties for the establishment.

8 (2) Persons employed to deliver goods or services to the establishment
 9 during such hours as they are performing such duties.

10 (3) Persons accompanied by either of their parents (natural, adoptive or
 11 step-parent) or a legal guardian.

12 (4) Police, fire or emergency medical personnel during such hours as they
 13 are performing their duties in such capacities.

14 (5) An alcoholic beverage establishment during any time period in which
 15 it is not serving or selling alcoholic beverages to the public.

16 **Sec. 4-55. Penalty.**

17 (a) In addition to the Underage Prohibition Order, the provisions of this Article may
 18 be enforced by civil citation as provided in Chapter 2, Division 6 of this Code, or as
 19 otherwise provided in Section 1-9 of this Code. Any person not in compliance with this
 20 Article shall be subject to the penalties designated in Section 2-339 or Section 1-9. Each
 21 violation shall be considered a separate offense, which can be prosecuted separately.

22 (b) Findings and intent.

1 (1) It is the intent of this section to protect and preserve the health, safety,
2 and welfare of the citizens of Gainesville by strengthening enforcement
3 methodologies to enforce the prohibition against consumption of alcoholic
4 beverages by underage patrons.

5 (2) Admission of persons under the age of 21 to an alcoholic beverage
6 establishment that has, by its actions, demonstrated an inability to reasonably
7 prevent underage consumption on its premises presents a serious threat to the
8 public health, safety, or welfare of the youth of our community and the
9 citizenry at large.

10 (3) An enforcement officer shall not be required to provide a reasonable time
11 period to correct a violation of this section prior to issuing a citation to a
12 person that the officer has reasonable cause to believe has violated this
13 section.

14 **Sec. 4-56. Injunctive Relief.**

15 In addition to the procedures provided herein, the city attorney is authorized to seek
16 injunctive relief in a court of competent jurisdiction against any alcoholic beverage
17 establishment not in compliance with the requirements of this Article.

18 **Section 2.** Section 2-339 of the Code of Ordinances of the City of Gainesville, is
19 amended by adding the following new sections to the table of applicable codes and
20 ordinances (the existing sections remain unchanged):

21 **Sec. 2-339. Applicable codes and ordinances.**

22 The following ordinances are enforceable by the procedures described in this division:

Section	Description	Class	Penalty
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<u>4-52</u> <u>4-53(a)(1)</u> <u>4-53(a)(2)</u> <u>4-53(c)(10)a</u>	<u>Underage Prohibition In Alcoholic Beverage Establishments</u>	IV	\$500.00
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2 **Section 3.** It is the intention that Sections 1 and 2 of this ordinance shall become and be
 3 made a part of the Code of Ordinances, of the City of Gainesville, Florida, and that the Sections and
 4 Paragraphs of this ordinance may be renumbered or relettered in order to accomplish such intentions.

5 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance or
 6 the application hereof to any person or circumstance is held invalid or unconstitutional, such
 7 finding shall not affect the other provisions or applications of the ordinance which can be given
 8 effect without the valid or unconstitutional provisions or application, and to this end the
 9 provisions of this ordinance are declared severable.

10 **Section 5.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
 11 such conflict hereby repealed.

12 **Section 6.** This ordinance shall become effective immediately upon final adoption.

13 **PASSED AND ADOPTED** this _____ day of _____, 2009.

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 PEGEEN HANRAHAN, MAYOR

ATTEST

APPROVED AS TO FORM AND LEGALITY

 KURT M. LANNON
 CLERK OF THE COMMISSION

 MARION J. RADSON
 CITY ATTORNEY

This Ordinance passed on first reading this ____ day of _____, 2009.

This Ordinance passed on second reading this ____ day of _____, 2009.