

MEMORANDUM

Office of the City Attorney

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CONSENT ITEM

TO: Mayor and City Commissioners

DATE: September 12, 2005


FROM: Marion J. Radson, City Attorney

SUBJECT: AMENDMENT TO OPEN CONTAINER ORDINANCE

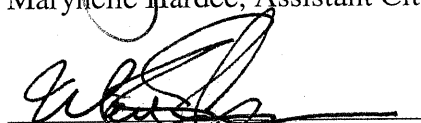
RECOMMENDATION: The City Commission authorize the City Attorney to prepare, and the Clerk of the Commission to advertise, an amendment to the open container ordinance which effectuates the intent of F.S. §564.09.

F.S. §564.09, effective July 1, 2005, permits a restaurant patron to remove a partially consumed bottle of wine from the premises, if the bottle is re-sealed and placed in a bag or other container. F.S. §316.1936(9), also effective July 1, 2005, provides that a bottle of wine re-sealed in this manner and properly secured for transportation in a motor vehicle is not classified as an open container of alcohol. The City of Gainesville's open container ordinance conflicts with intent of the new statute in that it currently contains no exception for wine purchased at a restaurant and re-sealed. While the statute applies to possession of the wine in a vehicle on the streets and highways, carrying the wine to the vehicle, or directly to the purchaser's residence, would violate the city's ordinance. Amending the ordinance to include such an exemption will eliminate these conflicts and bring the ordinance into compliance with state law

Prepared by


Marynelle Hardee, Assistant City Attorney

Approved and
Submitted by


Marion J. Radson, City Attorney

MH:MJR:bs