



# MEMORANDUM

Office of the City Attorney

Legistar No.: 050369

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**TO:** Mayor and Commissioners

**FROM:** Marion J. Radson, City Attorney

**SUBJECT:** **ORDINANCE NO.: 0-05-93**

**FIRST READING**

**DATE:** ~~October 10, 2005~~

**SECOND READING** October 24, 2005

**AMENDMENT TO OPEN CONTAINER ORDINANCE**


An ordinance of the City of Gainesville, Florida, amending Article I, Section 4-1(b) of the Code of Ordinances to be consistent with the provisions of F.S. §564.09 and F.S. §316.1936(9); providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

**RECOMMENDATION:** The City Commission adopt the proposed ordinance.


On September 12, 2005, the City Commission voted to authorize the City Attorney to draft, and the Clerk of the Commission to advertise an ordinance to be consistent with the provisions of F.S. §564.09 and F.S. §316.1936(9).

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/bs

PASSED ON FIRST READING BY A VOTE 6-0.

**ORDINANCE**

0-05-93

An ordinance of the City of Gainesville, Florida, amending Article I, Section 4-1(b) of the Code of Ordinances to be consistent with the provisions of F.S. §564.09 and F.S. §316.1936(9); providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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

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

**NOW, THEREFORE**, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

**Section 1.** Article 1, Section 4-1(b) of the Code of Ordinances of the City of Gainesville is amended to read as follows:

**ARTICLE I. IN GENERAL**

**Sec. 4-1. Definitions**

(a) The definitions contained in the beverage law of the state, as defined in F.S. §561.01 and interpreted by the courts of this state and the state director of the division of alcoholic

1 beverages and tobacco of the department of business and professional regulation, shall  
2 apply to the terms in this chapter.

3 (b) *Open container* shall mean any bottle, can, glass, cup or other vessel, other than  
4 the original unbroken sealed container or a bottle of wine resealed pursuant to  
5 F.S. §564.09, containing an alcoholic beverage; provided however, that if a bottle of wine  
6 resealed pursuant to F.S. §564.09 is transported in a motor vehicle, the resealed bottle  
7 shall be considered an open container unless it is placed in a locked glove compartment, a  
8 locked trunk, or the area behind the last upright seat of a motor vehicle that is not  
9 equipped with a trunk.

10 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of  
11 this Ordinance shall become and be made a part of the Code of Ordinances of the City of  
12 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered  
13 or relettered in order to accomplish such intentions.

14 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be  
15 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no  
16 way affect the validity of the remaining portions of this ordinance.

17 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of  
18 such conflict hereby repealed.

D R A F T

09/27/05

1 **Section 5.** This ordinance shall become effective immediately upon adoption.

2 **PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2005.

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6 \_\_\_\_\_  
7 CHARLES S. CHESTNUT IV  
8 MAYOR-COMMISSIONER PRO-TEMPORE

9  
10 ATTEST APPROVED AS TO FORM AND LEGALITY

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12  
13 \_\_\_\_\_  
14 KURT M. LANNON  
15 CLERK OF THE COMMISSION

16 \_\_\_\_\_  
17 MARION J. RADSON  
18 CITY ATTORNEY

16  
17 This Ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

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19 This Ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2005.