

**LEGISLATIVE #**

**120146D**

## Power Point Presented by Attorney Cary Meldon

# PETITION PB-12-60TCH CITY OF GAINESVILLE

## SEC 30-67(g)

**Any and all permits issued pursuant to this section for the sale of alcoholic beverages are conditional in that if the establishment comes under a final underage prohibition order after obtaining a permit for the sale of alcoholic beverages pursuant to this section, the permit shall be voided for any event occurring 14 or more days after the effective date of the prohibition order**

# UNDERAGE PROHIBITION ORDER

- Goal: Reduce or eliminate the unlawful consumption of alcoholic beverages by underage persons in alcoholic beverage establishments, and therefore protect the safety and health of our youth and our community
  - -Excerpt taken from deposition transcript of former city commissioner Jeanna Mastrodicasa on August 12, 2009

# UNDERAGE PROHIBITION ORDER

- Current punishments include:
- 1) posting a sign stating “Underage Prohibition Order” – No one under 21 Permitted inside from 9:00 pm to 2:00 am.
- 2) cease permitting persons under the age of 21 to enter the business from 9:00pm to 2:00 am

# UNDERAGE PROHIBITION ORDER

- Sec 4-55 – Penalty
- (b) Findings and Intent
- (1) It is the intent of this section to protect and preserve the health, safety, and welfare, of the citizens of Gainesville by strengthening enforcement methodologies to enforce the prohibition against consumption of alcoholic beverages by **underage patrons**

# UNDERAGE PROHIBITION ORDER

- Sec 4-55 – Penalty
- (b) Findings and Intent
- (2) **Admission of person under the age of 21 to an alcoholic beverage establishment** that has, by its actions, demonstrated an inability to reasonably prevent **underage consumption on its premises** presents a serious threat to the public, health, safety, or wealth of the youth of our community and citizenry at large.



# UNDERAGE PROHIBITION ORDER

- -Before the Underage Prohibition ordinance, there were 915 cases of underage drinking in 2008. According to GPD website, only 42 total Underage Drinking Incidents (UDI) in first quarter of 2012.
- On pace for only 168 UDIs for 2012
- Reduction from 915 in 2008 to estimated 168 UDIs in 2012

# UNDERAGE PROHIBITION ORDER

- What is rational basis to add more punishment when ordinance is apparently effective in its current form?
- Common sense should prevail

# UNDERAGE PROHIBITION ORDER

- Legal Basis
- -Must be a connection between the purposes of an amendment to the Land Development Code (i.e. to prevent establishments from being issued special events permits) and the evil complained of (i.e. underage drinking)
- -City of Miami v. Kayfetz ( Florida Supreme Court Decision)

# UNDERAGE PROHIBITION ORDER

- Proposed amendment would not allow businesses to conduct special events for people of any age, not just underage persons.
- - According to Judge Roundtree's decision, "legislation designed to **curb underage drinking** and to prevent the attendant harms that such activity creates clearly constitutes a "municipal purpose"
- No "municipal purpose" to prevent special events for people above the age of 21 years

# Proposed Solution

- -Existing business in violation of the Underage Prohibition Order would not be allowed to have people under the age of 21 at special events

# Proposed Solution

- -This proposed solution would address City of Gainesville's concerns regarding underage drinking while still penalizing establishments financially for business lost by not admitting people under the age of 21
- - Would pass constitutional muster

# Administrative Moratorium

- Administrative Moratorium on special events permits enacted May 3, 2012
- Moratorium alleged purpose is to allow City Commission sufficient time to review, study, hold public hearings and to prepare and adopt amendment to City of Gainesville Ordinance 30-67
- No reviews or studies have been produced that would indicate 30-67 should be amended

# Administrative Moratorium

- As proposed amendment allows commission to retroactively withdraw void permit, there is absolutely no legally valid reason to enact moratorium.
- Decision to dissolve moratorium must be made quickly as businesses are depending on hundreds of thousands of dollars in revenue as a result of the special events.