

2/5/09
Submitted
070941

JAMES F. GRAY, P.A.

3615-B N.W. 13TH STREET
GAINESVILLE, FLORIDA 32609

E-MAIL ADDRESS
PAPAGRAY1@AOL.COM

TELEPHONE: (352) 371-6303
FACSIMILE: (352) 371-4722

February 5, 2009

MEMORANDUM OF PROPOSED AMENDMENTS TO CITY OF GAINESVILLE PROPOSED ORDINANCE # 070941 "Underage Prohibition in Alcoholic Beverage Establishments"

I. TO PROTECT AN INNOCENT OWNER FROM INCIDENTS THAT OCCUR OFF THE OWNER'S PREMISES, THE ORDINANCE SHOULD BE AMENDED TO REQUIRE THAT AN "UNDERAGE DRINKING INCIDENT" OCCURRED "**ON THE LICENSEE'S PREMISES**" OR, BETTER, "**WITHIN THE ALCOHOLIC BEVERAGE ESTABLISHMENT'S PREMISES**".

ORDINANCE (14)(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.
- (2) Admission of persons 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 welfare of the youth of our community and the citizenry at large.

ORDINANCE Sec. 4-51. Definitions.

"Underage Prohibition Order"

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

II. TO PROTECT THE INNOCENT OWNER, THE ORDINANCE SHOULD BE AMENDED TO ALLOW STATE STATUTORY DEFENSES TO CIVIL LIABILITY WHEN THE UNDERAGE PATRON HAS COMMITTED A CRIME BY PRESENTING FRAUDULENT IDENTIFICATION.

ORDINANCE (3) Upon the timely filing of request for a hearing, **The lack of actual knowledge of, acquiescence to, participation in, or responsibility for any Underage Drinking Incident for this hearing on the part of the owner or agent shall not be a defense by such owner or agent.** (5) If the hearing officer finds, by a preponderance of the evidence, that (a) the requisite number of Underage Drinking Incidents have occurred within a quarter to subject the alcoholic beverage establishment to issuance of the Underage Prohibition Order; (b) the city complied with the procedural requirements of Sec. 4-53(d)(1); and (c) none of the exceptions of Sec. 4-54 are applicable, then the hearing officer shall prepare a recommended order that upholds the issuance of the Underage Prohibition Order.

Florida Administrative Code 61A-3.052 Identification to Verify Age.

(1) A licensee who has been cited in an administrative action for violations of Sections 562.11(1)(a) and 859.06, Florida Statutes, **shall have a defense to any administrative action if the underage person falsely evidenced that he was of legal age to purchase the alcoholic beverage, cigarettes, or tobacco products or consume the alcoholic beverage product and the appearance of the person was such that an ordinarily prudent person would believe the person is of legal age to purchase or consume those products, and if the licensee attempted to verify the person's age by checking one of the following forms of identification with respect to the person:**

- (a) A driver's license, issued by any government agency, domestic or foreign, provided it includes a photograph;
- (b) Identification cards issued by any state, provided it includes a photograph;
- (c) Passports;
- (d) An identification card issued by any branch of the United States military which shows the customer is currently serving in the United States Armed Services or is a family member of a person currently serving in the United States Armed Services.

Florida Statute 562. 11. Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties

(c) A licensee who violates paragraph (a) **shall have a complete defense to any civil action therefor, except for any administrative action by the division under the Beverage Law, if, at the time the alcoholic beverage was sold, given, served, or permitted to be served, the person falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage and the appearance of the person was such that an ordinarily prudent person would believe him or her to be of legal age to purchase or consume the alcoholic beverage and if the licensee carefully checked one of the following forms of identification with respect to the person: a driver's license, an identification card issued under the provisions of s. 322.051 or, if the person is physically handicapped as defined in s. 553.45(1), [FN1] a comparable identification card issued by another state which indicates the person's age, a passport, or a United States Uniformed Services identification card, and acted in good faith and in reliance upon the representation and appearance of the person in the belief that he or**

she was of legal age to purchase or consume the alcoholic beverage. Nothing herein shall negate any cause of action which arose prior to June 2, 1978.

(2) It is **unlawful for any person to misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any licensee or his or her agents or employees to sell, give, serve, or deliver any alcoholic beverages to a person under 21 years of age, or for any person under 21 years of age to purchase or attempt to purchase alcoholic beverages.**

(a) Anyone convicted of violating the provisions of this subsection is **guilty of a misdemeanor** of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person under the age of 17 years who violates such provisions shall be within the jurisdiction of the judge of the circuit court and shall be dealt with as a juvenile delinquent according to law.

III. TO PROTECT AN INNOCENT OWNER FROM BEING PUNISHED WHEN THE UNDERAGE PATRON COMMITTED THE CRIME OF FRAUD, THE ORDINANCE SHOULD BE AMENDED TO COUNT ONLY THOSE "UNDERAGE DRINKING INCIDENTS" IN WHICH THE OWNER OR AGENT OF AN ALCOHOLIC BEVERAGE ESTABLISHMENT HAD AN OPPORTUNITY TO INFORM THE ARRESTING OFFICER THAT THE UNDERAGE DRINKER HAD PRESENTED A FRAUDULENT IDENTIFICATION SO IT CAN BE CONFISCATED FOR EVIDENCE.

This will require the arresting officer to notify the business owner or agent at the time of arrest or issuance of the citation, to allow the business owner to obtain the fraudulent ID presented by the underage patron.

IV. TO PROVIDE AN INNOCENT OWNER FROM BEING PUNISHED WHEN THERE WAS NO "UNDERAGE DRINKING INCIDENT", THE ORDINANCE SHOULD BE AMENDED TO COUNT ONLY THOSE "UNDERAGE DRINKING INCIDENTS" THAT RESULT IN AN ADMISSION OR FINDING OF GUILT AS TO UNDERAGE DRINKING.

ORDINANCE Sec. 4-51. Definitions.

"Underage Drinking Incident" means any **physical arrest or notice to appear** (NTA) issued for possession or consumption of an alcoholic beverage by a person under the age of 21 which results in an adjudication of guilt, **finding of guilt with adjudication withheld, waiver of right to contest the violation, plea of no contest including, but not limited to, payment of fine or civil penalty, or entering into an agreement for deferred prosecution.**"

V. TO PROVIDE PROPORTIONAL FAIRNESS, THE ORDINANCE SHOULD BE AMENDED TO PROVIDE THAT IT REQUIRES 5 "UNDERAGE DRINKING INCIDENTS" PER EACH 200 OR FRACTION THEREOF OF AGGREGATE OCCUPANCY LOAD.

ORDINANCE Sec. 4-51. Definitions.

"Underage Prohibition Order"

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

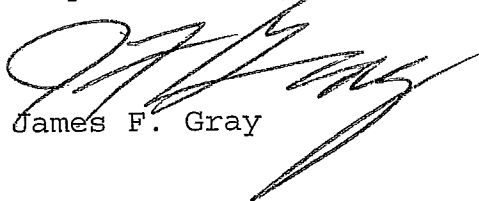
- (1) Aggregate **occupancy load less than 201: five or more.**
- (2) Aggregate **occupancy load of 201 or greater: ten or more.**

VI. THE ORDINANCE SHOULD BE AMENDED TO ONLY THE "ALCOHOLIC BEVERAGE ESTABLISHMENT" SINCE ONLY ONE ALCOHOL BEVERAGE LICENSE IS ISSUED FOR EACH PREMISES.

ORDINANCE (b) The final result of any Underage Drinking Incident which may **subject an alcoholic beverage establishment** to an Underage Prohibition Order...

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

Respectfully Submitted,



James F. Gray

Subj: **FW: .Notice of Appeal in Daly v. City of Gainesville**
Date: 1/22/2009 2:23:24 P.M. Eastern Standard Time
From: Paula.Delaney@gray-robinson.com
To: PapaGray1@aol.com

From: Radson, Marion J.
Sent: Tuesday, June 10, 2008 1:41 PM
To: citycomm; DG_City Manager; Bredfeldt, Erik A.; Varvel, Steven C.
Cc: Hatt, Monique; Waratuke, Elizabeth A.; Nee, Daniel M.; Marchman, Stephanie M.
Subject: .Notice of Appeal in Daly v. City of Gainesville

Last Friday I notified you that the Circuit Court entered an order in favor of the City declaring that the City's landlord permit ordinance, off-street parking ordinance, and noise ordinance are constitutional.

The Plaintiff's, Kevin and Carol Daly have appealed the court's decision to the First District Court of Appeal. This means that the lower court's decision is stayed pending the final decision by the Appellate Court. Briefs will next be filed and Oral Arguments may be scheduled by the Court.

If you have any questions please contact this office.

Marion J. Radson
City Attorney
City of Gainesville
(352) 334-5011
Fax (352) 334-2229

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Paula L. Delaney
Legal Assistant
GrayRobinson, P.A.
50 North Laura Street, Suite 1100
Jacksonville, Florida 32202
Main: 904-598-9929 | Fax: 904-598-9109
GRAY | ROBINSON
ATTORNEYS AT LAW

Thursday, January 22, 2009 America Online: Papa Gray1