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ORDINANCE NO. _____
0-07-121

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.

WHEREAS, at least 10 days notice has been given once 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. A new Article III of Chapter 4 of the Gainesville Code of Ordinances consisting of Section 4-50 through 4-56 is hereby created and added to the Code of Ordinances to read as follows:

Article III. Underage Prohibition In Alcoholic Beverage Establishments.

DIVISION 1. GENERALLY.

Sec. 4-50. Title.

1 **(b) The final disposition of any Underage Drinking Incident which may subject**
2 **an alcoholic beverage establishment to an Underage Prohibition Order, need not occur within**
3 **the quarter of the Underage Drinking Incident; however, the city manager or designee shall**
4 **comply with the 45-day limit set forth in Section 4-53(c)(1).**

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

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

21 **(2) The owner or agent of the alcoholic beverage establishment shall have**
22 **10 days from the date of service to file a request for an administrative hearing**

1 to contest the issuance of the Underage Prohibition Order. The request shall
2 be filed at the office of the city manager.

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

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

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

1 are applicable, then the hearing officer shall prepare a recommended order
2 that upholds the issuance of the Underage Prohibition Order.

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

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

1 deficiencies in an addendum to the recommended order. The city manager
2 shall then either:

3 a. adopt the recommended order and addendum, if applicable, in
4 its entirety; or

5 b. adopt the findings of fact and conclusions of law in the
6 recommended order and addendum, if applicable, and accept, reject or
7 modify the recommended action.

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

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

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

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

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

1 penalty shall become effective the day after expiration of the active
2 Underage Prohibition Order.

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

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

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

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

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

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

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

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

18 **Sec. 4-55. Penalty.**

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

1 (b) Findings and intent.

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

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

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

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

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

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

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

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

Section	Description	Class	Penalty
<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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4 **Section 3.** It is the intention that Sections 1 and 2 of this ordinance shall become and be
5 made a part of the Code of Ordinances, of the City of Gainesville, Florida, and that the Sections and
6 Paragraphs of this ordinance may be renumbered or relettered in order to accomplish such intentions.

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

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

14 **Section 6.** This ordinance shall become effective immediately upon final adoption; however,
15 enforcement and implementation of this Ordinance shall commence on April 1, 2009.

DRAFT

02-05-09

1 PASSED AND ADOPTED this _____ day of _____, 2009.

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PEGEEN HANRAHAN
MAYOR

8 ATTEST

APPROVED AS TO FORM AND LEGALITY

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

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

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