



MEMORANDUM

Office of the City Attorney

Legistar No.: 050369

Phone: 334-5011/Fax 334-2229
Box 46

FIRST READING

TO: Mayor and Commissioners

DATE: October 10, 2005

FROM: Marion J. Radson, City Attorney

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

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.

19
20

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.

3
4
5
6 _____
7 CHARLES S. CHESTNUT IV
8 MAYOR-COMMISSIONER PRO-TEMPORE

9
10 ATTEST

11 APPROVED AS TO FORM AND LEGALITY

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

16 _____
17 MARION J. RADSON
18 CITY ATTORNEY

19 This Ordinance passed on first reading this ____ day of _____, 2005.

This Ordinance passed on second reading this ____ day of _____, 2005.

**ADVERTISEMENT
NOTICE OF PROPOSED
ENACTMENT OF
ORDINANCE
BY CITY COMMISSION,
GAINESVILLE, FLORIDA**

Notice is hereby given that the proposed ordinance, whose title appears below will be considered for First Reading on the 10th day of October, 2005, at the City Commission meeting and if then adopted on First Reading will be considered for Second and Final Reading and adoption on the 24th day of October, 2005, at the City Commission meeting. The meetings begin at 6:00p.m. and the ordinances will be read as soon thereafter as may be heard. The meetings are held in the City Commission Auditorium, on the First Floor of City Hall, 200 East University Avenue, Gainesville, Florida. A copy of said ordinance may be inspected by any member of the public at the office of the Clerk of the Commission on the First Floor of City Hall during regular business hours located at 200 East University Avenue, Gainesville, Florida, and at the Public Library, Main Branch, located at 401 East University Avenue. On the dates mentioned above all interested parties may appear at the meeting and be heard with respect to the proposed ordinance. Persons with disabilities, who require assistance to participate in the meetings, are requested to notify the Equal Opportunity Office at 334-5051 or call the TDD phone line at least 2 business days in advance.

**ORDINANCE TITLE
ORDINANCE NO. 050369**

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.

Note: "All persons are advised that, if any person decides to appeal any decision made at any of these meetings, they will need a record of the proceedings and, for such purpose, they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

October 3, 2005
Publish Date

Kurt M. Lannon,
Clerk of the Commission

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