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# Judge upholds drinking law

**However, bar owners are still able to use a fake-ID defense when underage drinkers are arrested.**

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An Alachua County judge has upheld the majority of a Gainesville ordinance that punishes bars that have "excessive" underage drinking, but struck down a clause in the ordinance prohibiting bar owners from using a fake-ID defense.

The ordinance, which took effect on April 1, prohibits patrons under the age of 21 from entering bars after 9 p.m. that have exceeded a set threshold for the number of underage drinking arrests in a three-month period.

Bar owner Rob Zeller challenged the ordinance claiming the city was attempting to regulate an industry out of its purview and was thus unconstitutional.

According to city of Gainesville litigation attorney Elizabeth Waratuke, Alachua County Circuit Judge Robert Roundtree's initial indication is that he will uphold the law.

"The good news is that the ordinance was upheld," said City Commissioner Jeanna Mastrodicasa, who was the political force behind the new ordinance.

However, Zeller also challenged a clause in the law that prohibits bar owners from challenging any underage drinking violations on the grounds that they are "innocent owners" - a term that indicates an underage patron successfully hoodwinked the bouncer and the bar should not be held responsible if they drink alcohol.

If the draft judgment is signed by the judge, then the city will keep the same



A Gator City bartender walks through a crowd of Gator fans on April 1, 2006, for beer refills at Gator City bar for the University of Florida versus George Mason Final Four basketball game.

ordinance in place, only bar owners will now be permitted to challenge any punishment on the grounds that the underage drinking violations were unpreventable.

"We have not discussed it with our client," said Thomas Cloud, a partner in the firm Gray Robinson out of Orlando, which was hired by Zeller. "The judge has announced that his intention is to rule the ordinance is not pre-empted, but that the provision denying an innocent order defense be struck, but he has not ruled yet."

Both sides could appeal the final decision, but neither is indicating whether that will be the case.

The ordinance was passed by the City Commission in an attempt to curb widespread underage drinking.

According to the ordinance, "drinking violations" are counted not if a person is arrested at the establishment for underage drinking but at the time that the person is found guilty in court or pleads no contest to the charges.

Thresholds for "excessive violations" are based on the size of the bar over a three-month period. Bars with occupancies of fewer than 200 people would be punished after having five or more prosecuted underage drinking violations in a three-month period. Larger bars would be punished after 10 violations.

In the two quarters that have passed since the ordinance was enacted, no bar has exceeded the threshold.

The Swamp Restaurant had six underage drinking incidents in the three months following April, and Gator City, a bar that Zeller owns with a partner, had five. Both of those bars have capacities over 201 people.

A record of drinking violations at Gainesville bars can be found at [www.gainesvillepd.org/](http://www.gainesvillepd.org/) by clicking on "online forms and services" and then "Underage drinking ordinance reports for venues."

Without the portion of the ordinance prohibiting the "innocent owner" defense, a punished bar owner would be able to challenge the decision and present evidence that the establishment could not have prevented the underage drinking from occurring.

Gainesville police spokesman Keith Kameg said the change doesn't matter to the police department.

"The question is whose responsibility is it, and ultimately the police department thinks it's the bar owners," Kameg said.

"Since the ordinance has been enacted and since everybody has been held responsible, underage drinking has dropped dramatically," Kameg continued. "If you want to keep your business open and your livelihood is getting underage drinking people in your bar for food or cover charges, then make sure there is no underage drinking going on."

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