



# MEMORANDUM

Office of the City Attorney

Legistar No. 000903

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

TO: Mayor and City Commission

DATE: May 14, 2001  
~~April 28, 2001~~  
FIRST READING  
SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-01-22; Petition No. 14TCH-01 PB  
An ordinance of the City of Gainesville, Florida, relating to temporary outdoor alcoholic beverage sales for University of Florida home football game day events; amending section 30-67 to provide regulations for such sales; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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Recommendation: The City Commission (1) approve Petition 14TCH-01 PB and (2) adopt the proposed ordinance.

## STAFF REPORT

During the fall of 1999, the City Commission heard testimony from the Gainesville Police Department that temporary outdoor alcohol sales were creating problems along University Avenue adjacent to the University of Florida Campus. Crowd control, open container violations and traffic problems associated with people spilling over into the street while trying to buy alcohol are examples of the stated problems. The City Commission concluded that the outdoor alcohol sales under the City's special events sales permit process was creating a public safety problem.

On June 12, 2000, the City Commission withdrew a proposed ordinance that would have prohibited temporary alcoholic beverage sales permits in the University Context area. The City Commission, after hearing from citizen and business owners in the area, referred this issue to the Public Safety Committee for review. After several meetings, the Public Safety Committee recommended that the Land Development Code be changed to allow alcohol sales with conditions and to charge a fee of \$300 per permit. It was determined that the \$300 fee is the amount needed to cover costs related to the permit.

Staff recommends that Sec. 30-67., General provision for business and mixed-use districts, be amended, to included additional requirements for getting a permit. The new requirements include a limitation on the size of the outdoor activity, add more site plan requirements, address crowd control and garbage pickup.

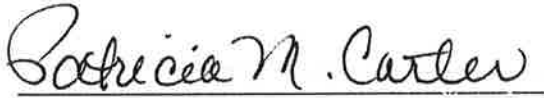
Public notice was published in the Gainesville Sun on January 30, 2001. The Plan Board held a public hearing February 15, 2001. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 14TCH-01 PB. Plan Board vote 6-0.

Fiscal note. None

CITY ATTORNEY MEMORANDUM


This ordinance requires two public hearings. If the Commission adopts the ordinance on first reading, the second and final reading will be held on May 14, 2001.

Prepared by:



Patricia M. Carter,  
Sr. Assistant City Attorney

Approved and  
Submitted by:

  
Marion J. Radson,  
City Attorney

MJR:PMC:sw

PASSED ON FIRST READING BY A VOTE OF 5-0.

**D R A F T**

4/23/01

ORDINANCE NO. \_\_\_\_\_  
0-01-22

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3  
4 **An ordinance of the City of Gainesville, Florida, relating to temporary**  
5 **outdoor alcoholic beverage sales for University of Florida home football**  
6 **game day events; amending section 30-67 to provide regulations for such**  
7 **sales; providing directions to the codifier; providing a severability clause;**  
8 **providing a repealing clause; and providing an immediate effective date.**  
9

10 **WHEREAS**, the City Plan Board authorized the publication of notice of a Public Hearing  
11 that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

12 **WHEREAS**, notice was given and publication made as required by law and a Public  
13 Hearing was then held by the City Plan Board on February 15, 2001; and

14 **WHEREAS**, notice was given and publication made of a Public Hearing which was then  
15 held by the City Commission on April 23, 2001; and

16 **WHEREAS**, at least 10 days notice has been given prior to first reading by publication in  
17 a newspaper of general circulation notifying the public of this proposed ordinance and of a Public  
18 Hearing in the Auditorium of City Hall in the City of Gainesville; and

19 **WHEREAS**, the Public Hearings were held pursuant to the published notice described at  
20 which hearings the parties in interest and all others had an opportunity to be and were, in fact,  
21 heard;

22 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
23 **CITY OF GAINESVILLE, FLORIDA:**

24 **Section 1.** Subsection 30-67(g)(3) is created and added to the Land Development Code of the  
25 City of Gainesville to read as follows:

1 **Sec. 30-67. General provisions for business and mixed use districts.**

2 (g) *Outdoor storage and sales.*

3 (3) Temporary outdoor alcoholic beverage sales for University of Florida Home  
4 Football Game Day events, in the University Context Area. The city manager or designee  
5 may issue a permit for outdoor alcoholic beverage sales in the University Context Area  
6 provided the following conditions and requirements are met:

7 a. The business conducting the sale must be an existing business in a  
8 permanently fixed location operating with an alcoholic beverage license issued by  
9 the State of Florida.

10 b. The temporary sale event must be conducted on the site where the business  
11 is located. The site of the temporary sale event must be owned or leased by the  
12 business as part of the normal daily operations of the business. Businesses located  
13 in a development consisting of several stores sharing the area to be used by the  
14 temporary sale event must have the permission of the owner of the development  
15 and the consent of the tenants that share the space.

16 c. The area used for the temporary sales event can not be more than 1.5 times  
17 the square footage of the on-site business conducting the sale. Permits for the use  
18 of the area will be issued for the period of the day before the football game and  
19 the day of the football game.

20 d. All permit applications must include a site plan sketch showing the  
21 location, access, barriers delineating the event site from other public areas and all  
22 other details of the site. All permit applications must be submitted to the city  
23 manager or designee, along with the fee as set out in Appendix A of the Code of

1 Ordinances, at least 10 days prior to the event.

2 e. All permit applications must include a report detailing how many people  
3 are expected to attend, the capacity of any proposed temporary structures, whether  
4 there will be outdoor entertainment, a plan for the storage and pickup of garbage  
5 during and after the sale event, and a public safety plan detailing how the  
6 permittee will maintain crowd control and public safety, and comply with the  
7 City's noise ordinance.

8 f. Permit applications shall be examined by the appropriate departments of  
9 the city to ensure protection of the public health, safety and general welfare. In  
10 addition to normal concerns of each such department, particular attention will be  
11 given to traffic flow and control, auto and pedestrian safety, and the effect that the  
12 use and activity will have on surrounding uses, particularly where the adjoining  
13 use is residential. The permit may be approved with conditions or denied by the  
14 city manager or designee based on these factors.

15 **Section 2.** Appendix A of the Code of Ordinances, titled "Schedule of Fees, Rates and Charges,"  
16 is amended to read as follows:

17 LAND DEVELOPMENT CODE

18 (4) Zoning:

19 g. Permit for temporary outdoor alcoholic beverage sales (~~\$~~ 30-67) 300.00

20 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1 and 2 of  
21 this ordinance shall become and be made a part of the Code of Ordinances of the City of  
22 Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be renumbered

**D R A F T**

4/23/01

1 or relettered in order to accomplish such intentions.

2 **Section 4.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or  
3 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect  
4 the validity of the remaining portions of this ordinance.

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

7 **Section 6.** This ordinance shall become effective immediately upon final adoption.

8

9 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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12 \_\_\_\_\_  
13 PAULA M. DeLANEY  
14 MAYOR  
15

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17  
18 **ATTEST:**

Approved as to form and legality

19  
20  
21 \_\_\_\_\_  
22 KURT M. LANNON  
23 CLERK OF THE COMMISSION

\_\_\_\_\_

MARION J. RADSON  
CITY ATTORNEY

24 This Ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

25 This Ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

26  
27 carter:ordinances:14TCH-01 PB

*City of*  
*Gainesville*

Inter-Office Communication

Planning Division  
X5022, FAX x2282, Station 12

Item No. 6

TO: City Plan Board

DATE: February 15, 2001

FROM: Planning Division Staff

SUBJECT: Petition 14TCH-01 PB. City of Gainesville. Amend the City of Gainesville Land Development Code to provide regulation for temporary outdoor alcoholic beverage sales for University of Florida Home Game Day Events, in the University Context Area.

Recommendation

Planning staff recommends approval of Petition 14TCH-01 PB.

Explanation

During the fall of 1999, the City Commission heard testimony from the Gainesville Police Department that temporary outdoor alcohol sales were creating problems along University Avenue adjacent to the University of Florida Campus. Crowd control, open container violations and traffic problems associated with people spilling over into street while trying to buy alcohol are examples of the stated problems. The City Commission concluded that the outdoor alcohol sales under the City's special events sales permit process was creating a public safety problem.

On June 12, 2000, the City Commission withdrew a proposed ordinance that would have prohibited temporary alcoholic beverage sales permits in the University Context area. The City Commission, after hearing from citizen and business owners in the area, referred this issue to the Public Safety Committee for review. After several meetings, the Public Safety Committee recommended that the Land Development Code be changed to allow alcohol sales with conditions and to charge a fee of \$300 per permit. It was determined that the \$300 fee is the amount needed to cover extra police patrols in the area.

Staff recommends that Sec. 30-67. General provision for business and mixed-use districts be amended to include the following:

**Temporary Outdoor Alcoholic Beverage Sales for University of Florida Home Game Day Events, in the University Context Area Permit**


- (1) Temporary Outdoor Alcoholic Beverage Sales for University of Florida Home Game Day Events, in the University Context Area Permit. The city manager or designee may

issue a permit for outdoor alcoholic beverage sales, provided the following conditions and requirements are met:

- a. The business conducting the sale must be an existing business in a permanently fixed location operating with an alcoholic beverage license issued by the State of Florida.
- b. The temporary sale event must be conducted on the site where the business is located and the site of the temporary sale must be owned or leased by the business as part of the normal daily operations of the business. Businesses located in a development consisting of several stores sharing the area to be used by the sales event must have the permission of the owner of the development and the consent of the tenants that share the space.
- c. The area used for the temporary sales event can not be more than 1.5 times the square footage of the on-site business conducting the sale. Permits for the use of the space will be issued for the period of the day before the game and the day of the game.
- d. All permit applications must include a site plan sketch showing the location, access, barriers delineating the use area from other public areas and all other details of the site. All permit applications must be applied for at least 10 days before the event.
- e. The permit application shall also include a report detailing how many people are expected to attend, the capacity of any proposed temporary structures, whether there would be outdoor entertainment, a plan for the storage and pickup of garbage during and after the event, and a public safety plan detailing how the sponsors will maintain crowd control and public safety, in addition to compliance with the City's Noise Ordinance.
- f. Applications for a permit under the provisions herein shall be examined by the appropriate departments of the city to ensure protection of the public health, safety and general welfare. In addition to normal concerns of each such department, particular attention shall be given to traffic flow and control, auto and pedestrian safety, and the effect that such use and activity will have on surrounding uses, particularly where the adjoining use is residential. The permit may be approved, approved with conditions or denied by the city manager or designee.

Amend Appendix A, Schedule of fees, rates and charges to include a \$300 fee for the permit.

Respectfully submitted,



Ralph Hilliard  
Planning Manager

RH



6. **Petition 14TCH-01 PB** City of Gainesville. Amend the City of Gainesville Land Development Code to provide regulation for temporary outdoor alcoholic beverage sales for University of Florida Home Game Day Events, in the University Context Area.

Mr. Ralph Hilliard was recognized. Mr. Hilliard explained that over a year ago, the board had approved a petition that would prohibit temporary outdoor alcoholic beverages sales for University of Florida Home Game Day Events in the University Context Area. He indicated that, after public comment, the City Commission withdrew the petition and referred the matter to the Public Safety Committee. He explained that the Public Safety Committee discussed the matter and made a recommendation to the City Commission. He noted that the recommendation was then referred by the City Commission to the Plan Board. Mr. Hilliard presented a map of the University Context Area. He indicated that the proposal was for temporary outdoor alcoholic beverage sales on game days with guidelines and requirements to address public safety and codes enforcement issues. He reviewed the requirements for obtaining a temporary outdoor alcoholic beverage sales permit. Mr. Hilliard offered to answer any questions from the board.

Chair McGill asked if the intention was to regulate sales at all games or only football games. He suggested that, if so, that should be specified in the petition since there were UF home games from September to May.

Mr. Hilliard indicated that the ordinance was intended for football games. He agreed that the language could be more specific.

Mr. Carter cited a concern about the number of regulations in the University Context Area. He asked why the ordinance would not apply citywide.

Mr. Hilliard explained that the area was singled out because there were additional problems associated with alcohol sales on game days. He pointed out the area on the map and noted that it did not include downtown which had separate regulations.

Mr. Carter asked about the proposed \$300 license fee.

Mr. Hilliard explained that the fee was set by the City Commission and but it was requested that the information be included in the board's packet. He suggested that the fee would probably apply to all outdoor businesses.

Mr. Pearce noted that the \$300 fee was for a two-day permit. He suggested that, given the numbers of persons in the area on a certain day, it was understandable that extra police presence might be required. He requested more information on the provision for businesses that "shared an area."

Mr. Hilliard indicated that could include a parking lot at a shopping center, where separate businesses shared the parking. He pointed out that most of the outdoor sales took place in parking lots.

Mr. Pearce asked if sales could occur in the front of a row of businesses such as those on University Avenue, and if each business owner had to agree for one business to have alcohol sales.

Mr. Hilliard indicated that only private shared area would be affected. He explained that the sidewalk in front of the businesses on University Avenue was a public area, therefore, could not be used for sales. He noted that he did not believe the City would allow a business to sell alcohol on the public sidewalk.

There was discussion of specific businesses with private setbacks and shared areas.

Mr. Pearce noted that the petition allowed an area 1.5 times the square footage of the business to be used for outdoor alcohol sales. He suggested that it was a rather large area.

Mr. Guy asked if an outdoor café that sold alcohol required a permit.

Mr. Hilliard indicated that it did not. He explained that if the entire sales operation took place outside a building it was considered outdoor sales. He agreed that a person could go inside a business buy a cup of beer, but that person would be in violation of the law if they went off private property.

Mr. Bill Richert was recognized. Mr. Richert indicated that he owned a business that dealt with outdoor sales on game days. He discussed various types of alcohol sales licenses and how they applied to businesses in the University Context Area. He noted that the state licenses allowed sales in a specified space and the temporary permits were to extend that space for two days. He explained that he could go to the state and the City and request that his parking lot area be added the space where alcohol sales were allowed, but if he did so, he would have additional liability and control requirements. He indicated that he paid a \$600 a year fee to the State for a temporary permit.

Mr. Carter asked if the City's \$300 would be in addition to the State fee.

Mr. Richert indicated that it would.

Chair McGill opened the floor to public comment.

Mr. Bill Richert, owner of Joe's Deli, was again recognized. Mr. Richert discussed the meetings of the Public Safety Committee in which he participated to help develop the ordinance. He indicated that he believed the proposed language was a good compromise to deal with the situation.

Ms. Mary Anderson was recognized. Ms. Anderson indicated that she lived near the University Context Area and near University Avenue. She discussed the problems associated with alcohol sales on game days. She cited a concern about spill over litter and suggested that the regulation apply to all sports events and not just football. She asked why the proposed regulations did not apply to the entire City. She noted that she had seen tents set up in parking lots around town.

Chair McGill closed the floor to public comment. He noted that downtown had regulations on alcohol sales and he asked if those rules applied in other areas of the City.

Mr. Hilliard explained that, outside Downtown and the University Context Area, any business that was licensed to sell alcohol had the option of obtaining a permit to place a tent in their parking lot.

Chair McGill asked why the regulation was not consistent city wide.

Mr. Hilliard explained that a problem was identified in the University Context Area and the regulations were drafted to address that specific problem. He noted that he did not know of any temporary outdoor alcohol sales permits that had ever been requested or issued for any area other than the University Context Area or Downtown. He pointed out that a significant number of persons had to be in an area for an event to make such sales profitable.

Mr. Pearce indicated that he supported the petition but had a concern about allowing a sales area 1.5 times the square footage of the licensed business and the impact to the adjacent neighborhoods.

Mr. Richert explained that the 1.5 number was determined at the Public Safety Committee meetings.

Mr. Guy discussed the inconsistency of the regulations for Downtown, the University Context Area and the rest of the City. He pointed out that the problems associated with the University Context Area were based on many factors around the University and not just alcohol sales. He cited a concern about the amount of the proposed fee for the permit and suggested that it was unfair to penalize specific businesses in an attempt to solve systemic areas problems. Mr. Guy reminded the board that, at one time, it recommended outdoor alcohol sales be prohibited.

Chair McGill asked if Mr. Guy did not wish to support the petition and was in favor of prohibiting temporary outdoor alcohol sales entirely.

Mr. Guy agreed, but reiterated that beverage sales not the primary issue. He agreed that some problems could not be solved.

Chair McGill indicated that he did not understand why the ordinance was needed if any business in the City could request a permit for temporary outdoor alcohol sales on their property. He asked why a special ordinance was required for home football games.

Dr. Fried pointed out that the problem with outdoor sales was geographically restricted to a specific area. He noted that it involved the impact of a significant number of people on policing and clean-up. He indicated that he had no problem with the fee and was, in fact, unsure if \$300 was adequate.

Mr. Richert was recognized. He agreed that alcohol sales and the control of alcohol sales was a problem. He explained that he controlled the persons on his property but others did not. He noted that his business had never been cited for improprieties. He explained that the problem had come when several businesses out of the immediate area or from the County erected tents for outdoor alcohol sales. He pointed out that those businesses' tents were far from their licensed premises. He discussed how the ordinance came and his participation in the matter.

Chair McGill indicated that Mr. Richert's participation in drafting the ordinance was informative.

Mr. Carter made the motion to approve Petition 14TCH-01 PB with the condition that the \$300 fee be changed to \$100.

Chair McGill requested that Mr. Hilliard clarify the fee issue.

Mr. Hilliard explained that the fees were not a part of Chapter 30 of the Land Development Code and were established by the City Commission. He noted, however, the board could recommend a specific fee to the City Commission.

<u>Motion By:</u> Mr. Carter	<u>Seconded By:</u> Mr. Pearce
<u>Moved to:</u> Approve Petition 14TCH-01 PB.	<u>Upon Vote:</u> Motion Carried 6 - 0 Yeas: Carter, Guy, Fried, Pearce, Myers, McGill

Dr. Fried noted that an affected businessman had discussed how the fee had been determined and it did seem appropriate that there be a fee because of the increased need for police services. He suggested that he did not believe \$300 would significantly impact any of the businesses.

Mr. Pearce noted that the fee was for two days. He pointed out that \$150 a day for increased police service was not excessive. He indicated that he could not support a change in the permit fee amount.

Mr. Carter suggested that any business person dealing with a City committee that consisted of two commissioners, persons from the Police Department and neighborhood activists did not have many options. He indicated that he would like more study of the fee to determine if it was reasonable or if it would be considered an impact fee for a business.

Mr. Hilliard reiterated that the City Commission set the fee. He indicated that staff had heard the board's concerns about the fees. He explained that the board could make a motion to request that the City Commission study the fees and the concerns would be addressed in the minutes of the meeting.

<u>Motion By:</u> Dr. Fried	<u>Seconded By:</u> Mr. Pearce
<u>Moved to:</u> Request that the City Commission carefully consider the fairness of the proposed fee for temporary outdoor alcoholic beverage sales for University of Florida Home Game Day Events, in the University Context Area.	<u>Upon Vote:</u> Motion Carried 6 - 0 Yeas: Carter, Guy, Fried, Pearce, Myers, McGill