



MEMORANDUM
Office of the City Attorney

Legistar No. 991153

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

TO: Mayor and City Commission

DATE: September 11, 2000
SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-00-78; Petition No. 35TCH-00PB
An ordinance of the City of Gainesville, Florida; amending subsection 30-66(e)(4) relating to sidewalk cafes in the central corridor district (CCD), providing that a license for a sidewalk café must be renewed upon change of owner of the principal use, revising the requirements and conditions for an enclosure or barrier around the cafe, and revising the requirements for a clear pedestrian path; amending section 30-87 relating to outdoor cafes, revising the requirements and conditions for an enclosure or barrier around the café and requiring the café to not interfere with pedestrian or vehicular circulation; 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, as amended.

STAFF REPORT

The Downtown Redevelopment Advisory Board (DRAB) made a motion at their January 6, 2000 meeting that the land development code provisions for sidewalk cafes and outdoor cafes be revised to address the issues of: whether or not the cafes are used and what to do with a non-used cafe; the amount of space needed for pedestrians on a sidewalk; and the need for barriers of any kind. The DRAB was concerned about some situations in downtown where it appears that a sidewalk cafe is not in use, yet barriers remain in place.

At present, the Land Development Code allows sidewalk cafes and outdoor cafes in certain zoning districts. An outdoor cafe is defined as an unenclosed establishment that is located on private property, open to the public and operates under the regulations for food service of the Florida Department of Agriculture or Florida Department of Business and Professional Regulation. Outdoor cafes are allowed in the CCD, MU-1 and MU-2 zoning districts in accordance with the requirements of Article VI, Section 30-87.

Sidewalk cafes are permitted in the CCD zoning district, provided that a license is obtained for the use of the public right-of-way, and that the cafe is operated in conjunction with a permitted principal use. Sidewalk cafes are only permitted use of the sidewalk up to 5 feet from the


curbline of the street and from any fire hydrants, planters or other public improvements in the right-of-way. Both sidewalk cafes and outdoor cafes are required by the Land Development Code to be defined by an enclosure of a least 3 feet in height. For sidewalk cafes, if the use is abandoned or if the enclosure no longer meets the requirements of the Land Development Code, the code requires that all obstructions of the right-of-way be removed.

The Plan Board reviewed the petition and recommended approval of the petition as presented by staff.


Public notice was published in the Gainesville Sun on June 6, 2000. The Plan Board held a public hearing June 22, 2000. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 35TCH-00 PB. Plan Board vote 5-0. **Staff is proposing a change on page 4, line 1, of the ordinance to clarify when items associated with a café must be removed from the sidewalk. The change is shown in shaded text.**

Fiscal Note
None

Prepared by:


Patricia M. Carter
Sr. Assistant City Attorney

Approved and
Submitted by:


Marlon J. Radson
City Attorney

MJR:PMC:sw

PASSED ON FIRST READING BY A VOTE OF 3-0.

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ORDINANCE NO. _____

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An ordinance of the City of Gainesville, Florida; amending subsection 30-66(e)(4) relating to sidewalk cafes in the central corridor district (CCD), providing that a license for a sidewalk café must be renewed upon change of owner of the principal use, revising the requirements and conditions for an enclosure or barrier around the cafe, and revising the requirements for a clear pedestrian path; amending section 30-87 relating to outdoor cafes, revising the requirements and conditions for an enclosure or barrier around the café and requiring the café to not interfere with pedestrian or vehicular circulation; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on June 22, 2000; and

WHEREAS, notice was given and publication made of a Public Hearing which was then held by the City Commission on August 28, 2000; and

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

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings 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:

Petition No. 35TCH-00 PB
CODE: Words ~~stricken~~ are deletions; words underlined are additions; words shaded are proposed changes for second reading.

1 **Section 1.** Subsection 30-66(e)(4) of the Land Development Code of the City of Gainesville is
2 amended to read as follows:

3 **Sec. 30-66. Central City District (CCD).**

4 (e) *Additional requirements.*

5 (4) *Sidewalk cafes.*

6 a. Such cafes may be operated with a permitted principal use provided a
7 license thereof is first issued by the city manager. The city manager is authorized
8 to issue revocable licenses, terminable upon 15 days' notice, for the use of public
9 right-of-way for sidewalk cafes, provided that all of the requirements of this
10 chapter are met, the principal use and sidewalk cafe are otherwise in compliance
11 with the requirements of this Code, the owner of the principal use agrees in
12 writing to maintain the portion of the right-of-way where the sidewalk cafe exists,
13 the owner of the principal use agrees in writing to hold the city harmless for any
14 personal injury or property damage resulting from the existence or operation of
15 the sidewalk cafe and the condition and maintenance of the right-of-way upon
16 which it is located, and the owner of the principal use furnishes evidence of
17 general liability insurance in the amount of \$100,000 per person and \$200,000 per
18 occurrence with the city as additional named insured. A license for a sidewalk
19 cafe must be renewed upon the change of ownership of the permitted principal
20 use.

21 b. Such license shall only permit use of the sidewalk up to five feet from the
22 curblineline of the street and from any fire hydrants, ~~planters, or other public~~

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1 improvements in the right-of-way. A minimum 5-foot wide clear pedestrian path
2 on the sidewalk shall be maintained at all times, except where a sidewalk cafe is
3 adjacent to a lane of traffic with no on-street parking, and located on an arterial
4 street. In such cases, a minimum 6-foot wide clear pedestrian path on the
5 sidewalk shall be maintained at all times. A license issued to a sidewalk cafe
6 which serves an eating place, as defined in Section 30-23, may include the area
7 adjacent to the curblin, when adjacent to on-street parking, provided that there is
8 sufficient public sidewalk to maintain a 5 foot wide clear pedestrian path. The
9 width of a required clear pedestrian path may be increased by the City Manager or
10 designee if deemed necessary for pedestrian circulation. No such license shall
11 authorize the use or obstruction of a sidewalk located within the triangular area at
12 the intersection of two streets as defined in Section 30-341.

13 c. Every sidewalk cafe that serves an alcoholic beverage establishment, as
14 defined in Section 30-23, shall be defined by an enclosure or barrier of at least 3-
15 feet in height, measured from the ground or sidewalk level, except for an
16 entrance/exit of customary width. If the alcoholic beverage establishment does
17 not operate between the hours of 8:00 a.m. and 6:00 p.m., elements of the
18 enclosure shall not be permanently affixed to the sidewalk, unless otherwise
19 required by a governmental entity. A sidewalk cafe that serves an eating place, as
20 defined in Section 30-23, shall not be required to have an enclosure or barrier. If
21 a business owner does not provide a permanent enclosure or barrier to define the
22 area of use, all chairs, tables, elements of the barrier or enclosure and related items

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1 shall be moved inside the building for storage when the ~~cafe~~ business is closed, or
2 be securely stored adjacent to the building. If enclosures or barriers are provided,
3 they shall be designed to ensure access to the public right-of-way by the
4 handicapped people with disabilities. Such enclosures or barriers may consist of
5 screens, planters, fencing or other material which provides an enclosure that
6 defines the area of use. Unless otherwise specified in this Section, provided that
7 the business operates 4 out of 7 days a week and is in operation by 6:00 p.m. each
8 business day, such enclosure and other improvements may be permanently
9 affixed to the sidewalk, and provided they are removed, and the sidewalk repaired
10 to its original condition, upon termination of the license or abandonment of the
11 sidewalk cafe use. If at any time, parts or part of the enclosure are removed or
12 withdrawn, to such an extent that the enclosure is no longer sufficient to meet the
13 requirements stated herein, all obstruction of the right-of-way must be removed.
14 The city manager or designee is authorized to revoke any license issued pursuant
15 to this section if it is determined by the city manager or designee that the licensee
16 has violated the terms of the license agreement or this section.

17 (d) No heating or cooking of food or open flame shall be allowed in the
18 sidewalk cafe area.

19 **Section 2.** Section 30-87 of the Land Development Code of the City of Gainesville is amended
20 to read as follows:

21 **Sec. 30-87. Outdoor Cafes**

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- 1 (a) An outdoor cafe may be operated in conjunction with a principal use other than an eating
2 place when all state requirements for food and beverage service are met, except that an outdoor
3 cafe may only be operated in conjunction with an alcoholic beverage establishment in the central
4 city district (CCD). An outdoor cafe may include the sale of alcoholic beverages for
5 consumption on the premises when at least 51 percent of the monthly gross revenues of the food
6 and beverage activity is attributable to the sale of food and non-alcoholic beverages. The
7 outdoor activity shall ~~only include the sale of~~ only include the sale of food and beverages, except as
8 may otherwise be permitted as special event sales.
- 9 (b) Every outdoor cafe shall be defined by an enclosure or barrier of at least 3-feet in height,
10 unless otherwise approved by the appropriate reviewing board or staff, if only staff review is
11 required. The enclosure or barrier can be plants, screens or fencing. The outdoor cafe shall be
12 open to the weather. The outdoor cafe shall not interfere with the circulation of pedestrian or
13 vehicular traffic on adjoining streets, alleys or sidewalks.
- 14 (c) Parking requirements shall be calculated based on the seating, to be consistent with the
15 parking requirements for eating establishments, in accordance with this chapter.
- 16 (d) All such areas shall be in the front yard when adjacent to the side or rear to property in
17 any residential land use category.
- 18 (e) All lighting shall be shielded so that substantially all the directly emitted luminous flux
19 falls within the property lines.
- 20 (f) Any music or other entertainment outside the enclosed building shall not be amplified
21 beyond the normal acoustical range of the instrument.

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1 (g) Noise, smoke, odor or other environmental nuisances shall be confined to the lot upon
2 which the restaurant is located and shall be controlled in accordance with city, state and federal
3 regulations.

4 (h) Development plan review shall be required in accordance with Article VII. The area for
5 the outdoor cafe shall be shown on the development plan. The area must not be in conflict with
6 required landscaped area and development review shall determine appropriate modifications of
7 existing landscaped areas. Stormwater management shall be required for landscaped areas that
8 may become compacted or be stabilized with pavers or other materials for the cafe use.

9 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1 and 2 of
10 this ordinance shall become and be made a part of the Code of Ordinances of the City of
11 Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be renumbered
12 or relettered in order to accomplish such intentions.

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

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

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

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PASSED AND ADOPTED this _____ day of _____, 2000.

PAULA M. DeLANEY
MAYOR

ATTEST:

Approved as to form and legality

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this _____ day of _____, 2000.

This Ordinance passed on second reading this _____ day of _____, 2000.

carter:ordinances:35TCH-00PB

