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TO: City Plan Board **Item Number: 1**

FROM: Planning and Development Services Staff **DATE: March 27, 2014**

SUBJECT: Petition-14-31TCH. City Plan Gainesville. Amend the Land Development Code Section 30-121 related to Sidewalk Cafes to add provisions consistent with the Florida Department of Transportation requirements for the use of State right-of-ways.

Recommendation:

Staff recommends approval of this petition and adding a \$2 per square foot space charge to the Schedule of Fees.

Explanation

The State of Florida Department of Transportation (FDOT) notified the City that they would no longer allow sidewalk cafés on State right-of-way, unless certain requirements are met. The FDOT is requiring each business that want to use State right-of-way to pay an annual rental fee of two (2) dollars per square footage of area permitted by the license agreement (see attachment), and to carry a minimum of one million dollars (\$1,000,000) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one million dollars (\$1,000,000) for property damage, or a combined coverage of not less than two million dollars (\$2,000,000). In addition to these requirements the FDOT is requiring the City to administer the program if the City wants to allow this use.

The Community Development Committee of the City Commission held a meeting with stakeholders on this issue, where it was decided that the City would initiate a petition and develop a process to allow sidewalk café s on State right-of way in the downtown area. It was determined that it would not be appropriate on State right-of-ways near the University of Florida Campus. Staff is recommending the following code changes to facilitate the process:

Sec. 30-121. Sidewalk cafes.

Sidewalk cafes shall be operated only in zoning districts that specifically allow such use and shall be operated by the business owner of the principal use pursuant to a license agreement entered into with the city on the form provided by the city and approved by the city attorney as to form and legality. The city manager or designee is authorized to enter into such license agreements and to terminate any license agreement if it is determined by the city manager or designee that the licensee has violated the terms of the license agreement or this section or for such other reason as the city manager or

designee deems necessary for the public health, safety or welfare. All license agreements are subject to the following minimum terms and conditions:

- (1) The principal use and sidewalk cafe shall remain in compliance with the requirements of this Code.
- (2) The licensee shall maintain the portion of the right-of-way where the sidewalk cafe is located in a clean and safe condition and shall promptly repair any damage caused by the licensee, its invitees, employees and others utilizing the sidewalk cafe.
- (3) The licensee shall release, indemnify and hold the City and the State of Florida harmless for any personal injury or property damage resulting from the existence or operation of the sidewalk cafe and the condition and maintenance of the right-of-way upon which it is located, including utilities located within the right-of-way.
- (4) The licensee shall maintain general liability insurance in the amounts not less than one million dollars (\$1,000,000) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one million dollars (\$1,000,000) for property damage, or a combined coverage of not less than two million dollars (\$2,000,000) for cafés on State right-of-ways. The licensee shall maintain general liability insurance in the amounts not less than \$500,000.00 combined single limit for bodily injury and property damage. The city shall be named as an additional insured, as evidenced by a policy endorsement. Policies must be issued by companies authorized to do business in the State of Florida and must be rated at least A- and have a size category rating of VI or higher as per Best's Key Rating Guide, latest edition. The licensee must give the city no less than 30 days written notice prior to any cancellation, nonrenewal, or any material change in a continuing policy. The city's risk management director is authorized to lower the amount of general liability insurance required, if the licensee can show that the above amount is excessive for the particular activity. The licensee shall furnish evidence of such insurance to the city annually.
- (5) The sidewalk cafe shall be at least five feet from the curblines of the street and from any fire hydrants.

(6)

A minimum five-foot wide clear pedestrian path shall be maintained on the sidewalk at all times. However, where a sidewalk cafe is adjacent to a lane of traffic with no on-street parking and located on an arterial street, a minimum six-foot wide clear pedestrian path shall be maintained on the sidewalk at all times. The width of a required clear pedestrian path may be increased or decreased by the city manager or designee if deemed advisable for the public health, safety and welfare. However, in no event shall the clear pedestrian path be less than three feet in width.

(7)

A sidewalk cafe that is operated by an eating place, as defined in [section 30-23](#), may include the area adjacent to the curblineline, when adjacent to on-street parking, provided there is sufficient sidewalk width to maintain a five-foot wide clear pedestrian path.

(8)

A sidewalk cafe that is operated by an alcoholic beverage establishment, as defined in [section 30-23](#), shall be surrounded by an enclosure or barrier at least three feet in height, measured from the ground or sidewalk level. If the alcoholic beverage establishment is not open for business between the hours of 8:00 a.m. and 6:00 p.m., the enclosure or barrier shall not be permanently affixed to the sidewalk, unless otherwise required by a governmental permitting entity.

(9)

A sidewalk cafe that is operated by an eating place, as defined in [section 30-23](#), shall not be required to have an enclosure or barrier, provided all chairs, tables, and related items are stored inside the building or are securely stored adjacent to the building when the eating place is closed for business.

(10)

If enclosures or barriers are required or provided, they shall be designed to provide ADA-compliant access to the public right-of-way. Enclosures or barriers may consist of screens, planters, fencing or other material that surrounds the area in which the sidewalk cafe is operated. Unless otherwise specified in this section, provided that the principal use operates four out of seven days a week and is in operation by 6:00 p.m. each day it is open for business, such enclosure and other improvements may be permanently affixed to the sidewalk, provided they are removed, and the sidewalk repaired to its original condition, upon termination of the license or abandonment of the sidewalk cafe use. If at any time, parts or part of the enclosure are removed or missing to such an extent that the enclosure

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is no longer sufficient to meet the requirements of this section; the entire enclosure shall be removed.

(11)

No heating or cooking of food or open flames shall be allowed in the sidewalk cafe, except as may be allowed by the chief fire official.

(12)


Sidewalk cafes shall not use or obstruct a sidewalk located within the triangular area at the intersection of two streets as defined in section 30-341

(13)

Each license agreement for a sidewalk cafe shall be for a one year term and must be renewed annually and upon any change of business ownership of the principal use. Property owners using State right-of-ways must sign the license agreement furnish by the State and must adhere to all stipulations contain therein.

In addition to the requirements stated above that applicant must pay a rental fee of \$2 per square foot a space used that will be passed on to the State. Therefore, the City's Fee Schedule in the City code of ordinances will be amended to include this fee. Staff recommends approval of this petition.

Respectfully submitted,



Ralph Hilliard
Planning Manager

Attachment: Addendum to Lease Agreement (FDOT)