

**Legistar #**

**150406**

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**ORDINANCE NO: 150406**

**An ordinance of the City of Gainesville, Florida, amending the Code of Ordinances to prohibit smoking outdoors in all City parks and RTS bus facilities; by amending Article II and Article IV of Chapter 11.5; by amending Article II of Chapter 18; by amending Section 2-339 to provide a civil citation penalty; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.**

**WHEREAS**, the Surgeon General of the United States, in a 2006 report of the Surgeon General titled “The Health Consequences of Involuntary Exposure to Tobacco,” has determined that secondhand smoke presents a health danger; and

**WHEREAS**, in addition to presenting a danger to public health, the City Commission finds that secondhand smoke is a material annoyance, inconvenience, discomfort, and health hazard to the citizenry; and

**WHEREAS**, the City Commission finds that smoking occurs at city-owned parks and at the city-owned and operated Regional Transit System bus stations, stops and shelters located within the City; and

**WHEREAS**, the City Commission finds that patrons and employees of the city-owned parks and of the Regional Transit System should not be unnecessarily exposed to secondhand smoke while on the premises; and

**WHEREAS**, restricting smoking and secondhand smoke at City parks, the Rosa Parks RTS Downtown Station and all City bus stations, stops and shelters will protect the health and welfare of the citizenry;

**WHEREAS**, the City Commission in furtherance of protecting the public’s health, safety and welfare desires to restrict smoking as more fully set forth herein;

1 WHEREAS, at least 10 days notice has been given once by publication in a newspaper  
2 of general circulation notifying the public of this proposed ordinance and of public hearings to be  
3 held in the City Commission Auditorium, City Hall, City of Gainesville; and

4 WHEREAS, the Public Hearings were held pursuant to the published notice described at  
5 which hearings the parties in interest and all others had an opportunity to be and were, in fact  
6 heard.

7 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE  
8 CITY OF GAINESVILLE, FLORIDA:

9 Section 1. Section 11.5-16 of Article II, Chapter 11.5 is amended to read as follows:

10 **Chapter 11.5 - HEALTH AND SANITATION**

11 **ARTICLE II – CLEAN INDOOR AIR**

12 **Sec. 11.5-16 - Purpose and intent.**

13 It is the purpose and intent of this article to limit the use of nicotine dispensing devices to  
14 the areas where the use of lighted tobacco products is allowed pursuant to state law.

15 Regulation of indoor ~~where the smoking of lighted tobacco products is allowed~~ is  
16 preempted to the state in F.S. Chapter § 386.209, Florida Statutes, and the delivery to and  
17 possession of nicotine dispensing devices by a minor is prohibited in F.S. § Section 877.112,  
18 Florida Statutes. However, regulation of where the use of nicotine dispensing devices by adults is  
19 allowed is not preempted to the state. The city finds that it is in the best interest of the public  
20 health, safety and welfare to further regulate the use of nicotine dispensing devices within the  
21 city.

22 Section 2. Article IV, Chapter 11.5 is amended to read as follows:

1 **ARTICLE IV - RESTRICTION OF OUTDOOR SMOKING AT A CERTAIN CITY**  
2 **FACILITIES AND CITY PROPERTY AND AT RTS BUS STOPS AND BUS**  
3 **SHELTERS**

4 **Sec. 11.5-40 – Purpose and Definitions.**

5 The purpose of this article is to regulate outdoor smoking at city facilities and property.  
6 Outdoor smoking at city facilities and property is a danger to health and is a material annoyance,  
7 inconvenience, discomfort, and health hazard to employees and patrons. This article does not  
8 regulate indoor smoking, as stated in section 11.5-16, the regulation of indoor smoking is  
9 preempted to the State by Chapter 386, Florida Statutes.

10 *Bus and vehicle* shall mean a bus or motor vehicle operated by RTS for the purpose of  
11 transporting passengers.

12 ~~*Bus shelter* shall mean any designated place, characterized by a roofed or partially roofed~~  
13 ~~structure, where a RTS bus stops to pick up or let off passengers.~~

14 *Bus facility stop* shall mean any designated place where a RTS bus stops to pick up or let off  
15 passengers, including bus stops, bus shelters, transfer stations and terminal stations. Bus  
16 facilities stops may be designated by the placement of a sign or bench.

17 City parks are those areas listed in Chapter 18 of the City Code and any other areas  
18 officially designated by the city commission as a park and posted as such.

19 *Smoke or smoking* shall mean the intake and exhalation by a person of smoke from tobacco,  
20 a tobacco substitute or other weed or plant, and also possessing, carrying, holding or otherwise  
21 having control of a lighted pipe, cigar, cigarette or other lighted smoking equipment. In addition,  
22 for purposes of this article, smoke or smoking shall include the use of a nicotine dispensing  
23 device as defined in section 11.5-17.

CODE: Words ~~stricken~~ are deletions; words underlined are additions.

1           **Sec. 11.5-41 - Prohibition of smoking at or around all RTS bus facilities ~~Rosa Parks~~**  
 2           **~~RTS Downtown Station.~~**

3           ~~A person may not smoke on at or in the municipal transit transfer station, known as the~~  
 4           ~~Rosa Parks RTS Downtown Station except in a specific location designated by the city manager~~  
 5           ~~as a smoking permitted area. The smoking permitted area shall be clearly and conspicuously~~  
 6           ~~posted as provided in section 11.5-42, and shall not exceed ten percent of the total area of the~~  
 7           ~~Rosa Parks RTS Downtown Station.~~

8           ~~**Sec. 11.5-41.1. -- Prohibition of smoking at or around all RTS bus stops and bus shelters.**~~

9           (1) A person shall not smoke outdoors at or within 20 feet of any RTS bus facility; ~~stop or bus~~  
 10           ~~shelter the municipal transit transfer station, known as~~ however, the city manager may designate  
 11           up to ten percent of the total area of a large bus facility such as the Rosa Parks RTS Downtown  
 12           Station or Butler Plaza Station as a smoking permitted area with signs that delineate the  
 13           boundaries of the area and state that smoking is permitted in such area. Nothing herein requires  
 14           the city manager to designate a smoking permitted area.

15           (2) This section shall not apply to pedestrians, drivers or passengers of a motor vehicle, non-  
 16           motorized vehicle, or bicycle on a public street, sidewalk or thoroughfare while actively  
 17           passing on the way to another destination.

18           (3) This section shall not apply to persons who are within 20 feet of a bus facility ~~stop or bus~~  
 19           ~~shelter~~ while lawfully occupying private real property.

20           (4) This section is supplemental and in addition to the prohibitions of smoking near school  
 21           property as provided in F.S. ~~§ 386.212~~ Section 386.212, Florida Statutes.

1 ~~Sec. 11.5-42. - Posting of signs at the Rosa Parks RTS Downtown Station.~~

2 ~~(1) If the city manager designates a smoking permitted area at the Rosa Parks RTS Downtown~~  
3 ~~Station, such area shall be conspicuously posted as a smoking permitted area with signs stating~~  
4 ~~that smoking is permitted in such an area. Such signs shall delineate the boundaries of such~~  
5 ~~area.~~

6 ~~(2) Each sign posted pursuant to this section shall have letters at least four inches high with the~~  
7 ~~principal strokes of letters no less than one half inch wide.~~

8 Sec. 11.5-42 - Prohibition of smoking in city parks.

9 A person shall not smoke outdoors within a city park.

10 ~~Sec. 11.5-42.143. - Posting of no smoking signs at all RTS bus stops and bus shelters.~~

11 ~~(1) The city manager or designee is authorized to install appropriate signage at all bus stops~~  
12 ~~and bus shelters in all locations that smoking is prohibited.~~

13 ~~(2) Such signage shall consist of "No Smoking" or "Smoke Free" signs with letters not less~~  
14 ~~than one inch in height, or the international "No Smoking" symbol consisting of a pictorial~~  
15 ~~representation of a burning cigarette enclosed in a red circle with a red bar across it.~~

16 ~~Sec. 11.5-4344. - Penalties.~~

17 ~~The provisions of this article IV, may be enforced by civil citation as provided in chapter 2,~~  
18 ~~article V, division 6 of this Code.~~

19 Section 3. Section 18-20 of Article II, Chapter 18 is amended to read as follows:

20 **Chapter 18 - PARKS AND RECREATION**

21 **ARTICLE II. - PARK REGULATIONS**

22 **Sec. 18-20. - Prohibited activities.**

1 It shall be unlawful for any person to do any of the following in any park listed in section  
 2 18-18 of this article or any other areas officially designated by the city commission as a park and  
 3 posted as such unless specifically permitted by the appropriate authorization received from the  
 4 city manager or designee and issued pursuant to this article, except for activities of the City of  
 5 Gainesville which are undertaken within the scope of its governmental authority:

6 (1) Construct or erect any hut, shanty or other shelter. Park users may temporarily set  
 7 up a sun/shade apparatus up to ten feet by ten feet in size (larger sizes may be  
 8 approved by request for special events conducted in the park areas upon the issuance  
 9 of a facility use agreement by the city manager or designee in charge of that park  
 10 area). Such apparatus must be made of flexible material, and any support lines  
 11 which extend beyond the length and width of the covering, must be flagged for  
 12 visibility and cannot be within 15 feet of any game court, sport's field, or children's  
 13 play equipment. No sun/shade apparatus shall remain in place overnight in any park  
 14 without a special use permit or facility use agreement being issued by the city  
 15 manager or designee. All parks listed under section 18-18(b) are exempt from the  
 16 temporary sun/shade apparatus provision as stated in this subsection (1);

17 (2) Cook foodstuff on personal grills brought into the park area unless permitted by the  
 18 appropriate authorization received from the city manager or designee. Persons may  
 19 utilize only grills provided or permitted by the city for cooking in the park area. No  
 20 fires or food preparation shall be allowed that pose a hazard to public property or the  
 21 general public;

- 1 (3) Set or stoke a fire, except for city authorized prescribed burns or those fires set or  
2 stoked in designated city or permitted grills, where they are provided, and said fire  
3 shall not be allowed if it poses a hazard to public property or the general public;
- 4 (4) Gather firewood or other natural materials to set or stake a fire;
- 5 (5) Discharge or deposit human wastes, except in toilet facilities provided by the city;
- 6 (6) Dump or deposit yard waste;
- 7 (7) Disturb the natural surface of the ground in any manner unless authorized in writing  
8 by the city manager or designee and done in accordance with a city-initiated land  
9 management activity;
- 10 (8) Allow privately owned animals to discharge or deposit waste on park property  
11 without moving said waste. All owners or others in charge of privately owned  
12 animals shall remove their waste from the park grounds, and may deposit animal  
13 waste in park trash receptacles;
- 14 (9) Pick flowers, nuts, berries, or fruit; or to damage or remove plants, trees, or shrubs,  
15 from any part of the park grounds unless specifically authorized in writing by the  
16 city manager or designee or done in accordance with a city-initiated land  
17 management activity;
- 18 (10) Erect signs or affix signs to any tree, post, pole, fence or park facility or grounds  
19 except as provided by city ordinance, or through an approved facility use contract  
20 with the city manager or appropriate designee;
- 21 (11) Drive, putt or otherwise hit a golf ball or shoot an arrow, except in parks  
22 specifically designated for those purposes;



- 1           (12) In any way disturb, molest, or remove any wildlife, animal, bird, or egg located
- 2                   above, upon or below the surface of the park grounds or to allow any privately
- 3                   owned animal to do so unless specifically authorized in writing by the city manager
- 4                   or designee;
- 5           (13) Write on, draw on, paint on, or otherwise deface, damage, remove or destroy any
- 6                   park facility or any part of the park grounds;
- 7           (14) Carry any weapons, explosive, or destructive device, as defined in F.S. § 790.001,
- 8                   either openly or concealed, onto any park property; except as otherwise permitted
- 9                   by law or this article;
- 10          (15) Operate or park any motorized vehicle, as defined in F.S. Ch. 316, on park
- 11                   grounds except in areas designated by the city as public parking areas, driveways,
- 12                   or roadways. Motorists shall obey all posted speed limit and other directional signs
- 13                   posted within the park. Authorized city personnel or contract personnel shall be
- 14                   allowed to drive vehicles onto park areas during facility maintenance or renovation
- 15                   projects;
- 16          (16) Except as otherwise provided in this Code of Ordinances, purchase, sell, offer for
- 17                   sale, possess, or consume any alcoholic beverages, illegal drugs or intoxicating
- 18                   substances;
- 19          (17) Use public restrooms to shave and/or shower, unless shower facilities are
- 20                   specifically provided for public use at that park;
- 21          (18) Bathe or otherwise be or remain in a water or drinking fountain and/or its reservoir
- 22                   or to allow any privately owned animal to do so;

- 1           (19) Use roller skates, roller blades or skateboards, except on park facilities specifically
- 2                   designated for this purpose;
- 3           (20) Engage in the sale of any item on park property for any non-city sponsored
- 4                   function(s), except as allowed by a facility use agreement issued by the city
- 5                   manager or appropriate designee or in these ordinances;
- 6           (21) Use of any park property for non-city sponsored fundraising activities, except as
- 7                   authorized by the city manager or appropriate designee or in these ordinances;
- 8           (22) Engage in the destruction, removal or alteration of any city owned facility or
- 9                   equipment from any park property except as authorized by the city manager or
- 10                  designee;
- 11          (23) Engage in the removal, alteration or destruction of archaeological or cultural
- 12                  resources from any park property and water body except as authorized by the city
- 13                  manager or designee. For purposes of this article "archaeological or cultural
- 14                  resources" means any associated physical artifacts and features below the ground
- 15                  service indicating the past use of a location by people which may yield information
- 16                  on the city's history or prehistory, including but not limited to artifacts, fossils,
- 17                  bones, shell mounds, or primitive culture facilities or items;
- 18          (24) Install any gate providing access to any park, or build any trail except as
- 19                  authorized by an approved management plan or the city manager or designee;
- 20          (25) Feed any animal except as authorized by the city manager or designee;
- 21          (26) Engage in the removal, destruction or harassment of animals and plants from or on
- 22                  parklands, except for authorized research efforts, as authorized by the city manager
- 23                  or appropriate designee; and

1 (27) Engage in the introduction of plants or animals onto park lands unless authorized  
2 by the city manager or appropriate designee.

3 (28) Smoking outdoors, as defined and prohibited in Article IV of Chapter 11.5 of the  
4 City Code. Any person violating this prohibition shall be subject to civil citation as  
5 provided in chapter 2, article V, division 6 of this Code.

6 **Section 4.** Section 2-339 of Division 6, Article V, Chapter 2 is amended in part to read  
7 as set forth below. Except as amended herein, the remainder of Section 2-339 remains in full  
8 force and effect.

9 **Chapter 2 – ADMINISTRATION**

10 **ARTICLE V. – BOARDS, COMMISSIONS AND COMMITTEES**

11 **DIVISION 6. – CIVIL CITATIONS**

12 **Sec. 2-339. - Applicable codes and ordinances.**

13 The following ordinances are enforceable by the procedures described in this division:

<del>11.5-18</del>	Use of a nicotine dispensing device where smoking prohibited	II	\$725.00
<del>11.5-41</del>	Prohibition of smoking outdoors at or around all Rosa Parks RTS bus facilities Downtown Station	II	\$725.00
<del>11.5-41.1</del>	Prohibition of smoking at or within 20 feet of all RTS bus stops and bus shelters	II	\$75.00
11.5-42	<u>Prohibition of smoking outdoors in City parks</u>	II	\$25.00
18-20(28)	<u>Prohibition of smoking outdoors in all City parks</u>	II	\$25.00

14 **Section 5.** It is the intention of the City Commission that the provisions of Sections 1, 2,  
15 3 and 4 of this Ordinance shall become and be made a part of the Code of Ordinances of the City  
16 of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be  
17 renumbered or relettered in order to accomplish such intentions.

1           **Section 6.** If any word, phrase, clause, paragraph, section or provision of this ordinance  
 2 or the application hereof to any person or circumstance is held invalid or unconstitutional, such  
 3 finding shall not affect the other provisions or application of the ordinance which can be given  
 4 effect without the invalid or unconstitutional provisions or application, and to this end the  
 5 provisions of this ordinance are declared severable.

6           **Section 7.** All ordinances or parts of ordinances, in conflict herewith are to the extent of  
 7 such conflict hereby repealed.

8           **Section 8.** This ordinance shall become effective immediately upon final adoption.

9           **PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.**

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\_\_\_\_\_  
 LAUREN POE  
 MAYOR

ATTEST:

Approved as to form and legality

\_\_\_\_\_  
 KURT M. LANNON  
 CLERK OF THE COMMISSION

\_\_\_\_\_  
 NICOLLE M. SHALLEY  
 CITY ATTORNEY

This ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2017.

This ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2017.