

**LEGISLATIVE #**

**110942A**

ORDINANCE NO. 110942

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**An ordinance of the City of Gainesville, Florida, amending the Land Development Code related to sidewalk cafes; by amending Section 30-23 to add a definition; by creating Section 30-121 to add sidewalk cafes as a specially regulated use; by amending Section 30-66(c) to allow sidewalk cafes within the Central City District; by deleting Section 30-66(e)(3) related to requirements for sidewalk cafes within the Central City District; by amending Appendix A. – Special Area Plans, Section 3. – Special Area Plan for College Park, Exhibit B, Urban Regulations For New Construction – Type 1, Building Use to allow sidewalk cafes; by amending Appendix A – Schedule of Fees, Rates and Charges of the Code of Ordinances to add an annual fee for sidewalk cafes; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.**

**WHEREAS**, publication of notice of a public hearing was given 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 April 26, 2012; and

**WHEREAS**, pursuant to law, an advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of the public hearing to be held in the City Commission Meeting Room, First Floor, City Hall, in the City of Gainesville at least seven (7) days after the first advertisement was published; and

**WHEREAS**, a second advertisement no less than two columns wide by 10 inches long was placed in the aforesaid newspaper notifying the public of the second public hearing to be held at least five (5) days after the day the second advertisement was published; and

1           **WHEREAS**, public hearings were held pursuant to the published notices described  
 2 above at which hearings the parties in interest and all others had an opportunity to be and were,  
 3 in fact, heard.

4           **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
 5 **CITY OF GAINESVILLE, FLORIDA:**

6           **Section 1.** Section 30-23 Definitions. of the Land Development Code is amended to add  
 7 the following definition. Except as amended herein, the remainder of Section 30-23 remains in  
 8 full force and effect.

9           Sidewalk cafe means a seating area within the public right-of way that is: adjacent to,  
 10 ~~and operated by, and as~~ an accessory use to an eating place or an alcoholic beverage  
 11 establishment.

12  
 13           **Section 2.** A new Section 30-121 Sidewalk cafes. is created within Article VI  
 14 Requirements for Specially Regulated Uses of the Land Development Code to read as follows:

15 **Sec. 30-121. Sidewalk cafes.**

16           (a) Sidewalk cafes shall be operated only in zoning districts that specifically allow  
 17 such use and shall be operated by the business owner of the principal use pursuant to a  
 18 license agreement entered into with the city on the form provided by the city and  
 19 approved by the city attorney as to form and legality. The city manager or designee is  
 20 authorized to enter into such license agreements and to terminate any license  
 21 agreement if it is determined by the city manager or designee that the licensee has  
 22 violated the terms of the license agreement or this section or for such other reason as  
 23 the city manager or designee deems necessary for the public health, safety or welfare.  
 24 All license agreements are subject to the following minimum terms and conditions:

25           (1) The principal use and sidewalk cafe shall remain in compliance with the  
 26 requirements of this Code.

27           (2) The licensee shall maintain the portion of the right-of-way where the  
 28 sidewalk cafe is located in a clean and safe condition and shall promptly repair  
 29 any damage caused by the licensee, its invitees, employees and others utilizing the  
 30 sidewalk cafe.

31           (3) The licensee shall release, indemnify and hold the city 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 \$500,000 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 5 feet from the curbline of the street and from any fire hydrants.

(6) A minimum 5-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 6-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 3-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 curbline, when adjacent to on-street parking, provided there is sufficient sidewalk width to maintain a 5-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 3 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.

1 (10) If enclosures or barriers are required or provided, they shall be designed to  
 2 provide ADA-compliant access to the public right-of-way. Enclosures or barriers  
 3 may consist of screens, planters, fencing or other material that surrounds the area  
 4 in which the sidewalk cafe is operated. Unless otherwise specified in this section,  
 5 provided that the principal use operates four out of seven days a week and is in  
 6 operation by 6:00 p.m. each day it is open for business, such enclosure and other  
 7 improvements may be permanently affixed to the sidewalk, provided they are  
 8 removed, and the sidewalk repaired to its original condition, upon termination of  
 9 the license or abandonment of the sidewalk cafe use. If at any time, parts or part  
 10 of the enclosure are removed or missing to such an extent that the enclosure is no  
 11 longer sufficient to meet the requirements of this section; the entire enclosure  
 12 shall be removed.

13 (11) No heating or cooking of food or open flames shall be allowed in the  
 14 sidewalk cafe, except as may be allowed by the Chief Fire Official.

15 (12) Sidewalk cafes shall not use or obstruct a sidewalk located within the  
 16 triangular area at the intersection of 2 streets as defined in section 30-341.

17 (13) Each license agreement for a sidewalk cafe shall be for a one year term and  
 18 must be renewed annually and upon any change of business ownership of the  
 19 principal use.

20 **Section 3.** Section 30-66 (c) of the Land Development Code is amended to read as set

22 forth below. Section 30-66(e)(3) is deleted and repealed in its entirety. Except as amended

23 herein the remainder of Section 30-66 remains in full force and effect.

24 **Sec. 30-66. - Central city district (CCD).**

25 (c) *Permitted uses.*

SIC	Uses	Conditions
	USES BY RIGHT:	
	Adult day care homes	In accordance with article VI
	Alcoholic beverage establishments	In accordance with article VI <u>including</u> <u>sidewalk cafes as an accessory use in</u> <u>accordance with VI</u>
	Any accessory uses customarily and clearly incidental to any permitted principal use	

	Bed and breakfast establishments	
	Compound uses	
	Day care centers	In accordance with article VI
	Dormitories	In accordance with article VI
	Eating places	Including sidewalk cafes <u>as an accessory use</u> in accordance <del>with this section 30-66(e)</del> <u>article VI</u>
	Farmers markets	In accordance with article VI
	Multifamily dwellings up to 150 units per acre	
	Outdoor cafes	As defined in article II and in accordance with article VI
	Personal fitting and sales of orthopedic or prosthetic appliances	
	Places of religious assembly	In accordance with article VI
	Public service vehicles	In accordance with article VI
	Roominghouses	In accordance with article VI
	Single-family dwellings	
	Structured parking	As regulated by the special area plan for traditional city
	Townhouses	
	Two-family dwellings	
GN-074	Veterinary services	Only within enclosed buildings and in accordance with article VI
IN-0752	Animal specialty services, except veterinary	Only within enclosed buildings
GN-078	Landscape and horticultural services	
MG-15	Building construction - General contractors and operative builders	
MG-17	Construction - Special trade contractors	
IN-2261	Finishers of broadwoven fabrics of cotton	
IN-2262	Finishers of broadwoven fabrics of manmade fiber and silk	
MG-27	Printing, publishing and allied industries	
MG-41	Local and suburban transit and interurban highway passenger transportation	
MG-43	U.S. Postal Service	
GN-472	Arrangement of passenger	

	transportation	
MG-48	Communications	Accessory transmission, retransmission, and microwave towers up to and including 100 feet in height in accordance with article VI
MG-52	Building materials, hardware, garden supply	Excluding mobile home dealers (GN-527)
MG-53	General merchandise stores	
MG-54	Food stores	Excluding gasoline pumps as accessory uses
MG-56	Apparel and accessory stores	
MG-57	Home furniture, furnishings and equipment stores	
MG-59	Miscellaneous retail	Excluding fuel dealers (GN-598), junkyards and salvage yards
Div. H	Finance, insurance and real estate	Excluding cemetery subdividers and developers (IN-6553)
GN-701	Hotels and motels	
MG-72	Personal services	Excluding funeral services and crematories (GN-726)
MG-73	Business services	Excluding disinfecting and pest control services (IN-7342)
MG-76	Miscellaneous repair services	Excluding welding repair (IN-7692) and armature rewinding shops (IN-7694)
MG-78	Motion pictures	Excluding drive-in theaters (IN-7833)
MG-79	Amusement and recreation services	Only within enclosed structures, and excluding go-cart rental and raceway operations
MG-80	Health services	Excluding hospitals (GN-806) and including nursing and personal care facilities (GN-805) in accordance with article VI
MG-81	Legal services	
MG-82	Educational services	Including private schools, in accordance with article VI
GN-832	Individual and family social services	
GN-833	Job training and vocational rehabilitation services	
GN-839	Social services, not elsewhere classified	Excluding rehabilitation centers
MG-84	Museums, art galleries and botanical	

	and zoological gardens	
MG-86	Membership organizations	
MG-87	Engineering, accounting, research, management and related services	Within enclosed buildings
MG-89	Services, not elsewhere classified	
Div. J	Public administration	Excluding correctional institutions (IN-9223)
	USES BY SPECIAL USE PERMIT	
	Accessory transmission, retransmission and microwave towers over 100 feet in height	In accordance with article VI
	Community residential homes over 14 persons	In accordance with article VI
	Emergency shelters	
	Food distribution center for the needy	In accordance with article VI
	Other uses (including light assembly or packaging)	Within completely enclosed structures; no outdoor storage, truck traffic limited to that normal to commercial activities such as grocery stores, loading docks and mechanical equipment must be screened, and sound attenuation shall be provided to any adjacent residential area or area in actual residential use; no access to any residential street; must meet industrial buffers. Storage of hazardous materials in accordance with the county hazardous materials management code
	Rehabilitation centers	In accordance with article VI
	Residences for destitute people	In accordance with article VI
	Social service homes and halfway houses	In accordance with article VI
GN-726	Funeral services and crematories	In accordance with article VI

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2 (e) *Additional requirements.*

3 (1) *General conditions.* All structures and uses within this district shall also comply with  
 4 the applicable requirements and conditions of section 30-67 and article IX, and the  
 5 Traditional City overlay.

6 (2) *Projections over right-of-way.* Projections may, in the CCD, project over any public  
 7 right-of-way used for sidewalks or other pedestrian walkways when in conformance with



1 the Florida Building Code and, when permitted by the public entity responsible for the  
2 right-of-way by the granting of an easement or other appropriate property right.

3 ~~(3) Sidewalk cafes.~~

4 ~~a. Sidewalk cafes may be operated in conjunction with a permitted principal use  
5 provided a license therefor is first issued by the city manager. The city manager is  
6 authorized to issue revocable licenses, terminable upon 15 days' notice, for the use of  
7 public right-of-way for sidewalk cafes, provided all requirements of this chapter are  
8 met, the principal use and sidewalk cafe are in compliance with the requirements of  
9 this Code, the owner of the principal use agrees in writing to maintain the portion of  
10 the right-of-way where the sidewalk cafe exists, the owner of the principal use agrees  
11 in writing to hold the city harmless for any personal injury or property damage  
12 resulting from the existence or operation of the sidewalk cafe and the condition and  
13 maintenance of the right of way upon which it is located, and the owner of the  
14 principal use annually furnishes evidence of general liability insurance in the amounts  
15 of \$100,000.00 per person and \$200,000.00 per occurrence with the city as additional  
16 named insured. A license for a sidewalk cafe must be renewed upon the change of  
17 ownership of the permitted principal use.~~

18 ~~b. This license shall only permit use of the sidewalk up to 5 feet from the curbline  
19 of the street and from any fire hydrants. A minimum 5-foot wide clear pedestrian path  
20 shall be maintained at all times, except where a sidewalk cafe is adjacent to a lane of  
21 traffic with no on-street parking, and located on an arterial street. In such cases, a  
22 minimum 6-foot wide clear pedestrian path on the sidewalk shall be maintained at all  
23 times. A license issued to a sidewalk cafe that serves an eating place, as defined in  
24 section 30-23, may include the area adjacent to the curbline, when adjacent to on-  
25 street parking, if there is sufficient public sidewalk to maintain a 5-foot wide clear  
26 pedestrian path. The width of a required clear pedestrian path may be increased by the  
27 city manager or designee if deemed necessary for pedestrian circulation. No such  
28 license shall authorize the use or obstruction of a sidewalk located within the  
29 triangular area at the intersection of 2 streets as defined in section 30-341~~

30 ~~e. Every sidewalk cafe that serves an alcoholic beverage establishment, as defined  
31 in section 30-23, shall be defined by an enclosure or barrier of at least 3 feet in height,  
32 measured from the ground or sidewalk level, except for an entrance/exit of customary  
33 width. If the alcoholic beverage establishment does not operate between the hours of  
34 8:00 a.m. and 6:00 p.m., elements of the enclosure shall not be permanently affixed to  
35 the sidewalk, unless otherwise required by a governmental entity. A sidewalk cafe that  
36 serves an eating place, as defined in section 30-23, shall not be required to have an  
37 enclosure or barrier. If a business owner does not provide a permanent enclosure or  
38 barrier to define the area of use, all chairs, tables, elements of the barrier or enclosure  
39 and related items shall be moved inside the building for storage when the cafe is  
40 closed, or be securely stored adjacent to the building. If enclosures or barriers are~~

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

14 d. ~~No heating or cooking of food or open flames shall be allowed in the sidewalk~~  
 15 ~~cafe area.~~

16 **Section 4.** Appendix A. – Special Area Plans, Section 3. – Special Area Plan for College  
 17 Park, Exhibit B, Urban Regulations For New Construction – Type 1. Building Use, is amended  
 18 to read as stated below. Except as amended herein, the remainder of Appendix A. – Special Area  
 19 Plans, Section 3. – Special Area Plan for College Park remains in full force and effect.

20 Urban Regulations for New Construction – Type 1

21 *Building Use.*

- 22 1. Allowable uses are those permitted in the underlying zoning district or those permitted  
 23 within an adopted Planned Development (PD) ordinance. If the underlying zoning district  
 24 or the PD allows alcoholic beverage establishments or eating places as a permitted use, then  
 25 a sidewalk cafe shall be allowed as an accessory use to those uses in accordance with article  
 26 VI.
- 27 2. New construction or expansion of drive-throughs is prohibited within the Special Area  
 28 Plan Area. Existing drive-throughs shall be allowed as non-conforming uses, as regulated  
 29 by Sec. 30-346 of the Land Development Code.  
 30

31 **Section 5.** Appendix A. – Schedule of Fees, Rates and Charges of the Code of  
 32 Ordinances is amended to read as stated below. Except as amended herein, the remainder of

1 Appendix A. – Schedule of Fees, Rates and Charges remains in full force and effect.

2 LAND DEVELOPMENT CODE:

3 (4) Zoning

4 i. Administrative fee for license agreement for sidewalk cafe (§30-121) ....60.00

5 **Section 6.** It is the intention of the City Commission that the provisions of Sections 1  
6 and 5 of this ordinance shall become and be made a part of the Code of Ordinances of the City of  
7 Gainesville, Florida, and that the sections and paragraphs of this ordinance may be renumbered  
8 or relettered in order to accomplish such intentions.

9 **Section 7.** If any word, phrase, clause, paragraph, section or provision of this ordinance  
10 or the application hereof to any person or circumstance is held invalid or unconstitutional, such  
11 finding shall not affect the other provisions or applications of the ordinance which can be given  
12 effect without the invalid or unconstitutional provisions or application, and to this end the  
13 provisions of this ordinance are declared severable.

14 **Section 8.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of  
15 such conflict hereby repealed.

16 **Section 9.** This ordinance shall become effective immediately upon final adoption.

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18 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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\_\_\_\_\_  
CRAIG LOWE  
MAYOR

ATTEST:

Approved as to form and legality

1 \_\_\_\_\_  
2 KURT M. LANNON  
3 CLERK OF THE COMMISSION

\_\_\_\_\_   
MARION J. RADSON  
CITY ATTORNEY

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5 This Ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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7 This Ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2012.