

07-0209

*City of
Gainesville*

Inter-Office Communication

Planning Division
X5022, FAX x2282, Station 11

Item No. 4

TO: City Plan Board

DATE: July 19, 2007

FROM: Planning Division Staff

SUBJECT: Petition 80TCH-07 PB. Stacy Girouard, agent. Amend the Land Development Code of the City of Gainesville to allow "Itinerant Food Vendors" on properties within the Business (BUS: General business district) zoning district that contain a large scale retail store (50,000 square feet or greater).

Recommendation

Staff recommends approval of Petition 80TCH-07 PB.

Explanation

This petition proposes to allow itinerant food vendors in the BUS zoning district, and only in association with retailers over 50,000 square feet in size. Expanding itinerant food vendors to properties containing relatively large-scale retail stores may humanize the scale of a large retail center.

An "itinerant food vendor" is a person, corporation, company or business that sells immediately consumable food products and non-alcoholic beverage items from a non-permanent structure at a fixed location on private property. In other words, itinerant food vendors sell products from small, mobile vending carts that are typically (and often appropriately) found in places exhibiting relatively high pedestrian volumes, such as downtown or in front of a large-format retail store such as a Wal-Mart or Home Depot.

Currently, itinerant food vendors are only allowed in the MU-1 and MU-2 zoning districts.

Allowing such vendors within additional locations in the city promotes small, locally-owned business operations—particularly those with modest capital resources. Indeed, urban designers such as Jane Jacobs have pointed out that areas with high pedestrian volumes tend to be incubators for small, non-corporate businesspeople, largely because the barriers to entering the market are quite low.

Such vendors are also said to provide convenient and affordable products to customers.

Perhaps the main concern that communities have with such vendors is aesthetics. Uncontrolled vendors can create clutter and litter problems. Staff believes, however, that the City will be able to adequately enforce and correct such problems, and the large distances found between large-format retailer buildings and nearby streets and properties further mitigate these potential problems, should they arise.

The City must strike a careful balance in regulating itinerant food vendors. As noted above, such vendors can create nuisance or aesthetic problems. However, they also provide an important function in creating a healthy, attractive, festive atmosphere that is considered desirable by a large percentage of pedestrians.

Parcel Zoning and Itinerant Food Vendors

Currently, there are 848 parcels within the city that are zoned MU-1, 276 that are zoned MU-2 and 242 zoned BUS. Therefore, allowing itinerant food vendors in the BUS zoning district would increase the number of parcels where such vendors are allowed by 22 percent—but only on those parcels where a retailer exceeding 50,000 square feet is found. Only a small handful of BUS parcels have such retailers in the city.

Examples of large retailers in Gainesville

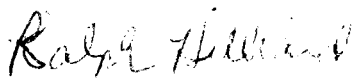
Sam's	2801 NW 13 th St	PD zoning	115,500 sf
Home Depot	5150 NW 13 th St	BUS zoning	95,776 sf
Lowe's	2564 NW 13 th St	MU-2 zoning	135,900 sf
Home Depot	7107 NW 4 th Blvd	BUS zoning	102,400 sf
Walmart	2649 NW 13 th St	MU-2 zoning	104,000 sf
Publix	5200 NW 43 rd St	PD zoning	54,000 sf
Publix	1302 N. Main St	MU-2 zoning	38,000 sf
Walgreens	1170 E. Univ. Ave	MU-1 zoning	13,000 sf
Wal-Mart Supercenter	Being constructed at 1800 NE 12 th Ave	MU-2 zoning	216,000 sf

As of July 3, 2007, there are six individuals holding itinerant food vendor permits in six locations within city limits. This number has remained fairly steady over the past several years.

Summary of Existing Itinerant Food Vendor Requirements

1. Only allowed in MU-1 & MU-2 zoning districts currently. Only one such vendor is allowed per property.
2. A trash container and fire extinguisher must be provided.
3. Any licenses required must be displayed.
4. Such vendors are only allowed to operate between 7 am till 11 pm, and only in an approved location.
5. Such vendor operations cannot be set up before 7 am and must be removed at end of each day no later than 11 pm.
6. No outdoor customer seating allowed in association with such vending.
7. No drive-thru service is allowed. That is, vendors cannot sell to customers who are within motor vehicles, unless the customer is disabled.
8. Such vendors cannot obstruct sidewalks, access to entrance doors or fire hydrants. Nor can such vendors be a nuisance.
9. Such vending operations that change their cart, the owner, or the location of the operation requires new permit.
10. An itinerant food vendor permit must be renewed annually (October 1st).
11. Liability insurance required for itinerant food vendors.
12. Tent structures not allowed for itinerant food vendors.
13. Alcohol cannot be sold by an itinerant food vendor.
14. A \$50 fee required for such vendors.
15. Permits for itinerant food vendors are issued by the City Building Division.

Respectfully submitted,



Ralph Hilliard
Planning Manager

DM:DN
Attachments

- Recommended text changes for Sec. 30-61, and Chapter 19, Article IV.

Sec. 30-61. General business district (BUS).

(a) *Purpose.* The general business district is established to provide for a wide range of commercial, business and office uses located along major transportation arteries and frontage roads. The district shall be located so as to promote compatibility with residential uses while maintaining flexibility for commercial uses. If appropriate transitional zones between residential and general business areas do not exist, they must be provided through the use of design features under the development plan provisions of this chapter. Residential uses are encouraged both to buffer the more intense aspects of these areas and to provide greater flexibility in areas of existing strip development.

(b) *Objectives.* The provisions of this district are intended to:

- (1) Permit compatible commercial, office and service developments that benefit from being located in close proximity to each other;
- (2) Minimize traffic congestion on public streets;
- (3) Ensure, through development plan approval, that major commercial developments are designed to promote the most efficient use of the land, as well as establish a harmonious relationship between such development and its environment;
- (4) Require appropriate buffering or screening around such development when it abuts any residential district boundary, to maintain its compatibility with such abutting district; and
- (5) Discourage, as much as possible, encroachment by industrial, residential or other uses considered capable of adversely affecting the basic commercial characteristics of the district.
- (6) Provide community level services and retail uses. Such districts should not overlap other community serving activity centers.

(c) *Permitted uses.*

TABLE INSET:

SIC	Uses	Conditions
	USES BY RIGHT:	
	Any accessory uses customarily and clearly incidental to any permitted principal use	
	Bed and breakfast establishments	In accordance with article VI
	Compound uses	
	Eating places	

	<u>Itinerant Food Vendor</u>	<u>In accordance with chapter 19, article IV</u>
	Outdoor cafe	As defined in article II and in accordance with article VI
	Personal fitting and sales of prosthetic or orthopedic appliances	
	Places of religious assembly	In accordance with article VI
	Public service vehicles	As defined in article II and in accordance with article VI
	Repair services for household needs	As defined in article II
	Forest nursery for sale of planted trees only	In a non-enclosed (outdoor), fenced area; excluding storage and outside storage of all other items other than: (1) trees planted in the ground, and (2) mechanical and vehicular equipment used to plant, cultivate and harvest the trees; subject to development plan review
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	
GN-171	Plumbing, heating and air conditioning contractors	
GN-172	Painting and paper hangers	
GN-173	Electrical work	
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-43	U.S. Postal Service	
GN-472	Arrangement of passenger transportation	Offices only, with no operation of passenger tours from the site
MG-48	Communications	Accessory transmission, retransmission and microwave towers up to and including 100 feet in height in accordance with article VI
GN-523	Paint, glass and wallpaper stores	
GN-525	Hardware stores	
GN-526	Retail nurseries, lawn and garden supply stores	
MG-53	General merchandise stores	
MG-54	Food stores	Accessory gasoline and alternative fuel pumps in accordance with article VI
GN-553	Auto and home supply stores	Excluding garage and installation facilities except as provided for with a special use permit
GN-554	Gasoline service stations including the sale of alternative fuels for automobiles	In accordance with article VI
MG-56	Apparel and accessory stores	
MG-57	Home furniture, furnishings and equipment stores	
MG-59	Miscellaneous retail	Direct selling establishments (IN-5963) and fuel oil dealers (IN-5983) with inside storage, display and sales only

Div. H	Finance, insurance and real estate	Excluding cemetery subdivisions and developers (IN-6553)
MG-72	Personal services	Including funeral services and crematories in accordance with article VI
MG-73	Business services	Excluding outdoor advertising services (IN-7312, heavy construction equipment rental and leasing (IN-7353), and equipment rental and leasing, not elsewhere classified (IN-7359); and including disinfecting and pest control services (IN-7342), in accordance with article VI.
GN-752	Automobile parking	
MG-76	Miscellaneous repair services	Excluding miscellaneous repair shops and related services (GN-769), and including repair services for household needs as defined in article II
MG-78	Motion pictures	Excluding drive-in theaters (IN-7833) and outdoor filming facilities
MG-79	Amusement and recreation services	Only within enclosed structures, and excluding go-cart rental and raceway operations and also excluding commercial sports (GN-794)
MG-80	Health services	Including nursing and personal care facilities (GN-805) in accordance with article VI, and excluding hospitals (GN-806) and rehabilitation centers.
MG-81	Legal services	
MG-82	Educational services	Private schools in accordance with article VI
MG-83	Social services	Including day care as defined in article II and in accordance with article VI, excluding rehabilitation centers, halfway houses, social service homes, and residences for destitute people as defined in article II
GN-841	Museums and art galleries	
MG-86	Membership organizations	See also definition of places of religious assembly and in accordance with article VI
MG-	Engineering, accounting,	Excluding testing laboratories, (IN-8734) and facility

87	research, management and related services	support management services (IN-8744)
MG-89	Services, not elsewhere classified	
Div. J	Public administration	
	USES BY SPECIAL USE PERMIT	
	Accessory transmission, retransmission and microwave towers over 100 feet in height	In accordance with article VI
	Alcoholic beverage establishments	In accordance with article VI
	Food distribution center for the needy	In accordance with article VI
	Limited automotive services	In accordance with article VI
	Rehabilitation centers	In accordance with article VI
	Residences for destitute people	In accordance with article VI
GN-598	Fuel dealers	In accordance with article IX
GN-701	Hotels and motels	
GN-702	Roominghouses and boardinghouses	In accordance with article VI

(d) *Dimensional requirements.*

(1) Minimum yard setbacks:

a. Front: Ten feet.

b. Where the side or rear yard abuts property which is in a residential district or is shown for residential use on the future land use map of the comprehensive plan, the minimum setback shall be 50 feet or the distance created by the 60-degree angle of light obstruction, whichever is greater.

(2) Accessory structures shall not exceed 25 feet in height.

(3) Maximum lot coverage: 40 percent.

(4) Maximum building height: Where the side or rear yard abuts property which is in a residential district or is shown for residential use on the future land use map of the comprehensive plan, the maximum building height shall be three stories.

(e) *General requirements.*

(1) Where the side or rear yard abuts property which is in a residential district or is shown for residential use on the future land use map of the comprehensive plan, solid waste, recycling, yard trash containers (except litter containers), and grease containers, that are stored outside of the building, shall be placed at the side or the rear of the building and within ten feet of the building. The container shall be enclosed with an enclosing wall, so that it is not visible from the street or adjacent property (from ground level). The enclosing wall shall be finished and/or painted with the same material as is used on the building. The enclosing wall shall be fitted with an opaque sliding or hinged door and working latch. Loading docks shall be placed at the side or rear of the building, and shall be screened from the street and abutting residential land.

(2) Mechanical equipment shall be located so that noise and visual impacts upon abutting residential property are minimized. For purposes of this section, mechanical equipment is defined as a heating, ventilation, or air conditioning unit placed outside of a building.

(3) All structures and uses within this district shall also comply with the applicable requirements and conditions of section 30-67 and article IX.

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 3918, § 3, 11-15-93; Ord. No. 3963, § 3, 3-14-94; Ord. No. 4075, § 6, 5-8-95; Ord. No. 950862, § 3, 11-13-95; Ord. No. 951420, § 3, 7-8-96; Ord. No. 980273, § 1, 11-9-98; Ord. No. 030128, § 1, 10-27-03; Ord. No. 030752, § 4, 5-10-04; Ord. No. 030916, § 1, 8-9-04)

ARTICLE IV. VENDING BOOTHS AND ITINERANT VENDORS*

***Editor's note:** Section 1 of Ord. No. 970631, adopted June 8, 1998, repealed §§ 19-91--19-97 in their entirety and added §§ 19-91--19-98 to read as set forth herein. Formerly, §§ 19-91--19-97 pertained to mobile food carts and derived from §§ 14-31--14-36 of the 1960 Code; and Ord. No. 3435, § 1, adopted May 16, 1988.

Section 1 of Ord. No. 990299, adopted Oct. 25, 1999, changed the title of Art. IV from "Vending Booths" to "Vending Booths and Itinerant Food Vendors".

Sec. 19-91. Definition.

A "vending booth" is a temporary wheeled cart-mounted food or retail establishment, or a permanent structure constructed by the city on the Gainesville Community Plaza. A vending booth cannot be propelled by an internal combustion engine, electric motor or other similar mechanical device. A vending booth, except a permanent structure constructed by the city on the

Gainesville Community Plaza, must be capable of being moved from place to place, but may be stationary during the business day. Examples of vending booths are, but are not limited to, the following: coffee/cappuccino stands; stands selling muffins, bagels and other bakery items; ice cream carts; snow cone and Italian Ice carts; fast-food carts; souvenirs carts; and newsstands.

An "itinerant food vendor" is a person, corporation, company or business that sells immediately consumable food products and non-alcoholic beverage items from a non-permanent structure at a fixed location on private property.

(Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Sec. 19-92. Annual permit.

(a) A vending booth permit or itinerant food vendor permit is required and can be renewed annually upon payment of the fee specified in Appendix A of this Code. Vending booth and itinerant food vendor permits expire on October 1 and are delinquent if not renewed. Vending booth and itinerant food vendor permits initially received between April 1 and September 30 are subject to one-half the permit fees for the initial period ending September 30. In order to obtain a vending booth permit, written approval of the proposed vending booth is required from the fire department and code enforcement office, who will approve the application if it meets the requirements of this article and all applicable fire safety regulations. In order to obtain an itinerant food vendor permit, a minor site plan, meeting the requirements of Article VII of the land development code, must be approved by the city manager or designee, including written approval from the fire department if applicable. The application for an itinerant food vendor permit must include sufficient information for staff to determine that all of the applicable requirements of section 19-97 are met.

(b) When applying for the vending booth or itinerant food vendor permit, photographs of the vending booth or itinerant food vending conveyance must be submitted for review. The city manager or designee will examine the photographs and shall determine the acceptability of the vending booth or itinerant food vending conveyance as to design and appearance. Items to be considered will be size, material and color of the vending booths or itinerant food vending conveyance, canopy and signs.

(Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Sec. 19-93. Insurance requirements.

Each vending booth operator located on public property shall be required to carry liability insurance, in amounts to annually be determined by the city manager, which shall include the city as an additional insured and which shall indemnify, defend and save harmless the city, its elected and appointed officers, employees and agents, from any resultant claims which may arise from operation of the booth due to intentional wrongdoing or negligence by the operator, or employees, contractors or agents of the operator.

(Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Sec. 19-94. Public areas available by drawing.

Vending booths on public property will only be allowed in areas as designated by the city manager. When more than one application is received for a designated space, that space will be made available by random drawing of all qualified applicants. Once an operator has received a space, that space will not become available again unless the operator does not renew the permit or the owner's permit is revoked under section 19-98.

(Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Sec. 19-95. Setbacks.

Vending booths on public property must be located a minimum of five feet from the curb or improved right-of-way and so positioned as to leave an unobstructed way for pedestrian passage on any sidewalk and shall not be positioned within five feet of any crosswalk or fire hydrant, nor block any ingress or egress from a building entrance or emergency exit. Vending booths shall be 25 feet from intersections.

(Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Sec. 19-96. Signage.

Signs using lettering painted on or applied to the canopy valance will be allowed. The sign message on the canopy valance shall be limited to a single generic description of the merchandise, such as "food," "sandwiches," "ice cream," "newspapers." Two additional signs will be allowed at six square feet each, to be mounted on the vending booth or itinerant food vending conveyance. No other signs, pictures or advertisements of any kind, such as stickers, flags, balloons, or lights other than as discussed below, shall be allowed.

(Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Sec. 19-97. Regulations.

Vending booths and itinerant food vending conveyances operating in the city shall be subject to the following regulations:

- (1) The county/state health department must license any vending booths and itinerant food vending operations preparing and selling food items. All applicable codes of the health department shall be met.
- (2) A trash container must be available on the vending booth or itinerant food vending conveyance.
- (3) Lighting may be used to continuously illuminate the vending booth or itinerant food vending conveyance canopy and provide task lighting for night operation.
- (4) Change of ownership, cart or location will require that the owner apply for a new vendor booth or itinerant food vendor permit.
- (5) All required licenses must be conspicuously displayed on the vending booth or itinerant food vending conveyance.
- (6) Vending booths and itinerant food vending conveyances must be provided with at least one approved portable fire extinguisher having a minimum rating of 8 BC.
- (7) All liquefied petroleum gas containers must be installed on the outside of the vending booth or itinerant food vending conveyance, protected from physical damage and, if enclosed, vented at the lowest point of the enclosure. All liquefied petroleum gas containers must be properly secured and comply with all applicable standards.
- (8) The following regulations shall apply to itinerant food vendors:
 - a. Tent structures shall not be permitted.
 - b. Sale of hot dogs, sausages or barbecue meat shall only be made from a cart approved by the applicable state agency. No alcoholic beverages may be sold.
 - c. Vendors are restricted to mixed-use low intensity (MU-1) and mixed-use medium intensity (MU-2) zoning districts, and the General Business (BUS) when the property contains a retail store of at least 50,000 square feet. There shall be only one vending conveyance per property, location or development.
 - d. Itinerant food vendors applying to operate on private property must provide the following information:

1. A brief description of the nature, character and quality of food and beverage to be offered for sale.
 2. The specific location of the proposed operation.
 3. The name and address of the applicant's employer, if not self-employed.
 4. Written permission or lease from the owner of the property where the business will operate.
 5. A site plan meeting the requirements of Article VII of the land development code for a minor development plan to include dimensions and the proposed location of the itinerant food vending conveyance as well as entrance and exits to the host business, parking areas, bus stops, loading zones, fire hydrants, zoning district setbacks and any other information necessary for the city to determine that the itinerant food vending conveyance will comply with all city codes.
- (9) Itinerant food vendors shall keep the sidewalks, parking areas and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from their vending operation.
- (10) No itinerant food vendor shall be permitted to operate in any of the following areas:
- a. Within 25 feet of any loading zone or bus stop.
 - b. Within 15 feet of a building entrance or exit.
 - c. Against display windows of a business.
 - d. Within 25 feet of any fire hydrant, fire escape or fire control device.
 - e. Within 25 feet of any parking space or access ramp designated for persons with disabilities.
 - f. Outside the established building setbacks of the zoning district.
 - g. Within required parking spaces unless the city manager or designee determines that the parking spaces are not needed and the property owner agrees that the itinerant food vendor may operate there.
 - h. On a vacant lot or property.
- (11) Sales shall be oriented to pedestrians. No itinerant food vendor shall sell or attempt to sell any product or engage in any commercial transaction with the occupant of any motor vehicle, unless requested by a person with a disability.
- (12) Vendors shall not conduct business in a way that will restrict or interfere with the entrance or exit of a business, create a nuisance, create a hazard to pedestrians, life or property, or obstruct access to emergency exits.
- (13) Itinerant food vending shall be limited to the hours between 7:00 a.m. and 11:00 p.m. daily and shall take place only at the approved location. Itinerant food vending operations shall not be set up prior to 7:00 a.m. and must be removed at the end of the business day.
- (14) Outdoor seating shall not be permitted.
- (15) Vending booth and itinerant food vendor permits shall not be valid during any event declared to be a special event by the city manager or designee. A separate permit shall be required for vending at these events.
- (Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Sec. 19-98. Revocation of permit/license.

Permits/licenses issued under this article may be revoked by the city manager or designee after proper notice and opportunity for hearing for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the application for permit.
- (2) Any violation of this section.
- (3) Conviction of a felony by a court of competent jurisdiction of the operator, or any shareholder, partner or member of an organization holding a 50-percent or greater interest in the permit for any of the following: homicide, rape, aggravated battery, burglary, aggravated assault, kidnapping, robbery, child molestation, lewd and lascivious acts, criminal solicitation to commit

any of the above, criminal attempt to commit any of the above, or possession, sale or distribution of narcotic drugs, barbituric acid derivatives or central nervous system stimulants.

(4) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

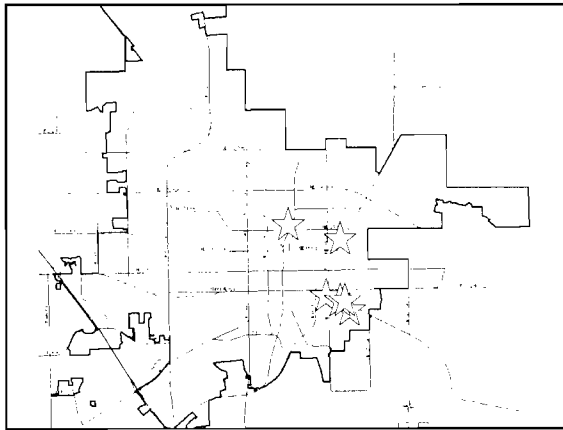
(5) Failure to operate for more than 14 consecutive days during the period from May 1 through September 30 of each year.

Such revocation may be appealed directly to the city commission provided such appeal is filed with the clerk of the commission within 15 days of the time of the revocation by the city manager. The clerk shall schedule the hearing on the appeal at the next regular meeting of the city commission scheduled to be at least ten days from the date the appeal is filed. The clerk shall inform the city manager of the appeal, and the city manager shall forward the evidence used to determine the revocation, including minutes of the hearing, if any, to the clerk. The city commission shall review the record and may restore the permit only if it finds an abuse of discretion.

(Ord. No. 970631, § 1, 6-8-98; Ord. No. 990299, § 1, 10-25-99)

Allow Itinerant Food Vendors in BUS zoning

80TCH-07PB



Summary

- “Itinerant”: Mobile vendor in a non-permanent structure at a fixed location
- Only in MU-1 & MU-2 now. Only one per property
- Proposal: Also allow in BUS zoning & only with retailers over 50K sq. ft.

Summary

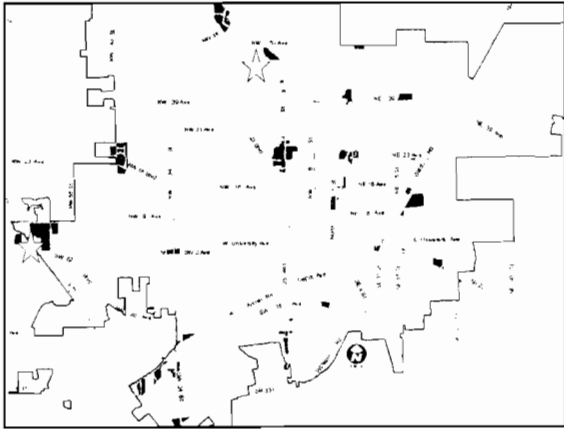
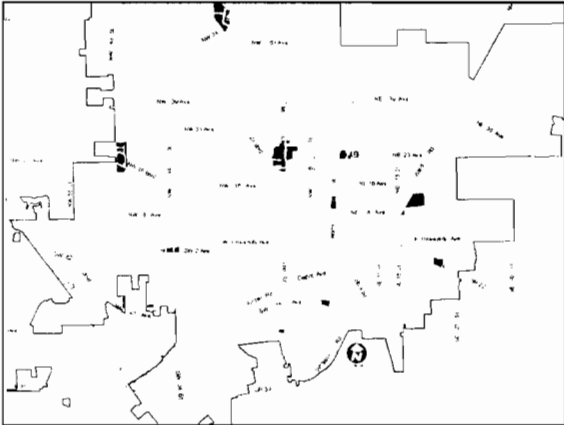
- Trash container, fire extinguisher, license displayed
- No customer seating
- No drive-thru’s
- 7am to 11 pm & only in approved location
- Remove at end of day

Summary

- Operation cannot obstruct or be a nuisance
- Change of cart, owner, location requires new permit
- Annual permit (10/1)
- Liability insurance required
- No tent structures

Summary

- No alcohol sales
- \$50 fee required
- Permit from Bldg Division



Recommendation

Approve Petition