



MEMORANDUM

Office of the City Attorney

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LEGISLATIVE ITEM NO. 090657

TO: MAYOR AND CITY COMMISSION DATE: June 17, 2010

FROM: CITY ATTORNEY

SUBJECT: **Prohibiting Smoking at RTS Bus Stops and Bus Shelters**

Recommendation: The City Commission: 1) hear a presentation that includes the recommendation of four members of the RTS Advisory Board; and 2) authorize the City Attorney to prepare, and the Clerk of the Commission to advertise, an ordinance amending Article IV, Chapter 11.5, Code of Ordinances prohibiting smoking at all RTS bus stops and bus shelters.

SUMMARY

The City Commission, at its meeting of December 17, 2009, requested the City Attorney to research and opine whether the City may prohibit smoking at RTS bus stops and shelters within the corporate limits. After reviewing the legislative history of the Florida law and researching general law, it is the opinion of the City Attorney that the City may prohibit smoking at RTS bus stops and bus shelters that are located within the City. The City Attorney has consulted with the City Manager and the Director of RTS who concur with this recommendation. Additionally, the RTS Advisory Board, after hearing a presentation from the City Attorney and reviewing the draft ordinance, also concurs with this recommendation.

BACKGROUND INFORMATION

At the December 17, 2009 City Commission meeting, the City Commission requested that the City Attorney research whether the City may prohibit smoking at City bus stops and bus shelters. The City Commission also sent the referral to the Advisory Board of RTS for review and a recommendation.

In Florida, a municipality is given broad authority to enact ordinances under its municipal home rule powers, to legislate concurrently with the Legislature on any subject not expressly preempted to the State. *See Wyche v. State*, 619 So.2d 231, 237-38 (Fla. 1993); *City of Miami Beach v. Rocio Corp.*, 404 So.2d 1066, 1069 (Fla. 3d DCA 1981); *Barragan v. City of Miami*, 545 So.2d 252, 254 (Fla. 1989). Express preemption requires a specific statement; the preemption cannot be made by implication, nor by inference. *See Fla. League of Cities, Inc. v. Dep't of Ins. & Treasurer*, 540 So.2d 850, 856 (Fla. 1st DCA

1989). However, the preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject. *See Barragan*, 545 So.2d at 254 (citing *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984)).

The preemptory language of Florida Statute 386.209 indicates the intent to preempt the regulation of smoking in indoor workplaces. Florida Statute 386.209: Regulation of smoking preempted to state.—“This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.” This statute makes an express statement of preemption. The title uses broad language by saying “regulation of smoking preempted to state.” The title is only one indicator of the legislature’s intent. The legislature’s intent is explained in 386.202 which states “The purpose of this part is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution. It is the intent of the Legislature to not inhibit, or otherwise obstruct, medical or scientific research or smoking cessation programs approved by the Department of Health.” Section 20, Art. X of the State Constitution is entitled “Workplaces without tobacco smoke.” The legislative intent therefore, seems to be limited to workplaces.

Applying the rules of statutory construction, the language of Fla. Stat 386.209 specifically says “this part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.” By using the words “this part,” the part being referred to is Part II of Fla. Stats. Chapter 386, which has been divided into two parts. Part II being entitled “Indoor Air: Tobacco Smoke.”

Additionally, a ban on smoking at all RTS bus stops and bus shelters will not conflict with the Florida Clean Indoor Air Act. A municipal ordinance that regulates smoking at bus stops is outdoor regulation that does not conflict with Florida’s Clean Indoor Air Act. The only potential conflict that could arise is a municipal ordinance that would also affect an area within 1000 feet of a school, however, any ordinance could defer to the Act in this instance. In other words, to the extent that bus stops and shelters are located within 1000 feet of school properties, the provisions of Fla. Stat. §386.212 would apply to prohibit smoking.

The Attorney General opined that the regulation smoking, wherever it occurs, is preempted to the state. *See AGO 2005-63*. The City Attorney’s Office disagrees with the Opinion of the Attorney General; the Attorney General’s opinion fails to consider the entire language of the preemptory provision. The Attorney General fails to take into consideration the first words of the preemption provision, which uses the “this part” language. As explained earlier, reading the statute’s provision as a whole would limit the scope of preemption to “this part”—the part being Part II on “indoor air: tobacco smoke.” Furthermore, as the Attorney General himself points out, one can also refer to the legislature’s statement of intent in Fla. Stat. §386.202 which also seems to limit the scope of regulation to indoor air given the purpose of implementing s.20, Art. X of the State Constitution.

THE ORDINANCE

The proposed ordinance prohibits smoking at or within 20 feet of any RTS bus stop or bus shelter. Although the Surgeon General has stated that there is no safe level of exposure to secondhand smoke (<http://www.surgeongeneral.gov/library/secondhandsmoke/report/>), studies have shown that at a distance of 20 feet, secondhand smoke concentration levels are generally no greater than background levels (https://webadmin.pfizer.com.mx/files/crossContent/ccFile_988.pdf).

Additionally, several other cities have enacted no-smoking ordinances which ban smoking within 20 feet of bus stops. Note: The cities of Berkley and Pasadena in California, as well as Glendale, Arizona have all successfully enacted no-smoking ordinances using a distance of 20 feet.

The ordinance does not apply to pedestrians, drivers or passengers of a motor vehicle, non-motorized vehicle, or bicycle on a public street, sidewalk or thoroughfare while actively passing on the way to another destination. Additionally, the ordinance does not apply to persons who are lawfully occupying private real property within 20 feet of a RTS bus stop or bus shelter. The City Manager is authorized to install appropriate signage consisting of "No Smoking" or "Smoke Free" language at all RTS bus stops and bus shelters. The provisions of the ordinance will be enforced by civil citation and a fine of \$75.00.

The City Commission should be aware that the ordinance would only apply to RTS bus stops and bus shelters within the Gainesville city limits. If the ordinance is adopted, the City Commission may request the Board of County Commissioners of Alachua to adopt a similar ordinance that would cover RTS bus stops and bus shelters outside the city of Gainesville.

If this ordinance is enacted into law, the City should engage in a public information campaign to inform the citizens and RTS riders of the new law. Additionally, the City may offer a 30 day grace period before enforcing the ordinance in order to allow those affected by the new law to become aware of its operation.

RTS ADVISORY BOARD MEETING

At the May 26, 2010 RTS Advisory Board meeting the City Attorney presented to the Board the City Attorney's opinion regarding the legality of the proposed ordinance and explained how the proposed ordinance would operate. A Prevention Specialist from the Florida Department of Health also spoke at this meeting and expressed her endorsement for the proposed ordinance and the positive public health implications of adopting such an ordinance. Although a quorum was not present at this meeting, the three members of the RTS Advisory Board who were present all expressed their support for the proposed ordinance. (A copy of the draft minutes of the May 26, 2010 RTS Advisory Board meeting are attached.) Another member has subsequently expressed support of the ordinance via e-mail.

CONCLUSION

A municipal ordinance prohibiting smoking at City bus stops and bus shelters within the corporate limits of the City does not conflict with the Florida Clean Indoor Air Act which regulates indoor air and workplaces. City bus stops and bus shelters are outdoor facilities and are limited public places for use by RTS patrons. Therefore, an ordinance regulating smoking at RTS bus stops and bus shelters is outside of the scope of the statute and does not appear to be preempted or conflict with state law.

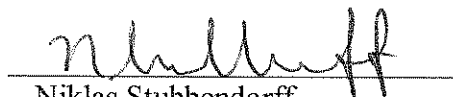
Therefore, the City, may, in the opinion of the City Attorney, prohibit smoking at RTS bus stops and bus shelters.

Prepared and submitted by:



Marion J. Radson,
City Attorney

Assisted by:



Niklas Stubbendorff,
Extern, UF College of Law

Regional Transit System
Citizens Advisory Board
Meeting Notes
Wednesday, May 26, 2010
City Hall, Room 16

MEMBER	PRESENT	ABSENT
Zachary Andrews (Chair)	X	
Kyle (Two Feathers) S. Blair		X
La Twania Brown	X	
Cesar Fernandez		X
Antonio Gil		X
Wayne Googins	X	
Kyle Huey		X
Valerie Rosenkrantz (Vice Chair)		X

RTS employees and interns in attendance

Millie Crawford Doug Robinson
Julian Lauzan Nancy Wininger
Chip Skinner Jesus Gomez
Daphyne Sesco

City Employees in attendance

Marion Radson, City Attorney
Niklas Stubbendorff, extern, City Attorney's office

MV Employees in attendance

Jackie Charles

There were 2 citizens in attendance at the meeting.

The meeting began at 4:36 p.m. without a quorum.

A presentation by Armando Grundy was scheduled for this meeting but he requested that it be postponed to the next CAB meeting in July.

Regional Transit System Staff Presentations

Jesus Gomez, Transit Director, provided the Director's Report to the board.
Topics included:

- Administration Update
- Maintenance Update
- Marketing Update
- Planning Update
- ADA Update

Discussion

Administrative Update – Jesus Gomez

- Ridership –up 4% YTD over last year
- FTA allocation for this year - \$2,965,110
 - 5309 earmarks – \$1.6 million to buy buses
 - Hybrid buses are too expensive at this time (\$600,000 each).
- FDOT – no service development funds available for 2012
- RT 25
 - Proposal to the City Commission to begin in the fall and operate during peak hours for one year
 - UF 50/50 match
 - Maps will be emailed to CAB members for comment.
- FY 11-12 Budget Proposal
 - Revenue
 - Reduction on LOGT (gas tax) revenue
 - \$203,981 FY11
 - \$203,330 FY12
 - Expenses
 - Increase in insurance premiums:
 - \$61,744 FY11
 - \$141,781 FY12
 - Total Deficit
 - The City had projected a \$300,000 deficit for FY2011 and \$500,000 for FY2012 but insurance premiums did not increase as expected so the deficit will be less.
 - FY11 deficit - \$265,725
 - FY12 deficit - \$345,111

ADA Service Savings	\$ 30,000	\$ 30,000	
Fuel Savings	\$100,000	\$100,000	New Bus Fuel Efficiency
Additional Advertising Revenue	\$ 30,000	\$ 30,000	
Eliminate Service Day After Thanksgiving	\$ 27,823	\$ 27,823	Ridership average = 6,251
Eliminate Service Day Before Christmas	\$ 26,771	\$ 26,771	Ridership average = 5,407
Reduction in Operating Expenses/ Additional Revenue	\$ 51,131	\$ 130,517	Additional service and new service fees
Total	\$265,725	\$345,111	

- Mr. Googins asked if the City is self-insured and if a third party handles the claims. Mr. Gomez advised him that the City is self-insured and a third party does handle claims.

FY2010 Projects

- Maintenance Facility – moving slowly
 - Engineering and Design phase
 - General Services Department has many additional projects, such as the Senior Center and Fleet Garage.
- Bio-diesel on all routes by Fall 2010
- Gator Locator for all City Routes by Fall 2010
- Mobile Data Terminals (MDT) in paratransit vehicles
- Automated Passenger Counters (APC) scheduled for Fall 2010

- Facility Rehabilitation (Operations and Maintenance)
- Training Room Expansion
- Video Surveillance Equipment
 - Anticipating installation on 80% of fleet this year, balance next year

Planning – Doug Robinson

- BRT premium transit
- Public hearing in next month or so to advise service changes to Fall routes
 - Need to advertise 2 weeks in advance
 - UF funded improvements
 - Adding buses
 - Improving hours of service
 - Mr. Robinson said he is grateful that UF sees the benefit of the changes.
 - Route 1
 - Extend service to 11:00 PM
 - Add bus to peak service
 - Route 2
 - Have not received public comments on small eliminated portion of route
 - Proposal to extend route to WalMart to help with connection time
 - Better frequency with Route 10 to SFC
 - Route 6
 - Mr. Andrews was concerned about the change on Route 6 and the turn from University St. onto 1st St. especially with on- street parking. Mr. Robinson stated that RTS is aware of the problem and that Mr. Lauzan is working with Operations. RTS is aware of a tenant changing issue at the 400 building that's being worked through. Mr. Andrews asked about a similar problem on Main St. and was told that Mr. Skinner is working with FDOT.
 - Ms. Brown asked if any service is planned in front of the court house and was advised it is not.
 - There was discussion about other detours in the downtown area due to construction.
 - Mr. Googins asked what effect roundabouts have on RTS. Mr. Robinson advised him that even though there is a learning curve with drivers, there is no effect, and that RTS has insisted that future roundabouts match the one at 2nd Ave. and 6th St.
 - Route 8
 - Extend route to 11 p.m. to pick up Shands employees on late shifts
 - Route 12
 - Change route to go by Gateway Gainesville to Publix
 - Better connection between Route 1 and Route 75
 - Mr. Googins asked if UF would fund ½ of the change. Mr. Robinson said that the change does not involve additional funding. Mr. Robinson wants information posted at bus stops to advise people of the public hearing.
 - Route 23 – SFC to Oaks Mall

- Working with Millie Crawford to meet ADA accessibility requirements
- Mr. Lauzan stated that the route improvement will be funded through a federal grant Ms. Crawford applied for and received on behalf of RTS.
- SFC wanted a transportation fee for this route but Governor Crist vetoed the bill.
- RTS will reapply for funds until SFC can provide other funding.
- RTS anticipates the route will do well.
- Route 34 and Route 38
 - Route 38 relieves full buses from Route 34, is a shorter route to McCarty and the Hub, and is supported by the students.
- Route 36
 - Proposal to go into Park Meadows Nursing Home off 41st Place and terminate at Williston Shopping Plaza
 - Currently no bus route on SW 34th St. to shopping center
 - Mr. Googins asked why the nursing home was chosen. Mr. Robinson said it will allow people there who are mobile to use public transit instead of paratransit service. Mr. Googins asked if they were residents of the nursing home and if they paid for RTS service. He was advised that RTS fixed route service is free if they have an ADA card. Paratransit service is \$3.
 - Mr. Googins felt the changes are positive, especially keeping passengers from walking across Archer at 5:30 p.m.
- Ms. Brown asked if RTS is continuing with Later Gator. Mr. Robinson said there are a few changes but that it will continue.

Presentation – Marion Radson and Niklas Stubbendorff

- No smoking ordinance
 - Mr. Radson
 - Introduced himself and Mr. Stubbendorff, a UF law school extern in the City Attorney's office. Mr. Stubbendorff is the 2nd extern to work on the "No Smoking" ordinance because the 1st extern graduated this month. Externs are used to assist on projects such as this.
 - History
 - The "No Smoking" ordinance was referred to the RTS CAB and the City Attorney's office by the City Commission last December to research if the City can lawfully prohibit smoking at bus stops and bus shelters. Actually prohibiting smoking is a separate issue.
 - This referral may have been made in part because Shands and UF began to prohibit smoking at those facilities on campus about 6 months ago which caused their employees and visitors to go out to the right-of-way to RTS bus stops to smoke which somewhat interferes with our transit riders.
 - Smoking is already prohibited by ordinance at the Rosa Parks Downtown Station (effective about a year ago).
 - We have a successful, safe, and efficient system and want to keep it that way for our passengers and employees.

- Each state is different but the citizens of Florida adopted an amendment to the constitution that recognized the harms of smoking in indoor places and authorized the State legislature to regulate indoor smoking. The State legislature adopted law prohibiting indoor smoking more than 10 years ago.
- Later, the Legislature adopted a statute that prohibits smoking within 1000' of public schools. That was the first time the Legislature began to regulate outdoors even though the statute is an indoor regulation statute and the constitution only refers to indoor smoking. That statute, by its own terms, says that the regulations of indoor smoking is preemptive to the state, meaning that only the state can adopt regulations relating to smoking.
- Several years ago, the City Attorney from Margate, FL., asked the Attorney General if they could prohibit smoking at city parks. Then Attorney General Crist (now U.S. Senate candidate) issued a short opinion that Margate could not lawfully do that because it is preemptive to state.
- In spite of that opinion several cities in Florida do prohibit smoking by ordinance at their parks because the Crist opinion is an advisory to a court but is not binding on a court.
- Currently
 - The City of Gainesville owns some bus stops but they are limited public forums, meaning if someone enters a bus stop facility, it should be for no other purpose than for transit and they shouldn't interfere with transit service.
 - Mr. Radson's office
 - Disagrees with the Crist opinion after reading statutes and the Constitution, and reviewing case law
 - Believes "preemptive" refers to indoor smoking and doesn't extend to outdoors
 - Thinks smoking can interfere with transit service and that the City has the authority to prohibit smoking at bus stops and shelters
 - Has drafted an ordinance to show the City Commission how the prohibition could be accomplished
 - Points out several issues that must be taken into consideration
 - Should smoking be prohibited at all bus stops and all shelters? (not all stops have shelters)
 - If so, should smoking also be prohibited within a certain radius of the stop because smoke travels?
 - Would people travel through bus stops to get to destinations and walk, bike, or ride in cars be prohibited from smoking?
 - Some bus stops are adjacent to private property and the City doesn't want to interfere with private property rights.

- Niklas Stubbendorff presented the ordinance
 - The ordinance would prohibit smoking within 20' of all RTS stops and shelters.
 - The Attorney General has found no safe level for 2nd hand smoke but after 20', the level drops to near ambient conditions, which is a safe distance to prohibit smoking.
 - The ordinance will not prohibit someone who is lawfully occupying private real property from smoking, nor will pedestrians, drivers and passengers in vehicles passing through on sidewalks and streets be prohibited, as long as they are actively passing from one destination to another.
 - The ordinance will not interfere with the prohibition of smoking within 1000' of schools.
 - The City Manager will have authority to post signs at bus stops and shelters in conspicuous places using 1" high, easily readable font.
 - Violation of the ordinance will result in a civil citation and a \$75 penalty.
 - This ordinance will affect bus stops and shelters in the City of Gainesville only but the CAB can recommend that the City Commission recommend it to the Board of County Commissioners for the entire county.
- Questions
 - Mr. Andrews asked about stops that are jointly owned.
 - Mr. Radson said this ordinance applies to all operating, official City bus stops, regardless of ownership.
 - Mr. Andrews Mr. Googins asked who would enforce the ordinance.
 - Mr. Radson said that a public information campaign would be needed. The City Attorney's office is working with and has the support of the Department of Health. The ordinance would be enforced by Gainesville Police Department (GPD) and Code Enforcement.
 - Sarah Catalanotto, who was in attendance at the meeting, works with Tobacco Free Alachua which advocates for tobacco free policies in Alachua County. She is in support of the ordinance because of the health hazards smoking creates. She also said that her partnership is working with local enforcement agencies like Alcoholic Beverages and Tobacco, GPD, and the Sheriff's office to help them become more aware of the tobacco issue which should result in stronger enforcement of the ordinance. Ms. Catalanotto said that the public will also take ownership and help with enforcement if they are aware of the ordinance even though they can't issue citations.
 - Mr. Skinner noted that more and more passengers are policing themselves at the Rosa Parks Downtown Station and telling others there is a smoking area.

- Ms. Catalanotto said that the littering ordinance could also be a way to enforce the no-smoking ordinance.
 - Ms. Catalanotto said UF will become 100% smoke free on UF campus, including bus stops, effective July 1.
- Recommendation from the CAB
 - Mr. Radson said that even though the CAB does not have a quorum to make a formal recommendation at this meeting, Board members can email their individual opinions now so that he can make a presentation to the City Commission at the 2nd meeting in June, and if approved, would have enough time to have the ordinance in place by the time school starts in the fall.
 - Mr. Gomez said RTS would send an email to the rest of the CAB to be able to express their views.
 - Mr. Googins would like to see approval recommended to the Board of County Commissioners.
 - Mr. Andrews and Ms. Brown are in support of the ordinance.

Marketing – Chip Skinner

- Web/Social Media
 - 21,875 unique visitors and 2,288,505 hits in April (double last year)
 - Facebook fans increasing 1 person a day
 - Meetings posted on media
- Ad revenue
 - Nearly \$160k
 - Increasing ad rates by 10%
- Rosa Parks Downtown Station mural dedication, May 25
 - Artist in car accident so couldn't attend ceremony
 - Ms. Brown asked how the artist is doing. Mr. Skinner said it will take time for him to recover but that he will be ok.
 - Rosa Parks Quiet Courage Committee is happy with the murals.
 - Murals will be used for education.
 - Mr. Andrews asked about vandalism. Mr. Skinner said the artist had applied a protective coat and 2 anti-graffiti coats over the murals and also left material to repaint if the protective cover needs to be replaced. He also noted that several women on the Quiet Courage Committee live in that area and are watching for vandalism.
 - Mr. Skinner said that we are planning on having telephone numbers in place (like those at Payne's Prairies) for people who want to a "talking tour" to listen to information about the columns. The service will be free to RTS and to listeners.
- Talking Bus—Beta test during Summer B Session
 - Testing ad possibility with Domino's ads to see how riders react and if their business increases
 - We would have access to Domino's tracking data.
- New Route 23 in Fall 2010
 - Serving SFC and Oaks Mall
 - Press release, flyers to business in Oaks Mall, apartment complexes, and SFC for incoming students

ADA – Millie Crawford

- MV complaints increased in March.

- Jackie Charles, MV Assistant Manager, attributes the complaints to a lack of road supervisors, problems with decisions made by dispatchers, and a lack of training for drivers.
 - MV has promoted a road supervisor, is retraining dispatchers, and is implementing their concept of Triple LC (the Smith system for fixed routes) to educate drivers in defensive driving.
 - They are also making sure that their trips make sense and their riders are not having to stay on the vans for an extended time.
- Mr. Googins asked if we own MV and was advised that we own the vehicles but that we contract the service and do not own MV. Ms. Crawford said that due to benefits and wages, it would cost RTS 3 times as much to bring provide the service ourselves.
- Mr. Googins asked how MV is funded. He was advised they receive funds through the County, Medicaid, TD, and other contracts.
- Mr. Andrews noted MV ridership had decreased. Ms. Crawford noted it has been down the last few months and believes it was due to cold weather and the economy.
- Route 23
 - Will be funded by Section 5311 funds
 - The local match will come from Route 75.
 - *Passengers will be taken on a first come-first served basis. Criteria such as disabled or low income will not be a consideration and trips will not be prioritized.*

Actions

No formal actions were taken due to a lack of quorum.

Additional Advisory Board Member Comments

Noted above.

Citizen Comments

A citizen named Jeff (no last name given) was in attendance and asked about the CAB. He was advised of their positions and how they are chosen (City, County, or student). He was advised that the function of the CAB is to discuss issues and make recommendations to the City Commission.

Adjourn Meeting

The discussion ended at 6:01 p.m.

ORDINANCE NO. _____
0-10-05

An ordinance of the City of Gainesville, Florida, relating to outdoor smoking at a City Facility; providing legislative findings, amending Article IV in Chapter 11.5 of the Code of Ordinances; creating new section § 11.5-41.1; prohibiting the smoking of tobacco, or any other weed or plant at all RTS bus stops and bus shelters, and within a certain distance from said stops and shelters, creating new section § 11.5-42.1 providing for the posting of signs; amending §2-339 of the Code of Ordinances to permit enforcement by civil citation; providing directions to the codifier; providing for severability; 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, has determined that secondhand smoke presents a positive health danger;

WHEREAS, the smoking of tobacco, or any other weed or plant, and secondhand smoke are a material annoyance, inconvenience, discomfort, and health hazard to the persons who are present in confined spaces designated for public transit use and occupancy;

WHEREAS, Regional Transit Systems (RTS) buses, vehicles, bus stops and bus shelters are limited public areas that are designated for the specific purpose of use and occupancy only by patrons of the RTS bus system;

WHEREAS, the City Commission finds that patrons and employees of the RTS should not be unnecessarily exposed to secondhand tobacco smoke while utilizing or accessing the services of RTS;

1 WHEREAS, restricting smoking and secondhand smoke at and within certain
2 distances from RTS bus stops and bus shelters will serve the health, safety, and welfare of
3 the patrons and employees of RTS;

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

6 WHEREAS, at least 10 days notice has been given once by publication in a
7 newspaper of general circulation notifying the public of this proposed ordinance and of a
8 Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

9 WHEREAS, a Public Hearing was held pursuant to the published notice
10 described at which hearing the parties in interest and all others had an opportunity to be
11 and were, in fact, heard;

12 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION
13 OF THE CITY OF GAINESVILLE, FLORIDA:

14 Section 1. Findings. The City Commission adopts the foregoing findings.

15 Section 2. Article IV of Chapter 11.5, consisting of Sections 11.5-40 through 11.5-43
16 of the Code of Ordinances of the City of Gainesville, Florida, are amended to read as follows:

17 Chapter 11.5

18 Health and Sanitation

19 ARTICLE IV. RESTRICTION OF OUTDOOR SMOKING AT A CITY FACILITY AND AT
20 RTS BUS STOPS AND BUS SHELTERS

21 Sec. 11.5-40. Definitions.

1 Bus and vehicle shall mean a bus or motor vehicle operated by RTS for the purpose of
2 transporting passengers.

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

5 Bus stop shall mean any designated place where a RTS bus stops to pick up or let off
6 passengers. Bus stops may be designated by the placement of a sign or bench.

7 Smoke or smoking shall mean the intake and exhalation by a person of smoke from
8 tobacco, a tobacco substitute or other weed or plant, and also possessing, carrying, holding or
9 otherwise having control of a lighted pipe, cigar, cigarette or other lighted smoking equipment.

10 **Sec. 11.5-41. Prohibition of Smoking at Rosa Parks RTS Downtown Station.**

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

16 **Sec. 11.5-41.1. Prohibition of Smoking at or around all RTS bus stops and bus shelters.**

17 (1) A person shall not smoke at or within 20 feet of any RTS bus stop or bus shelter.

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

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

1 (4) This section is supplemental and in addition to the prohibitions of smoking near school
2 property as provided in Florida Statutes § 386.212.

3 **Sec. 11.5-42. Posting of signs at the Rosa Parks RTS Downtown Station.**

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

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

10 **Sec. 11.5-42.1. Posting of 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 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
15 pictorial representation of a burning cigarette enclosed in a red circle with a red bar
16 across it.

17 **Sec. 11.5-43. Penalties.**

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

20 **Section 3.** Section 2-339 of the Code of Ordinances of the City of Gainesville is
21 amended by amending §11.5-41 and creating and adding 11.5-41.1 to the table of applicable

1 codes and ordinances as stated below. Except as amended herein, the remainder of Section 2-
2 339 remains in full force and effect.

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

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

Section	Description	Class	Penalty
11.5-41	<u>Prohibition of Smoking at Rosa Parks RTS Downtown Station</u>	II	\$75.00
11.5-41.1	<u>Prohibition of Smoking at or within 20 feet of all RTS bus stops</u> <u>and bus shelters</u>	II	\$75.00

5
6 **Section 4.** It is the intention that Sections 1 through 3 of this ordinance shall be made
7 part of the Code of Ordinances of the City of Gainesville, Florida, and that the Sections and
8 Paragraphs of this ordinance be renumbered or relettered in order to accomplish such intentions.

9 **Section 5.** If any word, phrase, clause, paragraph, section or provision of this
10 ordinance or the application hereof to any person or circumstance is held invalid or
11 unconstitutional, such finding shall not affect the other provisions or applications of the
12 ordinance which can be given effect without the valid or unconstitutional provisions or
13 application, and to this end the provisions of this ordinance are declared severable.

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

16 **Section 7.** This ordinance shall become effective immediately upon final
17 adoption.

18 **PASSED AND ADOPTED** this _____ day of _____, 2010.
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CRAIG LOWE
MAYOR

ATTEST

APPROVED AS TO FORM AND LEGALITY

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

15 This Ordinance passed on first reading this _____ day of _____, 2010.

16 This Ordinance passed on second reading this _____ day of _____, 2010.