



# MEMORANDUM

Office of the City Attorney

Legistar No. 991153

Phone: 334-5011/Fax 334-2229  
Box 46

TO: Mayor and City Commission

DATE: August 28, 2000  
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-00-78; Petition No. 35TCH-00PB  
An ordinance of the City of Gainesville, Florida; amending subsection 30-66(e)(4) relating to sidewalk cafes in the central corridor district (CCD), providing that a license for a sidewalk café must be renewed upon change of owner of the principal use, revising the requirements and conditions for an enclosure or barrier around the cafe, and revising the requirements for a clear pedestrian path; amending section 30-87 relating to outdoor cafes, revising the requirements and conditions for an enclosure or barrier around the café and requiring the café to not interfere with pedestrian or vehicular circulation; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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Recommendation: The City Commission (1) approve Petition 35TCH-00 PB, and (2) adopt the proposed ordinance.

## STAFF REPORT

The Downtown Redevelopment Advisory Board (DRAB) made a motion at their January 6, 2000 meeting that the land development code provisions for sidewalk cafes and outdoor cafes be revised to address the issues of: whether or not the cafes are used and what to do with a non-used cafe; the amount of space needed for pedestrians on a sidewalk; and the need for barriers of any kind. The DRAB was concerned about some situations in downtown where it appears that a sidewalk cafe is not in use, yet barriers remain in place.

At present, the Land Development Code allows sidewalk cafes and outdoor cafes in certain zoning districts. An outdoor cafe is defined as an unenclosed establishment that is located on private property, open to the public and operates under the regulations for food service of the Florida Department of Agriculture or Florida Department of Business and Professional Regulation. Outdoor cafes are allowed in the CCD, MU-1 and MU-2 zoning districts in accordance with the requirements of Article VI, Section 30-87.

Sidewalk cafes are permitted in the CCD zoning district, provided that a license is obtained for the use of the public right-of-way, and that the cafe is operated in conjunction with a permitted principal use. Sidewalk cafes are only permitted use of the sidewalk up to 5 feet from the

curbline of the street and from any fire hydrants, planters or other public improvements in the right-of-way. Both sidewalk cafes and outdoor cafes are required by the Land Development Code to be defined by an enclosure of a least 3 feet in height. For sidewalk cafes, if the use is abandoned or if the enclosure no longer meets the requirements of the Land Development Code, the code requires that all obstructions of the right-of-way be removed.

The Plan Board reviewed the petition and recommended approval of the petition as presented by staff.

Public notice was published in the Gainesville Sun on June 6, 2000. The Plan Board held a public hearing June 22, 2000. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 35TCH-00 PB. Plan Board vote 5-0.

Fiscal Note

None

CITY ATTORNEY MEMORANDUM

This ordinance requires two public hearings. If the Commission adopts the ordinance on first reading, the second and final reading will be held on September 11, 2000.

Prepared by:



Patricia M. Carter  
Sr. Assistant City Attorney

Approved and  
Submitted by:



Marien J. Radson  
City Attorney

MJR:PMC:sw

**D R A F T**

7-14-00

ORDINANCE NO. \_\_\_\_\_  
0-00-78

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**An ordinance of the City of Gainesville, Florida; amending subsection 30-66(e)(4) relating to sidewalk cafes in the central corridor district (CCD), providing that a license for a sidewalk café must be renewed upon change of owner of the principal use, revising the requirements and conditions for an enclosure or barrier around the cafe, and revising the requirements for a clear pedestrian path; amending section 30-87 relating to outdoor cafes, revising the requirements and conditions for an enclosure or barrier around the café and requiring the café to not interfere with pedestrian or vehicular circulation; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.**

**WHEREAS**, the City Plan Board authorized the publication of notice of a Public Hearing 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 June 22, 2000; and

**WHEREAS**, notice was given and publication made of a Public Hearing which was then held by the City Commission on August 28, 2000; and

**WHEREAS**, at least 10 days notice has been given prior to first reading by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

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

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

**Section 1.** Subsection 30-66(e)(4) of the Land Development Code of the City of Gainesville is

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

14 (d) No heating or cooking of food or open flame shall be allowed in the  
15 sidewalk cafe area.

16 **Section 2.** Section 30-87 of the Land Development Code of the City of Gainesville is amended  
17 to read as follows:

18 **Sec. 30-87. Outdoor Cafes**

19 (a) An outdoor cafe may be operated in conduction with a principal use other than an eating  
20 place when all state requirements for food and beverage service are met, except that an outdoor  
21 cafe may only be operated in conjunction with an alcoholic beverage establishment in the central  
22 city district (CCD). An outdoor cafe may include the sale of alcoholic beverages for  
23 consumption on the premises when at least 51 percent of the monthly gross revenues of the food

1 and beverage activity is attributable to the sale of food and non-alcoholic beverages. The  
2 outdoor activity shall ~~only include the sale~~ only include the sale of food and beverages, except as  
3 may otherwise be permitted as special event sales.

4 (b) Every outdoor cafe shall be defined by an enclosure or barrier of at least 3-feet in height,  
5 unless otherwise approved by the appropriate reviewing board or staff, if only staff review is  
6 required. The enclosure or barrier can be plants, screens or fencing. The outdoor cafe shall be  
7 open to the weather. The outdoor cafe shall not interfere with the circulation of pedestrian or  
8 vehicular traffic on adjoining streets, alleys or sidewalks.

9 (c) Parking requirements shall be calculated based on the seating, to be consistent with the  
10 parking requirements for eating establishments, in accordance with this chapter.

11 (d) All such areas shall be in the front yard when adjacent to the side or rear to property in  
12 any residential land use category.

13 (e) All lighting shall be shielded so that substantially all the directly emitted luminous flux  
14 falls within the property lines.

15 (f) Any music or other entertainment outside the enclosed building shall not be amplified  
16 beyond the normal acoustical range of the instrument.

17 (g) Noise, smoke, odor or other environmental nuisances shall be confined to the lot upon  
18 which the restaurant is located and shall be controlled in accordance with city, state and federal  
19 regulations.

20 (h) Development plan review shall be required in accordance with Article VII. The area for  
21 the outdoor cafe shall be shown on the development plan. The area must not be in conflict with  
22 required landscaped area and development review shall determine appropriate modifications of

**D R A F T**

7-14-00

1 existing landscaped areas. Stormwater management shall be required for landscaped areas that  
2 may become compacted or be stabilized with pavers or other materials for the safe use.

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

7 **Section 4.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or  
8 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect  
9 the validity of the remaining portions of this ordinance.

10 **Section 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of such  
11 conflict hereby repealed.

12 **Section 6.** This ordinance shall become effective immediately upon final adoption.

13 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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PAULA M. DeLANEY  
MAYOR

19 ATTEST:

Approved as to form and legality

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

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

25 This Ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

26 This Ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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carter:ordinances:35TCH-00PB

**Petition 35TCH-99 PB, Legislative Matter No. 991153**  
**Text Language for Land Development Code**  
**June 22, 2000**

The following are proposed revisions to the Land Development Code. ~~Strike-throughs~~ indicate proposed deletions, underlines indicate proposed new language.

Section 30-66 (e)(4) Sidewalk Cafes

a. Such cafes may be operated with a permitted principal use provided a license thereof is first issued by the city manager. The city manager is authorized to issue revocable licenses, terminable upon 15 days' notice, for the use of public right-of-way for sidewalk cafes, provided that all of the requirements of this chapter are met, the principal use and sidewalk cafe are otherwise in compliance with the requirements of this Code, the owner of the principal use agrees in writing to maintain the portion of the right-of-way where the sidewalk cafe exists, the owner of the principal use agrees in writing to 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, and the owner of the principal use furnishes evidence of general liability insurance in the amount of \$100,000 per person and \$200,000 per occurrence with the city as additional named insured. A license for a sidewalk cafe must be renewed upon the change of ownership of the permitted principal use.

b. Such license shall only permit use of the sidewalk up to five feet from the curbline of the street and from any fire hydrants, ~~planters, or other public improvements in the right-of-way.~~ A minimum 5-foot wide clear pedestrian path on the sidewalk shall be maintained at all times, except where a sidewalk cafe is adjacent to a lane of traffic with no on-street parking, and located on an arterial street. In such cases, a minimum 6-foot wide clear pedestrian path on the sidewalk shall be maintained at all times. A license issued to a sidewalk cafe which serves an eating place, as defined in Section 30-23, may include the area adjacent to the curbline, when adjacent to on-street parking, provided that there is sufficient public sidewalk to maintain a 5 foot wide clear pedestrian path. The width of a required clear pedestrian path may be increased by the City Manager or designee if deemed necessary for pedestrian circulation. No such license shall authorize the use or obstruction of a sidewalk located within the triangular area at the intersection of two streets as defined in Section 30-341.

c. Every sidewalk cafe which serves an alcoholic beverage establishment, as defined in Section 30-23, shall be defined by an enclosure or barrier of at least 3- feet in height, measured from the ground or sidewalk level, except for an entrance/exit of customary width. If the alcoholic beverage establishment operates only after 6:00 p.m., elements of the enclosure shall not be permanently affixed to the sidewalk, unless required by a governmental entity. A sidewalk cafe which serves an eating place, as defined in Section 30-23, shall not be required to have an enclosure or barrier. If a business owner does not provide a permanent enclosure or barrier to define the area of use, all chairs, tables, elements of the barrier or enclosure and related items shall be moved inside the building for storage when the business is closed, or be securely stored adjacent to the building. If enclosures or

barriers are provided, they shall be designed to ensure access to the public right-of-way by the handicapped people with disabilities. Such enclosures or barriers may consist of screens, planters, fencing or other material which ~~provides an enclosure~~ defines the area of use. Unless otherwise specified in this Section, provided that the business operates 4 out of 7 days a week and is in operation by 6:00 p.m. each business day, ~~Such enclosure and other improvements may be permanently affixed to the sidewalk, and provided they are removed, and the sidewalk repaired to its original condition, upon termination of the license or abandonment of the sidewalk cafe use.~~ If at any time, parts or part of the enclosure are removed or withdrawn, to such an extent that the enclosure is no longer sufficient to meet the requirements stated herein, all obstruction of the right-of-way must be removed. The city manager or designee is authorized to revoke any license issued pursuant to this section if it is determined by the city manager or designee that there is a failure to use the licensed area properly.

(d) No heating or cooking of food or open flame shall be allowed in the sidewalk cafe area.

#### Sec. 30-87. Outdoor Cafes

(a) An outdoor cafe may be operated in conjunction with a principal use other than an eating place when all state requirements for food and beverage service are met, except that an outdoor cafe may only be operated in conjunction with an alcoholic beverage establishment in the central city district (CCD). An outdoor cafe may include the sale of alcoholic beverages for consumption on the premises when at least 51 percent of the monthly gross revenues of the food and beverage activity is attributable to the sale of food and non-alcoholic beverages. The outdoor activity shall only include the sale of food and beverages, except as may otherwise be permitted as special events sales.

(b) Every outdoor cafe shall be defined by an enclosure or barrier of at least 3-feet in height, unless otherwise approved by the appropriate reviewing board or staff, if only staff review is required. The enclosure or barrier can be plants, screens or fencing. The outdoor cafe shall be open to the weather. The outdoor cafe shall not interfere with the circulation of pedestrian or vehicular traffic on adjoining streets, alleys or sidewalks.

(c) Parking requirements shall be calculated based on the seating, to be consistent with the parking requirements for eating establishments, in accordance with this chapter.

(d) All such areas shall be in the front yard when adjacent to the side or rear to property in any residential land use category.

(e) All lighting shall be shielded so that substantially all the directly emitted luminous flux falls within the property lines.

(f) Any music or other entertainment outside the enclosed building shall not be amplified beyond the normal acoustical range of the instrument.



(g) Noise, smoke, odor or other environmental nuisances shall be confined to the lot upon which the restaurant is located and shall be controlled in accordance with city, state and federal regulations.

(h) Development plan review shall be required in accordance with Article VII. The area for the outdoor cafe shall be shown on the development plan. The area must not be in conflict with required landscaped area and development review shall determine appropriate modifications of existing landscaped areas. Stormwater management shall be required for landscaped areas that may become compacted or be stabilized with pavers or other materials for the cafe use.



CITY  
OF  
GAINESVILLE

INTER-OFFICE COMMUNICATION

Item No. 2

TO: City Plan Board

DATE: June 22, 2000

FROM: Planning Division Staff

SUBJECT: Petition 35TCH-00 PB, Amend the City of Gainesville Land Development Code regarding sidewalk cafes and outdoor cafes as to frequency of use and removal of non-used cafes, sidewalk space needed for pedestrians and the need for barriers of any kind.

Recommendation

Staff recommends approval of the proposed text change as provided in this report.

Explanation

The Downtown Redevelopment Advisory Board (DRAB) made a motion at their January 6, 2000 meeting that the land development code provisions for sidewalk cafes and outdoor cafes be revised to address the issues of: whether or not the cafes are used and what to do with a non-used cafe; the amount of space needed for pedestrians on a sidewalk; and the need for barriers of any kind. The DRAB was concerned about some situations in downtown where it appears that a sidewalk cafe is not in use, yet barriers remain in place. At the March 16, 2000 Plan Board meeting, the Plan Board recommended that this petition be continued until such time that a formal recommendation on the issues were made by the DRAB. Staff met with the DRAB on April 6, 2000. The DRAB recommendations to the Plan Board are included in the minutes of the April 6th meeting (see Exhibit B). Staff's recommendations have been revised in regards to some of the issues, based on the DRAB's recommendations.

At present, the Land Development Code allows sidewalk cafes and outdoor cafes in certain zoning districts. An outdoor cafe is defined as an unenclosed establishment that is located on private property, open to the public and operates under the regulations for food service of the Florida Department of Agriculture or Florida Department of Business and Professional Regulation. Outdoor cafes are allowed in the CCD, MU-1 and MU-2 zoning districts in accordance with the requirements of Article VI, Section 30-87.

Sidewalk cafes are permitted in the CCD zoning district, provided that a license is obtained for the use of the public right-of-way, and that the cafe is operated in conjunction with a permitted principal use (see Exhibit A). Sidewalk cafes are only

permitted use of the sidewalk up to 5 feet from the curbline of the street and from any fire hydrants, planters or other public improvements in the right-of-way. Both sidewalk cafes and outdoor cafes are required by the Land Development Code to be defined by an enclosure of a least 3 feet in height. For sidewalk cafes, if the use is abandoned or if the enclosure no longer meets the requirements of the Land Development Code, the code requires that all obstructions of the right-of-way be removed.

In terms of enclosures, some of the cities reviewed by staff require a minimum 3 foot barrier to define sidewalk cafes (i.e., Jacksonville and Sunrise, Florida). Others do not require any enclosures (i.e., Ft. Lauderdale, Tampa, Clearwater and Coral Gables). Tampa and Clearwater, for example, do not allow any element of a sidewalk cafe to be permanently affixed to the sidewalk. Ft. Lauderdale requires all objects associated with a sidewalk cafe to be removed when the business is not in operation.

The Code currently includes provisions that sidewalk enclosures be removed if the use is abandoned. The DRAB concerns are related to sidewalk cafes that have permanent fixtures but are only used very late at night, therefore prohibiting the public from using a portion of the public sidewalk for much of the day. Staff's original recommendation was to strengthen the language in the Code to state that if the sidewalk cafe use is abandoned for a period of 90 consecutive days, then the license shall be revoked. DRAB's concerns with this recommendation was that a sidewalk cafe could be open five nights of the year, and the public could be prohibited from using much of the sidewalk at all times during the year. Staff is therefore recommending that the concerns of the DRAB be addressed in terms of limiting the use of permanent enclosures in certain cases, as described below.

The DRAB has recommended that in order to be allowed a permanent enclosure, a sidewalk cafe must operate 4 out of 7 days a week and be open and in operation by 6:00 p.m. or earlier, and if the sidewalk cafe only operates after 6:00 p.m., permanent barriers would not be permitted. DRAB has recommended that if the business meets the definition of an alcoholic beverage establishment, then a 3 foot enclosure as currently required would remain, except that in the case of an alcoholic beverage establishment which is only open after 6:00 p.m., the barriers could not be permanently affixed to the sidewalk. Staff recommends that the proposed amendment include a provision that the sidewalk cafe would have to meet the requirements of the Department of Professional Regulation, Division of Alcoholic Beverages and Tobacco, which requires that the business owner of a sidewalk cafe "demonstrate control of the area", which could include an enclosure permanently affixed to the sidewalk if required by the State.

The DRAB has also recommended that the word "enclosure" within the ordinance be replaced with "barrier", to indicate that the area of sidewalk cafe use be defined but not necessarily completely enclosed.

At present, all sidewalk cafes must provide an enclosure. The DRAB has recommended that businesses which meet the definition of an eating place not be required to have any enclosure or barrier. The DRAB is concerned about small restaurants which have only a few tables, and that the need for barriers in these situations is excessive. As previously mentioned, staff has researched other cities, and many large cities with pedestrian-oriented downtown's do not require any enclosure for sidewalk cafes at all, and some do not permit permanent enclosures. Staff is proposing that the DRAB's recommendation be approved, but not without concerns that the approval of such an amendment could have negative impacts in the CCD district. These concerns include the ease in which tables and chairs could then be moved and pose a public safety hazard by blocking the pedestrian access along the public sidewalk. Staff further recommends that if the owner decides not to provide a barrier or enclosure, then all chairs, tables, etc. be moved inside for storage when the business is closed, or be secured adjacent to the building frontage.

Staff also recommends that the requirements for enclosures surrounding outdoor cafes on private property be removed (see Exhibit A), since liability issues are the responsibility of the property owner, provided that approval is obtained from the appropriate reviewing board. Since the establishment of new outdoor cafes require development plan review and must meet the requirements of the Land Development Code, a minimum 9- foot landscape buffer would typically be required between any outdoor cafe use and the public right-of-way. Staff recommends that the amendment to Article VI of the Land Development Code include a requirement that the outdoor cafe not interfere with pedestrian or vehicular circulation on nearby right-of-way.

The DRAB has stated concerns with the potential need for greater usable sidewalk width between the edge of a sidewalk cafe and the curblin in certain situation. The Land Development Code currently requires that a minimum pedestrian clearance of 5 feet be maintained for sidewalk cafes. Based on research of other cities, it appears that 5 feet is the generally accepted standard that allows minimum adequate room for pedestrians, especially where pedestrians congregate in larger groups, such as a downtown entertainment area. It is also the minimum width required for the passage of two wheelchairs. Some cities, such as Lakeland, require greater pedestrian clearances when a sidewalk is adjacent to a lane of traffic as opposed to on-street parking. Staff recommends that a minimum 6- foot pedestrian clearance be provided where a sidewalk cafe is adjacent to a traffic lane without on-street parking on an arterial street, and that a minimum 5- foot pedestrian clearance be provided in all other situations, unless a greater pedestrian clearance is necessary as determined by the City Manager or designee.

The following summarizes the DRAB's recommendations to the Plan Board and Planning staff's related recommendations for amendments to the Land Development Code:

1. DRAB recommendation to Plan Board: recommend that in order to be allowed a permanent enclosure, a sidewalk cafe must operate 4 out of 7 days a week and be open and in operation by 6:00 p.m. or earlier. If the sidewalk cafe operates only after 6:00 p.m., permanent barriers would not be permitted.

2. DRAB recommendation to Plan Board: 1.) recommend that an enclosure not be required for a food service establishment (51% of the gross revenues is from food sales), and planters or some other type of barriers be used if they limit it to the area in front of the property, 2.) if the principal use meets the definition of an alcoholic beverage establishment, the 3 foot enclosure as currently required by the Code would remain.

Planning staff recommendation: Revise section 30-66 of the Land Development Code to:

- A. require that the 3- foot enclosure requirement remain in place for alcoholic beverage establishments. If the alcoholic beverage establishment operates only after 6:00 p.m., elements of the enclosure or barrier shall not be permanently affixed to the sidewalk, unless required by a governmental entity (i.e., the Department of Professional Regulation, Division of Alcohol and Tobacco).
- B. eliminate the requirement for an enclosure for sidewalk cafes which serve business meeting the definition of eating place. If a non-permanent enclosure or barrier is provided, elements of the barrier and items related to the sidewalk cafe must be stored inside the building when the business is closed, or be securely stored adjacent to the building.
- C. allow permanent barriers or enclosures for sidewalk cafes only if a business operates 4 out of 7 days a week and is in operation by 6:00 p.m. each business day, unless otherwise required a State of Florida governmental entity (i.e. Division of Alcohol and Tobacco).

3. DRAB recommendation to Plan Board: Outdoor cafes shall not be required to have an enclosure unless required by the appropriate reviewing board to ensure that the outdoor cafe does not interfere with the circulation of pedestrians or vehicular traffic on adjacent streets, alleys or sidewalks.

Planning staff recommendation: Revise Section 30-87 to:

- A. indicate that outdoor cafes are required to provide a 3-foot enclosure, unless otherwise approved by the appropriate reviewing board, and provide a provision that outdoor cafes shall not interfere with the circulation of pedestrian or vehicular traffic on adjoining streets, alleys or sidewalks.
4. DRAB recommendation to Plan Board (related to minimum pedestrian clearance of 5 feet): increase the minimum clearance to greater than 5 feet where applicable, minimum 5 foot pedestrian clearance for sidewalk cafes where on-street parking is adjacent to sidewalk; minimum 6 foot pedestrian clearance where sidewalk cafe is adjacent to traffic lane.

Planning staff recommendation: Revise Section 30-66 to:

- A. Maintain the requirement for a minimum 5- foot clear pedestrian path, except where a sidewalk cafe is adjacent to a lane of traffic with no on-street parking, and located on an arterial street. In such case, a minimum 6- foot clear pedestrian path would be required. Include a provision that the width of the required clear pedestrian path may be increased by the City Manager or designee if necessary for pedestrian circulation.

Respectfully submitted,



Ralph Hilliard

RH/KW





Exhibit A

The following are proposed revisions to the Land Development Code. ~~Strike throughs~~ indicate proposed deletions, underlines indicate proposed new language.

Section 30-66 (e)(4) Sidewalk Cafes

a. Such cafes may be operated with a permitted principal use provided a license thereof is first issued by the city manager. The city manager is authorized to issue revocable licenses, terminable upon 15 days' notice, for the use of public right-of-way for sidewalk cafes, provided that all of the requirements of this chapter are met, the principal use and sidewalk cafe are otherwise in compliance with the requirements of this Code, the owner of the principal use agrees in writing to maintain the portion of the right-of-way where the sidewalk cafe exists, the owner of the principal use agrees in writing to 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, and the owner of the principal use furnishes evidence of general liability insurance in the amount of \$100,000 per person and \$200,000 per occurrence with the city as additional named insured. A license for a sidewalk cafe must be renewed upon the change of ownership of the permitted principal use.

b. Such license shall only permit use of the sidewalk up to five feet from the curblineline of the street and from any fire hydrants, ~~planters, or other public improvements in the right-of-way.~~ A minimum 5-foot wide clear pedestrian path on the sidewalk shall be maintained at all times, except where a sidewalk cafe is adjacent to a lane of traffic with no on-street parking, and located on an arterial street. In such cases, a minimum 6-foot wide clear pedestrian path on the sidewalk shall be maintained at all times. A license issued to a sidewalk cafe which serves an eating place, as defined in Section 30-23, may include the area adjacent to the curblineline, when adjacent to on-street parking, provided that there is sufficient public sidewalk to maintain a 5 foot wide clear pedestrian path. The width of a required clear pedestrian path may be increased by the City Manager or designee if deemed necessary for pedestrian circulation. No such license shall authorize the use or obstruction of a sidewalk located within the triangular area at the intersection of two streets as defined in Section 30-341.

c. Every sidewalk cafe which serves an alcoholic beverage establishment, as defined in Section 30-23, shall be defined by an enclosure or barrier of at least 3- feet in height, measured from the ground or sidewalk level, except for an entrance/exit of customary width. If the alcoholic beverage establishment operates only after 6:00 p.m., elements of the enclosure shall not be permanently affixed to the sidewalk,

unless required by a governmental entity. A sidewalk cafe which serves an eating place, as defined in Section 30-23, shall not be required to have an enclosure or barrier. If a business owner does not provide a permanent enclosure or barrier to define the area of use, all chairs, tables, elements of the barrier or enclosure and related items shall be moved inside the building for storage when the business is closed, or be securely stored adjacent to the building. If enclosures or barriers are provided, they shall be designed to ensure access to the public right-of-way by the ~~handicapped people with disabilities~~. Such enclosures or barriers may consist of screens, planters, fencing or other material which ~~provides an enclosure defines the~~ area of use. Unless otherwise specified in this Section, provided that the business operates 4 out of 7 days a week and is in operation by 6:00 p.m. each business day, Ssuch enclosure and other improvements may be permanently affixed to the sidewalk, and provided they are removed, and the sidewalk repaired to its original condition, upon termination of the license or abandonment of the sidewalk cafe use. If at any time, parts or part of the enclosure are removed or withdrawn, to such an extent that the enclosure is no longer sufficient to meet the requirements stated herein, all obstruction of the right-of-way must be removed. The city manager or designee is authorized to revoke any license issued pursuant to this section if it is determined by the city manager or designee that there is a failure to use the licensed area properly.

(d) No heating or cooking of food or open flame shall be allowed in the sidewalk cafe area.

#### Sec. 30-87. Outdoor Cafes

(a) An outdoor cafe may be operated in conduction with a principal use other than an eating place when all state requirements for food and beverage service are met, except that an outdoor cafe may only be operated in conjunction with an alcoholic beverage establishment in the central city district (CCD). An outdoor cafe may include the sale of alcoholic beverages for consumption on the premises when at least 51 percent of the monthly gross revenues of the food and beverage activity is attributable to the dale of food and non-alcoholic beverages. The outdoor activity shall only include the sale of food and beverages, except as may otherwise be permitted as special events sales.

(b) Every outdoor cafe shall be defined by an enclosure or barrier of at least 3-feet in height, unless otherwise approved by the appropriate reviewing board or staff, if only staff review is required. The enclosure or barrier can be plants, screens or fencing. The outdoor cafe shall be open to the weather. The outdoor cafe shall not interfere with the circulation of pedestrian or vehicular traffic on adjoining streets, alleys or sidewalks.

- (c) Parking requirements shall be calculated based on the seating, to be consistent with the parking requirements for eating establishments, in accordance with this chapter.
- (d) All such areas shall be in the front yard when adjacent to the side or rear to property in any residential land use category.
- (e) All lighting shall be shielded so that substantially all the directly emitted luminous flux falls within the property lines.
- (f) Any music or other entertainment outside the enclosed building shall not be amplified beyond the normal acoustical range of the instrument.
- (g) Noise, smoke, odor or other environmental nuisances shall be confined to the lot upon which the restaurant is located and shall be controlled in accordance with city, state and federal regulations.
- (h) Development plan review shall be required in accordance with Article VII. The area for the outdoor cafe shall be shown on the development plan. The area must not be in conflict with required landscaped area and development review shall determine appropriate modifications of existing landscaped areas. Stormwater management shall be required for landscaped areas that may become compacted or be stabilized with pavers or other materials for the cafe use.



Exhibit B

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**Minutes  
Downtown Redevelopment Advisory Board  
Thursday, April 6, 2000, 8:30AM**

**Thomas Center Building B  
306 NE 6<sup>th</sup> Avenue  
2<sup>nd</sup> Floor Conference Room #201**

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**A. ROLL CALL**

The Chair called the meeting to order at 8:45 A.M. A quorum was present at 8:48 A.M. with members Fetty, McGurn, Reeves, and Shelton in attendance.

Members Braumuller and Cain were absent.

Guests included Melinda Claybrook and Gary Dickens from Ivey, Harris & Walls, Inc. and Ray Washington. Tim Vaughan, Nancy Testa, Kathy Winburn, Yong Guo, and Onelia Lazzari represented staff.

**B. ADOPTION OF THE AGENDA**

RECOMMENDATION *Adopt the agenda as presented.*

The board voted unanimously to approve the motion made by Member Fetty, seconded by Member Shelton, to adopt the agenda as presented.

**C. APPROVAL OF THE MINUTES FROM THE PREVIOUS REGULAR MEETING**

RECOMMENDATION *Approve the March 2, 2000 minutes as circulated.*

The board voted unanimously to approve the motion made by Member McGurn, seconded by Member Fetty, to adopt the minutes as circulated.

**D. REQUEST TO ADDRESS THE BOARD**

**Onelia Lazzari, Community Development Department - US Census 2000**

Ms. Lazzari, US Census 2000 coordinator for the city, was introduced and spoke to the matter.

**E. COMMUNICATIONS**

**1. Chair's Report**

Chair Reeves reported on the progress of the Sign Design Subcommittee. It was noted that the subcommittee was in the process of discussing the N.I.C.E. sign that was being proposed for the Fifth Avenue Pleasant Street neighborhood through Keep Alachua County Beautiful.

It was reported that the CRA Coordinating Subcommittee did not meet last month.

**2. Staff Report – Information Items**

**CRA Action:** Mr. Vaughan reported that at their March 20, 2000 meeting, the CRA approved the developer's request for an eight-month extension of the commencement and completion dates of the

Commerce Building Project and the first and second phases of the related residential project. It was also reported that the City Commission approved the extension at their March 27, 2000 meeting.

**Renovation Grants Update:** Mr. Vaughan reported that the interior work for Stella's was in progress. He noted that the grant for the façade and a partial payment for the interior work have been paid.

**Plaza Furniture-Benches/Tables:** Staff reported that the items have arrived. It was noted that Public Works and the Parks Division were assisting in the installation.

**Plaza Receptacles/Extra Liners:** Staff reported that three receptacles and three lid replacements have been received. Three additional replacement lids and six liners are on back order.

**Union Street:** Under the Development Agreement the CRA would be advancing funds to McGurn Investment Co. for utility fees, site plan fees, and the building permit. Staff reported that the CRA and the City are working out a funding approach for the fees, which will ultimately be paid for out of tax increments generated by the property.

## F. OLD BUSINESS

### 1. Redevelopment Consultant, Downtown Expansion

Mr. Vaughan explained that on May 10, 1999, the City Commission authorized staff to develop a final consultant solicitation for expansion of the downtown district. And the creation of a fourth redevelopment district. On September 13, 1999, the City Commission approved Ivey Harris and Walls as the top ranked firm to serve as redevelopment consultant to the City of Gainesville.

On January 28, 2000, the City Commission approved authorizing the City manager to enter into an agreement with Ivey, Harris and Walls for redevelopment consulting services. Staff explained that that the consulting firm has asked for the opportunity with meet with the DRAB.

Melinda Claybrook and Gary Dickens were introduced and spoke to the matter.

### 2. Sidewalk Cafes

Staff explained that at the DRAB April 6, 2000 meeting, a motion was approved requesting that the Community Development Department request that the city begin changing the ordinance on sidewalk cafes and outdoor cafés to address the issue of whether or not they are used and what do you do with a non-used café, address the issue of how much space is needed for the pedestrian on the sidewalk, and address the need for barriers of any kind. On March 16<sup>th</sup>, 2000, the City Plan Board discussed but did not vote on proposed changes, pending further discussion of the changes by DRAB.

Kathy Winburn from Community Development staff was present and spoke to the matter.

The advisory board expressed concern regarding the property on the northeast corner of Southwest 1<sup>st</sup> Avenue and Southwest Main Street. They noted that a large stepladder is always set up in front of the establishment, and items appear to be falling off the façade.

## RECOMMENDATION

*The Downtown Redevelopment Advisory Board to CRA: request that the City Commission direct staff to follow up on insurance requirements and the new property maintenance standards regarding the property at the corner of Southwest 1<sup>st</sup> Avenue and South Main.*

### a. Non-use of a sidewalk café

The board discussed that staff's recommendation was to strengthen the language by providing that a sidewalk café license could be revoked if the sidewalk café use was abandoned for a period of 90 consecutive days. The board expressed concern that someone could use a sidewalk café five nights out of the year and the public would be prevented from using the sidewalk at all times during the year.

**The board voted unanimously to approve the following motion made by Member Fetty, seconded by Member Shelton.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to the CRA: request the City Commission to direct the Codes Enforcement Division and the Building Department to 1) review all sidewalk cafes for compliance, insurance and property licensing, and 2) afford them the opportunity to comply if not legal.*

**The board voted unanimously to approve the following motion made by Member Fetty, seconded by Member Shelton.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to Plan Board: recommend that in order to be allowed a permanent enclosure, a sidewalk café must operate four out of seven days a week and be open and in operation for 6:00P.M. Or earlier. If the sidewalk café operates only after 6:00P.M, permanent barriers would not be permitted.*

*There was discussion about the transferability of a sidewalk café' license. Staff was asked to check with the City's Attorney's office and report back.*

**b. Enclosures**

The board discussed that the word enclosure should be removed from the ordinance and it should talk in terms of barriers, planter or something that defines the space.

**The board voted unanimously to approve the following motion made by Member McGurn, seconded by Member Fetty.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to Plan Board: 1) recommend that an enclosure not be required for a food service establishment (51% of the gross revenue is from food sales), and planters or some other type of barriers be used if they limit it to the area in front of their property, 2) if the principal use meets the definition of an alcoholic beverage establishment, the three foot enclosure as currently required by Code would remain.*

**c. Outdoor Café Railings**

**The board voted unanimously to approve the following motion made by Member McGurn, seconded by Member Fetty.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to Plan Board: Outdoor café's shall not be required to have an enclosure unless required by the appropriate reviewing board to ensure that the outdoor café does not interfere with the circulation of pedestrian or vehicular traffic on adjoining streets, alleys or sidewalks.*

**d. Minimum Pedestrian Clearance of Five Feet**

**The board voted unanimously to approve the following motion made by Member McGurn, seconded by Member Fetty.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to Plan Board: Increase the minimum clearance to greater than five feet where applicable, minimum five foot pedestrian clearance for sidewalk cafés where on-street parking is adjacent to sidewalk; minimum six foot pedestrian clearance where sidewalk café is adjacent to a traffic lane.*

**e. Enforcement**

The board noted that every sidewalk café owner agrees to maintain the sidewalk café and hold the City harmless, and provide evidence of general liability insurance. The board expressed concern regarding the property on the northwest corner of Southwest 1<sup>st</sup> Avenue and South Main Street. They

noted that a large stepladder is always set up in front of the establishment, and items appear to be falling off the facade.

**The board voted unanimously to approve the following motion made by Member Fetty, seconded by Member Fetty.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to the CRA: request the City Commission to direct the Codes Enforcement Division determine whether or not the owner of the café at the northwest corner of Southwest 1<sup>st</sup> Avenue and South Main Street has provided the evidence of general liability insurance to the City.*

### **3. Community Plaza Marquee**

On August 13, 1999, a purchase order was issued to Festival Sign Service in accordance with the contract dated July 15, 1999 for the design, construction and installation of a marquee for the Downtown Community Plaza. The CRA and Cultural Affairs Department approved sharing in the cost of the project. The purchase order amount is \$9,7000 with the CRA funding \$6,700, and Cultural Affairs Department Department funding \$3,000.

Staff was notified that an additional \$800 is needed to cover additional expenses incurred for the Plaza Marquee due to modifications required to meet the sign code.

**The board voted unanimously to approve the following motion made by Member McGurn, seconded by Member Shelton.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to the CRA: approve the expenditure of \$800 from the Plaza budget to fund the additional cost to cover additional expenses incurred for the Plaza Marquee due to modifications required to meet the sign code.*

### **4. Downtown Streetscape**

The board began the process of prioritizing the work plan streetscape projects. There was discussion that because the Union Street Station project would generate a considerable amount of pedestrian traffic, their top priority for streetscape improvements should be focused on Southeast 2<sup>nd</sup> Avenue and Southeast 1<sup>st</sup> Street.

**The board voted unanimously to approve the following motion made by Member Shelton, seconded by Member Fetty.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to the CRA: hear presentation from Jay Reeves and staff, and take appropriate action.*

In a related matter, the board discussed that it would be appropriate to recommend that an additional landscaped bubble be installed on the westside of Southeast 1<sup>st</sup> Street near the Hippodrome State Theater.

**The board voted unanimously to approve the following motion made by Member Shelton seconded by Member Fetty.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to the CRA: 1) approve the allocation of unspent funds from the Union Street Station Streetscape project budget to install a landscaped bubble on the west side of the Hippodrome State Theater, 2) if unspent funds are not available, approve the allocation of funds from the CRA FY2000 streetscape project budget for the installation of the bubble.*

**The board voted unanimously to approve the following motion made by Member McGurn seconded by Member Fetty.**

RECOMMENDATION *The Downtown Redevelopment Advisory Board to the Public Works Department: consider adding irrigation to any proposed islands to make sure that plants survive.*



1. **City Beautification Board Recommendation for Residential Street and Roadway Lighting**

Due to the length of the meeting, there was a consensus to place the item on May meeting agenda.

2. **Skateboard Park**

Due to the length of the meeting, there was a consensus to place the item on May meeting agenda.

**H. BOARD MEMBER COMMENT**

**I. PUBLIC COMMENT**

**J. ADJOURNMENT**

*The Meeting Adjourned at 10:50 A.M.*

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Chair

Date \_\_\_\_\_

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Clerk



2. **Petition 35TCH-00 PB**

City of Gainesville. Amend the City of Gainesville Land Development Code regarding sidewalk cafes and outdoor cafes as to frequency of use and removal of non-used cafes, sidewalk space needed for pedestrians and the need for barriers of any kind.

Ms. Kathy Winburn was recognized. Ms. Winburn indicated that the petition had been continued to allow the Downtown Redevelopment Advisory Board (DRAB) to make recommendations on the issue. She reviewed the DRAB's recommendations regarding the need for enclosures to define cafes, permanent enclosures, and the adequacy of the clearance distance. Ms. Winburn noted that many other cities did not require any enclosures for sidewalk cafes and others did not allow fixed enclosures. She reviewed the proposed changes to Section 30-66 of the Land Development Code. She noted that the changes encompassed the recommendations of the DRAB. She noted that the regulations of some state agencies such as the Florida Department of Alcohol and Tobacco would take precedence over the Land Development Code regulations. Ms. Winburn offered to answer any questions from the board.

Dr. Fried asked if staff could provide information on the license fee that would permit private business to operate on public right-of-way.

Ms. Winburn indicated that she did not know the cost of the license fees.

Dr. Fried asked if business that served both food and alcohol would be allowed to operate without a permanent enclosure.

Ms. Winburn indicated that an establishment that received more than 51 percent of its revenue from food would not be required to have an enclosure.

There was discussion of permanent and temporary enclosures.

At the request of the Chair, Ms. Winburn compared the recommendations of staff to the recommendations of the DRAB.

Mr. Polshek noted that, if permanent enclosures were prohibited for businesses opening after 6:00 PM, an establishment could open at 5:55 PM and would be allowed a permanent barrier.

Ms. Winburn agreed that it was a possibility. She noted, however, that there was a provision that the business operate four out of seven days a week and be in operation by 6:00 PM.

Mr. Hilliard suggested that it might be more economically feasible to use a temporary barrier.

Mr. McGill noted that most of the establishments in question didn't open until much later in the evening.

Ms. Winburn noted that, in order to obtain a permit from the Department of Alcohol and Tobacco, a business had to demonstrate control of the area.

Mr. Polshek noted that the proposed text change deferred to the state in many areas. He asked if there was any redundancy in the regulations since the state covered many of the issues.

*These minutes are not a verbatim account of this meeting. Tape recordings from which the minutes were prepared are available from the Community Development Department of the City of Gainesville.*

Ms. Winburn explained that the state's primary concern in dealing with sidewalk cafes and the ordinance was that the applicant display control of the area.

Mr. Polshek suggested that alcoholic beverage establishments be required to have temporary barriers and all other establishments not have permanent barriers. He further suggested that permanent barriers impeded both flow and overall open urban visual experience.

Dr. Fried requested clarification on the recommendation that some establishments be allowed to place tables right up to the curb line, as long as a five-foot pathway was maintained. He suggested that it would be difficult to control encroachment into that path and could cause significant problems.

Chair Guy opened the floor to public comment.

Ms. Linda McGurn was recognized. Ms. McGurn indicated that she and other members of the DRAB supported the petition. She discussed the operation of sidewalk cafes in Gainesville and other cities. Regarding the five foot clearance area, she noted that a business could have its license revoked if the path was impeded. She offered to answer any questions from the board.

Mr. Polshek asked if there was any reason for permanent barriers for eating establishments.

Ms. McGurn indicated that certain business establishments where full meals were served might prefer permanent barriers. She suggested the more casual establishments would probably prefer an open area.

Mr. Polshek suggested that temporary barriers would serve all establishments.

Ms. McGurn indicated that, given the size of certain businesses, setting up and removing temporary barriers every day could be a problem. She suggested that it would be better to offer businesses an option. She requested that the board approve the petition.

Chair Guy closed the floor to public comment and requested comment and a motion from the board.

Mr. McGill stated that he believed there was a need for permanent barriers. He indicated he could not support allowing only temporary barriers. He discussed various businesses in the downtown area.

Mr. Polshek asked if the five-foot distance applied to areas where trees were planted. He asked if the proposed ordinance would be retroactive.

Ms. Winburn stated that if an establishment had an existing valid sidewalk license, it would be grandfathered in. She noted that, if a license ever became null and void, the site would have to meet the requirements.

There was discussion of the removal of permanent barriers when a business closed.

<u>Motion By:</u> Dr. Fried	<u>Seconded By:</u> Ms. Myers
<u>Moved to:</u> Approve Petition 35TCH-00 PB.	<u>Upon Vote:</u> Motion Carried 5-0 Yeas: Fried, Polshek, Guy, McGill, Myers