

LEGISLATIVE #

130895A

ORDINANCE NO. 130895

An ordinance of the City of Gainesville, Florida, amending the Land Development Code Section 30-121 *Sidewalk cafes* to add provisions required by the Florida Department of Transportation in order for the city to permit sidewalk cafes to be located in state right-of-ways; amending Appendix A – *Schedule of Fees, Rates and Charges* of the Code of Ordinances to add an annual license agreement fee for sidewalk cafes located in State of Florida right-of-ways; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, notice was given as required by law that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, on March 27, 2014, a public hearing was held by the City Plan Board, which acts as the local planning agency pursuant to Section 163.3174, Florida Statutes, and makes recommendations to the City Commission of the City of Gainesville; and

WHEREAS, at least ten (10) days’ notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of public hearings in the City Hall Auditorium located on the first floor of City Hall in the City of Gainesville; and

WHEREAS, public hearings were held pursuant to the notice described above 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. Section 30-121 of the Land Development Code is amended as follows.

Sec. 30-121. Sidewalk cafes.

Sidewalk cafes ~~shall~~ may be operated only in zoning districts that specifically allow such use, ~~and Sidewalk cafes are allowed in city right-of-way in all such zoning districts, subject~~

1 to this section. However, sidewalk cafes are allowed in State of Florida right-of-way only in
 2 the Central City District (CCD), subject to this section. Sidewalk cafes shall be operated by
 3 the business owner of the principal use pursuant to a license agreement entered into with the
 4 city on the form provided by the city and approved by the cCity aAttorney as to form and
 5 legality. The eCity mManager or designee is authorized to enter into such license
 6 agreements and to terminate any license agreement if it is determined by the eCity
 7 mManager or designee that the licensee has violated the terms of the license agreement or
 8 this section or for such other reason as the eCity mManager or designee deems necessary for
 9 the public health, safety or welfare. In addition, sidewalk cafes in state right-of-way shall be
 10 subject to approval by the Florida Department of Transportation (FDOT), all terms and
 11 conditions imposed by FDOT, and shall be subject to termination by FDOT. All license
 12 agreements are subject to the following minimum terms and conditions:

- 13 (1) The principal use and sidewalk cafe shall remain in compliance with the
 14 requirements of this Ccode.
- 15 (2) The licensee shall maintain the portion of the right-of-way where the sidewalk cafe
 16 is located in a clean and safe condition and shall promptly repair any damage
 17 caused by the licensee, its invitees, employees and others using ~~utilizing~~ the
 18 sidewalk cafe.
- 19 (3) The licensee shall release, indemnify and hold harmless the city, and the State of
 20 Florida if the sidewalk cafe is located in a state right-of-way, ~~harmless~~ for any
 21 personal injury or property damage resulting from the existence or operation of the
 22 sidewalk cafe and the condition and maintenance of the right-of-way upon which it
 23 is located, including utilities located within the right-of-way.
- 24 (4) For a sidewalk cafe located in a city right-of-way, the licensee shall maintain
 25 general liability insurance in ~~an~~the amounts not less than \$500,000.00 combined
 26 single limit for bodily injury and property damage. The city shall be named as an
 27 additional insured, as evidenced by a policy endorsement. Policies must be issued
 28 by companies authorized to do business in the State of Florida and must be rated at
 29 least A- and have a size category rating of VI or higher as per Best's Key Rating
 30 Guide, latest edition. The licensee ~~shall~~must give the city no less than 30 days
 31 written notice prior to any cancellation, nonrenewal, or any material change in a
 32 continuing policy. The city's risk management director is authorized to lower the
 33 amount of general liability insurance required, if the licensee can show that the
 34 above amount is excessive for the particular activity. The licensee shall furnish
 35 evidence of such insurance to the city annually.
- 36 (5) For a sidewalk cafe located in a state right-of-way, the licensee shall maintain
 37 general liability insurance in an amount not less than one million dollars
 38 (\$1,000,000) for bodily injury or death to any one person or any number of persons
 39 in any one occurrence and not less than one million dollars (\$1,000,000) for
 40 property damage, or a combined coverage of not less than two million dollars
 41 (\$2,000,000). The State of Florida and the city shall be named as additional insured,
 42 as evidenced by a policy endorsement. Policies must be issued by companies

authorized to do business in the State of Florida and must be rated at least A- and have a size category rating of VI or higher as per Best's Key Rating Guide, latest edition. The licensee shall give the city no less than 75 days written notice prior to any cancellation, nonrenewal, or any material change in a continuing policy. The licensee shall furnish evidence of such insurance to the city annually.

~~(56)~~ The sidewalk cafe shall be at least five feet from the curblineline of the street and from any fire hydrants.

~~(67)~~ A minimum five-foot wide clear pedestrian path shall be maintained on the sidewalk at all times. However, where a sidewalk cafe is adjacent to a lane of traffic with no on-street parking and located on an arterial street, a minimum six-foot wide clear pedestrian path shall be maintained on the sidewalk at all times. The width of a required clear pedestrian path may be increased or decreased by the ~~e~~City ~~m~~Manager or designee if deemed advisable for the public health, safety and welfare. However, in no event shall the clear pedestrian path be less than three feet in width.

~~(78)~~ A sidewalk cafe that is operated by an eating place, as defined in section 30-23, may include the area adjacent to the curblineline, when adjacent to on-street parking, provided there is sufficient sidewalk width to maintain a five-foot wide clear pedestrian path.

~~(89)~~ A sidewalk cafe that is operated by an alcoholic beverage establishment, as defined in section 30-23, shall be surrounded by an enclosure or barrier at least three feet in height, measured from the ground or sidewalk level. If the alcoholic beverage establishment is not open for business between the hours of 8:00 a.m. and 6:00 p.m., the enclosure or barrier shall not be permanently affixed to the sidewalk, unless otherwise required by a governmental permitting entity.

~~(910)~~ A sidewalk cafe that is operated by an eating place, as defined in section 30-23, shall not be required to have an enclosure or barrier, provided all chairs, tables, and related items are stored inside the building or are securely stored adjacent to the building when the eating place is closed for business.

~~(1011)~~ If enclosures or barriers are required or provided, they shall be designed to provide ADA-compliant access to the public right-of-way. Enclosures or barriers may consist of screens, planters, fencing or other material that surrounds the area in which the sidewalk cafe is operated. Unless otherwise specified in this section, provided that the principal use operates four out of seven days a week and is in operation by 6:00 p.m. each day it is open for business, such enclosure and other improvements may be permanently affixed to the sidewalk, 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 missing to such an extent that the enclosure is no longer sufficient to meet the requirements of this section, the entire enclosure shall be removed.

- 1 (~~11~~12) No heating or cooking of food or open flames shall be allowed in the sidewalk cafe,
- 2 except as may be allowed by the chief fire official.
- 3 (~~12~~13) Sidewalk cafes shall not use or obstruct a sidewalk located within the ~~triangular~~
- 4 ~~area at the intersection of two streets~~ vision triangle, as defined in section 30-341.
- 5 (~~13~~14) Each license agreement for a sidewalk cafe shall be for a one year term and must be
- 6 renewed annually and upon any change of business ownership of the principal use.
- 7

8 **Section 2.** Appendix A. – Schedule of Fees, Rates and Charges of the Code of

9 Ordinances is amended as follows. Except as amended herein, the remainder of Appendix A. –

10 Schedule of Fees, Rates and Charges remains in full force and effect.

11 LAND DEVELOPMENT CODE:

12 (4) *Zoning*:

- 13 i. ~~Administrative fee for license agreement for sidewalk café~~ Sidewalk cafe in city right-of-
- 14 way, annual license agreement administrative fee (§30-121)60.00
- 15 j. Sidewalk cafe in state right-of-way, annual license agreement administrative fee (§30-
- 16 121)2.00 per square foot of right-of-way

17 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1

18 and 2 of this ordinance shall become and be made a part of the Code of Ordinances of the City of

19 Gainesville, Florida, and that the sections and paragraphs of the Code of Ordinances may be

20 renumbered or relettered in order to accomplish such intentions.

21 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance

22 or the application hereof to any person or circumstance is held invalid or unconstitutional, such

23 finding shall not affect the other provisions or applications of this ordinance that can be given

24 effect without the invalid or unconstitutional provision or application, and to this end the

25 provisions of this ordinance are declared severable.

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

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

4

5 **PASSED AND ADOPTED** this _____ day of _____, 2014.

6

7

EDWARD B. BRADDY
MAYOR

8

9

10 Attest:

Approved as to form and legality:

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14

KURT M. LANNON
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

15

16

17 This ordinance passed on first reading this _____ day of _____, 2014.

18

19 This ordinance passed on second reading this _____ day of _____, 2014.