



MEMORANDUM

Office of the City Attorney

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

TO: Mayor and City Commission

DATE: June 12, 2000
SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-00-54; Petition No. 32TCH-00PB
An ordinance of the City of Gainesville, Florida, revising and amending section 30-67(g)(1) of the Land Development Code relating to outdoor storage and sales in business and mixed use zoning districts; providing that temporary permits for sale of alcoholic beverages are not allowed in the University Context Area surrounding the University of Florida main campus; providing requirements for temporary permits for sale of alcoholic beverages in other areas and clarifying that a permit for temporary sales may be denied or approved with conditions based on public health, safety and welfare; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

STAFF REPORT

During the fall of 1999, the City Commission heard testimony from the Gainesville Police Department that temporary outdoor alcohol sales were creating problems along University Avenue adjacent to the University of Florida Campus. Crowd control, open container violations and traffic problems associated with people spilling over into the street while trying to buy alcohol were cited as problems. The City Commission concluded that the outdoor alcohol sales under the City's special events sales permit process was creating a public safety problem. One of the problems which has compounded this issue is the frequent use of temporary tents for the sale of alcohol on football game days. Often, a large number of football fans flock to these tents to purchase alcohol and then leave with the open container (often due to overcrowded conditions).

Currently, City codes allow eating places and alcoholic beverage establishments that have a State Alcoholic Beverage License, to obtain a temporary permit to serve alcoholic beverages outdoor, under a tent, as part of a special event. The purpose of this petition is to address the problems associated with outdoor alcohol sales. Staff recommends that City codes be amended to prohibit the outdoor sales of alcoholic beverages through the use of a temporary alcoholic beverage

permit. This prohibition would not prevent the sale of alcohol by restaurants as part of an approved outdoor café.

The Plan Board approved the petition with staff's recommendation.

Public notice was published in the Gainesville Sun on March 1, 2000. The Plan Board held a public hearing March 16, 2000. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 32TCH-00 PB. Plan Board vote 5-0.

Fiscal Note
None

CITY ATTORNEY'S 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 June 12, 2000.

Prepared by: Patricia M. Carter
Patricia M. Carter,
Sr. Assistant City Attorney

Approved and
Submitted by: Marion J. Radson
Marion J. Radson,
City Attorney

MJR:PMC:sw

PASSED ON FIRST READING BY A VOTE OF 4-0.

**ORDINANCE NO. _____
0-00-54**

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An ordinance of the City of Gainesville, Florida, revising and amending section 30-67(g)(1) of the Land Development Code relating to outdoor storage and sales in business and mixed use zoning districts; providing that temporary permits for sale of alcoholic beverages are not allowed in the University Context Area surrounding the University of Florida main campus; providing requirements for temporary permits for sale of alcoholic beverages in other areas and clarifying that a permit for temporary sales may be denied or approved with conditions based on public health, safety and welfare; 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 March 16, 2000; and

WHEREAS, notice was given and publication made of a Public Hearing which was then held by the City Commission on May 22, 2000; and

WHEREAS, pursuant to law, an advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission meeting room, City Hall, City of Gainesville to be held at least 7 days after the day this first advertisement was published; and

WHEREAS, a second advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of the second Public Hearing to be held at the adoption stage at least 5 days after the day this second

1 advertisement was published; and

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

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

7 **Section 1.** Section 30-67(g) of the Land Development Code is amended to read as
8 follows:

9 **Sec. 30-67. General provisions for business and mixed use districts.**

10 (g) *Outdoor storage and sales.* All principal uses in any business or mixed-use
11 district shall be contained within completely enclosed buildings, except as otherwise
12 specifically provided as a permitted use. When not so specifically provided, outdoor
13 storage or display of goods and commodities not contained within completely enclosed
14 buildings is prohibited, except the following uses under the conditions prescribed herein:

15 (1) *Outdoor promotional sales, special event sales, temporary sale of*
16 *alcoholic beverages and the sale of seasonal or temporary goods and*
17 *commodities other than farmers markets.* The city manager may issue a permit
18 for the sale of certain goods and commodities that ~~which~~ are strictly of a
19 temporary nature, other than for farmers markets, provided the following
20 conditions and requirements are met:

21 a. Such sales shall not be permitted on public rights-of-way;
22 provided, however, that in areas zoned CCD such sales and displays may
23 be permitted on sidewalks only; and provided further that parades and art

1 shows may be permitted on public rights-of-way under such conditions as
2 are otherwise provided by ordinances and policies of the city commission.

3 b. The sales period for seasonal or temporary goods, such as
4 Christmas trees, shall not exceed 30 days; promotional sales such as
5 characterized by the so-called “midnight madness,” “truck sale,” “tent
6 sale” or “sidewalk sale” shall not exceed 72 hours; and special event sales
7 such as may be permitted in conjunction with a parade, festival or other
8 such event shall not exceed the specified period approved for such event.
9 no more than one permit per applicant per location shall be issued in any
10 given six-month period for seasonal type sales, and no more than one
11 special use permit per applicant per location shall be issued in any given
12 60-day period of time for promotional type sales.

13 c. Temporary alcoholic beverage sales permits shall be prohibited in
14 the University Context Area within the area of the University of Florida
15 main campus as shown on the map entitled “Temporary Alcoholic
16 Beverage Sales Prohibited Area,” which is hereby adopted to be kept on
17 file at the Department of Community Development All other temporary
18 alcoholic beverage sales permit applications must be reviewed in
19 accordance with subsection d., below. The permit application must
20 include a site plan sketch showing the location, access, barriers delineating
21 the use area from other public areas and all other details of the site. The
22 permit applications should also include a report detailing how many
23 people are expected to attend, the capacity of any proposed temporary

1 structures, whether there would be outdoor entertainment and a public
2 safety plan detailing how the sponsors will maintain crowd control and
3 public safety, as well as compliance with the city's noise ordinance.

4 d. Application for a permit under the provisions herein shall be
5 examined ~~and approved~~ by the appropriate departments of the city to
6 ensure protection of the public health, safety and general welfare. In
7 addition to normal concerns of each department, particular attention shall
8 be given to traffic flow and control, auto and pedestrian safety, and the
9 effect ~~that~~ which such use and activity will have on surrounding uses,
10 particularly where the adjoining use is residential. The permit may be
11 approved with conditions, or denied by the city manager or designee based
12 on the inability of the applicant to provide for pedestrian and motorist
13 safety, prevent traffic blockage or for incompatibility of the event with
14 surrounding uses during the event.

15 e. d. When the city manager deems it necessary, in the opinion of the
16 city manager, it is deemed necessary the applicant may be required to post
17 a bond or otherwise provide adequate assurance that the site of the selling
18 activity will be returned to its original or an improved state when the
19 selling activity has ceased.

20 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
21 this ordinance shall become and be made a part of Land Development Code of the City of
22 Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be
23 renumbered or relettered in order to accomplish such intentions.

D R A F T

5-10-00

1 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be
2 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall
3 in no way affect the validity of the remaining portions of this ordinance.

4 **Section 4.** All ordinances or parts of ordinances in conflict herewith are to the extent of
5 such conflict hereby repealed.

6 **Section 5** This ordinance shall become effective immediately upon final adoption.

7
8 **PASSED AND ADOPTED** this _____ day of _____, 2000.
9

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11 _____
12 PAULA M. DeLANEY
13 MAYOR
14

15
16 **ATTEST:**

Approved as to form and legality

17
18
19 _____
20 KURT M. LANNON
21 CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

22 This Ordinance passed on first reading this _____ day of _____, 2000.

23 This Ordinance passed on second reading this _____ day of _____,
24 2000.

City of
Gainesville

Inter-Office Communication

Planning Division
X5022, FAX x2282, Station 12

Item No. 8

TO: City Plan Board

DATE: March 16, 2000

FROM: Planning Division Staff

SUBJECT: Petition 32TCH-00 PB, City of Gainesville. Amend the City of Gainesville Land Development Code to prohibit the temporary sale of alcohol in the University Context Area.

Recommendation

Staff recommends approval of this petition.

Explanation

During the fall of 1999, the City Commission heard testimony from the Gainesville Police Department that temporary outdoor alcohol sales were creating problems along University Avenue adjacent to the University of Florida Campus. Crowd control, open container violations and traffic problems associated with people spilling over into the street while trying to buy alcohol were cited as problems. The City Commission concluded that the outdoor alcohol sales under the City's special events sales permit process was creating a public safety problem. One of the problems which has compounded this issue is the frequent use of temporary tents for the sale of alcohol on football game days. Often, a large number of football fans flock to these tents to purchase alcohol and then leave with the open container (often due to overcrowded conditions).

Currently, City codes allow eating places and alcoholic beverage establishments that have a State Alcoholic Beverage License, to obtain a temporary permit to serve alcoholic beverages outdoor, under a tent, as part of a special event. The purpose of this petition is to address the problems associated with outdoor alcohol sales. Staff recommends that City codes be amended to prohibit the outdoor sales of alcoholic beverages through the use of a temporary alcoholic beverage permit. This prohibition would not prevent the sale of alcohol by restaurants as part of an approved outdoor café. Staff recommends that *Sec. 30-67. General provision for business and mixed use districts* be amended as follows:

- (g) *Outdoor storage and sales.* All principal uses in any business or mixed-use district shall be contained within completely enclosed buildings, except as otherwise specifically provided as a permitted use. When not so specifically provided, outdoor storage or display of goods and commodities not contained within completely enclosed buildings is prohibited, except the following uses under the conditions prescribed herein:
- (1) *Outdoor promotional sales, special event sales, temporary sale of alcoholic beverages and the sale of seasonal or temporary goods and commodities other than farmers markets.* The city manager may issue a permit for the sale of certain goods and commodities which are strictly of a

8. **Petition 32TCH-00 PB** City of Gainesville. Amend the City of Gainesville Land Development Code to prohibit the temporary sale of alcohol in the University Context Area.

Mr. Ralph Hilliard was recognized. Mr. Hilliard explained that there had been discussion by the City Commission and local residents about problems with temporary alcohol sales in the University Context Area. He indicated that a business licensed to sell alcohol could request a temporary permit from the State to sell alcoholic beverages outdoors. He explained that the practice primarily occurred under a tent with a City-issued permit for a special event. Mr. Hilliard discussed problems with persons leaving the tent in violation of the open container law. He explained that, after discussion with the City Commission and other committees, a proposal to prohibit those types of sales within the University Context Area had been brought to the Plan Board. He presented a map of the area where sales would be prohibited and discussed it in detail. He noted that the area where the temporary sale of alcohol would be prohibited would consist of a quarter mile area around the boundary of the University Context Area. He pointed out a small area of NW 13th Street which should be included in the petition. Mr. Hilliard offered to answer any questions from the board.

Chair Guy asked where the tents were usually located.

Mr. Hilliard indicated that they were on private property. He noted that one business typically used a parking lot to erect a tent for outdoor sales. He pointed out that other businesses didn't bother with a tent and sold alcoholic beverages out of a window. He explained that he had contacted the State regulating authorities and was told that, if the Land Development Code prohibited the sales, the applicant would not be granted a temporary permit.

Mr. Polshek noted that the petition stated a distance of a quarter mile. He suggested that the term was rather vague. He asked why the perimeter had not been determined by streets.

Mr. Hilliard agreed that the area could have been determined by specific streets, but the proposed boundary took in the commercial areas along University Avenue. He pointed out that the outer edges of the area were residential.

Chair Guy opened the floor to public comment.

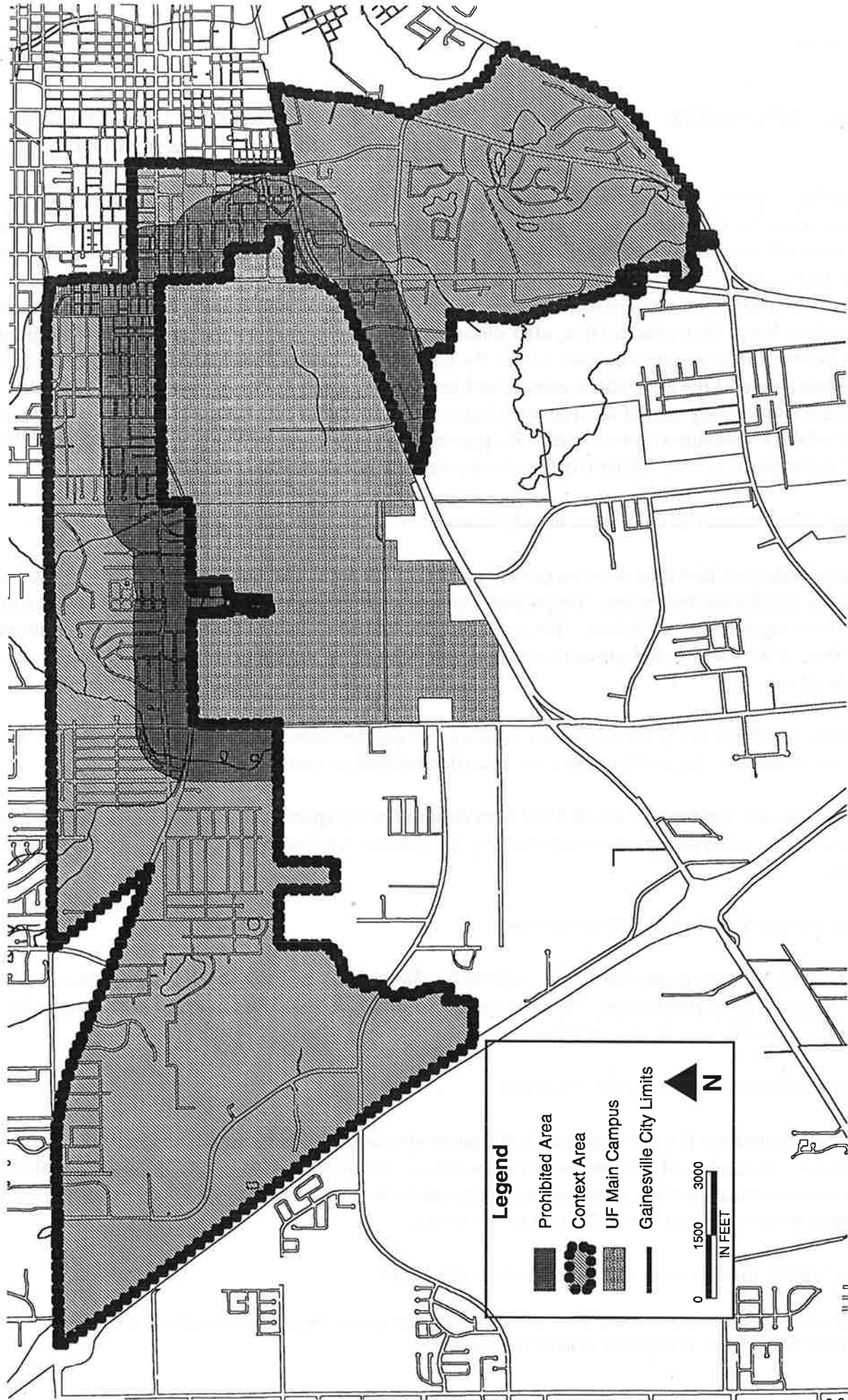
Mr. Mark Goldstein was recognized. Mr. Goldstein indicated that he lived in the Context Area and had been active in requesting the prohibition. He cited problems in the neighborhood because of increasing alcohol sales. He urged the board to support the petition.

Chair Guy closed the floor to public comment.

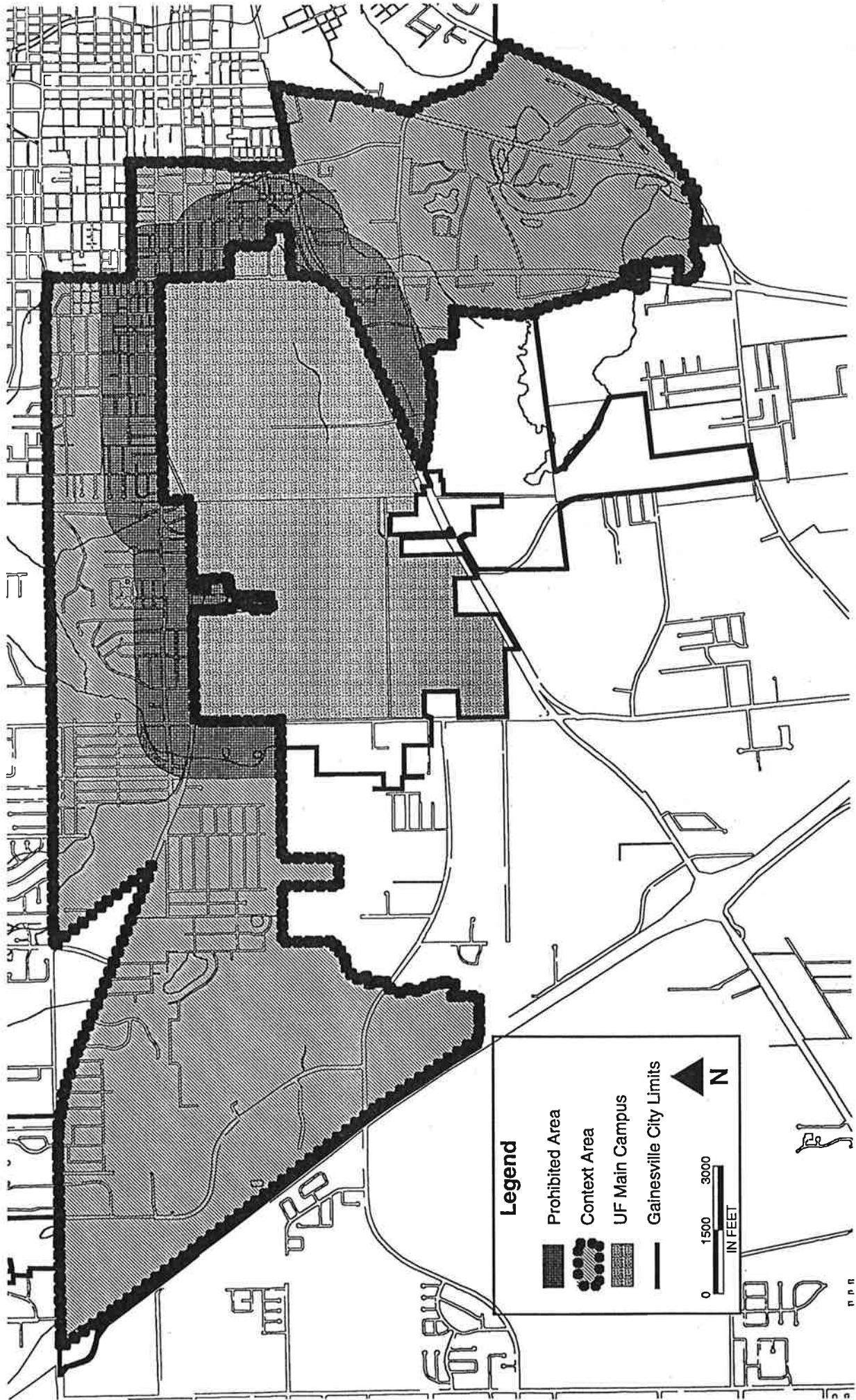
Mr. Hilliard pointed out that the proposed text change also amended permit requirements outside the University Context Area. He explained that temporary sales outside the Context Area would require a site plan sketch and more detailed information than what had been required in the past. He indicated that such a request would also go through a review process for traffic and safety issues.

Chair Guy called for comment and a motion from the board.

Temporary Alcoholic Beverage Sales Prohibited Area



Temporary Alcoholic Beverage Sales Prohibited Area



Prepared by the Department of Community Development March 10, 2000

