

**Legislative #
130141**

ORDINANCE NO. 130141

An ordinance of the City of Gainesville, Florida, amending the Gainesville Code of Ordinances related to peddlers, solicitors and canvassers; by amending Section 2-339 to create penalties for certain violations; by amending Chapter 19, Article IV Vending Booths and Itinerant Vendors to permit and regulate football game day vending booths; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City Commission at its meeting of February 20, 2014, authorized the City Attorney to draft an ordinance to permit vending booths in certain areas in City right-of-way on University of Florida football game days; and

WHEREAS, at least 10 days notice has been given once 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, public hearings were held pursuant to the published notices 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 2-339 of the Code of Ordinances is amended to create the following new penalties. Except as amended herein, the remainder of Section 2-339 remains in full force and effect.

Sec. 2-339. Applicable codes and ordinances.

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

Section	Description	Class	Penalty
19-92	Operation of a vending booth <u>or a game day vending booth</u> without a permit	I	\$250.00
19-93	Violation of regulations on permitted vending booth <u>or game day</u>	I	\$250.00

	<u>vending booth</u>		
19-95	<u>Maintaining display, stand, article or item of personal property without proper permit</u>	<u>I</u>	<u>\$50.00</u>

Section 2. Sections 19-91, 19-92, 19-93, 19-94 and 19-95 of the Code of Ordinances are amended to read as follows:

Sec. 19-91. Definitions.

A "vending booth" is a temporary wheeled cart-mounted food or retail establishment located on public property, or a permanent structure constructed by the city on the Gainesville Community Plaza. A vending booth cannot be propelled by an internal combustion engine, electric motor or other similar mechanical device. A vending booth, except a permanent structure constructed by the city on the Gainesville Community Plaza, must be capable of being moved from place to place, but may be stationary during the business day. Examples of vending booths are, but are not limited to, the following: coffee/cappuccino stands; stands selling muffins, bagels and other bakery items; ice cream carts; snow cone and Italian Ice carts; fast-food carts; souvenirs carts; and newsstands.

A "game day vending booth" is a temporary retail establishment located on designated public property or City right-of-way that is only allowed to operate during University of Florida home football game days. Examples of game day vending booths are, but are not limited to, the following: stands selling food items; souvenirs carts; and newsstands.

Sec. 19-92. Annual permit.

(a) A vending booth permit or game day vending booth permit, is required and can be obtained from the city manager, or designee upon payment of the fee specified in Appendix A of this Code, along with submitting a completed application that includes a

1 description of the food, beverage or retail items to be offered for sale; photographs of the
2 vending booth; and sufficient information for city reviewing staff to determine
3 compliance with the requirements listed in subsection (b) below, the applicable
4 regulations listed in section 19-93 and other applicable code and safety requirements.

5 Vending booth permits expire on September 30 of each year. Vending booth permits
6 issued between April 1 and September 30 are subject to one-half the permit fees for the
7 initial period (between issuance and September 30). Game day vending booth permits
8 may be issued at any time, but are only valid on game days listed on the permit when
9 issued, and expire immediately following the last University of Florida home football
10 game day of the year issued. Vending booth and game day vending booth permits shall
11 not be valid during any event declared to be a special event by the city manager or
12 designee. A separate permit shall be required for vending at these events.

13 (b) Requirements to obtain a vending booth permit or game day vending booth permit:

14 (1) Proof of liability insurance, in amounts to annually be determined by the city
15 manager, which shall include the city as an additional insured and which shall
16 indemnify, defend and hold harmless the city, its elected and appointed officers,
17 employees and agents, from any resultant claims which may arise from operation of
18 the booth due to intentional or unintentional wrongdoing or negligence by the
19 operator, or employees, contractors or agents of the operator.

20 (2) Proof of workers compensation insurance or provide a certificate of exemption.

21 (3) Select an available ~~public property~~ site from the property designated on the official
22 vending booth site map or the game day vending booth site map on file with the city
23 manager or designee. When more than one application is received for a designated

1 site, that site will be made available by random drawing of all qualified applicants.

2 Once an operator has received a space, that site will not become available again

3 unless the operator does not renew the permit or the owner's permit is revoked under

4 this article.

- 5 (4) Submission of a site drawing clearly depicting the public property site location, size
6 of the vending booth, set up of the vending booth and any other information
7 necessary for the city reviewing staff to determine that the vending booth will
8 comply with all applicable city codes. The vending booth must be located a
9 minimum of five feet from the curb or improved right-of-way and so positioned as to
10 leave an unobstructed way for pedestrian passage on any sidewalk and shall not be
11 positioned within five feet of any crosswalk or fire hydrant, nor block any ingress or
12 egress from a building entrance or emergency exit. Vending booths shall be located a
13 minimum of 25 feet from intersections and shall be located outside of the vision
14 triangle.

15 **Sec. 19-93. Regulations**

- 16 (a) *Vending booths and game day vending booths operating in the city shall be subject to*
17 *the following regulations:*

- 18 (1) The county/state health department must license any vending booths and game
19 day vending booths operations preparing and selling food items. All applicable
20 codes of the health department shall be met.
- 21 (2) A trash container must be available on the vending booth or game day vending
22 booth.

- 1 (3) Lighting may be used to continuously illuminate the vending booth or game day
2 vending booth canopy and provide task lighting for night operation, provided it is
3 in conformity with the city's lighting regulations.
- 4 (4) Change of ownership, booth/conveyance or location will require that the owner
5 apply for a new vending booth or game day vending booth permit.
- 6 (5) All required licenses must be conspicuously displayed on the vending booth or
7 game day vending booth.
- 8 (6) Vending booths and game day vending booths must be provided with at least one
9 approved portable fire extinguisher having a minimum rating of 8 BC.
- 10 (7) All liquefied petroleum gas containers must be installed on the outside of the
11 vending booth or game day vending booth, protected from physical damage and,
12 if enclosed, vented at the lowest point of the enclosure. All liquefied petroleum
13 gas containers must be properly secured and comply with all applicable standards.
- 14 (8) Signs using lettering painted on or applied to the canopy valance will be allowed.
15 Two additional signs in conformity with the city's sign regulations will be allowed
16 at a maximum size of six square feet each, to be mounted on the vending booth or
17 game day vending booth. No other signs, pictures or advertisements of any kind,
18 such as stickers, flags, balloons, inflatables or lights shall be allowed.
- 19 (9) The vendor must obtain a local business tax receipt from the city.
- 20 (10) The vendor shall keep the sidewalks, parking areas and other spaces adjacent to
21 their vending sites or locations clean and free of paper, peelings and refuse of any
22 kind generated from their vending operation.

(11) Sales shall be oriented to pedestrians. No vendor shall sell or attempt to sell any product or engage in any commercial transaction with the occupant of any motor vehicle.

(12) Vendors shall not conduct business in a way that will restrict or interfere with the entrance or exit of a business, create a nuisance, create a hazard to pedestrians, life or property, or obstruct vehicular circulation, pedestrian circulation, or access to emergency exits.

(13) Vending booth vendors operating within the Central City Zoning District (CCD), as this area is shown on the city's zoning map atlas, and the College Park Area, as delineated in the College Park-Master Plan and Regulation Plan for New Construction map in Appendix A Section 3 of the Land Development Code, shall be limited to the hours between 7:00 a.m. and 3:00 a.m. the following day and shall take place only at the approved location. The "vending booth" conveyance shall not be set up prior to 6:00 a.m. and must be removed by 4:00 a.m. the following day.

(14) Game day vending booth vendors operating within the College Park area, as delineated in the College Park – Master Plan and Regulation Plan for New Construction Map in Appendix A Section 3 of the Land Development Code, shall be limited to the hours between 7:00 am on the day of the game and three (3) hours after the end of the football game.

Sec. 19-94. Revocation of permit.

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

- 1 (1) Fraud, misrepresentation or false statement contained in the application for
2 permit.
- 3 (2) Any violation of this article.
- 4 (3) Conviction of a felony by a court of competent jurisdiction of the operator, or any
5 shareholder, partner or member of a business entity holding a 50-percent or
6 greater interest in the vending booth or game day vending booth for any of the
7 following: homicide, rape, aggravated battery, burglary, aggravated assault,
8 kidnapping, robbery, child molestation, lewd and lascivious acts, criminal
9 solicitation to commit any of the above, criminal attempt to commit any of the
10 above, or possession, sale or distribution of narcotic drugs, barbituric acid
11 derivatives or central nervous system stimulants.
- 12 (4) Conducting business in an unlawful manner or in such a manner as to constitute a
13 breach of the peace or to constitute a menace to the health, safety or general
14 welfare of the public.
- 15 (5) With respect to a vending booth, failure to operate for more than 14 days during
16 the period from May 1 through September 30 of each year.
- 17 (6) Refusal to remove the vending booth or game day vending booth from the site at
18 the end of each business day.
- 19 (7) The vending booth or game day vending booth vendor has been adjudicated guilty
20 of, been found guilty of with adjudication withheld, waived the right to contest, or
21 pled no contest to, three or more violations of city ordinances with respect to the
22 vending operation.

Such revocation may be appealed directly to the city commission provided such appeal is filed with the clerk of the commission within 15 days of the time of the revocation by the city manager. The clerk shall schedule the hearing on the appeal at the next regular meeting of the city commission scheduled to be at least ten days from the date the appeal is filed. The clerk shall inform the city manager of the appeal, and the city manager shall forward the evidence used to determine the revocation, including minutes of the hearing, of any, to the clerk. No new evidence or testimony may be introduced before the city commission, which shall render its decision based upon the record. The city commission may reinstate the permit only if it finds an abuse of discretion in the decision of the city manager or designee.

Sec. 19-95. Vendors' stands

It shall be unlawful for any person to display, keep or maintain any stand, article or item of personal property, whether for sale, advertising or other purpose, on any of the streets or sidewalks of the city, or within 50 feet of the main entrance to any public building in the city during normal operating hours for that building, without first obtaining a permit from the city manager. This section does not apply to a vending booth or game day vending booth properly permitted under this chapter.

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

Section 4. If any word, phrase, clause, paragraph, section, or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of this ordinance that can be given

1 effect without the invalid or unconstitutional provision or application, and to this end the
2 provisions of this ordinance are declared severable.

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

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

6
7 **PASSED AND ADOPTED** this ____ day of _____, 2015.
8
9

10 _____
11 EDWARD B. BRADDY
12 MAYOR

13 Attest:

Approved as to form and legality:

14
15 _____
16 KURT M. LANNON
17 CLERK OF THE COMMISSION

18 _____
19 NICOLLE M. SHALLEY
20 CITY ATTORNEY
21

19 This ordinance passed on first reading this ____ day of _____, 2015.

20 This ordinance passed on second reading this ____ day of _____, 2015.