

Application for a Sidewalk Cafe

OFFICE USE ONLY

Petition No. _____ Fee: **\$60.00**

Tax Map No. _____ Receipt No. _____

Account No. _____

Owner(s) of Record (please print)		Applicant(s)/Agent(s) (please print)	
Name: _____		Name: _____	
Address: _____		Address: _____	
E-mail: _____		E-mail: _____	
Phone: _____	Fax: _____	Phone: _____	Fax: _____
<i>(If additional owners, please include on back)</i>			
PROJECT INFORMATION			
Project Name and Address			
Attached the following documents for review:			
General Liability Insurance	<input type="checkbox"/> General liability insurance in the amounts not less than \$500,000 combined single limit for bodily injury and property damage. The City shall be named as an additional insured, as evidenced by a policy endorsement. Policy 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 capacity rating of VI or higher as per Best's Key Rating guide, latest edition. The licensee shall furnish evidence of such insurance to the City annually.		
Indemnification and Hold Harmless Agreement	<input type="checkbox"/> The licensee shall release and indemnify and hold the City harmless for any personal injury or property damage resulting from the existence or operation of the sidewalk café and the condition and maintenance of the right-of-way upon which it is located, including utilities located within the right-of-way.		
Development Plan	<input type="checkbox"/> Development Plan drawn to scale depicting the location of all items (including the height and type of materials) that will be placed on the public right-of-way (planters, chairs, tables, permanent structures, etc,) the curb line of adjoining street and the location of all fire hydrants, planters and other public improvements within 5 feet of the area to be used for the sidewalk café.		

I certify that the above statements are correct and true to the best of my knowledge and that the business will comply with section 30-121 Sidewalk Cafes of the Land Development Code attached to this application.

Applicant's signature

Date

Certified Cashier's Receipt:

ORDINANCE NO. 110942

An ordinance of the City of Gainesville, Florida, amending the Land Development Code related to sidewalk cafes; by amending Section 30-23 to add a definition; by creating Section 30-121 to add sidewalk cafes as a specially regulated use; by amending Section 30-66(c) to allow sidewalk cafes within the Central City District; by deleting Section 30-66(e)(3) related to requirements for sidewalk cafes within the Central City District; by amending Appendix A. – Special Area Plans, Section 3. – Special Area Plan for College Park, Exhibit B, Urban Regulations For New Construction – Type 1, Building Use to allow sidewalk cafes; by amending Appendix A – Schedule of Fees, Rates and Charges of the Code of Ordinances to add an annual fee for sidewalk cafes; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, publication of notice of a public hearing was given 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 April 26, 2012; 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 the public hearing to be held in the City Commission Meeting Room, First Floor, City Hall, in the City of Gainesville at least seven (7) days after the first advertisement was published; and

WHEREAS, a second advertisement no less than two columns wide by 10 inches long was placed in the aforesaid newspaper notifying the public of the second public hearing to be held at least five (5) days after the day the second advertisement was published; 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.

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

3 **Section 1.** Section 30-23 Definitions. of the Land Development Code is amended to add
4 the following definition. Except as amended herein, the remainder of Section 30-23 remains in
5 full force and effect.

6 Sidewalk cafe means a seating area within the public right-of way that is: adjacent to,
7 operated by, and an accessory use to an eating place or an alcoholic beverage establishment.

8
9 **Section 2.** A new Section 30-121 Sidewalk cafes. is created within Article VI
10 Requirements for Specially Regulated Uses of the Land Development Code to read as follows:

11 **Sec. 30-121. Sidewalk cafes.**

12 (a) Sidewalk cafes shall be operated only in zoning districts that specifically allow
13 such use and shall be operated by the business owner of the principal use pursuant to a
14 license agreement entered into with the city on the form provided by the city and
15 approved by the city attorney as to form and legality. The city manager or designee is
16 authorized to enter into such license agreements and to terminate any license
17 agreement if it is determined by the city manager or designee that the licensee has
18 violated the terms of the license agreement or this section or for such other reason as
19 the city manager or designee deems necessary for the public health, safety or welfare.
20 All license agreements are subject to the following minimum terms and conditions:

21 (1) The principal use and sidewalk cafe shall remain in compliance with the
22 requirements of this Code.

23 (2) The licensee shall maintain the portion of the right-of-way where the
24 sidewalk cafe is located in a clean and safe condition and shall promptly repair
25 any damage caused by the licensee, its invitees, employees and others utilizing the
26 sidewalk cafe.

27 (3) The licensee shall release, indemnify and hold the city harmless for any
28 personal injury or property damage resulting from the existence or operation of
29 the sidewalk cafe and the condition and maintenance of the right-of-way upon
30 which it is located, including utilities located within the right-of-way.

31 (4) The licensee shall maintain general liability insurance in the amounts not
32 less than \$500,000 combined single limit for bodily injury and property damage.
33 The city shall be named as an additional insured, as evidenced by a policy
34 endorsement. Policies must be issued by companies authorized to do business in
35 the State of Florida and must be rated at least A- and have a size category rating

1 of VI or higher as per Best's Key Rating Guide, latest edition. The licensee must
2 give the city no less than 30 days written notice prior to any cancellation,
3 nonrenewal, or any material change in a continuing policy. The city's risk
4 management director is authorized to lower the amount of general liability
5 insurance required, if the licensee can show that the above amount is excessive for
6 the particular activity. The licensee shall furnish evidence of such insurance to
7 the city annually.

8 (5) The sidewalk cafe shall be at least 5 feet from the curbline of the street and
9 from any fire hydrants.

10 (6) A minimum 5-foot wide clear pedestrian path shall be maintained on the
11 sidewalk at all times. However, where a sidewalk cafe is adjacent to a lane of
12 traffic with no on-street parking and located on an arterial street, a minimum 6-
13 foot wide clear pedestrian path shall be maintained on the sidewalk at all times.
14 The width of a required clear pedestrian path may be increased or decreased by
15 the city manager or designee if deemed advisable for the public health, safety and
16 welfare. However, in no event shall the clear pedestrian path be less than 3-feet
17 in width.

18 (7) A sidewalk cafe that is operated by an eating place, as defined in section 30-
19 23, may include the area adjacent to the curbline, when adjacent to on-street
20 parking, provided there is sufficient sidewalk width to maintain a 5-foot wide
21 clear pedestrian path.

22 (8) A sidewalk cafe that is operated by an alcoholic beverage establishment, as
23 defined in section 30-23, shall be surrounded by an enclosure or barrier at least 3
24 feet in height, measured from the ground or sidewalk level. If the alcoholic
25 beverage establishment is not open for business between the hours of 8:00 a.m.
26 and 6:00 p.m., the enclosure or barrier shall not be permanently affixed to the
27 sidewalk, unless otherwise required by a governmental permitting entity.

28 (9) A sidewalk cafe that is operated by an eating place, as defined in section 30-
29 23, shall not be required to have an enclosure or barrier, provided all chairs,
30 tables, and related items are stored inside the building or are securely stored
31 adjacent to the building when the eating place is closed for business.

32 (10) If enclosures or barriers are required or provided, they shall be designed to
33 provide ADA-compliant access to the public right-of-way. Enclosures or barriers
34 may consist of screens, planters, fencing or other material that surrounds the area
35 in which the sidewalk cafe is operated. Unless otherwise specified in this section,
36 provided that the principal use operates four out of seven days a week and is in
37 operation by 6:00 p.m. each day it is open for business, such enclosure and other
38 improvements may be permanently affixed to the sidewalk, provided they are
39 removed, and the sidewalk repaired to its original condition, upon termination of
40 the license or abandonment of the sidewalk cafe use. If at any time, parts or part

1 of the enclosure are removed or missing to such an extent that the enclosure is no
2 longer sufficient to meet the requirements of this section; the entire enclosure
3 shall be removed.

4 (11) No heating or cooking of food or open flames shall be allowed in the
5 sidewalk cafe, except as may be allowed by the Chief Fire Official.

6 (12) Sidewalk cafes shall not use or obstruct a sidewalk located within the
7 triangular area at the intersection of 2 streets as defined in section 30-341.

8 (13) Each license agreement for a sidewalk cafe shall be for a one year term and
9 must be renewed annually and upon any change of business ownership of the
10 principal use.

11
12 **Section 3.** Section 30-66 (c) of the Land Development Code is amended to read as set
13 forth below. Section 30-66(e)(3) is deleted and repealed in its entirety. Except as amended
14 herein the remainder of Section 30-66 remains in full force and effect.

15 **Sec. 30-66. - Central city district (CCD).**

16 (c) *Permitted uses.*
17

SIC	Uses	Conditions
	USES BY RIGHT:	
	Adult day care homes	In accordance with article VI
	Alcoholic beverage establishments	In accordance with article VI <u>including</u> <u>sidewalk cafes as an accessory use in</u> <u>accordance with VI</u>
	Any accessory uses customarily and clearly incidental to any permitted principal use	
	Bed and breakfast establishments	
	Compound uses	
	Day care centers	In accordance with article VI
	Dormitories	In accordance with article VI
	Eating places	Including sidewalk cafes <u>as an</u> <u>accessory use in accordance with this</u> <u>section 30-66(e) article VI</u>
	Farmers markets	In accordance with article VI
	Multifamily dwellings up to 150 units	

	per acre	
	Outdoor cafes	As defined in article II and in accordance with article VI
	Personal fitting and sales of orthopedic or prosthetic appliances	
	Places of religious assembly	In accordance with article VI
	Public service vehicles	In accordance with article VI
	Roominghouses	In accordance with article VI
	Single-family dwellings	
	Structured parking	As regulated by the special area plan for traditional city
	Townhouses	
	Two-family dwellings	
GN-074	Veterinary services	Only within enclosed buildings and in accordance with article VI
IN-0752	Animal specialty services, except veterinary	Only within enclosed buildings
GN-078	Landscape and horticultural services	
MG-15	Building construction - General contractors and operative builders	
MG-17	Construction - Special trade contractors	
IN-2261	Finishers of broadwoven fabrics of cotton	
IN-2262	Finishers of broadwoven fabrics of manmade fiber and silk	
MG-27	Printing, publishing and allied industries	
MG-41	Local and suburban transit and interurban highway passenger transportation	
MG-43	U.S. Postal Service	
GN-472	Arrangement of passenger transportation	
MG-48	Communications	Accessory transmission, retransmission, and microwave towers up to and including 100 feet in height in accordance with article VI
MG-52	Building materials, hardware, garden supply	Excluding mobile home dealers (GN-527)
MG-53	General merchandise stores	
MG-54	Food stores	Excluding gasoline pumps as accessory uses
MG-56	Apparel and accessory stores	

MG-57	Home furniture, furnishings and equipment stores	
MG-59	Miscellaneous retail	Excluding fuel dealers (GN-598), junkyards and salvage yards
Div. H	Finance, insurance and real estate	Excluding cemetery subdividers and developers (IN-6553)
GN-701	Hotels and motels	
MG-72	Personal services	Excluding funeral services and crematories (GN-726)
MG-73	Business services	Excluding disinfecting and pest control services (IN-7342)
MG-76	Miscellaneous repair services	Excluding welding repair (IN-7692) and armature rewinding shops (IN-7694)
MG-78	Motion pictures	Excluding drive-in theaters (IN-7833)
MG-79	Amusement and recreation services	Only within enclosed structures, and excluding go-cart rental and raceway operations
MG-80	Health services	Excluding hospitals (GN-806) and including nursing and personal care facilities (GN-805) in accordance with article VI
MG-81	Legal services	
MG-82	Educational services	Including private schools, in accordance with article VI
GN-832	Individual and family social services	
GN-833	Job training and vocational rehabilitation services	
GN-839	Social services, not elsewhere classified	Excluding rehabilitation centers
MG-84	Museums, art galleries and botanical and zoological gardens	
MG-86	Membership organizations	
MG-87	Engineering, accounting, research, management and related services	Within enclosed buildings
MG-89	Services, not elsewhere classified	
Div. J	Public administration	Excluding correctional institutions (IN-9223)
	USES BY SPECIAL USE PERMIT	
	Accessory transmission, retransmission and microwave towers over 100 feet in height	In accordance with article VI
	Community residential homes over 14	In accordance with article VI

	persons	
	Emergency shelters	
	Food distribution center for the needy	In accordance with article VI
	Other uses (including light assembly or packaging)	Within completely enclosed structures; no outdoor storage, truck traffic limited to that normal to commercial activities such as grocery stores, loading docks and mechanical equipment must be screened, and sound attenuation shall be provided to any adjacent residential area or area in actual residential use; no access to any residential street; must meet industrial buffers. Storage of hazardous materials in accordance with the county hazardous materials management code
	Rehabilitation centers	In accordance with article VI
	Residences for destitute people	In accordance with article VI
	Social service homes and halfway houses	In accordance with article VI
GN-726	Funeral services and crematories	In accordance with article VI

(e) *Additional requirements.*

(1) *General conditions.* All structures and uses within this district shall also comply with the applicable requirements and conditions of section 30-67 and article IX, and the Traditional City overlay.

(2) *Projections over right-of-way.* Projections may, in the CCD, project over any public right-of-way used for sidewalks or other pedestrian walkways when in conformance with the Florida Building Code and, when permitted by the public entity responsible for the right-of-way by the granting of an easement or other appropriate property right.

~~(3) *Sidewalk cafes.*~~

~~a. Sidewalk cafes may be operated in conjunction with a permitted principal use provided a license therefor 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 all requirements of this chapter are met, the principal use and sidewalk cafe are 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~~

1 maintenance of the right of way upon which it is located, and the owner of the
2 principal use annually furnishes evidence of general liability insurance in the amounts
3 of \$100,000.00 per person and \$200,000.00 per occurrence with the city as additional
4 named insured. A license for a sidewalk cafe must be renewed upon the change of
5 ownership of the permitted principal use.

6 b. ~~This license shall only permit use of the sidewalk up to 5 feet from the curbline~~
7 ~~of the street and from any fire hydrants. A minimum 5-foot wide clear pedestrian path~~
8 ~~shall be maintained at all times, except where a sidewalk cafe is adjacent to a lane of~~
9 ~~traffic with no on-street parking, and located on an arterial street. In such cases, a~~
10 ~~minimum 6-foot wide clear pedestrian path on the sidewalk shall be maintained at all~~
11 ~~times. A license issued to a sidewalk cafe that serves an eating place, as defined in~~
12 ~~section 30-23, may include the area adjacent to the curbline, when adjacent to on-~~
13 ~~street parking, if there is sufficient public sidewalk to maintain a 5-foot wide clear~~
14 ~~pedestrian path. The width of a required clear pedestrian path may be increased by the~~
15 ~~city manager or designee if deemed necessary for pedestrian circulation. No such~~
16 ~~license shall authorize the use or obstruction of a sidewalk located within the~~
17 ~~triangular area at the intersection of 2 streets as defined in section 30-341~~

18 c. ~~Every sidewalk cafe that serves an alcoholic beverage establishment, as defined~~
19 ~~in section 30-23, shall be defined by an enclosure or barrier of at least 3 feet in height,~~
20 ~~measured from the ground or sidewalk level, except for an entrance/exit of customary~~
21 ~~width. If the alcoholic beverage establishment does not operate between the hours of~~
22 ~~8:00 a.m. and 6:00 p.m., elements of the enclosure shall not be permanently affixed to~~
23 ~~the sidewalk, unless otherwise required by a governmental entity. A sidewalk cafe that~~
24 ~~serves an eating place, as defined in section 30-23, shall not be required to have an~~
25 ~~enclosure or barrier. If a business owner does not provide a permanent enclosure or~~
26 ~~barrier to define the area of use, all chairs, tables, elements of the barrier or enclosure~~
27 ~~and related items shall be moved inside the building for storage when the cafe is~~
28 ~~closed, or be securely stored adjacent to the building. If enclosures or barriers are~~
29 ~~provided, they shall be designed to ensure access to the public right of way by people~~
30 ~~with disabilities. Such enclosures or barriers may consist of screens, planters, fencing~~
31 ~~or other material that defines that area of use. Unless otherwise specified in this~~
32 ~~section, provided that the business operates four out of seven days a week and is in~~
33 ~~operation by 6:00 p.m. each business day, such enclosure and other improvements~~
34 ~~may be permanently affixed to the sidewalk, provided they are removed, and the~~
35 ~~sidewalk repaired to its original condition, upon termination of the license or~~
36 ~~abandonment of the sidewalk cafe use. If at any time, parts or part of the enclosure are~~
37 ~~removed or withdrawn to such an extent that the enclosure is no longer sufficient to~~
38 ~~meet the requirements stated herein, all obstruction of the right of way must be~~
39 ~~removed. The city manager or designee is authorized to revoke any license issued~~
40 ~~pursuant to this section if it is determined by the city manager or designee that the~~
41 ~~licensee has violated the terms of the license agreement or this section.~~

42 d. ~~No heating or cooking of food or open flames shall be allowed in the sidewalk~~

1 cafe area.

2 **Section 4.** Appendix A. – Special Area Plans, Section 3. – Special Area Plan for College
3 Park, Exhibit B, Urban Regulations For New Construction – Type 1. Building Use, is amended
4 to read as stated below. Except as amended herein, the remainder of Appendix A. – Special Area
5 Plans, Section 3. – Special Area Plan for College Park remains in full force and effect.

6 Urban Regulations for New Construction – Type 1

7 *Building Use.*

8 1. Allowable uses are those permitted in the underlying zoning district or those permitted
9 within an adopted Planned Development (PD) ordinance. If the underlying zoning district
10 or the PD allows alcoholic beverage establishments or eating places as a permitted use, then
11 a sidewalk cafe shall be allowed as an accessory use to those uses in accordance with article
12 VI.

13 2. New construction or expansion of drive-throughs is prohibited within the Special Area
14 Plan Area. Existing drive-throughs shall be allowed as non-conforming uses, as regulated
15 by Sec. 30-346 of the Land Development Code.
16

17 **Section 5.** Appendix A. – Schedule of Fees, Rates and Charges of the Code of
18 Ordinances is amended to read as stated below. Except as amended herein, the remainder of
19 Appendix A. – Schedule of Fees, Rates and Charges remains in full force and effect.

20 LAND DEVELOPMENT CODE:

21 (4) Zoning

22 i. Administrative fee for license agreement for sidewalk cafe (§30-121)60.00


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

1 **Section 7.** If any word, phrase, clause, paragraph, section or provision of this ordinance
2 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
3 finding shall not affect the other provisions or applications of the ordinance which can be given
4 effect without the invalid or unconstitutional provisions or application, and to this end the
5 provisions of this ordinance are declared severable.

6 **Section 8.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
7 such conflict hereby repealed.

8 **Section 9.** This ordinance shall become effective immediately upon final adoption.
9


10 **PASSED AND ADOPTED** this 6th day of September, 2012.
11

12
13 
14 CRAIG LOWE
15 MAYOR

16 ATTEST:

17 Approved as to form and legality

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

22
23 
24 MARION J. RADSON
25 CITY ATTORNEY

SEP 6 2012

23 This ordinance passed on first reading this 16th day of August, 2012.

24 This ordinance passed on second reading this 6th day of September, 2012.