

**ORDINANCE NO. 1398-10-2016**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS AMENDING CHAPTER 17 OF THE GAINESVILLE CITY CODE OF ORDINANCES BY ADDING SECTION 17-20 THAT ESTABLISHES PROCEDURES AND CRITERIA FOR THE GRANTING OF REVOCABLE LEASES FOR SIDEWALK CAFÉS AND PARKLETS IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ANY CONFLICTING ORDINANCES; PROVIDING AN OPEN MEETING FINDING; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Gainesville wants to reclaim and repurpose underutilized spaces for people through the use of sidewalk cafés and parklets; and

**WHEREAS**, the City desires to improve the aesthetics of the streetscape; and

**WHEREAS**, the City would like to encourage pedestrian activity in the downtown area; and

**WHEREAS**, the City would like to promote economic development in the downtown area.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS:**

**SECTION 1.** That the Code of Ordinances, City of Gainesville, Texas is hereby amended by adding a section to be numbered 17-20, which section reads as follows:

Section 17-20 Sidewalk Cafés and Parklets

Section 17-20.1. Definitions.

In this section:

1. *Parklet* means a small area of land within a public right-of-way temporarily dedicated for use by the public for rest, relaxation, recreation, beautification, entertainment, cultural, education, and other non-commercial activities and purposes, together with improvements, such as lighting, signage, paving, benches, sculpture, landscaping, barricades and fencing, in furtherance of such purposes. Use of a parklet may not be reserved for the exclusive benefit of any private person or entity, including a lessee under this article for any profit or commercial purpose.

2. *Public right of way* means a strip of land over which the city has authority used or intended to be used, wholly or in part by the city, as a public street or sidewalk, or for utility purposes.
3. *Sidewalk* means that portion of a public right-of-way, not including the street, that is paved for pedestrian traffic.
4. *Sidewalk café* means an outdoor dining or drinking area that is:
  - a. associated with a restaurant, bar, brewery, winery, or distillery, the primary business of which is the on-premises sale of prepared food or drinks;
  - b. is located on a sidewalk or street abutting and within the span of the façade of the restaurant, bar, brewery, winery, or distillery;
  - c. open to the air; and
  - d. contains removable tables, chairs, planters, or other appurtenances.
5. *Street* means that portion of a public right-of-way that provides primary vehicular access to adjacent land, whether designated as a street, highway, thoroughfare, parkway, throughway, avenue, lane, boulevard, road, place, drive, or other similar designation, including areas designated for on-street parking.

#### Section 17-20.2. Authorized Leases and Building Permit.

1. The city manager or the city manager's designee may grant a lease and building permit for the use of public right-of-way in accordance with the requirements of this ordinance for parklets and sidewalk cafés.
2. All other improvements in or uses of a public right-of-way not specified in this ordinance may only be approved as specifically provided by other ordinances or by the city council, subject to applicable laws.
3. A lease and building permit granted under this article is a revocable grant of a privilege.

#### Section 17-20.3. Requirements for building permits.

1. *Uses and improvements not allowed.* No permit may be granted under this article for any improvement, facility or use, the installation or allowance of which would:
  - a. result in a violation of the Americans with Disabilities Act or any other applicable local, state, or federal health or safety law or regulation;
  - b. unduly interfere with the free passage of vehicles on the street or of pedestrians on the sidewalk;
  - c. create a traffic hazard;
  - d. unduly interfere with the safe and efficient operation of a utility facility;
  - e. create undue adverse impacts on adjacent property owners and businesses; or
  - f. block the sight visibility triangle at an intersection.

2. *General requirements for all leases and building permits.* An application that includes permitted uses and improvements allowed under this section, shall include, as applicable:
  - a. all requirements set forth in the Parklet and Sidewalk Café Manual or other applicable technical standards and specifications with which the lessee must comply;
  - b. terms and restrictions necessary to protect public use of the public right-of-way or the facilities and access need of a public or private utility provider;
  - c. specifications for required clearances between the improvements and utility facilities, whether aboveground, underground or overhead, as prescribed by applicable building and health and safety codes, franchise agreements, or state or federal laws;
  - d. a requirement that the lessee pay the cost to relocate a utility facility or improvement in a public right-of-way in connection with the installation of the improvements, if consent is granted for such relocation;
  - e. authorization for the city or a utility provider to remove, without liability, all or part of the improvements if necessary to obtain access to an affected utility facility;
  - f. provisions approved by the city attorney that require the lessee to indemnify, defend, hold harmless and release the city, its officers, agents, and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with lessee's use of public right-of-way;
  - g. a provision specifying the term or expiration date of the lease and permit that is no greater than one year;
  - h. a provision for termination of the lease and permit for violation of its terms, subject to notice of the violation and an opportunity to cure the violation within 10 days after receipt of the notice;
  - i. a provision for termination of the lease and permit by the city without recourse before the end of the license term when necessary to implement a capital improvement or maintenance project, to address threats to public health or safety, or to mitigate adverse impacts to adjacent property owners and businesses caused by the improvement; and
  - j. a provision providing for the prompt removal of all improvements or cessation of uses upon termination of the lease at the lessee's expense, including the right of the city to remove improvements upon failure of the lessee to do so and to recover the city's cost for such removal.
3. *Other minimum design and installation standards.*

The city manager or the city manager's designee shall approve a Parklet and Sidewalk Café Manual and any other technical standards or specifications for authorized improvements and uses under this section, which shall include:

- a. provisions to ensure a minimum width of unobstructed paved areas on a sidewalk available for passage by pedestrians and other users of the sidewalk of at least 5 feet;
- b. measures deemed necessary by the city manager or the city manager's designee to address public health, safety, sanitation, and aesthetic concerns;
- c. requirements for maintenance, repair, litter, and debris;
- d. requirements for the protection of persons and property from injury or damage;
- e. requirements for installation and anchoring to prevent or minimize damage to the surface of streets, curbs, and sidewalks;
- f. requirements for the type of construction utilized;
- g. requirements to facilitate the expeditious removal of improvements; and
- h. requirements for the mitigation of adverse impacts on the public or adjacent property owners and businesses.

#### Section 17-20.4. Requirements for Parklets and Sidewalk Cafés.

1. *Approval of parklets and sidewalk cafés by city manager.* The city manager or the city manager's designee shall designate appropriate locations eligible for the installation of parklets and sidewalk cafés and may approve applications for a parklet or sidewalk café. Parklets must have support from the adjacent property owner.
2. *Appeal of city manager's decision.* An applicant that is denied a lease and permit may appeal the decision to city council. The city council may not approve the appeal, if the approval would violate section 17-20.3.1 of this ordinance.

#### Section 17-20.5. Smoking restrictions applicable to parklets and sidewalk cafés.

Parklets and sidewalk cafés approved under this section shall be subject to the same restrictions and prohibitions against smoking and vaping as are applicable to parks pursuant to Section 8-301 of the City of Gainesville Code of Ordinances, together with applicable enforcement remedies and penalties thereunder.

#### Section 17-20.6. Insurance & Security Requirements.

1. Insurance.
  - a. No lease or building permit shall be granted for a parklet or sidewalk café unless the applicant files with the city manager or city manager's designee a certificate of liability insurance or other proof of insurance in a form acceptable to the city confirming that the applicant has procured the insurance required by this section. If the policy is not kept in full force and effect throughout the term of the lease, the lease shall automatically become void and the improvements must be removed at that time.

- b. The insurance policy shall be issued by an insurance company authorized to do business in the State of Texas. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgement of a court of competent jurisdiction against the city, its officers, agents, or employees. The insurance shall provide coverage in an amount of not less than \$1,000,000.00 for each single occurrence. The minimum amounts of insurance coverage may be increased by the city when it is in the best interest of the public. The policy of insurance shall name both the lessee and the city as insured parties to the full amount of the policy limits.

2. Security.

The applicant shall provide sufficient security to the city to pay for the costs of the safe and orderly removal of such parklet or sidewalk café.

- a. *Amount of security.* The security shall be in the amount of \$10,000 for the removal of parklet or sidewalk café.
- b. *Form of security.* The security provided to the city shall be either a cash escrow (payment of funds directly with the finance department of the city to be held in escrow by the city) or surety bond.

Section 17-20.7. Application.

1. An application for a lease and building permit under this ordinance must be filed with the department designated by the city manager on a form approved by the city manager or the city manager's designee.
2. An application under this article must include:
  - a. a building permit fee based on the Commercial Building Fees Valuation Table in the Annual Fee Schedule; and
  - b. a map, survey, drawing, aerial photograph, or similar information, provided at the applicant's expense, identifying the area of public right-of-way proposed to be used under a lease; and
  - c. a survey and/or title commitment if the city manager or the city manager's designee determines that the information provided by the applicant is inadequate to identify the area subject to the proposed license, to clarify conflicts in boundary lines between the city's right-of-way and adjacent properties, to verify ownership of the subject area or the existence of other encumbrances; and
  - d. a detailed description, together with plans, specifications, photographs, or illustrations of the proposed improvements or installation.
3. The application shall be delivered to affected city departments and affected utility providers.

Section 17-20.8. Provisions for parklets and sidewalk cafés subject to review after one year.

In the month of October 2017, the city council shall review and consider the provisions of this ordinance that allow for and relate to parklets and sidewalk cafés to determine their effectiveness and impact on the community, and whether to continue, amend, or repeal such provisions. The city council may also review this ordinance at any other time it deems appropriate. During this review period, parklets and sidewalk cafés are only allowed to be placed on Commerce Street between California Street and Scott Street.

**SECTION 2.** In codifying the changes authorized by this ordinance, paragraphs, section, and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the City of Gainesville Code of Ordinances.

**SECTION 3.** Severability.

If any provision, section, subsection, sentence, clause, or phrase of this article, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this article or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the city council in adopting the ordinance from which this article derives that no portion hereof or provisions or regulation contained therein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this article to be severable for that purpose.

**SECTION 4.** Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances in conflict with the provisions of this article are hereby repealed.

**SECTION 5.** Open Meeting Finding.

It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapter 551 of the Texas Government Code*.

**SECTION 6.** Effective Date

This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Texas Government Code and City Charter*.

**INTRODUCTION, FIRST READING, CHARTER SUSPENSION**

**INTRODUCED AND READ FOR THE FIRST TIME BEFORE THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 4<sup>TH</sup> DAY OF OCTOBER 2016, AT WHICH TIME THE CHARTER REQUIREMENT OF THREE READINGS WAS SUSPENDED BY THE FOLLOWING VOTE.**

\_\_\_\_\_AYES, \_\_\_\_\_NAYS, \_\_\_\_\_ABSENT, \_\_\_\_\_ABSTENTIONS

**ATTEST:**

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**CAITLYN HUDDLESTON, CITY SECRETARY**

\_\_\_\_\_  
**JIM GOLDSWORTHY, MAYOR**

**ADOPTION**

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 4<sup>TH</sup> DAY OF OCTOBER 2016.**

\_\_\_\_\_ **AYES,** \_\_\_\_\_ **NAYS,** \_\_\_\_\_ **ABSENT,** \_\_\_\_\_ **ABSTENTIONS**

**ATTEST:**

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**CAITLYN HUDDLESTON, CITY SECRETARY**

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**JIM GOLDSWORTHY, MAYOR**