

BCC Mtg. Date: October 16, 2018

EFFECTIVE DATE: November 9, 2018

ORDINANCE NO. 2018-21

AN ORDINANCE AFFECTING THE USE OF LAND IN ORANGE COUNTY, FLORIDA; AMENDING CHAPTER 38 OF THE ORANGE COUNTY CODE ("ZONING") BY AMENDING SECTION 38-79(86) ("CONDITIONS FOR PERMITTED USES AND SPECIAL EXCEPTIONS") REGARDING OUTDOOR SEATING; CREATING SECTION 38-1402 ESTABLISHING A LOCAL EXEMPTION TO THE FOOD AND DRUG ADMINISTRATION'S FOOD CODE FOR DOGS IN DESIGNATED OUTDOOR PORTIONS OF PUBLIC FOOD SERVICE ESTABLISHMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 509.233, Florida Statutes, authorizes the governing body of local governments to establish, by ordinance, a local exemption procedure to certain provisions of the Food and Drug Administration Code, as currently adopted by the Florida Division of Hotels and Restaurants, in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments; and

WHEREAS, in accordance with Section 509.233, Florida Statutes, any such local exemption procedure adopted shall be codified within the land development code of the participating local government; and

WHEREAS, Section 509.233, Florida Statutes, mandates that any participating local government's ordinance includes a permitting process, specific regulations provided for therein, and a mechanism for state and local cooperation regarding the reporting of complaints and the participating local government's enforcement responses to such complaints; and

WHEREAS, the County's Board of County Commissioners (the "Board") finds that establishing a local exemption that provides restaurants with outdoor seating the choice to – within the limits of a permit and the regulations found within the ordinance establishing the local exemption for Orange County – serve patrons who wish to be accompanied by their dogs while dining outdoors; and

WHEREAS, the Board finds that providing the owners of restaurants the option to obtain a permit so that they may allow their patrons to have their dogs accompany them while dining outdoors is in the interest of providing those restaurant owners more discretion and control over their business decisions.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Amendments; In General. Throughout this ordinance, additions are

shown by underlines, deletions are shown by strikethroughs, and asterisks (***) indicate portions of text which have not changed.

Section 2. Amendment to Section 38-79. Subsection (86) of Section 38-79 (“Conditions for permitted uses and special exceptions”) is amended as follows:

Section 38-79. Conditions for permitted uses and special exceptions.

The following numbered conditions shall correlate with the numbers listed in the use table set forth in section 38-77:

* * *

(86) Outdoor seating is permitted subject to the following conditions:

a. All lighting at outdoor seating areas shall be directed away from all residential uses or residential zoning districts;

b. Activity at outdoor seating areas shall comply with chapter 15, article V (noise pollution control), Orange County Code; ~~and~~

c. All outdoor seating shall be depicted on site plans; and

d. Any outdoor seating permitting dogs must comply with section 38-1402 (Dog-Friendly Restaurants).

Section 3. Creation of Section 38-1402. Section 38-1402, presently “Reserved” under Article IX (“General Supplemental Regulations”) of Chapter 38, is created to read as follows:

**ARTICLE IX.
GENERAL SUPPLEMENTAL REGULATIONS**

* * *

Sec. 38-1402. Dog-Friendly Restaurants.

(a) **Local exemption authorized.** There is hereby established a local exemption procedure to certain provisions of the Food and Drug Administration Food Code, as currently adopted by the Florida Division of Hotels and Restaurants, in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments.

(b) **Limitations on exemption.**

(1) This exemption shall only provide a variance to those portions of the currently adopted Food and Drug Administration Food Code in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments.

(2) Without exception, any dog that has been classified or designated as a "dangerous dog" as defined by section 767.11, Florida Statutes, or for which Orange County's Animal Services Division has record of its propensity toward aggressive behavior, shall not be permitted within any portion of a public food service establishment.

(c) **Definitions.**

(1) *DHR* means the Division of Hotels and Restaurants of the State of Florida Department of Business and Professional Regulation.

(2) *Dog* means an animal fully of the subspecies *Canis lupus familiaris*.

(3) *Employee(s)* means any person(s) employed by, or acting on behalf of, the public food service establishment.

(4) *Outdoor dining area* means an area that is subject to the zoning requirements and associated conditions for restaurants with outdoor seating as set forth in the use table in section 38-77.

(5) *Patron* has the meaning given to "guest" by section 509.013, Florida Statutes.

(6) *Public food service establishment* has the meaning given to it by section 509.013, Florida Statutes.

(d) Permit requirements. In order to protect the health, safety, and general welfare of the public, participating public food service establishments shall annually apply for and receive a permit from Orange County before allowing patrons' dogs on their premises. Application for the permit shall be made to the county, on a form provided for such purpose, and shall include, along with any other such information deemed reasonably necessary by the county in order to implement and enforce the provisions of this part, the following information:

(1) The name, location, and mailing address of the public food service establishment.

(2) The name, mailing address, and telephone contact information of the permit applicant.

(3) Notarized written authorization from the owner of the property on which the public food service establishment is located if the applicant is not the owner.

(4) A diagram and description of the outdoor dining area to be designated as available to patrons' dogs, including dimensions of the designated area; a depiction of the number and placement of tables, chairs, and restaurant equipment, if any; the entryways and exits to the designated area and of other areas of outdoor dining not available for patrons' dogs; any fences or other barriers; surrounding property lines and public rights-of-way, including sidewalks and common pathways; and such other information reasonably required by the county. The diagram or plan shall be accurate and to scale but need not be prepared by a licensed design professional.

(5) A description of the days of the week and hours of operation which patrons' dogs will be permitted in the designated outdoor dining area.

(6) A written certification of commercial general liability insurance and an instrument in which the applicant and the property owner (if not the applicant) agree to indemnify and hold harmless Orange County and its Board of County Commissioners, officers, and employees against liability, including court costs and reasonable attorneys' fees, through all appellate proceedings, for any and all claims for damage to property, or injury to, or death of, persons arising out of or resulting from the issuance of the permit.

(7) All application materials shall contain the appropriate DHR-issued license number for the subject public food service establishment.

(8) Payment of a non-refundable application fee of an amount set by the Orange County Board of County Commissioners.

(e) Regulations. In order to protect the health, safety, and general welfare of the public, and pursuant to section 509.233, Florida Statutes, the following regulations shall apply to establishments which obtain such a permit:

(1) All public food service establishments shall report to Orange County's Animal Services Division any and all incidents in which, while on the premises of the public food service establishment, a dog bites, attacks, endangers, and/or inflicts injury upon:

a. Any patron and/or employee of the public food establishment; or

b. Any other live animal, whether domestic in nature or not.

(2) Employees shall wash their hands promptly after touching, petting, or otherwise handling patrons' dogs.

(3) Employees shall be prohibited from touching, petting, or otherwise handling patrons' dogs while serving food or beverages or handling tableware or before entering other parts of the public food service establishment.

(4) Patrons in the designated outdoor dining area shall be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor dining area.

(5) Employees and patrons shall be instructed that they shall not allow dogs to come into contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations. That notwithstanding, dishes specifically dedicated for use by dogs shall be permitted.

(6) Patrons shall not leave their dogs unattended for any period of time. Patrons at all times shall keep their dogs on the ground, on a leash, and under control.

(7) Employees and patrons shall not allow any part of a dog to be on the chairs, tables, or other furnishings.

(8) All table and chair surfaces shall be cleaned and sanitized with an approved product between seating of patrons. Spilled food and drink shall be promptly removed from the floor or ground.

(9) All dog waste shall be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be kept near the designated outdoor area. Dog waste shall not be carried in or through indoor portions of the public food service establishment.

(10) At least one sign reminding employees of the applicable rules, including those contained in this section, and those additional rules and regulations, if any, included as further conditions of the permit by Orange County, shall be posted on the premises in a conspicuous location frequented by employees within the public food service establishment. The mandatory sign shall be not less than eight and one-half (8½) inches in width and eleven (11) inches in height (8½" × 11") and printed in easily legible typeface of not less than twenty (20) point font size.

(11) At least one sign reminding patrons of the applicable rules, including those contained in this section, and those additional rules and regulations, if any, included as further conditions of the permit by Orange County, shall be posted on the premises in a conspicuous location within the designated outdoor dining area of the public food service establishment. This notice must include notice to the patrons that dogs that have been classified or designated as "dangerous dogs" as defined by section 767.11, Florida Statutes, or for which Orange County's Animal Services Division has record of its propensity toward aggressive behavior, shall not be permitted within any portion of the public food service establishment. The mandatory sign shall be not less than eight and one-half (8½) inches in width and eleven (11) inches in height (8½" × 11") and printed in easily legible typeface of not less than twenty (20) point font size.

(12) At all times while the designated outdoor dining area of the public food service establishment is available to patrons and their dogs, at least one sign shall be posted in a conspicuous and public location near the entrance to the designated outdoor dining area, placing patrons on notice that the designated outdoor dining area of the public food service establishment is currently available to patrons accompanied by their dog or dogs. The mandatory sign shall not be less than eight

and one-half (8½) inches in width and eleven (11) inches in height (8½" × 11") and printed in easily legible typeface of not less than twenty (20) point font size.

(13) The permit issued by the County to the public food service establishment pursuant to this section, and the diagram that was submitted with the permit application, shall both be conspicuously displayed in the public food service establishment at all times.

(14) Dogs shall not be permitted to travel through indoor or non-designated outdoor portions of the public food service establishment, and ingress and egress to the designated outdoor dining area of the public food service establishment must not require entrance into or passage through any indoor area of the public food service establishment.

(15) The public food service establishment and designated outdoor dining area shall comply with all permit conditions and the approved diagram.

(f) Permit expiration and renewal.

(1) A permit issued pursuant to this section expires one (1) year from the date of issuance and a new permit must be obtained annually. Failure to obtain a current permit within five (5) days of a previous permit's expiration will require a late fee payment in an amount set by the Orange County Board of County Commissioners for the new permit in addition to the permit fee.

(2) A permit granted pursuant to this section shall not transfer to a subsequent owner upon the sale of a public food service establishment but shall instead expire automatically upon the sale of the establishment. The subsequent owner shall be required to apply for a permit pursuant to this section if the subsequent owner wishes to continue to accommodate patrons' dogs.

(g) Complaints and reporting.

(1) In accordance with section 509.233(5), Florida Statutes, the county shall accept and document complaints related to this program within Orange County, Florida, and shall report quarterly to the DHR all such complaints and the county's enforcement response to such complaints.

(2) The county shall also provide the DHR with a copy of all approved applications and permits issued.

(h) Enforcement.

(1) The ultimate responsibility for enforcement of this section falls upon the permitted public food service establishment, however, any person who violates any provisions of this section may, upon code enforcement action, be punished according to Chapter 11, Code Enforcement, of the Orange County Code of Ordinances, as may be amended.

(2) Any alleged violation of any of the provisions in this section may also be pursued by appropriate remedy, whether by injunctive, declaratory, or other civil remedy, at the county's option. The provisions of this section may also be enforced by the sheriff, deputy sheriffs, and any other authorized enforcement officer.

(i) Revocation of permit.

(1) A permit may be revoked by the Zoning Manager should the public food service establishment:

a. Have its business or health permit, and any other state or local license required by law, be suspended, revoked, or cancelled;

b. Fail to obtain, or maintain, the requisite insurance required by this section;

c. Fail to comply with approved diagram and requirements of this section;

d. Receive three (3) notice(s) of violation of the dog-friendly restaurants ordinance within the permitted year;

e. Fail to correct a violation of the dog-friendly restaurants ordinance, or condition(s) of the permit issued pursuant to this section, within three (3) days of receipt of the correction notice; or

f. Be found to have provided false or misleading information on the application which was material to the approval of the permit.

(2) Upon revocation, the Zoning Manager shall give notice of such action to the public food service

establishment in writing stating the action taken and the reason for that action. If the reason for revocation is a failure to maintain any required state or local license, the revocation may take effect immediately upon receipt of the notice of revocation by the public food service establishment. Otherwise, such notice shall become effective within five (5) days.

(3) If a dog-friendly restaurant permit is revoked, no new permit may be approved for the public food service establishment until the expiration of 180 days following the date of revocation.

Section 4. Effective date. This ordinance shall take effect on November 9,

2018.

OCT 16 2018

ADOPTED THIS ____ DAY OF _____, 2018.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By:

Teresa Jacobs

Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By:

Laketa Lewis
Deputy Clerk