

**ORDINANCE NUMBER 95-10-102**

**AN ORDINANCE OF THE CITY OF ATLANTIC BEACH, COUNTY OF DUVAL, STATE OF FLORIDA, AMENDING CHAPTER 24 OF THE MUNICIPAL CODE OF ORDINANCES OF THE CITY OF ATLANTIC BEACH; CREATING SECTION 24-158, DOG-FRIENDLY RESTAURANTS; ESTABLISHING, PURSUANT TO FLORIDA STATUTES SECTION 509.233, KNOWN AS THE DIXIE CUP CLARY LOCAL CONTROL ACT, A LOCAL EXEMPTION TO CERTAIN PROVISIONS OF GENERAL LAW AND AGENCY RULES RELATING TO PUBLIC FOOD SERVICE ESTABLISHMENTS IN ORDER TO PERMIT PATRONS' DOGS AT CERTAIN DESIGNATED OUTDOOR AREAS OF SUCH ESTABLISHMENTS; PROVIDING FOR IMPLEMENTATION PROCEDURES, INCLUDING PERMIT REQUIREMENTS, THE ADDITION OF CERTAIN NEW FEES, AND COMPLAINT AND REPORTING REQUIREMENTS; AMENDING SECTION 24-69, FEES; CREATING SECTION 24-69(D), SPECIFIC USE REVIEW FEES; PROVIDING FOR RECORDATION AND AN EFFECTIVE DATE.**

**WHEREAS**, at its regularly scheduled meeting of October 13, 2008, the City Commission of the City of Atlantic Beach, Florida (the "City Commission"), unanimously approved an ordinance entitled "*An Ordinance of the City of Atlantic Beach, County of Duval, State of Florida, Allowing Dogs within the Outdoor Dining Areas of Restaurants Under Certain Conditions as Set Forth within Florida Statutes, Section 509.233, Providing an Effective Date and an Expiration Date*" (the "Atlantic Beach Dog Dining Program") according to provisions of a pilot program established upon enactment of *The Dixie Cup Clary Local Control Act*, Florida Statutes, Section 509.233, (the "Act"); and

**WHEREAS**, the Florida Legislature passed Florida Law 2009-195, removing the sunset provision and making permanent the Act; and

**WHEREAS**, the Atlantic Beach Dog Dining Program has expired; and

**WHEREAS**, at the request of citizens and restaurant owners, it is the intent of the City Commission to continue to allow dogs in the outdoor dining areas of restaurants in a manner consistent with the Act; and

**WHEREAS**, a public hearing to enact this Ordinance was held by the City Commission for the City of Atlantic Beach on January 10, 2011.

**NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION ON BEHALF OF THE PEOPLE OF THE CITY OF ATLANTIC BEACH:**

**SECTION 1.** Chapter 24, Land Development Regulations, of the Code of Ordinances for the City of Atlantic Beach, Florida is hereby amended to add new Section 24-158, Dog-Friendly Restaurants, and upon enactment shall read as follows.

**Section 24-158. Dog-Friendly Restaurants.**

- (a) **Purpose and intent.** The Dixie Cup Clary Local Control Act, Florida Statutes §509.233, grants the City the authority to provide exemptions from certain portions of the United States Food and Drug Administration Food Code, as amended from time to time, and as adopted by the State of Florida Division of Hotels and Restaurants of the Department of Business and Professional Regulation, in order to allow patrons' dogs within certain designated outdoor areas of their respective establishments while providing for regulation and enforcement required to promote, protect, and maintain the health, safety and welfare of the public. By authority of F.S. §509.233(2), there is hereby created in the City of Atlantic Beach, Florida such a local exemption procedure, known as the City of Atlantic Beach Dog-Friendly Restaurants.
- (b) **Applicability.** No dog shall be allowed in a public food service establishment unless authorized by state law and the public food service establishment has received and maintains an unexpired permit pursuant to this section allowing dogs in designated outdoor dining areas of the establishment.
- (c) **Definitions.** As used in this Section, the following terms shall be defined as set forth herein unless the context clearly indicates or requires a different meaning:

Administrator shall mean the representative(s) of the City as designated by the City Manager to oversee administration and enforcement of this Section.

Employee shall mean owner, manager, host, wait staff, cook, dishwasher or any other person involved in the operation of the public food service establishment.

Division shall mean the Division of Hotels and Restaurants of the State of Florida Department of Business and Professional Regulation.

Dog shall mean an animal of subspecies *Canis lupus familiaris*.

Outdoor Area shall mean an area not enclosed in a building and which is intended or used as an accessory area to a public food service establishment which provides food and/or drink to patrons for consumption in the area.

Patron shall mean any guest or customer of a public food service establishment.

Public food service establishment and food service establishment shall mean any building, vehicle, place, or structure, or any room, division, or area in or adjacent to a building, vehicle, place or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

(d) **Permit requirements.** No public food service establishment within the City shall have or allow any dog on its premises unless the food service establishment possesses a valid permit issued in accordance with this section, or unless otherwise permitted pursuant to Florida Statutes.

(1) **Permit application.** An applicant for a dog-friendly restaurant permit shall submit the established fees along with the application form created and provided by the City to the designated administrative department. The application shall contain all required narrative and graphical information necessary to determine compliance with the provisions of this Section and deemed reasonably necessary for the enforcement of the provisions of this Section, but shall require, at a minimum, the following information:

- a. The name, location, and mailing address of the food service establishment.
- b. The appropriate and current Division-issued license number for the public food service establishment on all application materials.
- c. The name, mailing address, and telephone contact information for the owner of the public food service establishment.
- d. The name, mailing address and telephone contact information for the manager of the public food service establishment.
- e. The name, mailing address, and telephone contact information for the permit applicant.
- f. A diagram and description of the outdoor area to be designated as available to patrons' dogs, including the following:
  1. Dimensions of the designated area;
  2. A depiction of the number and placement of tables, chairs, and restaurant equipment, if any;
  3. The entryways and exits to the designated outdoor area;

4. The boundaries of the designated area and of other areas of outdoor dining not available for *patrons' dogs*;
5. Any fences or other barriers; and
6. Surrounding property lines and public rights-of-way, including sidewalks and common pathways.

The diagram or plan shall be accurate and to scale but need not be prepared by a licensed design professional.

- g. A description of the days of the week and hours of operation that *patrons' dogs* will be permitted in the designated *outdoor area*.
  - h. The property owner's authorization shall also be required if the applicant is not the property owner.
- (2) **Fees.** The City Commission shall establish reasonable fees to cover the cost of processing an initial application and issuing the permit, including a portion for initial permit compliance inspection and program monitoring. Separate fees shall be established for verified complaint-based and permit reinstatement compliance inspections. Such fees are detailed in Section 24-69 of this Chapter.
- (3) **Permit application review and approval.** Permit applications submitted under this Section shall be reviewed and approved by the *Administrator* in accordance with the following:
- a. The permit application shall be submitted at least 30 days prior to the date anticipated by the *food service establishment* for inception of the program in the designated *outdoor area*.
  - b. The applicant shall be required to prominently display notice within the *food service establishment* that application has been made for a *dog-friendly restaurant permit*. The notice shall indicate the portion of the seating area for which permitting is requested and the anticipated start date of service. The notice shall be displayed commencing the date application is made and continue until such date the permit is issued or the application is withdrawn or abandoned.
  - c. No permit shall be issued for any outdoor seating area which has not been properly authorized by the City or which does not meet all applicable criteria of the City's Land Development Regulations and regulations of the *Division*.

- d. For permits authorizing dogs within the outdoor areas of a food service establishment located on any right-of-way or other property of the City or any other governmental entity, the Administrator shall require the applicant to produce evidence of the following:
1. A valid right-of-way, sidewalk, or other permit, license, or lease showing the food service establishment has the right to occupy and use the area; and
  2. A properly executed insurance endorsement providing commercial general liability insurance coverage in an amount of no less than \$500,000.00 per occurrence and \$1,000,000.00 aggregate. The policy shall not have any exclusion for animals or animal bites. All insurance shall be from companies duly authorized to do business in the State of Florida. All liability policies shall be endorsed to provide that the City or any other appropriate governmental entity is an additional insured as to the operation of the outdoor dining area on such government property.
- e. After the Administrator determines the application for a permit to be complete and in compliance with this Section, the Administrator shall cause inspection of Outdoor areas of the food service establishment designated in the application for compliance with the provisions of this Section. A food service establishment found not in compliance upon such inspection shall have a reasonable time in which to correct any deficiencies found. Upon correction of such deficiencies, the public food service establishment shall request re-inspection and pay a re-inspection fee.
- f. A food service establishment making application for or issued a permit under this Section shall provide access to the premises of the food service establishment upon request of the Administrator or any designated official of the City or the Division for periodic inspections and monitoring for compliance. Neither advance notice nor written request shall be required for such inspections.
- g. An application shall be deemed abandoned if it remains incomplete in the determination of the Administrator for a period of 90 days after notice to the applicant of the deficiencies in the application or if inspection of the food service establishment revealed deficiencies in compliance with this Section and the applicant has not requested re-inspection within such period.
- h. A permit issued pursuant to this Section shall not be transferrable to a subsequent owner upon the sale or transfer of a public food

serviced establishment, but shall expire automatically upon the sale, lease, or other transfer of an interest in the *food service establishment*, and service under such expired permit shall cease. The subsequent owner, lessee, or other person acquiring an interest in the *food service establishment* shall be required to reapply for a permit pursuant to this Section if such person desires to continue to accommodate *patrons' dogs* according to the provisions of this program.

- (4) **Permit expiration.** Each permit issued under this Section shall expire on September 30 next following issuance, regardless of when issued.
- (5) **Permit renewal.** Each September, the *Administrator* shall review the compliance records for each *public food service establishment* with a current *dog-friendly* restaurant permit and send out renewal notices to those establishments not having substantial and/or habitual violations during the past year. Upon receipt of a complete renewal application and appropriate fees, and successful permit inspection, the *Administrator* shall issue a renewal permit with an effective date of October 1 of that year.

The *Administrator* shall issue a consultation notice to those *food service establishments* having substantial and/or habitual violations during the past year. At consultation, the *Administrator* and the applicant shall discuss severity and frequency of violations documented during the past year, and the *Administrator* shall determine whether or not the applicant may apply for a probationary renewal permit. Any *food service establishment* issued consultation notices for two (2) consecutive years shall be prohibited from applying for a *dog-friendly* restaurant permit.

- (6) **Permit revocation.** A permit issued under this Section may be revoked by the *Administrator* subject to the following conditions.
- a. A permit issued under this Section may be revoked by the *Administrator* if, after notice and reasonable time in which the grounds for revocation may be corrected, the *food service establishment* fails to comply with any condition of approval, fails to comply with the approved diagram, fails to maintain any required state or local license or permit, fails to pay when due any permit, renewal, inspection, or re-inspection fees, is found to be in violation of any provision of this Section, this Chapter, this Code, or regulations of the *Division*, or there exists any other threats to the health, safety, or welfare of the public. The *Administrator* may suspend the permit and the *food service establishment* shall cease service under the permit pending correction of the grounds for revocation. If the grounds for revocation are a failure to maintain any required state or local license or permit, revocation may take

effect immediately upon giving notice of revocation to the *food service establishment* owner or manager. A suspension or revocation by the *Administrator* shall be appealable as provided in the general appeal provision of this Chapter, but shall remain in effect during the course of such appeal.

b. If a permit issued to a *food service establishment* under this Section is revoked, no new permit may be approved or issued for such *food service establishment* until the expiration of 180 days following the date of such revocation, at which time the applicant may request a consultation with the *Administrator* to discuss issuance of a renewal permit.

(e) **Use-specific standards.** In addition to the general development standards and those specific to the applicable zoning district, any *public food service establishment* that receives a permit to allow *dogs* within a designated outdoor dining area pursuant to this Section shall require observation and compliance with the following use-specific standards.

- (1) The *public food service establishment* and designated *outdoor area* shall comply with all permit conditions and the approved diagram.
- (2) Permits shall be conspicuously displayed in the designated *outdoor area*.
- (3) Waterless hand sanitizer shall be provided at all tables in the designated *outdoor area*.
- (4) A kit with appropriate materials and supplies for cleaning and sanitizing an area soiled by *dog* waste shall be maintained in the designated *outdoor area*. *Dog* waste shall not be carried in or through indoor portions of the *public food service establishment*.
- (5) Ingress and egress to the designated *outdoor area* shall not require entrance into or passage through any indoor area or non-designated *outdoor areas* of the *public food service establishment*.
- (6) No *dogs* shall be allowed in the designated *outdoor areas* of the *food service establishment* if a violation of any of the requirements of this Section exists.
- (7) All *dogs* shall wear a current license tag or rabies tag and the *patron* shall have a current license certificate or rabies certificate immediately available upon request.

(f) **Required signs.** Any *public food service establishment* that receives a permit to allow *dogs* within a designated outdoor dining area pursuant to this Section shall provide signage in accordance these standards and content.

(1) Sign standards. Signs must comply with the following.

- a. Lettering must be no less than a thirty-six (36) point font.
- b. Lettering must be in a contrasting color to the sign background so as to be visible and readable.

(2) Employee-directed content signs. Signs with the following rules must be prominently posted in an *employee* area.

- a. *Employees* shall wash their hands promptly after touching, petting, or otherwise handling any *dog*, and shall wash their hands before entering other parts of the *public food service establishment* from the designated *outdoor area*.
- b. *Employees* shall be prohibited from touching, petting, or otherwise handling any *dog* while serving food or beverages or while handling tableware.
- c. *Employees* shall not permit any *dog* to be in, or to travel through, indoor or non-designated *outdoor areas* of the *public food service establishment*.
- d. *Employees* shall not allow any *dog* to come into contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations.
- e. *Employees* shall not allow any part of a *dog* to be on chairs, tables or other furnishings. *Dogs* must remain on the floor/ground level and shall not be permitted in the lap of the *patron*.
- f. *Employees* shall clean and sanitize all table and chair surfaces with an approved product between seating of *patrons*.
- g. Spilled food and/or drink must be removed from the floor or ground as soon as possible, but in no event less frequently than between seating of *patrons* at the nearest table.
- h. Accidents involving *dog* waste must be immediately cleaned and sanitized with an approved product.

(3) Patron-directed content. Signs with the following rules must be prominently posted at the entrance to the designated outdoor area allowing dogs.

- a. Patrons shall keep their dogs on a leash at all times and shall keep their dogs under reasonable control.
- b. Patrons shall not leave their dogs unattended for any period of time.
- c. Patrons 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.
- d. Patrons shall not allow any part of a dog to be on chairs, tables or other furnishings. Dogs must remain on the floor/ground level and shall not be permitted in the lap of the patron.
- e. Accidents involving dog waste must be immediately cleaned and sanitized with an approved product.
- f. Patrons are advised to wash their hands with waterless hand sanitizer before eating.

(g) **Complaints and reporting requirements.** In accordance with F.S. §509.233, the *Administrator* shall provide the *Division* with the following in a timely manner.

- (1) The Administrator shall establish a procedure for accepting, documenting and responding to complaints related to the program in a timely manner.
- (2) The Administrator shall in a timely manner provide the Division with a copy of all approved applications and permits issued.
- (3) The Administrator shall promptly provide the Division with copy of all complaints and responses to such complaints.
- (4) All applications, permits, and other materials submitted to the Division shall contain the Division-issued license number for the public food service establishment.

**SECTION 2.** Section 24-69, Fees, of Chapter 24, Land Development Regulations, of the Code of Ordinances for the City of Atlantic Beach, Florida is hereby amended to add new subsection 24-69(d), Specific Use Review Fees, and upon enactment shall read as follows.

**Sec. 24-69. Fees.**

Pursuant to Section 24-46(e), the City Commission for the City of Atlantic Beach hereby establishes the following fees related to the administrative cost of carrying out the requirements of this Chapter and also to cover the costs for planning, zoning, engineering utility and specific use reviews. These fees shall be payable to the City at the time such application or request is filed. Applications for planning and zoning related requests shall not be considered as complete applications until such time as required fees have been paid in full. Fees for specific use verified complaint-based and permit reinstatement reviews must be paid prior to scheduling of subsequent compliance inspections. Fees as required by this Section are not refundable.

(d) Specific Use Review Fees.

(1) Dog-Friendly Dining.

- a. Initial application (full year) \$175.00  
(half year) \$ 90.00

Includes processing of application, initial inspection, permit issuance, and three subsequent quarterly compliance inspections.

- b. Renewal application \$125.00

Includes annual compliance review and inspection, permit issuance, and three subsequent quarterly compliance inspections.

- c. Verified complaint-based compliance \$ 55.00

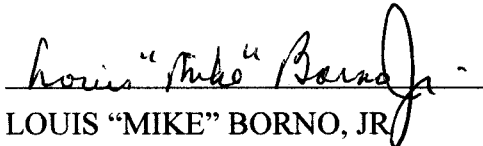
Includes one (1) compliance inspection, upon verification of a complaint-based violation. Each additional re-inspection for failed compliance will be charged this same amount.

- d. Permit reinstatement \$ 55.00

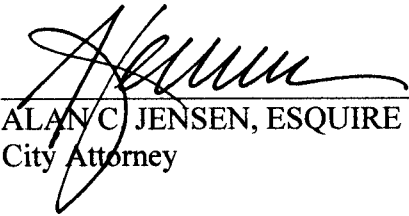
Includes one (1) compliance inspection, upon suspension due to violations documented at time of quarterly inspection, and permit reinstatement/issuance. Each additional re-inspection for failed compliance will be charged this same amount.

**SECTION 3.** This ordinance shall take effective immediately upon its final passage and adoption and shall be recorded in a book kept and maintained by the Clerk of the City of Atlantic Beach, Florida, in accordance with §125.68, Florida Statutes.

Passed on first reading by the City Commission of the City of Atlantic Beach the 13<sup>th</sup> day of December, 2010. Passed on final reading and public hearing the 10<sup>th</sup> day of January, 2011.

  
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LOUIS "MIKE" BORNO, JR.  
Mayor/Presiding Officer

Approved as to form and correctness:

  
\_\_\_\_\_  
ALAN C. JENSEN, ESQUIRE  
City Attorney

Attest:

  
\_\_\_\_\_  
DONNA L. BARTLE, CMC  
City Clerk