



Interoffice Memorandum

October 1, 2018

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development Services
Department

CONTACT PERSON: Jennifer Moreau, Assistant Manager, Zoning Division
407-836-5856

SUBJECT: October 16, 2018 – Second of Two Public Hearings
Ordinance Amending Chapter 38 ("Zoning")
Dog Friendly Dining

On June 5, 2018, staff presented the Board with a work session on dog friendly dining, and the changes required in order to allow the activity in Orange County. The discussion included an overview of applicable Florida Statutes, various provisions of a potential ordinance amending Orange County Code Chapter 38, and how complaints, reporting, and enforcement could be addressed. At that time, the Board directed staff to prepare an ordinance for consideration. On June 21, 2018, a work session was held with the Local Planning Agency/Planning and Zoning Commission (LPA/PZC).

On July 19, 2018, the LPA/PZC held a public hearing to consider the amendments to Sections 38-79(86) "Conditions For Permitted Uses And Special Exceptions" and to create 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". The LPA/PZC found the ordinance consistent with the Comprehensive Plan and recommended approval of the draft ordinance with amendments, which are underlined in the attached ordinance.

The proposed ordinance dated August 21, 2018 addresses the requirements outlined in the Florida Statutes, provides definitions, updates the conditions for outdoor seating, prohibits dangerous dogs, provides permitting requirements and fees, outlines the complaints, reporting, and enforcement process, and provides for revocation language.

This is the second of two public hearings. The first public hearing was held on September 18, 2018 at 5:01 pm.

ACTION REQUESTED: Make a finding of consistency with the Comprehensive Plan and adopt an ordinance amending Chapter 38 regarding Dog Friendly Dining and providing an effective date. All Districts

JVW/JM/pw
Attachment

ORDINANCE NO. 2018-_____

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

78 “Reserved” under Article IX (“General Supplemental Regulations”) of Chapter 38, is created to
read as follows:

80 **ARTICLE IX.**
82 **GENERAL SUPPLEMENTAL REGULATIONS**

84 * * *

Sec. 38-1402. Dog-Friendly Restaurants.

86 (a) **Local Exemption Authorized.** There is hereby
88 established a local exemption procedure to certain provisions of
90 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.

92 (b) **Limitations on exemption.**

94 (1) This exemption shall only provide a
96 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.

98 (2) Without exception, any dog that has been
100 classified or designated as a “dangerous dog” as defined by
102 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.

104 (c) **Definitions.**

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

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

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

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

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

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

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

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

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

134 (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.

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

148 (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.

150 (6) A written certification of commercial
152 general liability insurance and an instrument in which the
154 applicant and the property owner (if not the applicant) agree to
156 indemnify and hold harmless Orange County and its Board of
158 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.

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

162 (8) Payment of a non-refundable application
 fee of forty-six dollars (\$46.00).

164 (e) **Regulations.** In order to protect the health, safety,
166 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:

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

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

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

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

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

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

88 (5) Employees and patrons shall be instructed
190 that they shall not allow dogs to come in to 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.

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

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

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

202 (9) All dog waste shall be cleaned immediately
and the area sanitized with an approved product. A kit with the
204 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.

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

216 (11) At least one sign reminding patrons of the
applicable rules, including those contained in this section, and
218 those additional rules and regulations, if any, included as further
conditions of the permit by Orange County, shall be posted on the
220 premises in a conspicuous location within the designated outdoor
dining area of the public food service establishment. This notice
222 must include notice to the patrons that dogs that have been
classified or designated as "dangerous dogs" as defined by
224 section 767.11, Florida Statutes, or for which Orange County's
Animal Services Division has record of its propensity toward
226 aggressive behavior, shall not be permitted within any portion of
the public food service establishment. The mandatory sign shall

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

232 (12) At all times while the designated outdoor
dining area of the public food service establishment is available
234 to patrons and their dogs, at least one sign shall be posted in a
conspicuous and public location near the entrance to the
236 designated outdoor dining area, placing patrons on notice that the
designated outdoor dining area of the public food service
238 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
240 height (8½" × 11") and printed in easily legible typeface of not
less than twenty (20) point font size.

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

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

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

(f) Permit expiration and renewal.

256 (1) A permit issued pursuant to this section
expires one (1) year from the date of issuance and a new permit
258 must be obtained annually. Failure to obtain a current permit
within five (5) days of a previous permit's expiration will require
260 a late fee payment of twenty-five (\$25.00) for the new permit in
addition to the permit fee.

262 (2) A permit granted pursuant to this section
shall not transfer to a subsequent owner upon the sale of a public
264 food service establishment but shall instead expire automatically
upon the sale of the establishment. The subsequent owner shall

266 be required to apply for a permit pursuant to this section if the
268 subsequent owner wishes to continue to accommodate patrons'
dogs.

(g) Complaints and reporting.

270 (1) In accordance with section 509.233(6),
272 Florida Statutes, the county shall accept and document
274 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.

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

(h) Enforcement.

280 (1) The ultimate responsibility for enforcement
282 of this section falls upon the permitted public food service
284 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.

286 (2) Any alleged violation of any of the
288 provisions in this section may also be pursued by appropriate
290 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.

292 (i) Revocation of permit.

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

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

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

300 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 **MONTH, DAY, YEAR.**

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

340 By: _____
342 Deputy Clerk

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