

ORDINANCE NO. 2023-____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, CONCERNING ALLOWING DOGS WITHIN CERTAIN DESIGNATED OUTDOOR PORTIONS OF PUBLIC FOOD SERVICE ESTABLISHMENTS PURSUANT TO SECTION 509.233, FLORIDA STATUTES; AMENDING THE MARION COUNTY LAND DEVELOPMENT CODE TO CREATE SECTION 2.22.5., ENTITLED "OUTDOOR DOG FRIENDLY DINING AREAS"; RENUMBERING SECTION 2.22.5. TO 2.22.6; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 509, Florida Statutes, requires the State of Florida Division of Hotels and Restaurants (the " Division ") of the Department of Business and Professional Regulation (the " Department ") to carry out all laws and rules relating to the inspection and regulation of public food service establishments for the purpose of safeguarding the public health, safety, and welfare; and

WHEREAS, Section 509.032, Florida Statutes, requires the Division to adopt and enforce such rules as are necessary to ensure the protection of the public from foodborne illness in public food service establishments; and

WHEREAS, Section 509.032, Florida Statutes, further requires the Division to adopt such rules in order to "provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting necessary public food service establishment inspections for compliance with sanitation regulations, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions , and for other such responsibilities deemed necessary by the [D]ivision"; and

WHEREAS, pursuant to the grant of rulemaking authority cited in Section 509.032, Florida Statutes, the Division has adopted by rule sanitation and safety requirements of public food service establishments , including requirements relating to physical facilities , which adopts by reference certain portions of the Food and Drug Administration Food Code (the " Food Code"), as amended from time to time, as developed by the Food and Drug Administration of the United States Department of Health and Human Services, and codified such as Rule 61C-1.001, Florida Administrative Code; and

WHEREAS, the Food Code generally prohibits live animals from public food service establishments; and

WHEREAS, Section 509.032, Florida Statutes, expressly preempts the regulation of public lodging establishments and public food service establishments to the state; and

WHEREAS, Section 509.233, Florida Statutes, provides an exemption to Section 509.032, Florida Statutes, by authorizing the governing body of a local government to establish, by ordinance, a local exemption procedure to certain provisions of the Food Code in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments; and

WHEREAS, the Board of County Commissioners of Marion County, Florida, wish to establish such a local exemption;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA:

Section 1. Article 2, Division 22, of the Marion County Land Development Code, is hereby amended by adding a new section to be numbered Section 2.22.5. and entitled "Outdoor Dog Friendly Dining Areas," to read as follows:

Sec. 2.22.5. – Outdoor Dog Friendly Dining Areas

- (a) Purpose and intent. The purpose and intent of this section is to implement the program authorized by Section 509.233, Florida Statutes, by permitting public food service establishments within the unincorporated areas of the county, subject to the terms and contained herein, to become exempt 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 division of hotels and restaurants of the department of business and professional regulation (the "division"), in order to allow patrons' dogs within certain designated outdoor portions of their respective establishments. No part of this section is intended to be in conflict with any state or federal statute, rule, or regulation.
- (b) Service dogs. Service dogs covered under the American's with Disabilities Act (ADA) of 1990, 42 USC 12101 et seq., as amended, are exempt from this section. Under the ADA, state and local governments, business, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all such areas of the facility where the public is normally allowed.
- (c) Application requirements. Applications for a designated outdoor dog friendly dining area permit under this section shall be made to the County Administrator or designee, and shall include, along with any other such information deemed reasonably necessary by the County Administrator or designee in order to implement and enforce the provisions of this section, the following:

 - (1) The name, location, and mailing address of the subject public food service establishment.
 - (2) The name, mailing address, and telephone contact information and of the permit applicant.
 - (3) Written authorization to obtain the permit 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 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 outdoor area; boundaries of the designated area and any other areas of outdoor dining not available for patrons' dogs; any fences or barriers; surrounding property lines and public rights-of-way, including sidewalks and common pathways; and such other information reasonably required by the County Administrator or designee. 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 that patrons' dogs will be permitted in the designated outdoor area.
 - (6) The license number issued by the division for the public food service establishment.
 - (7) Payment of an application review fee as established by the fee schedule approved by the Board of County Commissioners.
 - (d) The county may impose additional conditions as necessary in order to protect the health, safety, and welfare of the community.
 - (e) *Permit transferability.* A permit issued pursuant to this section shall not be transferred to a subsequent owner upon the sale or transfer of a public food service establishment, but shall expire automatically upon such sale or transfer. The subsequent owner shall be required to apply for a permit pursuant to this section if such owner wishes to continue to accommodate patrons' dogs.
 - (f) *Public food service establishment requirements.* In order to protect the health, safety, and welfare of the public, and pursuant to Section 509.233, Florida Statutes, public food service establishments that receive a permit to allow dogs in a designated outdoor area shall comply with the following requirements:
 - (1) All public food service establishment employees shall wash their hands promptly after touching, petting, or otherwise handling any dog. Employees shall be prohibited from touching, petting, or otherwise handling any dog while serving food or beverages or handling tableware or before entering any other parts of the public food service establishment.
 - (2) Patrons in a designated outdoor area shall be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at tables in the designated outdoor area.
 - (3) 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.
 - (4) Patrons shall keep their dogs on a leash at all times and shall keep their dogs under reasonable and direct control.
 - (5) Dogs shall not be allowed on chairs, tables, or other furnishings.

- (6) All table and chair surfaces shall be cleaned and sanitized with an approved product between seating of patrons. Spilled food and drink shall be removed from the floor or ground between seating of patrons.
- (7) Accidents involving 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.
- (8) 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 the County Administrator or designee, shall be posted in a conspicuous location frequented by employees within the public food service establishment. The mandatory sign shall be not less than 8½ inches in width and 11 inches in height and printed in easily legible typeface of not less than 20-point font size.
- (9) 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 the County Administrator or designee, shall be posted in a conspicuous location frequented by patrons within the designated outdoor area of the public food service establishment. The mandatory sign shall be not less than 8½ inches in width and 11 inches in height and printed in easily legible typeface of not less than 20-point font size.
- (10) At all times while the designated outdoor portion 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 portion of the public food service establishment, the purpose of which shall be to place patrons on notice that the designated outdoor portion of the public food service establishment is currently available to patrons accompanied by their dog or dogs. The mandatory sign shall be not less than 8½ inches in width and 11 inches in height and printed in easily legible typeface of not less than 20-point font size.
- (11) Dogs shall not be permitted to travel through indoor or undesignated outdoor portions of the public food service establishment, and ingress and egress to the designated outdoor portions of the public food service establishment shall not require entrance into or passage through any indoor or undesignated outdoor portion of the public food service establishment.
- (g) *Complaints.* In accordance with Section 509.233, Florida Statutes, the County Administrator or designee shall accept and document complaints related to the outdoor dog friendly dining program within the county, and shall report to the division all such complaints and any county-related enforcement actions. The County Administrator or designee shall provide the division with a copy of all approved applications and permits issued on an annual basis.
- (h) *Enforcement.* Any public food service establishment allowing dogs within an unpermitted outdoor dining area shall be found in violation of this section and shall be subject to any and all enforcement proceedings consistent with the applicable provisions of this LDC and general law. If the public food service establishment fails to acquire the proper permit or fails to cease performing the unpermitted activity within the time allowed after receipt of a notice of violation, the public food service establishment may be subject to enforcement pursuant to

the code enforcement procedures established in Sec. 1.1.5. of the Marion County Land Development Code, and Chapter 2, Article 5, of the Marion County Code of Ordinances.

- (i) *Revocation.* Any public food service establishment with a permitted outdoor dog friendly dining area that fails to comply with the requirements of a permit issued pursuant to this section including both those contained in this section, and those additional rules and regulations, if any, included as further conditions of the permit by the County Administrator or designee, shall be guilty of violating this section and shall be subject to any and all enforcement proceedings consistent with the applicable provisions of this Code and general law.

 - (1) The County Administrator or designee may revoke a permit for violation of the designated outdoor dog friendly dining area if after notice and reasonable time in which the grounds for revocation may be corrected, the public food service establishment fails to comply with any of the standards, any condition of approval, fails to comply with the diagram or plans, or fails to maintain any required state or local license. Prior to revocation, the County Administrator or designee shall provide to the public food service establishment the following:

 - a. A written notice of intent to revoke the permit shall be provided to the applicant by certified mail;
 - b. A seven-calendar-day opportunity to cure the alleged violation, or an opportunity to be heard by the County Administrator prior to revocation.
 - (2) The decision to revoke a permit may be appealed to the Board of County Commissioners. The decision of the Board of County Commissioners shall constitute final action subject to judicial review. Any appeal of a revocation decision shall be made no later than 30 calendar days of receipt of a notice of revocation by filing a written notice of appeal with the County Administrator or designee, along with the applicable appeal fee. Failure to file a written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.
 - (3) If revoked, an owner may not reapply for a permit for that location for a period of 12 months from the date of revocation.
- (j) *Liability.* Prior to issuance of a permit, the applicant shall submit to the County Administrator or designee a signed instrument agreeing to indemnify and hold harmless the county and its officers, employees, and attorneys. The signed instrument shall be in a form acceptable to the County Attorney and County Administrator or designee, but at a minimum, the instrument shall state the applicant will indemnify and hold the county harmless against liability, including court costs and reasonable attorney's 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.

Section 2. Renumbering Section. The existing Section 2.22.5 is hereby renumbered to become Section 2.22.6.

Section 3. Inclusion in the Code.

It is the intent of the Board of County Commissioners of Marion County, Florida, and it is hereby provided that the provisions of this ordinance shall become and be part of the Marion County, Florida Land Development Code; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intent; and that the word “ordinance” may be changed to “section,” “article,” or other appropriate designation.

Section 4. Conflicting Provisions. In the event of any conflict between any provision of this Ordinance and any provision of another section of the County Code, the provisions of this Ordinance shall govern.

Section 5. Severability. Severability is intended throughout and within the provisions of this Ordinance. If any provision, including any exception, part, phrase or term or the application thereof to any person or circumstance is held preempted or invalid by a Court of appropriate jurisdiction, the application to other persons or circumstances shall not be affected thereby, and the validity of this Ordinance in any and all other respects shall not be affected thereby. The Board of County Commissioners do not intend this this Ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional as constitutionally permitted construction is intended and shall be given.

Section 6. Applicability. This Ordinance shall be applicable in the unincorporated area of Marion County, Florida.

Section 7. Filing with Secretary of State. A certified copy of this Ordinance shall be filed with the Secretary of State by the Clerk within ten (10) days after enactment by the Board of County Commissioners, as provided in Section 125.66(2)(b), Florida Statutes.

Section 8. Effective Date. This Ordinance shall become effective upon receipt of confirmation that it has been filed with the Office of the Secretary of State of the State of Florida.

DULY ADOPTED this _____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

CRAIG CURRY, CHAIRMAN

ATTEST:

GREGORY C. HARRELL, CLERK

APPROVED AS TO FORM:

MATTHEW G. MINTER, COUNTY ATTORNEY

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