

Sponsored by: Garrett
Introduction Date: February 9, 2021
Public Hearing Dates: February 9, 2021
March 9, 2021
Enactment Date: March 9, 2021

**CITY OF MARATHON, FLORIDA
ORDINANCE 2021-05**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA;
AMENDING CHAPTER FIVE SECTION 5-23 ENTITLED DOG-
FRIENDLY RESTAURANTS, REPEALING THE AUTOMATIC YEARLY
EXPIRATION OF LICENSES; PROVIDING FOR SEVERABILITY;
PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF
ORDINANCES FOUND TO BE IN CONFLICT; AND PROVIDING FOR
INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE
DATE.**

WHEREAS, Section 509.233, *Florida Statutes*, the “Dixie Cup Clary Local Control Act,” grants municipalities the authority to provide exemptions from Section 6-501.115 of the *U.S. Food and Drug Administration Food Code*, as adopted and incorporated by the State of Florida Division of Hotels and Restaurants in Chapter 61C-4.010 (6), *Florida Administrative Code*; and

WHEREAS, the City Council of the City of Marathon (the “City”) recognizes a long standing practice of various restaurants throughout the City of allowing City residents and visitors alike to bring their dogs to outdoor areas; and

WHEREAS, the purpose of this Ordinance is to recognize this unique and historic practice and to create regulations to legally allow dogs in outdoor areas of restaurants while providing for guidelines that help protect the public health, safety, and welfare in accordance with State law.

WHEREAS, the City does not want to put undue burdens on restaurants by having them reapply every year for a new dog friendly restaurant license.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are hereby confirmed and adopted.

Section 2. Section 5-23 of the Code of Ordinances, City of Marathon, Florida is hereby amended to read as follows:

Sec. 5-23. Dog-Friendly Restaurants.

- (a) *Purpose.* Section 509.233, *Florida Statutes*, the “Dixie Cup Clary Local Control Act,” grants the City the authority to provide exemptions from Section 6-501.115, *U.S. Food and Drug Administration Food Code* (“FDA Food Code”), as adopted and incorporated by the State of Florida Division of Hotels and Restaurants (“Division”) in Chapter 61C-4.010(6), *Florida Administrative Code*. The purpose of this section is to allow dogs in public food service establishments in a manner consistent with the three-year pilot program approved by the State of Florida. The procedure adopted pursuant to this section provides an exemption for those public food service establishments which have received a permit, to the sections of the FDA Food Code that prohibit live animals in public food service establishments.
- (b) No dog shall be in a public food service establishment unless allowed 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 areas of the establishment.
- (c) *Definitions.* Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. Words of one (1) gender include the correlative words of the other gender, unless the sense indicates otherwise. Additionally, the terms set forth below have the following meaning except where the context clearly otherwise requires:
- “Public food service establishments” shall mean any building, vehicle, place, or structure, or any room or division in 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.
- “Employee” or “employees” shall include, but is not limited to, the owner or owners of the public food service establishment.
- (d) *Application Requirements.* Public food service establishments must apply for and receive a permit from the Planning Department before patrons’ dogs are allowed on the premises. The City Council shall by resolution establish a reasonable fee to cover the cost of processing the initial application and renewals. The application for a permit shall require such information from the applicant as is deemed reasonably necessary to enforce the provisions of this section, but shall require, at a minimum, the following information:
- (1) Name, location, mailing address and Division issued license number of the public food service establishment.

- (2) Name, mailing address, and telephone contact information of the permit applicant. The name, mailing address, and telephone contact information of the owner of the public food service establishment shall be provided if the owner is not the permit applicant.
 - (3) A diagram and description of the outdoor area which is requested 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; the boundaries of the designated area and of the other outdoor dining areas 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 as is deemed necessary by the City.
 - (4) The diagram shall be accurate and to scale but need not be prepared by a licensed design professional. A copy of the approved diagram shall be attached to the permit and posted at the entrance.
 - (5) A description of the days of the week and hours of operation when patrons' dogs will be permitted in the designated outdoor area.
- (e) *Regulations.* Public food service establishments that receive a permit for a designated outdoor area pursuant to this section shall require that:
- (1) Employees shall wash their hands promptly after touching, petting, or otherwise handling any dog(s) and shall wash their hands before entering other parts of the public food service establishment from the designated outdoor area.
 - (2) Employees are prohibited from touching, petting or otherwise handling any dog while serving or carrying food or beverages or while handling or carrying tableware.
 - (3) Patrons in a designated outdoor area shall be advised by appropriate signage, at conspicuous locations, that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.
 - (4) Patrons shall keep their dogs on a leash at all times and shall keep their dogs under their control.

- (5) Employees and patrons shall not allow dogs to come into contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved with food service operations.
- (6) Employees and patrons shall not allow any part of a dog to be on chairs, tables, or other furnishings.
- (7) Employees shall clean and sanitize all table and chair surfaces with an approved product between seating of patrons.
- (8) Employees shall remove all dropped food and spilled drink from the floor or ground as soon as possible but in no event less frequently than between seating of patrons at the nearest table.
- (9) Employees and patrons shall remove all dog waste immediately and the floor or ground shall be immediately cleaned and sanitized with an approved product. Employees shall keep a disposal and wash down kit with other appropriate materials for this purpose near the designated outdoor area.
- (10) Employees and patrons shall not permit dogs to be in, or to travel through, indoor or nondesignated outdoor portions of the public food service establishment.
- (11) A sign or signs notifying the public that the designated outdoor area is available for the use of patrons and patrons' dogs shall be posted in a conspicuous manner that places the public on notice.
- (12) A sign or signs informing patrons of these laws shall be posted on premises in a conspicuous manner and place as determined by the City.
- (13) A sign or signs informing employees of these laws shall be posted on the premises in a conspicuous manner and place as determined by the City.
- (14) Ingress and egress to the designated outdoor area shall not require entrance into or passage through any indoor area or nondesignated outdoor portions of the public food service establishment.
- (15) The public food service establishment and designated outdoor area shall comply with all permit conditions and the approved diagram.
- (16) Employees and patrons shall not allow any dog to be in the designated outdoor areas of the public food service establishment if the public food service establishment is in violation of any of the requirements of this section.

- (17) Permits shall be conspicuously displayed in the designated outdoor area.
- (18) It shall be unlawful to fail to comply with any of the requirements of this section. Each instance of a dog on the premises of a public food service establishment without a permit is a separate violation.

(f) *Permit Expiration and Revocation.*

- (1) A permit issued pursuant to this section shall expire automatically upon the sale of the public food service establishment and cannot be transferred to a subsequent owner. The subsequent owner may apply for a permit pursuant to this section if the subsequent owner wishes to continue to allow patrons' dogs in a designated outdoor area of the public food service establishment.
- ~~(2) Permits shall expire on September thirtieth of each year, unless renewed by paying an annual renewal fee as provided herein.~~
- (2) A permit may be revoked by the City Manager if the public food service establishment fails to comply with any condition of this ordinance. If the ground for revocation is a failure to maintain any required state or local license, the revocation may take effect immediately upon giving notice of revocation to the permit holder.
- (3) If a public food service establishment's permit is revoked, no new permit may be approved for the establishment for a period of no less than 180 days following the date of revocation.

(g) *Complaints and Reporting.*

- (1) Complaints shall be made to the City documenting the name of the complainant and the nature of the complaint. The City shall accept, document, and respond to all complaints and shall timely report to the Division all complaints and the response to such complaints.
- (2) The City shall provide the Division with a copy of all approved applications and permits issued.
- (3) All applications, permits, and other related materials shall contain the Division-issued license number for the public food service establishment.

(h) *Permit Renewal Procedure and Fee.* The City Council shall by resolution establish a reasonable permit renewal fee, ~~and the permit holder shall renew the~~

~~permit by paying the applicable permit renewal fee on or before September thirtieth of each year. The fee shall be a onetime fee unless the subject permit has been revoked or expired as provided herein.~~

- (i) *Violations.* Violations of this section of the Marathon Code may be enforced and are punishable in accordance with Section 1-7 and Chapter 10 of the Marathon Code, or as may otherwise be provided for by State law.

Section 3. The Provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.


Section 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. This Ordinance shall become effective immediately upon adoption on second reading.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF MARCH 2021.


THE CITY OF MARATHON, FLORIDA



Luis Gonzalez, Mayor

AYES: Cook, Zieg, Bartus, Senmartin, Gonzalez
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(CITY SEAL)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



City Attorney Steven T. Williams

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON,
ORDINANCE NO. 2021-05

**FINAL ORDER
APPROVING MARATHON ORDINANCE NO. 2021-05**

The Department of Economic Opportunity (the “Department”) hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Marathon (the “City”), Ordinance No. 2021-05 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by Section 380.0552, Florida Statutes, as an area of critical state concern. The City is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on March 9, 2021 and rendered to the Department on May 27, 2021.
3. The Ordinance revises Chapter 5, Section 5-23 of the City’s Code of Ordinances to amend provisions relating to permits for dog-friendly restaurants. The Ordinance replaces the existing annual permit expiration, permit renewal, and permit fee requirements with a one-time permit fee, unless the subject permit is revoked or expired.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* Section 380.05(6), Florida Statutes.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is consistent with the City’s Comprehensive Plan as required by Section 163.3177(1), Florida Statutes, generally, and is specifically consistent with Objective 1-1.1 Protect Community Character and Policy 1-1.1.1 Enhance and Preserve Existing Community Character.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. *See* Section 380.05(6), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in Section 380.0552(7), Florida Statutes.

8. The Ordinance is consistent with the Principles for Guiding Development in Section 380.0552(7), Florida Statutes, as a whole, and is specifically consistent with the following Principles:

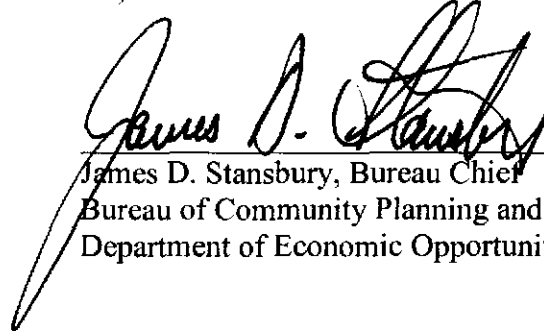
(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2021-05 is consistent with the City of Marathon’s Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby APPROVED.

This Final Order becomes final 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



James D. Stansbury, Bureau Chief
Bureau of Community Planning and Growth
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS FINAL ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

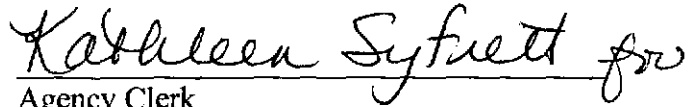
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 13th day of July, 2021.



Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Luis Gonzalez, Mayor
City of Marathon, City Council
9805 Overseas Highway
Marathon, FL 33050

Diane Clavier, City Clerk
City of Marathon, City Clerk
9805 Overseas Highway
Marathon, FL 33050

Brian Shea, Planning Director
City of Marathon, Planning Department
9805 Overseas Highway
Marathon, FL 33050