

**Key West Planning Board Special Meeting Agenda**  
**June 10, 2010 – 6:00 p.m.**  
**City Commission Chamber**  
**Old City Hall, 510 Greene Street**



**Item 5.a.5.**

**An Ordinance of the City of Key West, Florida, creating Chapter 109 of the Code of Ordinances entitled “Dogs in Public Food Service Establishments”; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**



## THE CITY OF KEY WEST

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# EXECUTIVE SUMMARY

To: The Planning Board for the City of Key West  
From: Ron Ramsingh, Assistant City Attorney  
Date: June 10, 2010  
RE: The Creation of Ch. 109 of the Code of Ordinances entitled "Dogs in Public Food Service Establishments"

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### **Action statement:**

Recommend to the Planning Board as well as the City Commission for the City of Key West to approve this ordinance creating chapter 109 entitled "Dogs in Public Food Service Establishments" thereby creating a licensing system for restaurants in the City of Key West to allow dogs under certain criteria.

### **Background:**

Under FL Statute §509.233, restaurants in the State of Florida are prohibited from allowing non-service dogs within their establishments. The Dixie Cup Clearly Local Control Act was created to allow for municipalities to create a permitting system and exemption for restaurants. This exemption would only apply to restaurants which have outdoor sections to allow for their patrons to bring non-service dogs. Florida Statute §509.233 prescribes that municipalities who choose to create such an ordinance to have certain licensing requirements to exempt "public food service establishments". Under FL

Statute 509.013 (5)(a), a "Public food service establishment" means 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. In addition, the state statute requires that applicable restaurants abide by certain health and safety requirements. The Legal Department does not believe that this state definition is in conflict with the City's definition of "Restaurants" in Sec 86-9 that says "*Restaurant*, excluding drive-through, means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service. For the purpose of this subpart B and impact fee assessments, a takeout or carryout restaurant shall be limited to no more than five chairs or bench seats without tables or counter tops." Florida Statute §509.233 also requires codification into the land development regulations of the municipality of an ordinance such as the one contained herein.

Furthermore, the undersigned has reviewed the criteria for approving amendments to the official zoning map contained in 90-521; as required by 90-522. However, this proposal is not a typical requested change to a zoning map, conditional use, or the like. Nonetheless the analysis is as follows:

1. *Consistency with plan*: This proposal is not inconsistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.
2. *Conformance with requirements*: This proposed ordinance is in conformance with all applicable requirements of the Code of Ordinances.
3. *Changed conditions*: Neither "land use" nor "development conditions" would change as a result of the adoption of this ordinance. This proposal simply seeks to recognize a long standing practice of allowing dogs in outdoor portions of restaurants.
4. *Land use compatibility*: This proposed ordinance will not create any incompatible land uses. The State Statute has dictated the criteria for which, as adopted in the

ordinance herein, a restaurant may allow dogs within the outdoor portions of their establishments.

5. *Adequate public facilities:* The adoption of this ordinance which would require restaurant operators to properly dispose of dog waste would not impose any additional impacts on any public facilities, services including transportation, water, wastewater, solid waste, disposal, drainage, recreation, education, or emergency services.
6. *Natural Environment:* The undersigned respectfully submits that the adoption of this ordinance allowing dogs in outdoor portions of restaurants would not impose any additional adverse impact to the natural environment than what dogs would otherwise impose, if any. Restaurant operators are required to properly dispose of all dog waste.
7. *Economic Effects:* This proposed ordinance would not have an adverse effect on property values in the area or the general welfare. The practice of bringing dogs to outdoor restaurants that allow for it in Key West has long been an accepted practice and has worked its way into the fabric of the tourist- oriented island economy.
8. *Orderly development:* The adoption of this ordinance will not create a negative effect on any “land use pattern”.
9. *Public interest; enabling act:* The adoption of this ordinance is in harmony with the long standing practice of allowing dogs in outdoor portions of restaurants who so choose to do so. This ordinance merely recognizes that practice in compliance with FL Statute. There has been overwhelming public support of this ordinance.

Recently, the Florida Division of Hotels and Restaurants has issued citations to restaurants in Key West with a long standing tradition of allowing dogs in the outdoor portions of their establishments. Unbeknownst to the restaurant owners, they were in violation of the state law on this subject absent an ordinance such as the one that is before the Planning Board and City Commission for consideration. Legal staff was asked to prepare an ordinance to be placed before the Planning Board and the City Commission by the City Manager as well as the sponsor, Commissioner Weekly.

**Recommendation:**

To pass this ordinance upon reading before the Planning Board as well as before the City Commission after first and second reading and to have an immediate effective date. The attached ordinance has been compared to the requirements of Florida Statute §509.233 and it is in compliance with the requirements of the State Statute. This ordinance will allow restaurants that have outdoor seating to resume or even begin to allow for dogs and not run afoul of state law.

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# **Ordinance**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST,  
FLORIDA, CREATING CHAPTER 109 OF THE  
CODE OF ORDINANCES ENTITLED "DOGS IN  
PUBLIC FOOD SERVICE ESTABLISHMENTS";  
PROVIDING FOR SEVERABILITY; PROVIDING  
FOR REPEAL OF INCONSISTENT PROVISIONS;  
PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Dixie Cup Clearly Local Control Act,  
Florida Statute §509.233 grants municipalities the  
authority to provide exemptions from section 6-501.115 of  
the Food and Drug Administration Code, as adopted and  
incorporated by the Division of Hotels and Restaurants in  
chapter 61C-4.010(6), Florida Administrative Code (2006);  
and

WHEREAS, The City Commission for the City of Key West  
recognizes a long standing practice of its citizens and  
visitors alike of bringing dogs to various restaurants  
throughout the island and its contribution to the unique  
character of Key West; and

WHEREAS, The purpose of this ordinance is to recognize  
this unique and historic practice and to create an  
ordinance allowing dogs in outdoor portions of restaurants  
while providing for guidelines that help protect the public  
health, safety and welfare of citizens and visitors that is

consistent with Florida Statute 509.233 and the City's Land Development Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 109 of the Code of Ordinances is hereby created as follows\*:

Sec. 109-1. Dogs in public food-service establishments.

(1) 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 and valid permit pursuant to this section allowing dogs in designated outdoor areas of the establishment.

(2) As used in this section, "public food-service establishments" shall mean eating and drinking establishments, or restaurants as defined by the Code of Ordinances of the City of Key West. "Employee" or "employees" shall include, but is not limited to, the owner or owners of the public food service establishment.

109-2 Application requirements.

Public food-service establishments must apply for and receive a permit from the city before patrons' dogs are

allowed on the premises. The city shall establish a reasonable fee of One Hundred Dollars (\$100.00) 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. This 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.

(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) Prior to the issuance of a permit, the applicant shall furnish the licensing official with a signed and notarized statement that the permittee shall hold harmless and indemnify the city, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.

(7) Permittee shall furnish and maintain such public liability and property damage insurance providing coverage for all claims and damage to property or bodily injury, including death which may arise from the existence of a dog(s) in its establishment under this ordinance. Such insurance shall provide coverage of not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage respectively, per occurrence. The City shall be named as an additional insured for any property

that the permittee leases from the City of Key West. All policies required under this ordinance shall provide such policies may not be terminated or cancelled without 45 days written notice sent via certified mail to the licensing official for the City of Key West.

109-3 Regulations.

Public food-service establishments that receive a permit for a designated outdoor area pursuant to this section shall require that:

(1) Employees 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 reasonable 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. Dogs must remain on the floor/ground level and shall not be permitted in the lap of the patron.

(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 kit with the 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 non-designated 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 non-designated 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, or if they do not possess a valid permit.

(17) Permits shall be conspicuously displayed in the designated outdoor area.

(18) 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.

109-4 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) A permit may be revoked by the city 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 condition of approval, fails to comply with the approved diagram, fails to maintain any required state or local license, or is found to be in violation of any provision of this section. 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 by the city manager or his designee.

(3) If a public food-service establishment's permit is revoked, no new permit may be approved for the establishment until the expiration of 90 days following the date of revocation, providing that all issues continued within the revocation have been satisfied. This includes any outstanding fines.

#### 109-5 Complaints and reporting

(1) Complaints may be made in writing to the Code Compliance Department which shall accept, document, and respond to all complaints and shall timely report to the Division of Restaurants (the Division) and Hotels 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.

(4) The patron or the designated person in charge of the public food-service establishment, or both, may be issued civil citations for each violation of this section.

#### 109-6 Penalties

Citations issued for violations of any provisions of this section shall be brought forth before the code compliance

special magistrate or in county court pursuant to Ch 162 Florida Statutes or section 1-15 of the Code of Ordinances for the City of Key West. Each instance of a dog on the premises of a public food service establishment without a permit is a separate violation.

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Authenticated by the presiding officer and Clerk of the City Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Filed with the Clerk \_\_\_\_\_, 2010.

\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

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CHERYL SMITH, CITY CLERK