

Committee Substitute for Senate Bill No. 1172

An act relating to public food service establishments; providing a short title; providing legislative findings and intent; creating s. 509.233, F.S.; creating a pilot program that authorizes local governments to adopt an ordinance establishing 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 portions of such establishments; providing for implementation and enforcement procedures; providing for state assistance; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as "The Dixie Cup Clary Local Control Act."

Section 2. Findings and intent.—The Legislature finds and declares:

(1) Chapter 509, Florida Statutes, requires the Division of Hotels and Restaurants of the Department of Business and Professional Regulation 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.

(2) Section 509.013(5), Florida Statutes, defines "public food service establishment" as "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."

(3) Section 509.032, Florida Statutes, requires the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to adopt and enforce such rules as are necessary to ensure the protection of the public from food-borne illness in public food service establishments.

(4) Section 509.032, Florida Statutes, further requires the Division of Hotels and Restaurants of the Department of Business and Professional Regulation 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 division."

(5) Pursuant to the grant of rulemaking authority cited in s. 509.032, Florida Statutes, the Division of Hotels and Restaurants of the Department

of Business and Professional Regulation 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, as amended from time to time, as developed by the Food and Drug Administration of the United States Department of Health and Human Services.

(6) The Food and Drug Administration Food Code generally prohibits live animals from public food service establishments.

(7) Section 509.032(7), Florida Statutes, expressly preempts to the state regulation of public lodging establishments and public food service establishments for compliance with the sanitation standards adopted by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(8) Section 509.032(7), Florida Statutes, expressly limits the general home rule powers of local governments as it relates to the regulation of public food service establishments.

(9) The purpose of this act is to establish a 3-year pilot program to allow participating local governments to enact an ordinance establishing procedures by which public food service establishments could become exempt from certain portions of the Food and Drug Administration Food Code and allow patrons' dogs within certain designated outdoor portions of their respective establishments.

Section 3. Section 509.233, Florida Statutes, is created to read:

509.233 Public food service establishment requirements; local exemption for dogs in designated outdoor portions; pilot program.—

(1) INTENT.—It is the intent of the Legislature by this section to establish a 3-year pilot program for local governments to allow patrons' dogs within certain designated outdoor portions of public food service establishments.

(2) LOCAL EXEMPTION AUTHORIZED.—Notwithstanding s. 509.032(7), the governing body of a local government participating in the pilot program is authorized to establish, by ordinance, a local exemption procedure to certain provisions of the Food and Drug Administration Food Code, as currently adopted by the division, in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments.

(3) LOCAL DISCRETION; CODIFICATION.—

(a) The adoption of the local exemption procedure shall be at the sole discretion of the governing body of a participating local government. Nothing in this section shall be construed to require or compel a local governing body to adopt an ordinance pursuant to this section.

(b) Any ordinance adopted pursuant to this section shall provide for codification within the land development code of a participating local government.

(4) LIMITATIONS ON EXEMPTION; PERMIT REQUIREMENTS.—

(a) Any local exemption procedure adopted pursuant to this section shall only provide a 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.

(b) In order to protect the health, safety, and general welfare of the public, the local exemption procedure shall require participating public food service establishments to apply for and receive a permit from the governing body of the local government before allowing patrons' dogs on their premises. The local government shall require from the applicant such information as the local government deems reasonably necessary to enforce the provisions of this section, but shall require, at a minimum, the following information:

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

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

3. 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; the boundaries of the designated area and of other areas of outdoor dining 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 reasonably required by the permitting authority. The diagram or plan shall be accurate and to scale but need not be prepared by a licensed design professional.

4. A description of the days of the week and hours of operation that patrons' dogs will be permitted in the designated outdoor area.

(c) In order to protect the health, safety, and general welfare of the public, the local exemption ordinance shall include such regulations and limitations as deemed necessary by the participating local government and shall include, but not be limited to, the following requirements:

1. All public food service establishment employees shall wash their hands promptly after touching, petting, or otherwise handling dogs. Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering 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 all 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 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. A sign or signs reminding employees of the applicable rules shall be posted on premises in a manner and place as determined by the local permitting authority.

9. A sign or signs reminding patrons of the applicable rules shall be posted on premises in a manner and place as determined by the local permitting authority.

10. A sign or signs shall be posted in a manner and place as determined by the local permitting authority that places the public on notice that the designated outdoor area is available for the use of patrons and patrons' dogs.

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

(d) A permit issued pursuant to this section shall not be transferred to a subsequent owner upon the sale of a public food service establishment but shall expire automatically upon the sale of the establishment. The subsequent owner shall be required to reapply for a permit pursuant to this section if the subsequent owner wishes to continue to accommodate patrons' dogs.

(5) POWERS; ENFORCEMENT.—Participating local governments shall have such powers as are reasonably necessary to regulate and enforce the provisions of this section.

(6) STATE AND LOCAL COOPERATION.—The division shall provide reasonable assistance to participating local governments in the development of enforcement procedures and regulations, and participating local governments shall monitor permitholders for compliance in cooperation with the division. At a minimum, participating local governments shall establish a procedure to accept, document, and respond to complaints and to timely report to the division all such complaints and the participating local governments' enforcement responses to such complaints. A participating local government shall provide the division with a copy of all approved applications and permits issued, and the participating local government shall require that all applications, permits, and other related materials contain the appro-

priate division-issued license number for each public food service establishment.

(7) FUTURE REVIEW AND REPEAL.—This section shall expire July 1, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. This act shall take effect July 1, 2006.

Approved by the Governor June 2, 2006.

Filed in Office Secretary of State June 2, 2006.