

MEMORANDUM

Agenda Item No. 7(E)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: March 2, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to zoning in the unincorporated area; amending sections 33-238 and 33-259 and creating section 33-245.1 of the Code; revising regulations pertaining to outdoor dining; allowing outdoor dining in additional areas subject to certain requirements; creating pilot program allowing establishment of outdoor dining areas without additional permits subject to certain requirements; making technical and conforming changes

Ordinance No. 21-23

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 2-11-21 County Infrastructure, Operations and Innovations Committee.

This substitute differs from the original version in that it specifies that the total seating for both indoor and outdoor dining areas cannot exceed the restaurant's total approved seating under non-emergency conditions.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Joe A. Martinez and Co-Sponsors Commissioner Sally A. Heyman and Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: March 2, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Fiscal Impact Statement for Ordinance Relating to Zoning Outdoor Dining

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County. The proposed changes to the code will not require additional County staffing resources nor generate additional operating expenses.

A handwritten signature in black ink, appearing to read "Jimmy Morales".

Jimmy Morales
Chief Operations Officer

FIS01221 202306

Memorandum



Date: March 2, 2021

To: Honorable Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Social Equity Statement for Ordinance Relating to Zoning Revising Regulations Pertaining to Outdoor Dining

The proposed ordinance relating to Zoning amends Sections 33-238 and 33-259 and creates Section 33-245.1 of the Code of Miami-Dade County (Code) revising regulations pertaining to outdoor dining within the unincorporated area of Miami-Dade County (County). The County's Zoning Code currently authorizes outdoor dining areas as ancillary to restaurants and other food service establishments but requires a certificate of use for all such areas.

The proposed ordinance seeks to amend the Code to provide certain alternatives, authorized by Emergency Order 23-20, issued by the County Mayor on May 15, 2020, during the COVID-19 emergency, for establishing permanent outdoor dining as an ancillary use. It additionally establishes a pilot program to allow outdoor dining under certain conditions without the need to obtain a certificate of use or prior review by zoning staff, which will expire on December 31, 2022 unless extended by subsequent legislation.

The hospitality industry, which employs thousands of Miami-Dade residents, has been hit particularly hard by the impacts of COVID-19. According to Florida International University's Chaplin School of Hospitality & Tourism Management, the restaurant and hotel sectors suffered approximately \$3.36 billion in economic losses from reduced sales, \$1.2 billion in lost worker pay, and \$428.3 million in lost federal, state, and county tax revenue in the six-month period between March 2020 and August 2020. Outdoor dining allows these businesses to continue to operate while keeping customers safe and following social distancing protocols. The proposed ordinance provides additional flexibility to this industry as it recovers from the severe economic impacts of the COVID-19 pandemic


Jimmy Morales
Chief Operations Officer

202306



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: March 2, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(E)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.7(E)
3-2-21

ORDINANCE NO. 21-23

ORDINANCE RELATING TO ZONING IN THE UNINCORPORATED AREA; AMENDING SECTIONS 33-238 AND 33-259 AND CREATING SECTION 33-245.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING REGULATIONS PERTAINING TO OUTDOOR DINING; ALLOWING OUTDOOR DINING IN ADDITIONAL AREAS SUBJECT TO CERTAIN REQUIREMENTS; CREATING PILOT PROGRAM ALLOWING ESTABLISHMENT OF OUTDOOR DINING AREAS WITHOUT ADDITIONAL PERMITS SUBJECT TO CERTAIN REQUIREMENTS; MAKING TECHNICAL AND CONFORMING CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order No. 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of coronavirus disease 2019 (COVID-19) in Florida; and

WHEREAS, on March 12, 2020, the County Mayor declared a State of Local Emergency for all of Miami-Dade County related to COVID-19; and

WHEREAS, on March 17, 2020, the County Mayor issued Emergency Order No. 03-20, ordering the closure for on-premises dining in response to the spread of COVID-19; and

WHEREAS, on May 15, 2020, the County Mayor issued Emergency Order No. 23-20, allowing for outdoor dining at restaurants in accordance with the County's New Normal Handbook and other conditions set forth in that order; and

WHEREAS, within the unincorporated area, the County's Zoning Code currently authorizes outdoor dining areas as ancillary to restaurants and other food service establishments but requires a certificate of use for all such areas; and

WHEREAS, in contrast to the County's current outdoor dining regulations, Emergency Order No. 23-20 authorized outdoor dining under certain conditions without the need to obtain a certificate of use or prior review by zoning staff, and provided additional outdoor dining alternatives that could be established subject to zoning staff's prior review; and

WHEREAS, these outdoor dining allowances have been working smoothly in the current environment; and

WHEREAS, providing additional flexibility to this important industry as it recovers from the severe economic impacts of the COVID-19 pandemic is warranted; and

WHEREAS, this Board now wishes to revise the Zoning Code to make permanent certain alternatives for establishing outdoor dining as an ancillary use; and

WHEREAS, this Board also wishes to establish a pilot program to allow outdoor dining under certain conditions without the need to obtain a certificate of use or prior staff review, to see whether that allowance is workable and appropriate after the state of emergency ends,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 33-238 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Sec. 33-238. - Uses permitted.

No land, body of water >>₁<< or structure shall be used or permitted to be used >>₁<< and no structure shall be hereafter erected, constructed, moved, reconstructed >>₁<< [[or]] structurally altered >>₁<< or maintained in any BU-1 District, which is designed, arranged >>₁<< or intended to be used or occupied for any purpose, except for one or more of the following uses:

* * *

(25.1) Outdoor dining >>only in accordance with section 33-245.1 and only<< as an ancillary use in conjunction with >>a restaurant or other public food service establishment, as defined in section 509.013, Florida Statutes, as may be amended.<< ~~[[restaurants, snack shops and other food service facilities where the primary use is the preparation of food for consumption on premises shall be permitted, subject to the following restrictions:~~

- ~~(a) The outdoor dining area shall be managed, operated and maintained as an integral part of the immediately adjacent food service facility; and~~
- ~~(b) The outdoor dining area shall not reduce required parking or landscaping for the site; and~~
- ~~(c) The outdoor seating area shall be included in the calculations for required parking; and~~
- ~~(d) There shall be no outdoor cooking or food preparation; and~~
- ~~(e) No outdoor dining area shall obstruct or impede pedestrian traffic; and~~
- ~~(f) The outdoor dining area shall comply with handicapped accessibility requirements; and~~
- ~~(g) No outside public address system shall be permitted, except in connection with outdoor entertainment as provided by section 33-150(H) of this Code; and~~
- ~~(h) Blinking and flashing type lighting shall be prohibited; and~~
- ~~(i) Alcoholic beverages may be served where such service is strictly incidental to the service of food and is from a service bar only, subject to compliance with the regulations specified in Article X (Alcoholic Beverages) of this chapter; and~~
- ~~(j) The use shall be subject to plan review and approval through the building permit review process. The plans for such use shall include all restrooms, furniture, umbrellas, lighting, and other related~~

- ~~services and functions associated with the proposed use, together with all required and provided parking calculations. Plans shall be subject to all the applicable building and zoning code regulations; and~~
- (k) ~~The use shall require a Certificate of Use which shall be renewed annually and shall be subject to revocation upon violation of any applicable building and zoning code regulations, or when a continuation of the permit would constitute a hazard or nuisance.]]~~

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Section 2. Section 33-245.1 of the Code of Miami-Dade County, Florida, is hereby

created to read as follows:

>>Sec. 33-245.1. – Outdoor dining.

(A) Outdoor dining permitted subject to prior review and annually-renewable certificate of use. Outdoor dining as an ancillary use in conjunction with a restaurant or other public food service establishment, as defined in section 509.013, Florida Statutes, as may be amended, may be established, including in landscaped and parking areas, subject to prior review and approval by the Department and to obtaining an annually renewable certificate of use, in accordance with the following:

- (1) The property owner submits, or provides written authorization for a tenant to submit, an application on a form acceptable to the Director. The application shall be accompanied by the following exhibits:
 - (a) Site plan or survey depicting the area to be utilized for outdoor dining.
 - (b) Indication of the maximum occupancy of the proposed area.
 - (c) Indication of the type of shade structures to be used.
 - (d) Signature and seal or other legally acceptable certification of a Florida licensed and registered architect or engineer who will be responsible for performing plan reviews and inspections for Florida Building Code requirements.
- (2) The establishment has all current state and local licenses required to operate.

- (3) Outdoor dining areas are managed, operated, and maintained as an integral part of the food service establishment.
- (4) Outdoor dining areas are not located on any private or public road, drive aisle, or public sidewalk.
- (5)<< >>The total seating count and seating areas do not exceed the current establishment's approved seating count and seating areas under non-emergency conditions, and outdoor<<² ~~[[Outdoor]]~~ >>dining areas are included in the calculations for required parking, such that the addition of an outdoor dining area to a previously approved establishment may require a reduction in indoor dining area.
- (6) Outdoor dining areas do not reduce required landscaping for the site.
- (7) Shade structures such as umbrellas and pop up tents may be installed, provided that any tent greater than 10 feet by 12 feet must obtain a building permit.
- (8) Tables and chairs are arranged to ensure that pedestrian access to the food service establishment is not impeded.
- (9) Outdoor dining areas shall comply with disability access requirements, including, without limitation:
 - (a) Providing a minimum clear and open pathway of 36 inches;
 - (b) Providing tables accessible to persons with disabilities; and
 - (c) Providing safe routes to and from washrooms that are accessible to disabled persons.
- (10) Outdoor dining areas shall provide a minimum clearance of 3 feet from all fire department access and devices, such as fire department connections and hydrants.
- (11) Outside public address systems are prohibited, except in connection with outdoor entertainment as permitted by section 33-150(H).
- (12) Alcoholic beverages may be served in accordance with the establishment's current state beverage license and article X of this chapter, provided that such service is strictly incidental to the service of food and is from a service bar only.

² The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

- (13) Except where otherwise authorized by the code, outdoor cooking or food preparation is prohibited.
- (14) Blinking and flashing lights are prohibited.
- (15) Sanitation requirements shall be observed in all outdoor dining areas.
- (16) Any foliage that dies as a result of removing or altering landscaping shall be replaced.
- (17) Outdoor dining areas are not located in dry retention areas.
- (18) No more than 20 percent of the parking area may be used for outdoor dining.
- (19) Where required, building permits shall be obtained for all applicable structures.

(B) *Pilot program allowing outdoor dining without prior review or certificate of use.* Until December 31, 2022, outdoor dining as an ancillary use in conjunction with a restaurant or other public food service establishment, as defined in section 509.013, Florida Statutes, as may be amended, shall be permitted without requiring an additional permit or certificate of use where all of the following conditions are met:

- (1) Outdoor dining areas are located only in one or more of the following:
 - (a) Walkways and pedestrian areas that abut the food service establishment.
 - (b) The first row of parking spaces, but only in accordance with the following requirements:
 - (i) The parking is adjacent to the walkway fronting the unit or building where the food service establishment is located;
 - (ii) Where the outdoor dining area is adjacent to a drive aisle, driveway, or other vehicular use area, the exterior of the outdoor dining area is clearly delineated with bollards, cones, landscaping, planters, or combinations thereof;
 - (iii) All handicapped-accessible ramps, parking spaces, and walkways remain fully accessible and are not used for outdoor dining;

- (iv) Structures are not placed in and do not encroach into driveways or drive aisles; and
- (v) The site retains the minimum parking required by this chapter.
- (2) The proposed site complies with paragraphs (2)-(15) of subsection (A).
- (C) The allowances set forth in this section shall not be construed to absolve a tenant from seeking any required consent from the property owner to provide for outdoor dining.<<

Section 3. Section 33-259 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-259. - Uses permitted.

No land, body of water >>₁<< or structure shall be used or permitted to be used >>₁<< and no structure shall be >>hereafter<< erected, constructed, moved >>₁<< ~~[[or]]~~ reconstructed, structurally altered, or maintained, >>in any IU-1 District,<< which is designed, arranged >>₁<< or intended to be used or occupied for any purpose, ~~[[unless otherwise provided herein, in IU-1 District, excepting]]~~ >>except<< for one ~~[[(-1)]]~~ or more of the following >>uses<<:

* * *

- (56.1) Outdoor dining >>only in accordance with section 33-245.1 and only<< as an ancillary use in conjunction with >>a restaurant or other public food service establishment, as defined in section 509.013 of the Florida Statutes, as may be amended.<< ~~[[restaurants, snack shops and other food service facilities where the primary use is the preparation of food for consumption on premises shall be permitted, subject to the following restrictions:~~
- (a) ~~The outdoor dining area shall be managed, operated and maintained as an integral part of the immediately adjacent food service facility; and~~
- (b) ~~The outdoor dining area shall not reduce required parking or landscaping for the site; and~~
- (c) ~~The outdoor seating area shall be included in the calculations for required parking; and~~
- (d) ~~There shall be no outdoor cooking or food preparation; and~~

- (e) ~~No outdoor dining area shall obstruct or impede pedestrian traffic; and~~
- (f) ~~The outdoor dining area shall comply with handicapped accessibility requirements; and~~
- (g) ~~No outside public address system shall be permitted, except in connection with outdoor entertainment as provided by section 33-150(H) of this Code; and~~
- (h) ~~Blinking and flashing type lighting shall be prohibited; and~~
- (i) ~~Alcoholic beverages may be served where such service is strictly incidental to the service of food and is from a service bar only, subject to compliance with the regulations specified in Article X (Alcoholic Beverages) of this chapter; and~~
- (j) ~~The use shall be subject to plan review and approval through the building permit review process. The plans for such use shall include all restrooms, furniture, umbrellas, lighting, and other related services and functions associated with the proposed use, together with all required and provided parking calculations. Plans shall be subject to all the applicable building and zoning code regulations; and~~
- (k) ~~The use shall require a Certificate of Use which shall be renewed annually and shall be subject to revocation upon violation of any applicable building and zoning code regulations, or when a continuation of the permit would constitute a hazard or nuisance.]]~~

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Section 4. If any section, subsection, sentence, clause or provision of this ordinance is

held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

March 2, 2021

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Dennis A. Kerbel
Lauren E. Morse

Prime Sponsor: Commissioner Joe A. Martinez
Co-Sponsors: Commissioner Sally A. Heyman
Commissioner Raquel A. Regalado