



CITY OF MCKINNEY, TEXAS

Agenda City Council Work Session

Monday, April 3, 2017

5:30 PM

Council Chambers
222 N. Tennessee Street
McKinney, Texas 75069

CALL TO ORDER

DISCUSS REGULAR MEETING AGENDA ITEMS

WORK SESSION ITEMS

17-333 [Presentation by the City of McKinney Energy Consultant, 5, for the Selection of an Energy Provider for the Procurement of Electricity](#)

Attachments: [Presentation](#)

17-334 [Consider and Provide Direction Regarding the Potential for Temporarily Allowing Gravel Parking Lots in Historic Downtown McKinney](#)

Attachments: [Possible Gravel Parking Map](#)
[Applicable Parking Development Requirements](#)
[Presentation](#)

17-335 [Consider and Provide Direction Regarding Allowing Dogs on Outdoor Patios of Food Establishments](#)

Attachments: [DRAFT Regulations](#)
[DRAFT Variance Application](#)
[McKinney Patio Locations](#)
[City of Frisco Ordinance](#)
[City of Dallas Ordinance](#)
[City of Plano Ordinance](#)

COUNCIL LIAISON UPDATES

EXECUTIVE SESSION

In Accordance with the Texas Government Code:

A. Section 551.071 (2). Consultation with City Attorney on any Work Session, Special or Regular Session agenda item requiring confidential, attorney/client advice necessitated by the deliberation or discussion of said items (as needed) and legal consultation on the following item(s), if any:

B. Section 551.071 (A) Pending or contemplated litigation

- Formal Complaint of ADC West Ridge, L.P. and Center for Housing Resources, Inc. Against the City of Frisco
- The City of McKinney, Texas, v. Custer Storage Center, LLC v. Collin County, Texas, No. 401-03649-2015, 401st District Court of Collin County, Texas

C. Section 551.072. Deliberations about Real Property

D. Section 551.074. Personnel Matters

E. Section 551.087 – Discuss Economic Development Matters

- Project A140 – Project Rest
- Project A144 – Project Red River
- Project A146 – Project Frost

ACTION ON EXECUTIVE SESSION**ADJOURN**

Posted in accordance with the Texas Government Code, Chapter 551, on the 31st day of March, 2017 at or before 5:00 p.m.

Sandy Hart, TRMC, MMC
City Secretary

Accommodations and modifications for people with disabilities are available upon request. Requests should be made as far in advance as possible, but no less than 48 hours prior to the meeting. Call 972-547-2694 or email contact-adacompliance@mckinneytexas.org with questions or for accommodations.



17-333

TITLE: Presentation by the City of McKinney Energy Consultant, 5, for the Selection of an Energy Provider for the Procurement of Electricity

COUNCIL GOAL: Financially Sound Government

MEETING DATE: April 3, 2017

DEPARTMENT: Financial Services

CONTACT: Mark Holloway, Chief Financial Officer
Trudy Mathis, Finance Director
Kelvin Bryant, Investment & Treasury Manager

RECOMMENDED CITY COUNCIL ACTION:

- N/A

ITEM SUMMARY:

- Presentation will cover
 - Market Update
 - Current Renewal Opportunity
 - Recommendations

BACKGROUND INFORMATION:

- The City has previously entered into an agreement with 5 to work as an advisor, consultant and energy broker on behalf of the City, and they have a presentation.
- 5 helped extend our previous/current contract with TXU while decreasing our base price per kilowatt hour (kWh) from \$.04999 to \$.04144 for December 1, 2019 through November 30, 2021.
- Due to natural gas storage being grossly below its 5 year average and the power market hovering around all-time lows, forward market pricing is lower, allowing the City to currently lock in pricing below \$.04 per kWh for up to 60 months.

FINANCIAL SUMMARY:

- Based on March 24, 2017 quotes, this could save the City approximately \$140,000/year over the 60 month term.
- Price per kWh will be based on the refreshed market rate on the day of bid.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Presentation](#)



Current Contracts

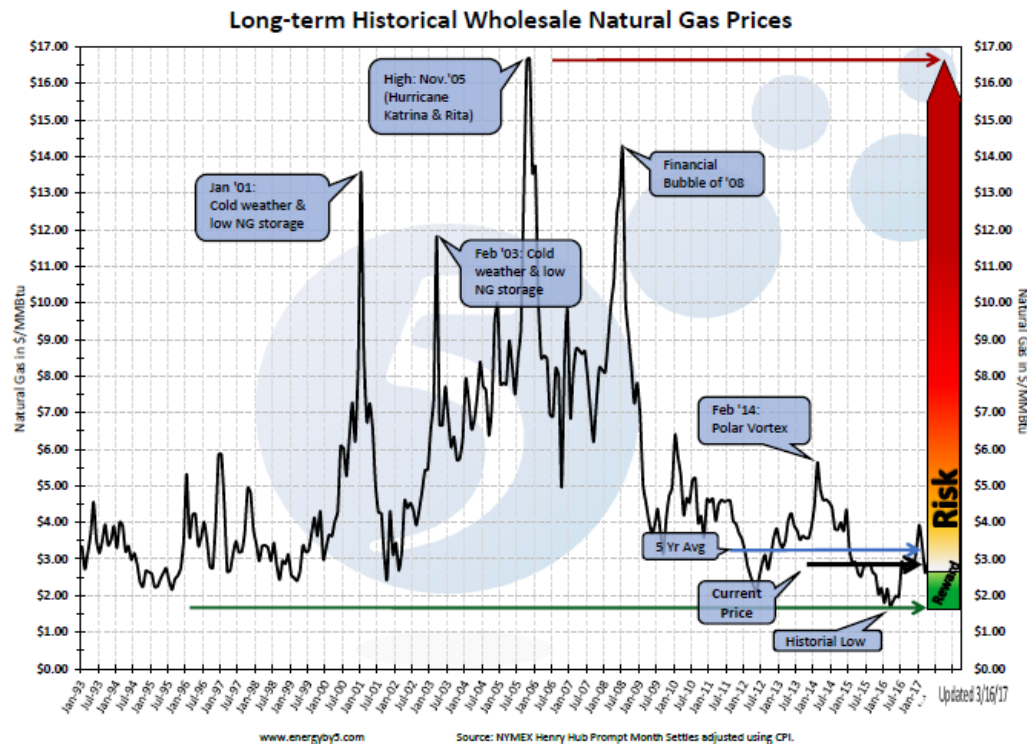
27,051 MWh's Annually
252 ESI ID's

<u>Rate/kWh:</u>	<u>Dates:</u>	
Current Contract: Signed 10/2012 w/ TXU	4/2014 – 4/2017	\$.05056
Future Contract: Signed 12/2014 w/ TXU	5/2017 – 11/2019	\$.04999
Future Contract: Signed 01/2016 w/ TXU	12/2019 – 11/2021	\$.04144



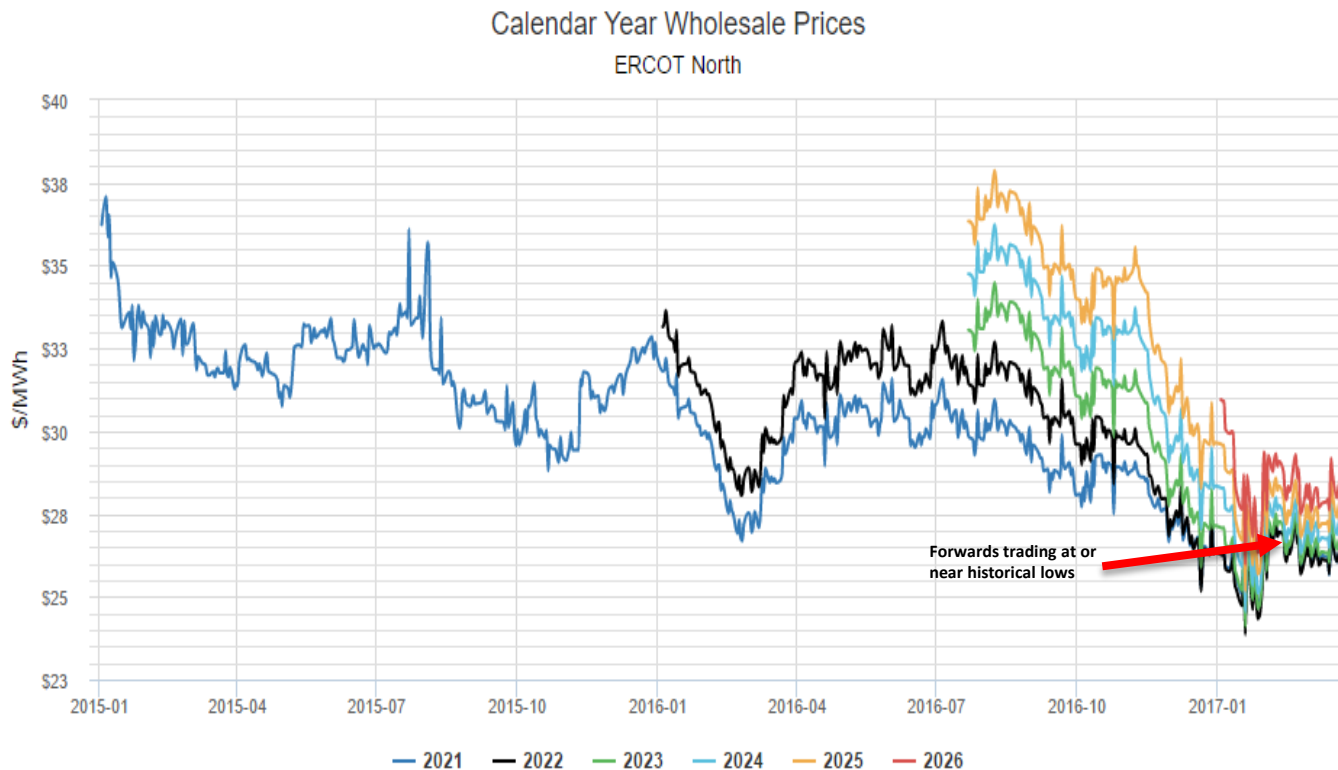
Market Update – Why Look Now

20 Year Graph – Risk/Reward



Over time, more risk to the upside of the market. Executing now protects the City from this upward risk.

Market Forwards





Current Renewal Opportunity



2021 Renewal

Start Date: 12/2021

- | | |
|------------------------------------|---------------------------------|
| • 12 month term = \$.03428* | Est. Term Savings = \$194,000** |
| • 24 month term = \$.03465* | Est. Term Savings = \$367,000** |
| • 36 month term = \$.03504* | Est. Term Savings = \$519,000** |
| • 48 month term = \$.03572* | Est. Term Savings = \$619,000** |
| • 60 month term = \$.03609* | Est. Term Savings = \$724,000** |

*Rates are quotes from 3/24/2017. Lowest supplier is GLO & market changes daily

**Est. Term Savings based on consistent volumes compared to \$.04144 rate (contract ending 2021)



5's Recommendation



Execute on the 60 month term contract.

Proposed Execution Process:

3/28/2017 - Request refreshed pricing from top 5 suppliers [TXU, MP2, Engie, Reliant & GLO]

4/4/2017 - Receive pricing and review, review top 2 supplier agreements and send any suggested edits to City for review

4/6 or 4/7 - Receive final supplier offers and executable agreements, evaluate and pick winning supplier, then email to City for signature. Must receive signed documents by 2:30pm



TITLE: Consider and Provide Direction Regarding the Potential for Temporarily Allowing Gravel Parking Lots in Historic Downtown McKinney

COUNCIL GOAL: Direction for Strategic and Economic Growth

MEETING DATE: April 3, 2017

DEPARTMENT: Development Services

CONTACT: Michael Quint, Executive Director of Development Services

RECOMMENDED CITY COUNCIL ACTION:

- Provide direction regarding temporary gravel parking lots downtown.

ITEM SUMMARY:

- Staff is seeking direction from the City Council regarding the possibility of temporarily suspending development regulations within a defined geographic area downtown to allow for the construction of gravel parking lots on private property.
- Recently, Staff has been approached by downtown property owners requesting that gravel parking lots be permitted to ease demand for public parking downtown.
- McKinney's current development regulations prohibit the construction of gravel parking lots. A summary of the design requirements that would typically apply to a permanent parking lot are attached for reference purposes.

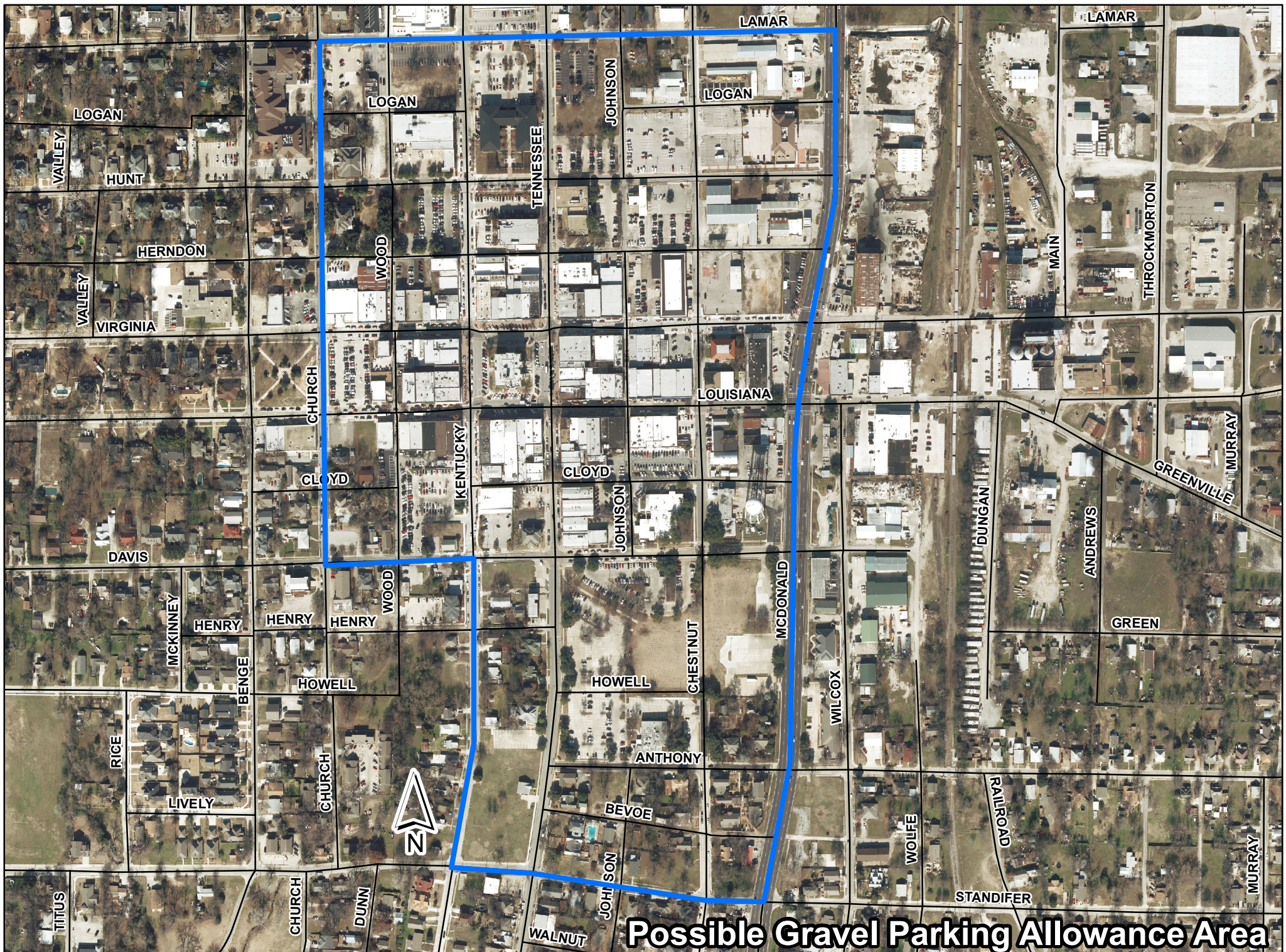
BACKGROUND INFORMATION:

- Shortages in public parking downtown has been a topic of conversation for many years. These discussions have intensified recently with the introduction of structured parking garage concepts and the recent ground breaking of the mixed-use development on the "9-Acre" site located on the southeast corner of Davis St. and Tennessee St.

SUPPORTING MATERIALS:

[Possible Gravel Parking Map](#)

[Applicable Parking Development Requirements
Presentation](#)



Possible Gravel Parking Allowance Area

Summary of Development Regulations Applicable to Parking Lots Downtown

- **MTC Zoning Requirements**

- Street screening device along all Pedestrian Priority A and B streets. Standards specify a 2' to 4' tall wall, landscaping, or combination thereof.
- In no case shall any portion of a parking lot have frontage along a Pedestrian Priority A street without the required screening device.
- No driveway access to Pedestrian Priority A and B streets. Exceptions allowed under certain conditions such as site not adjacent to a service street.
- Maximum driveway width of 24'.
- Residential transition screening device required adjacent to single-family residential.
- Parking located 6' behind property line along Pedestrian Priority B streets.

- **Standard Parking Requirements**

- *MTC is exempt from parking ratios, but is required to comply with other design standards; City Engineer and/or Fire Marshal are permitted to allow some deviations to dimensions and maneuvering within the MTC.*
- Minimum parking space dimensions.
 - 9' x 18' for perpendicular
 - 8' x 22' for parallel
- Drive aisle dimensions
 - 24' for two way and/or 90 degree parking
 - 20' for angled parking
 - 12' for one-way drive aisle with no parking
- Handicap spaces per ADA standards; ADA requires all parking lots to comply with standards regardless of surface, use, etc.
- All maneuvering must occur on site or within a mutual access easement. No maneuvering may occur in a public right-of-way except an alley.
- Asphalt or concrete surface required unless another surface approved through site plan process for operations which include storage or use of tracked equipment.
- Parking areas shall be clearly delineated by stripping, buttons, barriers, or other approved methods.
- Barriers installed to prevent overhang of vehicles into required landscape areas, right-of-way, pedestrian areas, and private property.

- **Standard Landscaping Requirements**

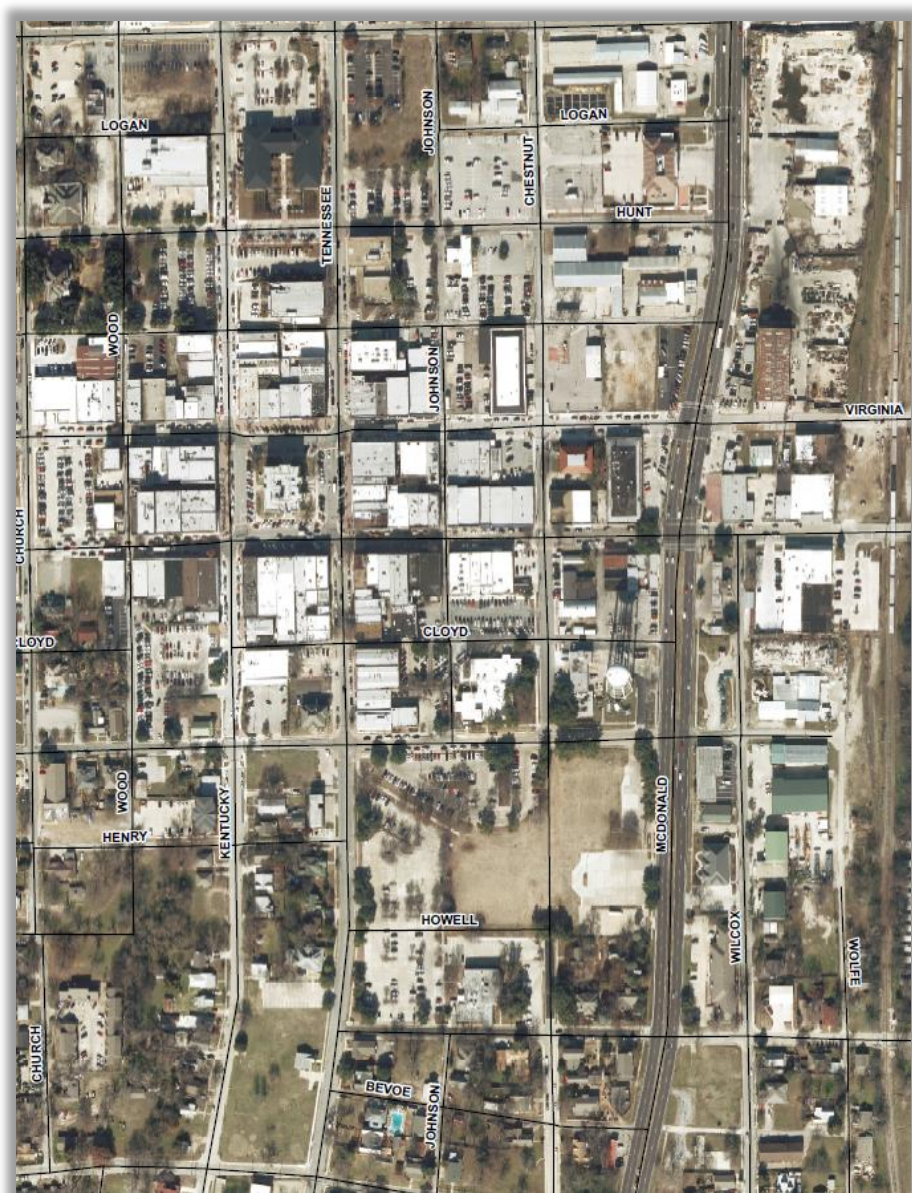
- *MTC is exempt from landscape requirements unless "achievable and would contribute to purpose and intent of the MTC" as determined by Landscape Administrator; requirements stated hereunder or those that are typically applied.*
- Canopy trees at the terminus of every parking row.
- Have a landscape area with canopy tree within 65' of every parking space.
- Parking lot screening from street frontage (also required by MTC)
- Street frontage canopy trees.
- Buffers and screening from adjacent properties.

- Landscape areas with curbs must be provided to define parking areas and circulation patterns.
- **Street Design Standards**
 - *Street Design Standards allow for deviation if approved by the Director of Engineering; such deviations cannot be detrimental to the public welfare and must be supported by an engineering study.*
 - Driveway width: minimum 24' maximum 40'. (MTC specifies 24' maximum).
 - Throat Length: typically 50' on a minor street, but variances typically allowed down to the parkway width plus the minimum required landscape buffer based on study of traffic volume on adjacent street, size of parking facility, circulation pattern, etc.
 - Driveway spacing: 180' minimum on Collector Streets, no minimum on local streets because non-residential access typically not allowed to local streets. Non-residential access to local streets thus reviewed on a case by case basis similar to variance criteria for throat length. In no case is a driveway allowed within the radii of a street intersection or within 30' of a street intersection.
- **Other Engineering Requirements**
 - At a minimum, a grading permit is required for any disturbance of earth. Grading, and erosion control plans would be required to determine impact of earth disturbing activity plus a drainage area map to see how much additional storm runoff is created and where it is going. Paving could also be included under a paving only permit.
 - No lot-to-lot drainage onto residential property. No increased storm runoff onto adjacent property without easements and improvements; no increased storm runoff into adjacent right-of-way without study on impact.
 - New / reconstructed sidewalks are typically only considered if the platting and/or site planning process were introduced; however, since the creation of a parking lot would generate pedestrian traffic it would be prudent to consider sidewalk connectivity.

Downtown Parking

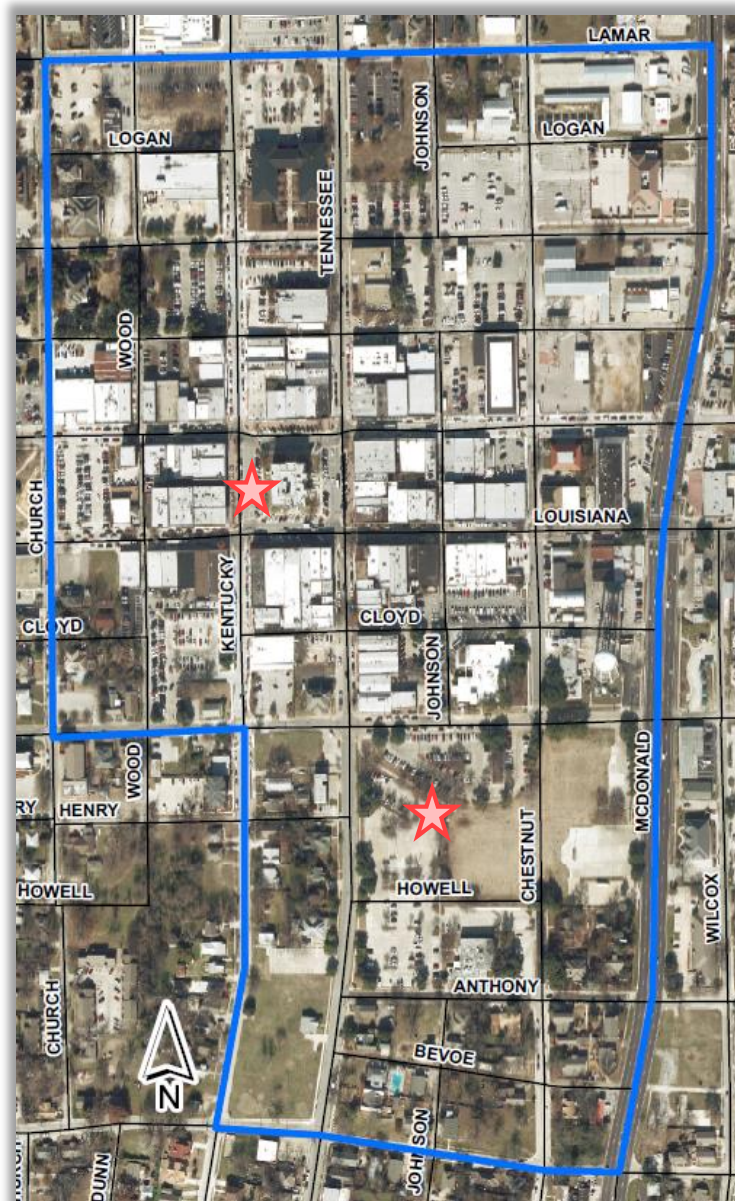
April 3, 2017 City Council Work Session





Background and Context

- The shortage of public parking spaces downtown has been discussed publicly for several years.
- Most recently, these discussions were intensified by public discussions regarding:
 - structured public parking facilities; and
 - the removal of parking spaces from the “9-Acre” site for the mixed-use development that’s currently under construction.
- The Downtown Parking Committee and City Staff have evaluated and are working to implement a number of short and long-term public parking solutions.
- ***Recently, downtown property owners have requested the ability to construct gravel parking lots to help ease the demand on downtown public parking.***
- Current development regulations prohibit the construction of a gravel parking lot within the City of McKinney.

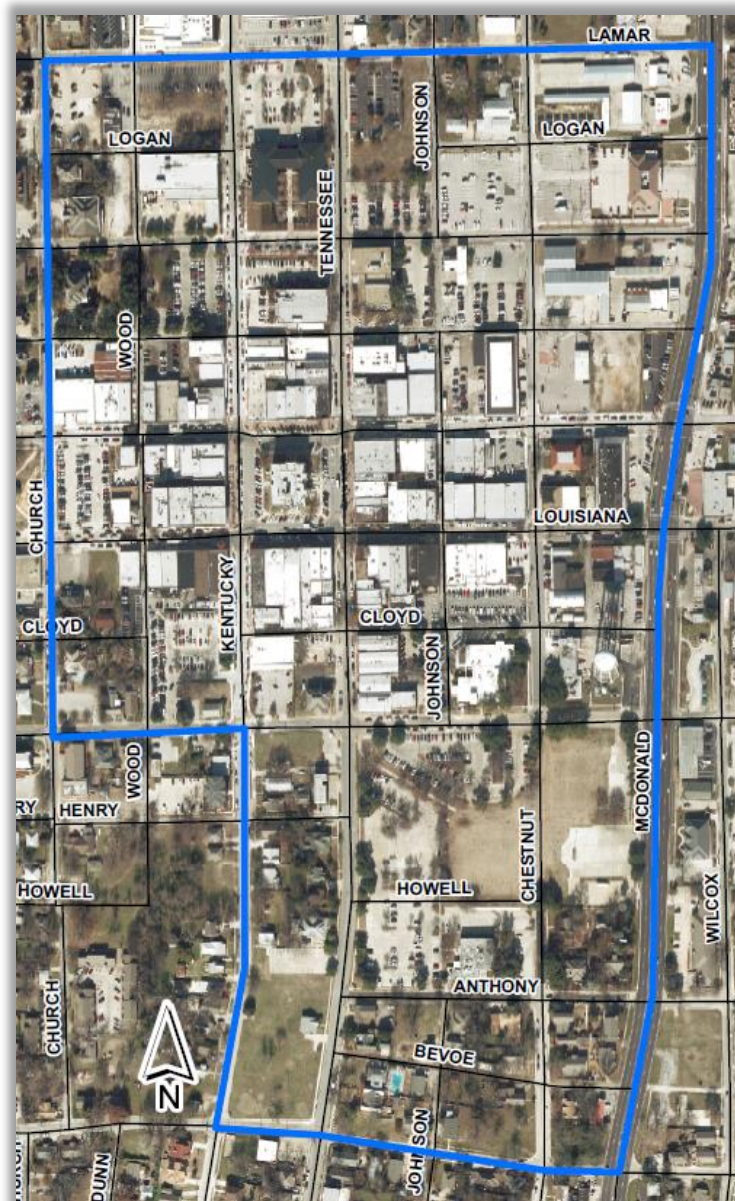


Potential Framework for Gravel Parking Lots

- Permanent design requirements would be temporarily suspended.
- The suspended design requirements would be limited to a period of 18-24 months during which permit requests must be submitted and approved. Gravel lots constructed during this time frame would be permitted to remain indefinitely.
- Gravel lots must be located within the area pictured left.
 - Generally bound by Lamar (north), McDonald (east), Standifer (south) and Church and Kentucky (west).
 - Boundaries were generally set to allow additional parking to be built within convenient walking distance of the “9-Acre site” and the *Downtown Square*.

Example of Gravel Parking Lot Downtown





Requested City Council Direction

In an effort to allow interested downtown property owners to assist with parking shortages downtown...

Would the City Council be supportive of allowing gravel parking lots to be constructed on privately owned property downtown for a limited period of time?

If so, what limitations (time, geographic location, etc.) would the City Council recommend applying?

Are there any design requirements that should not be temporarily suspended?



17-335

TITLE: Consider and Provide Direction Regarding Allowing Dogs on Outdoor Patios of Food Establishments

COUNCIL GOAL: Safe and Secure Community

MEETING DATE: April 3, 2017

DEPARTMENT: Development Services / Code Compliance

CONTACT: Lori Dees, Environmental Health Manager
Richard Milam, Health Compliance Supervisor

RECOMMENDED CITY COUNCIL ACTION:

- Provide direction regarding allowing dogs on outdoor patios of food establishments.

ITEM SUMMARY:

- Staff is seeking direction from the City Council regarding whether or not to adopt an ordinance allowing dogs on patios in food establishments after the approval of a variance.
- Staff has received feedback recently that variances allowing dogs on patios should be permitted in McKinney.
- A set of draft regulations establishing a variance process and associated regulations are attached for reference and discussion purposes.

BACKGROUND INFORMATION:

- Currently, dogs on the premises of a food establishment are prohibited by the Texas Food Establishment Rules (TFER).
- Plano, Frisco, San Antonio, Dallas, Houston and Austin all provide for a variance process within which dogs would be allowed on outdoor patios of food establishments.

FINANCIAL SUMMARY:

- If the City Council feels regulations establishing a variance procedure should be created, Staff recommends a variance application fee of \$100 would be valid for two years from the date of the variance's issuance.

SUPPORTING MATERIALS:

[DRAFT Regulations](#)

[DRAFT Variance Application](#)

[McKinney Patio Locations](#)

[City of Frisco Ordinance](#)

[City of Dallas Ordinance](#)

[City of Plano Ordinance](#)

ORDINANCE NO. 2017-04-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 46 (FOOD SERVICE REGULATIONS) OF THE CODE OF ORDINANCES BY ESTABLISHING SECTION 46-10 (DOGS IN FOOD ESTABLISHMENTS) AND BY AMENDING APPENDIX A (SCHEDULE OF FEES) OF THE CODE OF ORDINANCES TO ESTABLISH A VARIANCE APPLICATION FEE AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City of McKinney adopted the Code of Ordinances for the protection of the public health, safety and general welfare of the people of the City of McKinney; and

WHEREAS, the City Council of the City of McKinney, Texas, enacted Chapter 46 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), adopting the Texas Food Establishment Rules and has recognized that certain provisions of the Code of Ordinances should be reviewed and updated from time to time; and;

WHEREAS, in considering the health, safety and general welfare of the public, the City Council finds that Chapter 46 and Appendix A of McKinney's Code of Ordinances should be modified to provide for the allowance of live animals on the premises of food establishments with an approved variance application.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The Code of Ordinances, City of McKinney, Texas, Section 46-10 of the Code of Ordinances, is hereby established and shall read as follows:

"Sec. 46-10. – Dogs in Food Establishments.

(1) Notwithstanding anything to the contrary herein, a food establishment with an outdoor patio under its exclusive ownership and/or control may allow dogs to be present in the outdoor patio area of the food establishment if:

A. The food establishment obtains a variance from the City waiving the prohibition against dogs on the premises of the food establishment; and

B. The food establishment complies with all of the following requirements:

1. Except as allowed under Section 228.186(o)(2) of the Texas Food Establishment Rules, (25 TAC §228.186(o)(2)), no dog may be present in the interior of the food establishment or on any playground area designated for children on the premises of the food establishment.
2. A separate entrance must be provided from the outside of the food establishment to the outdoor patio so that a dog has direct access to the patio without entering the interior of the food establishment or any playground area of the food establishment. A dog may not be allowed within three (3) feet of any entrance to the interior of the food establishment, except when necessary to enter or exit the outdoor patio.
3. Doors equipped with self-closing and self-latching devices must be provided at all entrances to the outdoor patio from the interior of the food establishment and must be kept closed when not in use for ingress or egress.
4. Signs shall be posted at each and every public entrance of the food establishment and at each and every patio entrance so that the signs are clearly visible to the public at all times. The signs at each public entrance to the indoor portion of the food establishment must be located within 36 inches of the door handle and must state in a minimum of one-inch lettering: "DOG FRIENDLY PATIO - DOG ACCESS ONLY THROUGH OUTDOOR PATIO GATE. NON-SERVICE DOGS PROHIBITED". The sign at each outdoor patio entrance must be affixed directly to the fence or other enclosure that is adjacent to the patio entrance gate and located within 12 inches of the gate latch when the gate is closed, and shall state in 2-inch lettering "DOG FRIENDLY PATIO".
5. The outdoor patio must be continuously maintained free of visible dog hair, dog dander, and other dog-related waste or debris. The outdoor patio must be hosed down or mopped at the beginning of each shift during which food or beverages will be served, but not less frequently than every 12 hours.
6. No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio area except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment.

7. Hand Sanitizer shall be available to customers and employees in the outdoor patio area.
8. All table and chair surfaces shall be non-porous, easily cleanable material and cleaned and sanitized. Spilled food and drink shall be removed from the floor or ground within five (5) minutes of the spill.
9. Waste resulting from a dog's bodily functions must be cleaned up immediately with a product in compliance with Chapter 228 of the Texas Food Establishment Rules and not harmful to dogs within five (5) minutes of each occurrence. All dog waste must be disposed of outside of the food establishment and outside of any patio in an appropriate waste receptacle. Equipment used to clean the outdoor patio must be kept outside of the food establishment and outside of the outdoor patio. Exterior storage of such equipment must be screened from public view.
10. Wait staff and other food handlers may not pet or have any contact with any dog.
11. A dog must be kept on a leash, or in a secure bag or container specifically designed to carry and provide continuous restraint of dogs while providing adequate ventilation, and must remain under continuous physical control of the owner or other responsible adult while in the outdoor patio area. The dog must be wearing a collar or harness with a current rabies tag attached to it.
12. A dog is not allowed on a seat, table, countertop or similar surface in the outdoor patio area.
13. A dog may not have contact with any non-disposable dishes or utensils used for food service or preparation at the food establishment.
14. A dog may not be given any food (including, but not limited to, dog kibble, biscuits, and edible treats) while in the outdoor patio area, but may be given water in a disposable container.
15. The food establishment shall notify and maintain a copy of Chapter 26 Animal Control, of the City of McKinney Code of Ordinances on the premises at all times.
16. The flooring of a patio where dogs are permitted shall be constructed only of sealed concrete or other non-porous, approved material and have no covering that would inhibit thorough cleaning.

17. A food establishment shall not permit dogs to be present in the outdoor patio area of the food establishment if: the City of McKinney Health Compliance determines that a health hazard or nuisance condition exists, or the food establishment is in violation of this variance request or state law.

C. Variance Required.

1. Except as allowed herein, or under an exception allowed by Section 228.186(o)(2) of the Texas Food Establishment Rules, (25 TAC §228.186(o)(2)), any food establishment that allows dogs on its premises without an approved variance from the City are in violation of this ordinance. The owner or operator of a food establishment with an outdoor patio under the establishment's exclusive ownership and/or control may apply to the City for a variance waiving the prohibition against dogs on the premises of a food establishment. A completed application shall be accompanied by a non-refundable variance application fee specified in Appendix A of the Code of Ordinances.
2. Prior to approving a variance application, an inspection must be performed by the City to ensure that the food establishment complies with the requirements of this chapter.
3. A variance granted to a food establishment is nontransferable. The variance shall expire two (2) years after the date it is granted unless it is revoked by the City or terminated by the food establishment. A variance may be renewed through the application process set forth in this chapter.
4. The City shall deny or revoke a variance if:
 - a. The application for variance contains a false statement;
 - b. The food establishment does not hold a valid Food Establishment Permit issued by the regulatory authority;
 - c. The regulatory authority determines a health hazard or nuisance will result or has resulted from the variance;
 - d. The food establishment failed to pay the required application fee at the time it was due; or

- e. The food establishment is in violation of any term or condition of the variance as established by the City or state law.
- 5. If the City denies or revokes a variance, the City shall notify the applicant in writing by personal service or regular service through the United States Postal Service. The written notice shall include the reasons for the denial or revocation.
- 6. A food establishment whose variance under this subsection is denied or revoked may appeal by requesting a hearing within ten (10) calendar days after service of the written notice of the denial or revocation. Such request shall be in writing, shall specify the reasons why the variance should not be denied or revoked and shall be filed with the regulatory authority. A hearing shall be conducted by the Environmental Health Manager within fifteen (15) calendar days from the receipt of the appeal."

Section 2. Appendix A (Schedule of Fees) of the Code of Ordinances, City of McKinney, Texas, is hereby modified to establish an application fee for variances allowing dogs on the outdoor patios of food establishments and shall read as follows:

"Sec. 46-10 Dogs in Food Establishments.
Variance application fee 100.00"

Section 3. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 4. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 18TH DAY OF APRIL, 2017.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney



VARIANCE REQUEST TO ALLOW DOGS IN OUTDOOR PATIOS

FOOD ESTABLISHMENT NAME: _____

ADDRESS: _____

PERMIT NUMBER: _____

OWNER: _____

PHONE NUMBER: _____ **EMAIL:** _____

Pursuant to Section 46-10, the above named Food Establishment applies to the regulatory authority for a variance of § 228.186(o)(1) of the Texas Food Establishment Rules which prohibits animals on the premises of a food establishment. The application must be submitted with a non-refundable pre-operational inspection fee of \$100. An inspection will be conducted to determine compliance with the conditions of the variance request.

If pursuant to Section 46-10 the regulatory authority grants a variance to allow dogs to be present in the outdoor patio area of a food establishment, the food establishment shall comply with the following conditions to ensure that a health hazard or nuisance will not result from the modification or waiver:

- (a) A separate entrance must be provided from the outside of the food establishment to the outdoor patio so that a dog has direct access to the patio without entering the interior of the food establishment or any playground area of the food establishment. A dog may not be allowed within seven (7) feet of any entrance to the interior of the food establishment, except when necessary to enter or exit the patio.
- (b) Doors equipped with self-closing and self-latching devices must be provided at all entrances to the outdoor patio from the interior of the food establishment and must be kept closed when not in use.
- (c) Signs must be posted at each and every public entrance of the food establishment and at each and every patio entrance so that the signs are clearly visible to the public at all times. The sign at each public entrance of the food establishment must be located within 36 inches of the door handle and must state in 1-inch lettering "DOG FRIENDLY PATIO-DOG ACCESS ONLY THROUGH OUTDOOR PATIO GATE. NON-SERVICE DOGS PROHIBITED" The sign at each patio entrance must be affixed directly to the fence or other enclosure that is adjacent to the patio entrance gate and located within 12 inches of the gate latch when the gate is closed, and shall state in 2-inch lettering "DOG FRIENDLY PATIO".
- (d) The outdoor patio must be continuously maintained free of visible dog hair, dog dander, and other dog-related waste or debris. The outdoor patio must be hosed down or mopped at the beginning of each shift during which food or beverages will be served, but not less frequently than every 12 hours.

- (e) No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio area except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment.
- (f) Hand Sanitizer shall be available to customers and employees in the patio area.
- (g) All table and chair surfaces shall be non-porous, easily cleanable material and cleaned and sanitized. Spilled food and drink shall be removed from the floor or ground within five (5) minutes of the spill.
- (h) Waste resulting from a dog's bodily functions must be cleaned up immediately with a product approved by The Texas Food Establishment Rules 25 TAC §228 and not harmful to dogs within five (5) minutes of each occurrence. All dog waste must be disposed of outside of the food establishment and outside of any patio in an appropriate waste receptacle. Equipment used to clean the outdoor patio must be kept outside of the food establishment and outside of the outdoor patio. Exterior storage of such equipment must be screened from public view.
- (i) Wait staff and other food handlers may not pet or have any contact with any dog.
- (j) A dog must be kept on a leash, or in a secure bag or container specifically designed to carry and provide continuous restraint of dogs while providing adequate ventilation, and must remain under continuous physical control of the owner or other responsible adult while in the outdoor patio area. The dog must be wearing a collar or harness with a current rabies tag attached to it.
- (k) A dog is not allowed on a seat, table, countertop or similar surface in the outdoor patio area.
- (l) A dog is not allowed to be tied to anything affixed or non-affixed as a means to be restrained.
- (m) A dog may not have contact with any non-disposable dishes or utensils used for food service or preparation at the food establishment.
- (n) A dog may not be given any food (including, but not limited to, dog kibble, biscuits, and edible treats) while in the outdoor patio area, but may be given water in a disposable container.
- (o) The food establishment shall maintain a copy of Chapter 26 Animal Control, of the City of McKinney Code of Ordinances on the premises at all times.
- (p) A food establishment shall not permit dogs to be present in the outdoor patio area of the food establishment if: the City of McKinney Code Compliance determines that a health hazard or nuisance condition exists, or if the food establishment is in violation of this variance request or state law.

Applicant Name	Applicant Signature	Date
FEE \$100	Date Received: _____	Receipt No: _____
Variance Granted: _____	Date _____	
Variance Denied: _____	Date _____	
Reason for Denial _____		

Patio/Outside Seating Locations in the City of McKinney:

Lifetime Tennis – Seating out back

Corner Store (2 stores) – Patios on side

Market Street – Fenced in area....do not have to go through to get into store

Bahama Buck's Virginia Pkwy – Must go through patio to get into store

Baskin Robbins – Seats out front

Bayou Jack's – Patio, do not have to go through front entrance

Bermuda's Grill – Outdoor area, everyone must go through to get into store

Big Tony's – Patio on side, do not have to go through to enter store

Blue Goose – Patio on side, do not have to go through to enter store

Buffalo Wild Wings - Patio on side, do not have to go through to enter store

Butcher Board - Patio on side, must go through to enter store

Cadillac Pizza - Patio on side, do not have to go through to enter store

Cavalli's- Patio access from the rear of the restaurant.

Chicken Express– Must go through outdoor seating area to enter restaurant

Chipotle (2 stores) – Patio....only accessible from store. Dog would have to go through store

Cotton Patch - Patio....only accessible from store. Dog would have to go through store

Cristina's – Patio, do not have to go through patio to enter store

Dempsey's Place – Patio, do not have to go through patio if you enter from South of building

El Chico – Benches outside

El Pollo Regio – Seating outside, do not have to go through to get into store

El Pollo Alegre – Seating outside, do not have to go through to get into store

Eldorado Country Club – Outdoor seating, do not have to go through to get inside

Eldorado Spirits - Outdoor seating, do not have to go through to get inside

Ernesto's Mexican Food – Seating area in front, must walk through to get inside

Fuddrucker's – Patio on side

Genghis Grill – Patio on side

Hank's Texas Grill – Patio in back. Must go through building to get to patio

Harry's at the Harbor – Patio...do not have to go through patio to enter building

Henderson Kitchen – Patio on side

Hutchin's BBQ – Patio in front. Do not have to go through building

Jack's Pub and Grill – Patio on side

JC'S Burger House- Outdoor seating

Jimmy John's – Seats out front

Landon Winery – Must go through patio to enter business

Lone Star Wine Cellars – Patio on side

Louisiana Street Grill – Must go through outdoor seats to get into building

McAlister's – outdoor seating area on side

McKinney Sweet Spot – Seats in front

Mellow Mushroom – Do not have to go through patio to enter building

Mesa's Mexican Grill – Patio on side

Nom Noms – Seat out front

Oak Hollow Golf Course – Seats outside

On the Border – Patio on side

Orange Leaf – Seats out front

Paciugo – Must go through patio to enter building

Palio's Pizza – Patio on side

Panera Bread – Patio on side

Patina Green – Must go through patio to get into building

Piazza on Green – Seating out back

Racetrac- Outdoor Seating

Rick's Chophouse – Must go through patio to get into building

Rivera's Tex Mex – Patio off to side

Rockfish Seafood Grill – Patio on east side of building

Scooter's Coffee House- Small patio at front entry, outside access

Sheraton McKinney- Patio with outside access

Silk Road- Patio with outside access

Snug on the square- Must go through patio to get into the building

Sonic Drive in's- Patio seating

Spoon's Café- Must go through patio to get into building

Starbuck's Coffee- Patio with outside access

Taco Cabana- Patio with outside access

Taco Crush- Patio with outside access

Thai Noodle Wave- Patio but no exterior access

The Emporium-Purveyors- Tables and chairs out front

Tokyo Joe's- Patio outside but no exterior access

Zin Zen Wine Bistro- Patio with outside access

Dunkin Donuts- Patio with outside access

McDonald's- Patio with outside access

The Celt- Must go through patio to get into building

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, REPEALING ORDINANCE NO. 08-09-87 AND ADOPTING BY REFERENCE THE TEXAS FOOD ESTABLISHMENT RULES PROMULGATED BY THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES, CODIFIED AT 25 TEXAS ADMINISTRATIVE CODE, CHAPTER 228, AS AMENDED, SAVE AND EXCEPT FOR CERTAIN DELETIONS AND ADDITIONS; ESTABLISHING REGULATIONS FOR FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, FOOD TRUCKS, MOBILE FOOD VENDORS, DAY CARE FACILITIES AND TEMPORARY FOOD ESTABLISHMENTS IN THE CITY OF FRISCO; PERMITTING THE PRESENCE OF DOGS ON OUTDOOR PATIOS AT CERTAIN FOOD ESTABLISHMENTS; PROVIDING THE PURPOSE OF THESE RULES; PROVIDING DEFINITIONS INCLUDED IN THESE RULES; PROVIDING FOR THE ESTABLISHMENT AND COLLECTION OF FEES; PROVIDING A PROCESS FOR REVIEW OF PLANS; PROVIDING FOR MANAGEMENT AND PERSONNEL DUTIES; PROVIDING FOR WATER, PLUMBING AND WASTE REQUIREMENTS; PROVIDING FOR THE CONSTRUCTION OF PHYSICAL FACILITIES; PROVIDING FOR THE RESTRICTION OR EXCLUSION OF EMPLOYEES, THE EXAMINATION AND CONDEMNATION OF FOOD, PROVIDING FOR COMPLIANCE, ENFORCEMENT AND INTERPRETATION; PROVIDING FOR SUSPENSION AND REVOCATION OF PERMITS; PROVIDING AN ADMINISTRATIVE PROCESS TO ENFORCE THESE RULES; PROVIDING A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas ("Frisco"), to repeal Ordinance No. 08-09-87 for the purpose of establishing additional, updated and more comprehensive regulations for, among other things, food, food establishments, mobile food units, food trucks, and temporary food establishments in Frisco; allowing mobile vendors working within the enclosed venue of outdoor concerts, athletic stadiums or fields and entertainment venues with annual renewal permits; and permitting the presence of dogs on outdoor patios at certain food establishments; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of Frisco to adopt by reference the provisions of the Texas Food Establishment Rules adopted by the Texas Department of State Health Services, codified at 25 Texas Administrative Code Chapter 228, which are adopted and incorporated herein by reference, save and except the deletions and additions set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Purpose. The purpose of these rules is to safeguard public health and provide to consumers food that is safe, unadulterated and honestly presented.

SECTION 3: Repeal of Ordinance No. 08-09-87. Ordinance No. 08-09-87 is hereby repealed in its entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance, at which point Ordinance No. 08-09-87 shall be repealed. Such repeal shall not abate any pending prosecution or lawsuit or prevent any prosecution or lawsuit from being commenced for any violation of Ordinance No. 08-09-87 occurring before the effective date of this Ordinance

SECTION 4: Adoption of the Texas Food Establishment Rules. Frisco hereby adopts by reference the provisions of the current Texas Food Establishment Rules set forth in 25 Texas Administrative Code Chapter 228, as amended, which establish regulations regarding, among other things, food, food establishments, mobile food units, food trucks and temporary food establishments, save and except the deletions and additions set forth below. The Texas Food Establishment Rules (“TFER”) are made a part of this Ordinance as if fully set forth herein. Copies of the TFER are on file in the Office of the City Secretary of Frisco, being marked and designated as the 2015 TFER, published by the Texas Department of State Health Services. The following deletions and additions to the TFER are hereby approved and adopted:

Section 228.2 Definitions is amended as follows:

For the purpose of this Ordinance, the following terms, phrases, words and their derivation shall have the meaning given below (regardless of the case used, whether upper or lower case), unless the context clearly indicates otherwise:

- (1) **AUTHORIZED AGENT OR EMPLOYEE** – the employees or agents of the regulatory agency.
- (2) **BED AND BREAKFAST LIMITED** –
 - (i) an establishment with up to five (5) or fewer rooms for rent;
 - (ii) an establishment that serves breakfast to overnight guests; and
 - (iii) an establishment that provides for guest stays of up to 14 consecutive calendar days, but that does not offer weekly rates.
- (3) **CONCESSION STAND** – a food establishment operated on a seasonal basis for the purpose of providing food at sporting events

associated with an Independent School District, university, community college, non-profit organization, privately owned school or the City of Frisco.

- (4) EVENT – a unique public gathering of persons at which food products will be served or offered directly to consumers, such as a seasonal sale, marketing event, festival, bazaar, carnival, circus, fundraiser, public exhibition, celebration, sporting event, or other public gathering which is civic, political, public or educational in nature and for which an appropriate regulatory authority is required to grant permission for the operation of the event, whether by permit, license or other official written document.
- (5) FOOD TRUCK – a Mobile Food Unit (MFU), as defined herein, that is permitted to operate at one location for a period of time exceeding fifteen (15) minutes under this Ordinance or other City of Frisco ordinance, as they exist or may be amended.
- (6) FRISCO, CITY OF FRISCO or MUNICIPALITY – the City of Frisco, Texas.
- (7) LAW – any applicable local, state and/or federal law, statute, ordinance, resolution, rule, regulation and/or requirement, as it/they currently exist, may be amended or in the future arising.
- (8) LIMITED FOOD ESTABLISHMENT – an operation that is required by any regulatory agency to be inspected by the local regulatory authority, but which does not meet the definition of food establishment; or an operation meeting the definition of Bed and Breakfast Limited, as amended.
- (9) MISBRANDED – the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable state or local labeling requirement, as they exist or may be amended.
- (10) MOBILE FOOD UNIT (MFU) – a vehicle-mounted, self-contained food service operation, designed to be readily moveable (including catering trucks) and used to store, prepare, display, serve or sell food. Mobile Food Units must completely retain their mobility at all times. A Mobile Food Unit does not mean a stand or a booth.
- (11) MOBILE FOOD VENDOR – any person who operates or sells food from a stationary cart, or trailer-mounted on chassis, but without an engine, for period of fifteen (15) days or greater per

year. Mobile Food Vendors who operate for fourteen (14) days or less shall be considered temporary food establishments. Mobile Food Vendors shall operate under the guidelines set forth in the City of Frisco Zoning Ordinance, as it exists or may be amended, in addition to meeting the requirements for food establishments set forth in these rules. Mobile Food Vendors that are approved to operate within the enclosed venue of outdoor concerts, athletic stadiums or fields and entertainment venues are exempt from Sections 3.02.01(20)(f), (g), (i), (j) and (k) of the City of Frisco Zoning Ordinance.

- (12) PRIVATE EVENT – an event at which food and/or beverages are offered to participants and:
 - (i) That is held on publicly or privately owned premises or a location operated by an organization, group, club, association or institution that is not available for use by the general public and where entry to the event is governed by regulations or invitation of that organization, group, club, association or institution; or
 - (ii) where food and/or beverages are offered, sampled, sold or given only to event volunteers and/or event staff.
- (13) REGULATORY AUTHORITY or LOCAL REGULATORY AUTHORITY – the City of Frisco, Texas, or its authorized designee.
- (14) RETAIL ONLY – a business offering only foods which are pre-packaged, non-potentially hazardous (PHF/non-TCFS).
- (15) ROADSIDE FOOD VENDOR – a person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as a Food Truck under this Ordinance.
- (16) RULES, STATE RULES, TEXAS FOOD ESTABLISHMENT RULES or “TFER” — the Texas Food Establishment Rules adopted by the Texas Department of State Health Services, codified at 25 Texas Administrative Code Chapter 228, as amended.

Section 228.31 Responsibility is amended as follows:

- (a) Responsibility; Food Manager Certification Requirements.

- (1) Responsibility, assignment. Food establishments that serve, sell, or distribute only prepackaged foods, non-potentially hazardous beverages and foods such as sno-cones or popcorn, and temporary food establishments, are exempt from the certified food protection manager requirement. Concession stand operators must successfully take and pass a food safety class, such as food handler certification class, approved by the City of Frisco, or a class that educates food service workers which is approved by the regulatory authority, before operating a concession stand. Proof of successful course completion may be required of food establishments that are exempt from the certified food protection manager requirement under this subsection if the regulatory authority determines that the food establishment is capable of causing foodborne illness or increased public health risk.
- (2) A food establishment shall provide proof of food protection manager certification to the regulatory authority prior to opening the establishment.
- (3) A food establishment shall have thirty (30) days to meet the certified food protection manager requirement upon the transfer or termination of a certified food protection manager.
- (4) In the event of a change in ownership of a food establishment, the new owner/operator of a food establishment shall provide proof to the regulatory authority that the appropriate number of certified food protection managers will be on duty within thirty (30) days of the change of ownership.
- (5) A concessionaire or temporary food establishment must have a certified food handler on duty during all hours of operation.

...

- (c) Bed and Breakfast Limited. The owner/operator of a bed and breakfast limited shall successfully complete a food protection manager certification course approved by the regulatory authority and submit proof of certification to the regulatory authority when applying for a permit.

Section 228.43 Hair Restraints is amended as follows:

- (a) Except as provided in subsection (b) of this section, all food employees, regardless of title, position or establishment's own policy, shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their

hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles. Methods which only partially restrain hair, such as braids, hair ties, or visors, shall only be used in conjunction with one of the approved hair restraint methods listed above.

- (b) This section does not apply to food employees such as counter staff who only serve wrapped or packaged foods or beverages, bartenders, hostesses and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

Section 228.70 Preventing Contamination by Consumers is amended as follows:

- (a) Food display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards that comply with NSF standards; completely enclosed display cases; or other means approved by the regulatory authority. A letter may be required from the fabricator or installer of any food guard required by this subsection to confirm compliance with NSF standards if compliance is not evident through the use of labels or listings posted directly on the food guard by the authority approved to affix such label or listing.

...

Section 228.106 Functionality of Equipment is amended as follows:

...

- (x) Acceptability. Food equipment certification, classification. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with §§ 228.101-228.106 of this title. Food equipment shall display certification label(s) from an ANSI-accredited certification program or express approval is required from the Regulatory Authority for use. A letter may be required from the fabricator or installer of such equipment to confirm compliance with ANSI-accredited certification program if compliance is not evident through the use of labels posted directly on the equipment by the authority approved to affix such label.

Section 228.107 Equipment, Numbers and Capacities is amended as follows:

- (a) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Subchapter C of this chapter (relating to Food), provided, however, that the regulatory authority may calculate capacities required for limited food establishments or for any food establishment in order to ensure food is held at proper temperatures. This may include a requirement for a limited food establishment to provide a single refrigerator that complies with § 228.106(x) of this title to maintain student food brought in to be maintained at all times under mechanical refrigeration.
 - (1) Businesses that sublet, rent or share space adjacent to or within an existing food service operation shall have separate refrigeration units to serve each business adequately.
- (b) Manual warewashing, sink compartment requirements.
 - (1) Except as specified in paragraph 3 of this subsection, a sink with at least three compartments shall be provided for manually washing, rinsing and sanitizing equipment and utensils. If a mechanical warewashing machine as specified by the rules in this section is provided and approved to accomplish proper washing and sanitizing of equipment and utensils, this does not allow for exemption from the requirement of at least one three-compartment sink. The sink shall have each compartment labeled as to its function and use with a sign affixed to each compartment. The sink shall also have sanitizing instructions posted in an area adjacent to the warewashing area.
 - (2) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils.
 - (3) Alternative manual warewashing equipment may be used when there are special cleaning needs such as specialized equipment and its use is approved. Alternative manual warewashing equipment may only be used in existing establishments having Certificate of Occupancy dating before the effective date of this ordinance and may include:

...

Section 228.143 Water Quantity and Availability is amended as follows:

...

- (c) Hot water. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment. Sizing of supply systems shall comply with NSF standards approved by the regulatory authority.

Section 228.147 Plumbing, Numbers and Capacities is amended as follows:

- (a) Handwashing Facilities.
 - (1) Except as specified in paragraphs (2) and (3) of this subsection, at least one (1) handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by employees in areas specified under § 228.148 of this title, and not fewer than the number of handwashing lavatories required by the Plumbing Code, as it exists or may be amended by the City of Frisco, shall be provided. Lavatories in addition to those defined herein may be required by the regulatory authority.

...

- (c) Service Sink. At least one (1) floor-curbed cleaning facility, equipped with a floor drain, shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

...

Section 228.148 Plumbing, Location and Placement is amended as follows:

- (a) Handwashing facilities.
 - (1) A handwashing facility shall be located:
 - (A) to allow convenient use by employees in all food preparation, food dispensing and warewashing areas; and
 - (B) in, or immediately adjacent to, toilet rooms; and
 - (C) such that at least one (1) handwashing facility shall be on each cook line, for direct use by all employees while working on the cook line; and
 - (D) within every twenty-five (25) linear feet of unobstructed space in food preparation and utensil washing areas, or as otherwise approved by the regulatory authority. Any door,

wall, partial wall, stairway or other barrier, fixed or moveable, shall be considered an obstruction for the purposes of these rules.

- (2) If a handwashing facility is located immediately adjacent to food preparation, serving, or storage areas, an approved splash guard separating the handwashing facility from these areas may be required by the regulatory authority.
- (3) Dedicated food preparation sink. A minimum of one (1) sink shall be provided for food preparation in food establishments that prepare raw animal proteins and/or that prepare fruits or vegetables on site.
- (4) At least one (1) waste sink shall be provided where blender, coffee or tea service is performed.

...

Section 228.150 Sewage Retention, Drainage, and Delivery is amended as follows:

...

- (d) Grease trap, grease interceptor.
 - (1) A grease trap or grease interceptor is required unless otherwise approved by the regulatory authority, and shall be located to be easily accessible for cleaning, operation, and maintenance. The location of a grease trap or grease interceptor must be approved by the regulatory authority and shall not be within an area where food is held, prepared, stored, or transferred. Grease traps and grease interceptors shall be sized and installed in compliance with the Plumbing Code. All grease traps and interceptors shall also be approved by the regulatory authority prior to installation. Grease separators designed to be serviced manually by food establishment employees shall not be permitted. Grease interceptors or separators located above ground, beneath one (1) fixture, are prohibited unless otherwise approved by the regulatory authority.
 - (2) Grease traps and grease interceptors shall be serviced within ninety (90) days of the food establishment opening, undergoing extensive renovation, or change in ownership, and subsequently at an interval necessary to ensure that sediment and floating materials do not accumulate to impair the efficiency of the grease interceptor or trap; to ensure the discharge of grease into public sewers does not exceed local discharge limits not to exceed 100mg/L; to ensure no

visible grease is observed in discharge; and not to exceed ninety (90) operational days between servicing. Self-cleaning of grease interceptors by operators is expressly prohibited. Grease traps and grease interceptors shall be completely evacuated a minimum of four (4) times yearly, unless otherwise approved by the regulatory authority by written variance approval, and liquid waste transportation paperwork documenting complete service of the grease interceptor or trap shall be provided to the regulatory authority, or designee having jurisdiction, upon request. Testing of effluent shall be done at the business owner's expense upon request by the regulatory authority for failure to produce requested liquid waste transportation paperwork, or should the regulatory authority have knowledge of a grease interceptor or trap dysfunction or suspicion of misuse that allows grease to be discharged into the sewer system. Food establishments shall enter into a contract with a waste hauler licensed by the state regulatory authority having jurisdiction over waste haulers, to provide for regularly scheduled servicing. No "will call" or "on call" scheduling shall be permitted for servicing, except for emergency servicing when required to prevent imminent health hazard or the discharge of grease into the sewer system. Liquid waste transportation documentation, as approved by the state regulatory authority including, but not limited to, the Texas Commission on Environmental Quality or the department, shall be kept on file for one (1) year in the food establishment for review by the local regulatory authority.

...

Section 228.152 Refuse, Recyclables, and Returnables, Facilities on the Premises is amended as follows:

...

- (b) Outdoor storage surface. An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of concrete and shall be smooth, durable, and sloped to drain.
- (c) Outdoor enclosure. An outdoor enclosure for refuse, recyclables, and returnables, constructed to City of Frisco specifications and being comprised of, among other requirements, one hundred percent (100%) masonry, shall be provided, unless otherwise approved by the regulatory authority.

...

(f) Outside receptacles.

- (1) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers and be within an approved, as solely determined by the regulatory authority, enclosure as to shield from public view. All outside receptacles and waste handling units shall be approved by the regulatory authority prior to construction, installation, or use.

...

- (k) Storing refuse, recyclables, and returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents and shielded from public view by an approved, as solely determined by the regulatory authority, enclosure. Food waste shall be securely bagged prior to placing in receptacle or waste handling unit. All methods of storing and recycling waste shall be approved by the regulatory authority.

...

(m) Outside storage prohibitions.

...

- (2) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem, is shielded from public view by an approved enclosure, and approved by the regulatory authority.

...

- (p) Maintaining refuse areas and enclosures. A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under § 228.186(n) of this title (pertaining to Physical Facilities), and obstructions, and shall be clean.

...

Section 228.171 Indoor Areas, Surface Characteristics is amended as follows:

Except as specified in § 228.222(j) and (k)(1) of this title, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

...

- (3) nonabsorbent for areas subject to moisture such as food preparation areas, areas used for the storage or transportation of open containers of food, walk-in refrigerators, warewashing areas, toilet rooms, mobile food unit servicing areas, and areas subject to flushing or spray cleaning methods.

Section 228.172 Outdoor Areas, Surface Characteristics is amended as follows:

- (a) Walking and driving areas. The outdoor walking and driving areas shall be surfaced with concrete or other material approved by the regulatory authority.

...

Section 228.173 Floors, Walls, and Ceilings is amended as follows:

...

- (d) Floor carpeting, restrictions and installation.
 - (1) Floors and floor coverings of all food preparation and utensil-washing areas, walk-in refrigeration units, dressing rooms, locker rooms; and toilet rooms provided for employee use shall be constructed of smooth durable material such as terrazzo, ceramic, quarry tile, or equivalent, with a six (6) inch coved tile base installed integral and flush with finished floor, and shall be maintained in good repair. Top-set, square or thin-lip installations of coved base tiles are prohibited. Sealed concrete, sheet vinyl, vinyl products or VCT may not be used in these areas. Epoxy resin and other poured monolithic floors, and other durable seamless flooring systems may be used in these areas installed to a finished product thickness of a minimum of one-quarter (1/4, 0.25) inch when approved by the regulatory authority prior to installation. Poured monolithic floors and seamless flooring systems shall be constructed to a finished product thickness of a minimum of one-quarter (1/4, 0.25) inch with coved base monolithic, integral, and flush with floor. The regulatory authority may impose additional requirements such as, but not limited to, the addition of non-skid additives and may approve alternative minimum thicknesses of floors and base if it is proven in writing that a finished product of different thickness and/or additives

render the same or increased standards. Written documentation of compliance with these requirements shall be submitted to the regulatory authority at time of installation and no later than the date of issuance of the Certificate of Occupancy. Durable grades of sheet vinyl or other approved vinyl products may be used in dry storage areas if approved by the regulatory authority, and shall be maintained in good repair. In dedicated janitorial, laundry, or mechanical areas, sealed concrete may be used in lieu of the above listed materials if approved by the regulatory authority. Food areas within food establishments that are temporarily set up for use during specified hours during each day or one day such as buffet lines or bar service areas may be exempt from this rule. Food areas of a food establishment that are used for sole purpose of class instruction and where consumption of food on premise is minimal and of secondary to primary instruction use may be exempt from this rule.

At least one (1) floor drain must be provided, with total number of required drains to be approved by the regulatory authority. Properly installed, trapped floor drains shall be provided in floors that are water flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Properly trapped floor drains shall be provided in all toilet rooms and in food preparation areas in compliance with any and all applicable laws. Floors must be graded to drain properly.

- (2) Prohibited floor covering. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is expressly prohibited.

...

- (f) Wall and ceiling coverings and coatings.

- (1) Wall and ceiling covering materials shall be attached so that they are easily cleanable. Walls where excessive heat from equipment such as grills, griddles, fryers or gas burners must be covered with stainless steel sheets from floor to ventilation hood, unless otherwise approved by regulatory authority. Walls in areas where food is not prepackaged at all times, shall be nonabsorbent, easily cleanable and covering must be approved by the regulatory authority. Wall coatings, including epoxy paint, are not approved as wall coverings in areas where uncovered food is located, stored, transferred, processed, passed, cooked, prepared or sold. Wall coatings, including epoxy paint, may be used in areas where food

is prepackaged at all times or in non-food storage areas with approval by the regulatory authority. Ceilings in areas where food is not prepackaged at all times shall be nonabsorbent, easily cleanable and covering must be approved by the regulatory authority. Ceiling coatings, including epoxy paint, are not approved as ceiling coverings in areas where uncovered food is located, stored, transferred, processed, passed, cooked, prepared or sold, except in areas such as bars, temporary buffet lines and other areas if approved by the regulatory authority. Exception to this rule may be made for food establishments that are used for sole purpose of instructional and where consumption of food on premise is minimal and of secondary use.

- (2) Concrete, concrete blocks or bricks, when used in areas of a food establishment not open to the general public, shall be used only where non-food activities occur such as can washing or outdoor janitorial use or storage areas. Concession stands may use concrete, concrete blocks, or bricks for indoor wall construction if finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface and re-sealed for maintenance in a timely manner or when mandated by the regulatory authority.
- (3) Wall surfaces in dedicated bar service areas of a food establishment and toilet rooms provided for employee or worker use shall be durable, nonabsorbent and easily cleanable to a minimum height of four (4) feet. Wall coatings including epoxy paint may only be used above forty-eight (48) inches.

...

- (i) Indoor areas, food service segregated where exterior openings are open to the environment. Where the construction of a food establishment allows for a door, wall or outdoor environment left exposed, the food service areas of the food establishment shall be fully enclosed by 4 walls and tight fitting openings including entry and exit.
- (j) All shelving and millwork within food service areas of the food establishment shall be rendered washable and impervious.

Section 228.174 Functionality is amended as follows:

...

- (e) Outer openings, protected.

...

(3) ...

...

(D) protected by auto-activated air curtain.

(4) ...

...

(C) other effective means approved by the Regulatory Authority such as a fan which protects such opening and is documented to do so by a registered mechanical engineer.

...

(6) If drive-through service is provided by the food establishment, all drive-through windows shall be solid and self-closing.

...

Section 228.175 Handwashing Sinks is amended as follows:

...

(b) Handwashing cleanser, availability. Each handwashing lavatory or group of two (2) adjacent lavatories shall be provided with a supply of hand cleaning liquid or powder provided through a wall mounted dispenser. Bar soap is expressly prohibited.

...

Section 228.184 Distressed Merchandise, Segregation and Location is amended as follows:

Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, expired, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles. Such products shall be clearly marked that they are not to be used or served.

Section 228.186 Premises, Buildings, Systems, Rooms, Fixtures, Equipment, Devices, and Materials is amended as follows:

...

(o) Prohibiting animals

- (1) Except as specified in paragraphs (2), (3), and (4) of this subsection, live animals may not be allowed on the premises of a food establishment. This prohibition includes, but is not limited to, brief entry for purposes of picking up take-out food or the entry of the interior of any store where food is offered for sale or any establishment where a sign is posted prohibiting animals other than service dogs.

...

- (4) Notwithstanding anything to the contrary herein, a food establishment with an outdoor patio under its exclusive ownership or control may permit dogs to be present in the outdoor patio area of the food establishment if the food establishment obtains from the regulatory authority a variance waiving the prohibition against dogs on the premises of the food establishment and complies with the following conditions and standards:
 - (A) Except as allowed under § 228.186(o)(2) of this title, no dog may be present in the interior of the food establishment or on any playground area designated for children on the premises of the food establishment.
 - (B) A separate entrance must be provided from the outside of the food establishment to the outdoor patio so that a dog has direct access to the patio without entering the interior of the food establishment or any playground area of the food establishment. A dog may not be allowed within seven (7) feet of any entrance to the interior of the food establishment, except when necessary to enter or exit the patio.
 - (C) Signs must be posted at each and every public entrance of the food establishment and at each and every patio entrance so that the signs are easily visible to the public at all times. The sign at each public entrance of the food establishment must be located within 36 inches of the door handle and must state in 1-inch lettering in the color red: "DOG-FRIENDLY PATIO – DOG ACCESS ONLY THROUGH OUTDOOR PATIO GATE. NON-SERVICE DOGS PROHIBITED." The sign at each patio entrance must be affixed directly to the fence or other enclosure that is

adjacent to the patio entrance gate and located within 12 inches of the gate latch when the gate is closed, and shall state in 2-inch lettering in the color red: "DOG-FRIENDLY PATIO." The background color for all signs required by this subsection shall be white in color and display the approved City logo. The owner/operator shall obtain all signs required by this subsection from the City. The fee for each sign required by this subsection shall be \$25.00. All signs required by this subsection shall be replaced at owner/operator expense in a timely manner so as to comply with this subsection.

- (D) Doors equipped with self-closing devices must be provided at all entrances to the outdoor patio from the interior of the food establishment and must be kept closed when not in use.
- (E) No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio area, except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment.
- (F) The outdoor patio must be continuously maintained free of visible dog hair, dog dander, and other dog-related waste or debris. The outdoor patio must be hosed down or mopped with a product approved under the Rules at the beginning of each shift during which food or beverages will be served (breakfast, lunch, dinner, or late-hours), not less frequently than every 12 hours, except that cleaning under this subsection is not required if no dog has been present on the outdoor patio since the last cleaning.
- (G) All table and chair surfaces shall be non-porous, easily cleanable material and cleaned and sanitized with a product approved under the Rules. Spilled food and drink shall be removed from the floor or ground within five (5) minutes of the spill.
- (H) Waste resulting from a dog's bodily functions must be cleaned up immediately with a product approved under the Rules and not harmful to dogs within five (5) minutes of each occurrence. All dog waste must be disposed of outside of the food establishment and outside of any patio in an appropriate waste receptacle. Equipment used to clean the outdoor patio must be kept outside of the food

establishment and outside of any patio. Exterior storage of such equipment must be screened from public view.

- (I) While on duty, wait staff or other food handlers at the food establishment may not pet or have contact with any dog.
- (J) A dog must be kept on a leash, or in a secure bag or container specifically designed to carry and provide continuous restraint of dogs while providing adequate ventilation, and must remain under continuous physical control of the owner or other responsible adult while in the outdoor patio area. The dog must be wearing a collar or harness with a current rabies tag attached to it.
- (K) A dog is not allowed on a seat, table, countertop or similar surface in the outdoor patio area.
- (L) A dog is not allowed to be tied to anything affixed or non-affixed as a means to be restrained.
- (M) A dog may not have contact with any non-disposable dishes or utensils used for food service or preparation at the food establishment.
- (N) A dog may not be given any food (including, but not limited to, dog kibble, biscuits, and edible treats) while in the outdoor patio area, but may be given water in a disposable container.
- (O) The food establishment shall notify and maintain written procedures regarding the notification of the City of Frisco's Animal Control Division of any local rabies control incident as required by Chapter 14 (Animals) of the Frisco Code of Ordinances, or any other incident in which two or more dogs are involved in any altercation where they physically come into contact with each other, regardless of whether any of the animals are injured.
- (P) The flooring of a patio where dogs are permitted shall be constructed only of sealed concrete or other non-porous, approved material and have no covering that would inhibit thorough cleaning.
- (Q) A food establishment shall not permit dogs to be present in the outdoor patio area of the food establishment if:

- (i) The regulatory authority determines that a health hazard or nuisance will or has resulted; or
- (ii) The food establishment is in violation of this title or state law.

(R) Variance Required.

- (i) Except as allowed under § 228.186(o)(2) of this title, any food establishment that allows dogs on its premises without a variance is in violation of this ordinance. The owner or operator of a food establishment with an outdoor patio under the establishment's exclusive ownership or control may apply to the regulatory authority for a variance waiving the prohibition against dogs on the premises of the food establishment. The variance application shall be on a form provided by the regulatory authority. The application shall be accompanied by a non-refundable variance application fee.
- (ii) An inspection must be performed by the regulatory authority to ensure that the food establishment complies with the conditions and standards set forth in § 228.186(o)(4) of this title.
- (iii) A variance granted under this subsection is nontransferable. The variance shall expire two (2) years after the date it is granted by the regulatory authority unless it is sooner revoked by the regulatory authority or terminated by the food establishment. A variance may be renewed through the application process set forth in subsection (i) of this section.
- (iv) The regulatory authority shall deny or revoke a variance if:
 - 1. The application for variance contains a false statement;
 - 2. The food establishment does not hold a valid permit issued under this ordinance;

3. The regulatory authority determines that a health hazard or nuisance will result or has resulted from the variance;
 4. The food establishment failed to pay a required fee at the time it was due under this ordinance;
 5. The food establishment is in violation of any term or condition of the variance as established by the regulatory authority, this title, or state law.
- (v) If the regulatory authority denies or revokes a variance, the regulatory authority shall notify the applicant in writing by personal service or regular United States mail. The notice must include the reasons for the denial or revocation.
- (vi) A food establishment whose variance under this subsection is denied or revoked may appeal by requesting a hearing within ten (10) days after service of the notice of the denial or revocation. Such request shall be in writing, shall specify the reasons why the variance should not be denied or revoked and shall be filed with the regulatory authority. A hearing shall be conducted by the regulatory authority within fifteen (15) days from receipt of the appeal.
- (S) Nothing in this ordinance shall be construed to waive or limit the regulatory authority's governmental immunity from suit or from liability.
- (p) Except where allowed under Section 54-24 of the Code of Ordinances, ash trays, pipes, hookahs or other smoking paraphernalia shall not be made available for use to patrons of a food establishment.

Section 228.221 Mobile Food Units is amended as follows:

- (a) Mobile food unit provisions.
- (1) General. ...
- (A) Limited operating area, limited duration of operation.

- (i) Except when classified as a mobile food vendor in compliance with the City of Frisco Zoning Ordinance or as a food truck under this Ordinance or other City of Frisco ordinance, as they exist or may be amended, a mobile food unit shall not operate at one location for a period of time exceeding fifteen (15) minutes. A mobile food unit shall not operate at any location in which such operation would be prohibited under the City of Frisco Zoning Ordinance or any other ordinance, as they exist or may be amended.
- (ii) Except when located in a fixed, permanent area as allowed under separate City of Frisco ordinance, one or more Food Trucks may operate on non-residential private property, no closer than 10 feet from each other at any point, for so long as the services available on site and for use by the Food Truck staff and patrons remain fully accessible and usable, except that a Food Truck must report to its Central Preparation Facility at least once per day for servicing on the days the Food Truck operates or as otherwise limited by other City of Frisco ordinance. These services include rodent-proof trash containers serviced by a commercial waste hauler and non-temporary restroom facilities plumbed in accordance with the Plumbing Code, as it exists or may be amended, with a sufficient supply of soap, towels and hot water. The location of the site of operation of each Food Truck shall not impede traffic; shall not be in a fire lane; shall not allow a customer line to queue into a driving pathway or street; and is subject to relocation by the regulatory authority if the location poses a hazard to any patron. Each Food Truck must obtain a Health Permit type “Food Truck.” Each permit in each location is valid for six (6) months. Renewal of a permit per location is not automatic and must be requested by submitting a new application. The application may be denied if a history of noncompliance with these rules is shown. The Food Establishment application of type “Food Truck” shall be completed in full and submitted with the following for each operational period:

- a. Letter from property owner or authorized property management company providing written approval for each Food Truck to occupy the designated premise for the duration of allowed timeframe under each permit; and
 - b. Letter from a permanent business establishment that holds a valid Certificate of Occupancy and that is located on the same platted lot as the site of operation of the Food Truck; such letter must state that the establishment's permanent restroom facilities will be allowed for public use by any Food Truck operator or patron. In lieu of a letter from a permanent business establishment, the property owner or authorized property management company may provide a letter stating that the owner or company will provide temporary restroom facilities for public use by any Food Truck operator or patron. The location of such temporary restroom facilities will be subject to regulatory authority approval.
- (B) Pushcarts. Pushcarts providing food other than pre-packaged, non-potentially hazardous food shall operate only when classified as a mobile food vendor in compliance with the City of Frisco Zoning Ordinance, as it exists or may be amended.
- ...
- (4) Initial permitting inspection.
 - (A) The regulatory authority shall require a mobile food unit or food truck to obtain an inspection from the Frisco Fire Department prior to seeking a permit from the regulatory authority. Proof of Fire Department inspection and approval must be provided when submitting a completed permit application to the regulatory authority. The regulatory authority shall then require a mobile food unit or food truck to come to a location designated by the authority for inspection. The mobile food unit or food truck must be totally operable at the time of inspection, including but not limited to handwash/warewash facilities, fire suppression-related facilities, generator, fuel facilities, refrigeration and wastewater

disposal. A mobile food unit or food truck may not operate within the limits of the City of Frisco without a valid permit. The following documents shall be submitted with the completed permit application:

- i. Written consent to a background check;
 - ii. Copy of Central Preparation Facility document;
 - iii. Certificate of Liability Insurance, \$100,000 minimum;
 - iv. Copy of valid Driver's License;
 - v. Copy of successful completion of Food Manager or Food Handler certification, where required, from accredited and approved vendor;
 - vi. Proof of Fire Department inspection and approval;
 - vii. List of food items offered if not pre-packaged;
 - viii. A signed affidavit acknowledging that sales made in Frisco shall be designated on the individual Sales Tax returns for the owner of the mobile food unit or food truck; and
 - ix. Any other documents requested by the regulatory authority in the interest of public health.
- (B) Once compliance with these rules has been met and documented by inspection, applicable fees shall be paid prior to issuance of permit. Failure of the required mobile food unit inspection will require reinspection at a cost of Fifty and No/100 Dollars (\$50.00) per reinspection until approved.
- (C) The owner/operator of a mobile food unit shall display a mobile food unit permit, affixed directly to the mobile food unit, and shall keep on file in the mobile food unit the placard for the current valid permit.
- (D) The owner/operator of a mobile food unit shall inform the regulatory authority immediately upon changing or discontinuing use of a central preparation facility and shall immediately cease operations until a commissary letter

verifying use of a new central preparation facility has been approved by the regulatory authority. Failure to provide a new commissary letter to the regulatory authority may result in the revocation of the food establishment permit.

- (E) Renewal of permit per location is not automatic and must be requested by submitting a new application. Application may be denied if a history of noncompliance with these rules is shown.

...

- (c) Servicing area and operations.

- (1) Protection.

...

- (D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, approved by the regulatory authority, such as concrete, and shall be maintained in good repair, kept clean, and be graded to drain.

- (E) Potable water servicing equipment shall be installed in the servicing area, as required by any and all applicable laws, and stored and handled in a way that protects the water and equipment from contamination.

...

Section 228.222 Temporary Food Establishments is amended as follows:

...

- (c) Ice. Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of these rules (pertaining to Food). The ice shall be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice for consumption shall be held in the bags until it is dispensed, and shall be dispensed in a way that protects it from contamination. Ice shall not be used as a coolant for potentially hazardous foods at a temporary food establishment operating for more than four (4) hours. Regardless of event duration, ice shall not be used as a coolant for uncooked animal products.
- (d) Equipment and utensils.

- (1) Design and construction. Events less than or equal to four (4) hours long in duration shall use equipment and utensils designed and constructed to be durable and to retain their characteristic qualities under normal use conditions. Events greater than four (4) hours long in duration shall use equipment and utensils in compliance with Section 228.106(x) unless otherwise approved by the regulatory authority.

...

- (l) Adequate restroom facilities. The regulatory authority may require written proof, by notarized letter or other means, that adequate restroom facilities will be provided for the use of employees and patrons of a temporary food establishment.
- (m) Protection from contamination by consumers.
 - (1) Condiments provided for the customer's use, such as relish, sauces, catsup, mustard, etc. shall be shelf-stable and shall be dispensed as single serving packets or from squeeze-type containers.
 - (2) Baked goods shall be portioned and wrapped prior to sale.
- (n) Refuse. Covered refuse containers must be provided, made of non-absorbent material, and rodent-proof. Food waste shall be securely bagged. Refuse collection areas and servicing must be approved by the regulatory authority.

Section 228.244 Facility and Operating Plans is amended as follows.

- (a) ...
 - (1) ...
...
 - (3) the remodeling of a food establishment, whenever a food establishment is constructed or extensively remodeled; whenever modifications, additions, or reductions are made to areas regulated by these Rules; or whenever an existing structure is converted to use as a food establishment. Extensive remodeling means that twenty (20) percent or greater of the area of the food establishment is to be remodeled.
- (b) Contents of the plans and specifications. The plans and specifications shall include the following whether existing or not:
 - (1) proposed layout;

- (2) equipment arrangement and schedule including type and model of proposed equipment;
- (3) finish schedule of all floors, walls and ceilings;
- (4) manufacturer's equipment specification sheets for all equipment;
- (5) grease interceptor proposed location;
- (6) water heater calculations and proposed size;
- (7) grease waste storage receptacle location;
- (8) waste receptacle or dumpster enclosure location;
- (9) mechanical, electrical and plumbing plans;
- (10) menu of all food items offered; and
- (11) Other plan requirements to be submitted where applicable include proof of location of Consumer Advisory and submittal of Bare Hand Contact Policy.

...

- (e) Review of plans. The approved plans and specifications must be followed in construction, remodeling, modification and/or conversion of a food establishment. All work must be inspected by the regulatory authority for compliance with these Rules. After compliance with these Rules is deemed to be met, a food establishment permit may be approved. Failure to follow the approved plans and specifications will result in a permit denial, suspension or revocation.
- (f) Plan review fee. If a determination is made by the regulatory authority that no building permit is required, a plan review fee shall be assessed for any plan review required to ensure compliance with these rules. This fee shall be assessed at a rate of Fifty and No/100 Dollars (\$50.00) per hour, with a minimum charge of one (1) hour. Additional plan review required by changes, additions, or revisions to plans approved under a building permit, will be assessed a plan review fee at the rate of Fifty and No/100 Dollars (\$50.00) per hour, with a minimum charge of one (1) hour.

Section 228.249 Inspection Frequency, Performance-based and Risk-based is amended as follows:

- (a) The regulatory authority shall inspect each food establishment at least once every six (6) months, and may inspect as often as necessary to ensure the health and safety of the public. Establishments classified as limited

food establishments, concessions, kiosks and mobile food vendors shall be inspected as needed in order to provide inspection documentation to any requesting regulatory agency. Limited food establishments not requiring such documentation shall be reviewed once per year to confirm limited food establishment status and proper food protection manager certification.

...

Section 228.251 Report of Findings is amended as follows:

...

- (e) Public information. Except as specified in § 228.245 of this title, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who submits a written request to the Office of the City Secretary of the City of Frisco, as required by law.

...

Section 228.253 Priority Item/Priority Foundation Item, Time Frame for Correction is amended as follows:

- (a) Timely correction.

- (1) ...

- (A) Risk Violation Fee; Fee for timely correction. Should corrective action not be completed, observed and documented on site by an inspector at the time of inspection, one or more subsequent inspections will be required until compliance is observed and documented. The fee for each inspection of each noncompliant item or condition shall be Fifty and No/100 Dollars (\$50.00).

...

- (b) Verification and documentation of correction.

...

- (3) When the total cumulative demerit value of an establishment exceeds thirty (30) demerits, defined as “failing,” the establishment shall initiate immediate corrective action on all identified priority or priority foundation violations and shall initiate corrective action

on all other violations within forty-eight (48) hours. One (1) or more reinspections shall be conducted at reasonable time intervals to assure correction of each violation known to have increased risk for foodborne illness, as defined by the Centers for Disease Control. There shall be a separate reinspection fee of Two Hundred Fifty and No/100 Dollars (\$250.00) for each reinspection for correction until all risk factors are under managerial control. The reinspection fee shall be paid no later than the business day immediately following each reinspection. The reinspection fee is required to be paid for each failure occurrence. Each reinspection shall be scored.

...

Section 228.256 Investigation and Control is amended as follows:

(a) ...

...

(2) requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees. Such laboratory analysis, examinations by a physician, transportation, costs and applicable fees shall be the responsibility of the employee or establishment suspected.

...”

SECTION 5: Application for Permit and Fees.

(a) Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Applications for temporary food establishments must be received by the regulatory authority ten (10) days prior to the proposed event. Failure to provide all required information, falsification of required information, may result in denial or revocation of the permit. A fee of Fifty and No/100 Dollars (\$50.00) will be incurred for failing to timely submit a temporary food establishment permit application, which must be submitted at least ten (10) days prior to the event.

(b) Any person or business required to or desiring to have review of any variance or plan as required by Regulatory Authority or by the State including HACCP plan or Bare Hand Contact Policy plan shall pay a fee of One Hundred and No/100 Dollars (\$100.00).

(c) Requirement. It shall be unlawful for any person to operate a food establishment in Frisco unless he possesses a valid food establishment permit issued by the regulatory authority.

(d) Posting. A valid food establishment permit shall be posted in public view in a conspicuous place at the food establishment for which it is issued.

(e) Permit Nontransferable. A food establishment permit issued under this Ordinance is not transferable. Upon change of ownership of a business, the new business owner will be required to meet current standards set forth in this Ordinance, state law or regulation before a food establishment permit is issued.

(f) Multiple Permits.

(1) A separate Permit shall be required for every fixed, mobile, or temporary food establishment with separate and distinct facilities and operations, as determined by the regulatory authority, whether situated in the same building or at separate locations.

(2) Separate and distinct lounge operations in a food facility require a separate food establishment permit from food operations. However, multiple lounges on the same floor in the same building and under the same liquor license will not require a separate food establishment permit.

(g) Any person desiring to renew an existing food establishment permit must make written application for renewal of permit on forms provided by the regulatory authority. Renewals of permits are required on an annual basis, except where otherwise stated. An incomplete application for renewal will not be accepted. No food establishment permit renewal shall be issued until all outstanding fees required under this Ordinance, such as fees levied for reinspections for compliance, permit renewal late fees and plan review fees, have been paid.

(h) Prior to the approval of an initial permit, a change of ownership, or upon completion of additions, remodels, or modifications as specified in § 228.244, the regulatory authority shall inspect the food establishment to determine compliance with this Ordinance. A food establishment that does not comply with this Ordinance will be denied a food establishment permit. Food establishments with an existing food establishment permit that do not comply with this Ordinance may be denied the renewal of a food establishment permit. The owner/operator of a food establishment must pay a preoperational inspection fee as set by the fee schedule. Failure to follow the approved plans and specifications will result in denial, suspension or revocation of a food establishment permit.

(i) The regulatory authority shall classify each food establishment at the time of application, and assess food establishment permit fees, due at the time of plan submittal or at Health Permit application if only change of ownership applies and in no case later than prior to issuance of the Certificate of Occupancy, according to the table below:

PERMIT SUBTYPE	FEE AMOUNT	PERMIT DURATION
----------------	------------	-----------------

Restaurant	\$500.00	1 Year
Convenience	\$250.00	1 Year
Daycare	\$300.00	1 Year
Grocery	\$650.00	1 Year
Mobile Food Unit – Hot	\$400.00	1 Year
Mobile Food Unit – Cold	\$300.00	1 Year
Temporary	\$50.00	1 Event /14 Day Maximum
Concession	\$50.00	Seasonal/Annual (1)
Limited Food Establishment	\$100.00	1 Year
Mobile Food Vendor	\$400.00	1 Year
Food Truck	\$200.00	6 Months
Health Reinspection Fee	\$250.00	Each – for reinspection
Risk Violation Fee	\$50.00	Each violation, each day

(j) Concession stands shall be permitted for a length of time corresponding to the duration of the sporting season for which they are permitted. Concession stands owned, operated, and maintained by a single public entity, such as an Independent School District, university, community college, or the City of Frisco, shall be permitted on an annual basis.

(k) Non-fixed establishments that provide only non-potentially hazardous foods, sold or served in original packaging, shall be required to obtain a food establishment permit of the type “Mobile Food Unit – Cold” and may not operate in any location for more than fifteen (15) minutes unless otherwise in compliance with § 228.221(a)(1)(A)(i).

(l) Limited food establishments must obtain a food establishment permit as specified in paragraph (c) of this Section.

(m) Food establishments operated by a public entity, such as an independent school district, university, community college, or the City of Frisco, may be exempt from paying the food establishment permit fee, if approved by the regulatory authority.

(n) A food establishment that is not permanently permitted by the regulatory authority, but that is a recognized charitable or philanthropic organization, or that has attained 501(c)(3) status from the Internal Revenue Service, may be exempt from paying the temporary food establishment fee for a permit for a temporary event, if approved by the regulatory authority.

(o) Fee exemptions granted under paragraphs (m) or (n) do not exempt any food establishment from the requirement of applying for, obtaining, and displaying a food establishment permit or from complying with the provisions of this section or any other applicable law.

(p) Except as noted in paragraph (i), food establishment permits of the type “Concession” shall expire at the end of the sporting season for which they are permitted, food establishment permits of the type “Temporary” shall expire on the last day of the event for which they are issued, but under no circumstances shall exceed fourteen (14) calendar days. All other food establishment permits shall expire annually on the date one (1) year from the date of issuance. The regulatory authority shall assess a permit renewal late fee of fifty percent (50%) of the food establishment permit fee on any yearly food establishment permit that is renewed within thirty (30) days following expiration. Food establishment permit renewals received thirty-one (31) days or greater following the expiration date shall be assessed a permit renewal late fee of one hundred percent (100%) of the yearly permit fee. Food establishments that fail to renew annual permits within sixty (60) days following expiration may be subject to involuntary closure. The assessment of this late fee shall not release a food establishment from any other penalties imposed under this Ordinance.

SECTION 6: Suspension of Permit/Appeal. The regulatory authority may, without warning, notice or hearing, suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of notice. A food establishment inspection report may serve as notice. When a permit is suspended, food operations shall immediately cease. The regulatory authority shall post and maintain at the entrance of the food establishment, notice of the conditions therein, or require the owner, operator, or person in charge of the establishment to post and maintain, at the entrance of the establishment, notice that the establishment is closed. Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the

permit is, upon service of the notice, immediately suspended and that an opportunity for an appeal hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten (10) days from the date the notice is received.

If no written request for an appeal hearing is filed within ten (10) days, the suspension is sustained until compliance with this Ordinance is met. It is the responsibility of the permit holder to request a reinspection once full compliance with this Ordinance has been met. A reinspection must be performed by the regulatory authority to ensure compliance prior to ending the suspension. Additional reinspections may be required if compliance is not met. The request for each reinspection must be made to the regulatory authority and a reinspection fee of Two-Hundred and Fifty Dollars (\$250.00) shall be paid before each inspection is performed. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist and all fees have been paid.

SECTION 7: Revocation of Permit/Appeal. The regulatory authority may, after providing an opportunity for an appeal hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules and/or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice unless a written request for an appeal hearing is filed with the regulatory authority by the holder of the permit within such ten (10) day period referred to in the notice.

If no request for an appeal hearing is filed within the ten (10) day period referred to in the notice, the revocation of the permit becomes final.

SECTION 8: Administrative Process. A notice, as required by this Ordinance, is properly served when it is delivered to the holder of the permit or the person in charge via hand-delivery, or when it is sent by registered or certified mail, return receipt requested, or when it is sent via Federal Express or any courier service that provides a return receipt showing the date of actual delivery to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.

The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

SECTION 9: Appeal. All appeals from final suspension or revocation of a food establishment permit shall be made in writing to Frisco's City Manager or his designee. The appeal shall be filed in writing within ten (10) days of the occurrence of the suspension or revocation. The City Manager or his designee shall attempt to hear the appeal within thirty (30) days after notice of the appeal. The City Manager shall have the power to reverse a decision of the regulatory authority where he finds that such a reversal will not affect the health and/or welfare of the public. All decisions of the City Manager or his designee shall be subject to

review by the City Council at one of its regularly scheduled meetings. The decision of the City Manager or his designee will be final unless reversed by the City Council. The City Council's failure to take action on any such appeal shall constitute approval of the decision by the City Manager or his designee.

SECTION 10: Penalty Provision. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 11: Savings/Repealing. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent prosecution from being commenced for any violation occurring prior to the repeal of the ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

SECTION 12: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 13: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

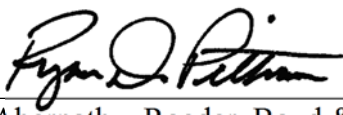
DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this _____ day of _____, 2016.

Maher Maso, Mayor

**ATTESTED AND
CORRECTLY RECORDED:**

APPROVED AS TO FORM:

Jenny Page, City Secretary



Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys

Dates of Publication: _____, *Frisco Enterprise*

Chapter 17-10.2

(s) Variances.

(1) A food establishment may apply to the director for a variance modifying or waiving the requirements of the Texas Food Establishment Rules or the requirements of this chapter. The food establishment shall apply for the variance on a form provided by the director and shall include in the application all of the information required by Subsection 229.171(c)(2) of the Texas Food Establishment Rules. The application must be accompanied by a nonrefundable application fee of:

(A) \$127 for a variance to allow dogs to be present in the outdoor patio area of a food establishment under Subsection (s)(7);

(B) \$95 for a variance to allow the preparation, cooking, and service of raw poultry, raw seafood, and non-fast-cooked food items on a mobile food preparation vehicle under Subsection (s)(8); and

(C) \$100 for all other variances applied for under this subsection.

(2) The director may grant a variance by modifying or waiving the requirements of Subchapter I, Subsections 228.243(a) through (c), of the Texas Food Establishment Rules or the requirements of this chapter if, in the opinion of the director, a health hazard or nuisance will not result from the variance.

(3) If a variance is granted, the director shall retain in its records for the food establishment the information provided by the applicant under Subchapter I, Subsection 228.243(b), of the Texas Food Establishment Rules. A food establishment granted a variance shall comply with Subchapter I, Subsection 228.243(c), of the Texas Food Establishment Rules and any conditions or standards for the variance established by the director or this chapter.

(4) A variance granted under this section is nontransferable. The variance expires two years after the date it is granted by the director, unless it is sooner revoked by the director or terminated by the food establishment. A variance may be renewed through the application process set forth in Paragraph (1) of this subsection.

(5) The director shall deny or revoke a variance under this section if:

(A) the food establishment made a false statement as to a material matter on or in connection with the request for the variance or on or in connection with the permit application for the food establishment;

(B) the food establishment does not hold a valid permit issued under this chapter;

(C) the director determines that a health hazard or nuisance will result or has resulted from the variance;

(D) the food establishment failed to pay a fee required under this chapter at the time it was due; or

(E) the food establishment is in violation of any term or condition of the variance as established by the director, this chapter, or state law.

(6) If the director denies or revokes a variance, the director shall notify the applicant in writing by personal service or regular United States mail. The notice must include the reasons for the denial or revocation and a statement informing the applicant of the right to appeal the decision in accordance with Subsection (q) of this section.

(7) If, pursuant to this section, the director grants a variance to Subchapter F, Subsection 228.186(o), of the Texas Food Establishment Rules (which prohibits animals on the premises of a food establishment) to allow dogs to be present in the outdoor patio area of a food establishment, then the food establishment shall comply with the following conditions and standards in addition to any other conditions and standards established by the director for the variance:

(A) Except as allowed under Subchapter F, Subsection 228.186(o), of the Texas Food Establishment Rules, no dog may be present inside the food establishment or on any playground area of the food establishment.

(B) A separate entrance must be provided from the outside of the food establishment to the outdoor patio so that a dog will have direct access to the patio without entering the interior of the food establishment or any playground area of the food establishment. A dog on an outdoor patio may not be allowed within seven feet of any entrance to the interior of the food establishment, except when necessary to enter or exit the patio.

(C) [eff. 9-1-16] A sign must be posted at the front entrance of the food establishment and on the outdoor patio so that it is easily visible to the public. The sign must state: "DOG FRIENDLY PATIO - DOG ACCESS ONLY THROUGH OUTDOOR PATIO. FOR COMPLAINTS RELATED TO THE DOG FRIENDLY PATIO, CALL 311." Signs must be:

- (i) no smaller than 9-1/2 inches long by 12 inches wide;
- (ii) printed in English and Spanish with bolded lettering at least 36 inches high in contrasting colors; and
- (iii) displayed in a landscape orientation.

(D) Doors equipped with self-closing devices must be provided at all entrances to the outdoor patio from the interior of the food establishment.

(E) No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio area, except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment.

(F) The outdoor patio must be continuously maintained free of visible dog hair, dog dander, and other dog-related waste or debris. The outdoor patio must be hosed down or mopped with animal friendly chemicals at the beginning of each shift during which food or beverages will be served (breakfast, lunch, dinner, or late-hours), or, if a food establishment has continuous food or beverage service without designated shifts, then every six hours that the establishment is open for business, except that cleaning under this subparagraph is not required if no dog has been

present on the outdoor patio since the last cleaning. Waste created from a dog's bodily functions must be cleaned up with animal friendly chemicals within five minutes after each occurrence. All dog waste must be disposed of outside of the food establishment in an appropriate waste receptacle. Equipment used to clean the outdoor patio must be kept outside of the food establishment. A food establishment must maintain a log of the cleaning schedule of the dog friendly patio and make the log available to the director for inspection upon request.

(G) While on duty, wait staff or other food handlers at the food establishment may not pet or have contact with any dog.

(H) A dog must be kept on a leash and remain in the control of the customer while in the outdoor patio area. The dog must be wearing a collar or harness with a current rabies tag attached to it.

(I) A dog is not allowed on a seat, table, countertop, or similar surface in the outdoor patio area.

(J) A dog is not allowed to have contact with any dishes or utensils used for food service or preparation at the food establishment.

(K) A dog may not be given any food (including, but not limited to, dog kibble, biscuits, and edible treats) while in the outdoor patio area, but may be given water in a disposable container.

(8) If, pursuant to this section, the director grants a variance to Section 17-8.2(h)(2)(C) of this chapter (which allows only fast-cooked food items to be prepared on a mobile food preparation vehicle and prohibits raw poultry or raw seafood from being prepared or cooked on the vehicle) to allow raw poultry, raw seafood, and non-fast-cooked food items to be prepared, cooked, and served from a mobile food preparation vehicle, then the food establishment shall comply with the following conditions and standards in addition to any other conditions and standards established by the director for the variance:

(A) The applicant must submit to the director detailed plans regarding the preparation, cooking, and service of the raw poultry, raw seafood, and non-fast-cooked food items on the mobile food preparation vehicle. The plans must include all of the following information:

(i) A description of the raw poultry, raw seafood, and non-fast-cooked food items and how they will be prepared, cooked, and served.

(ii) Details of how the raw poultry, raw seafood, and non-fast-cooked food items will be stored on the vehicle.

(iii) Any other information or documentation the director deems necessary to determine whether or not a health hazard or nuisance will result from granting the variance.

(B) The food establishment must not have committed more than a total of three violations of this chapter or the Texas Food Establishment Rules within the preceding 12-month period that involved any mobile food preparation vehicle or fixed food facility operated by the food establishment, regardless of whether such violations were committed by an owner, officer, operator, manager, other person in charge, or employee of the food establishment.

(C) The food establishment must not have had any confirmed foodborne illnesses at any of its locations within the preceding 24 months.

(D) The food establishment must not have scored less than 80 on two separate graded food inspections within the preceding 24 months.

(E) Cutting of raw poultry or raw seafood is prohibited on a mobile food preparation vehicle, except for seafood intended to be consumed raw.

(9) An owner, officer, manager, or other person in charge of a food establishment commits an offense if he, either personally or through an employee or agent, violates, allows a violation of, or fails to comply with a term or condition of a variance granted under this section. (Ord. Nos. 26023; 26134; 26556; 26598; 27190; 27353; 27695; 28046; 28488; 29177; [30134](#), eff. 7-1-16)

Sec. 9-79. - Variance for dogs on premises of a food establishment.

- (1) A food establishment with an outdoor patio under its exclusive ownership or control may apply to the regulatory authority for a variance modifying or waiving the prohibition against dogs on the premises of a food establishment contained in subsection 9-78(f)(1) of this Code, and Section 229.167(p)(15) of the TFER. The food establishment shall apply for the variance on a form provided by the regulatory authority and shall include in the application all of the information required by Section 229.171(c)(2) of the TFER. The application shall be accompanied by a nonrefundable variance application fee.
- (2) The regulatory authority may grant a variance, as authorized in subsection 9-108(c) of this chapter and Section 229.171(c) of the TFER, by modifying or waiving the requirements of the TFER or the requirements of subsection 9-78(f)(1) of this Code.
- (3) A food establishment granted a variance shall comply with any conditions or standards for the variance established by the regulatory authority or this chapter.
- (4) A variance granted under this section is nontransferable. The variance shall expire two (2) years after the date it is granted by the regulatory authority, unless it is sooner revoked by the regulatory authority or terminated by the food establishment. A variance may be renewed through the application process set forth in paragraph (1) of this section.
- (5) The regulatory authority shall deny or revoke a variance if:
 - (A) The application for variance contains a false statement as to a material matter;
 - (B) The food establishment does not hold a valid permit issued under this chapter;
 - (C) The regulatory authority determines that a health hazard or nuisance will result or has resulted from the variance;
 - (D) The food establishment failed to pay a fee required under this chapter at the time it was due; or
 - (E) The food establishment is in violation of any term or condition of the variance as established by the regulatory authority, this chapter, or state law.
- (6) If the regulatory authority denies or revokes a variance, the regulatory authority shall notify the applicant in writing by personal service or regular United States mail. The notice must include the reasons for the denial or revocation and a statement informing the applicant of the right to appeal the decision in accordance with section 9-115 of this chapter.
- (7) If the regulatory authority grants a variance to subsection 9-78(f)(1) of this chapter allowing dogs to be present in the outdoor patio area of a food establishment, then the food establishment shall comply with the following conditions and standards in addition to any other conditions and standards established by the regulatory authority for the variance under the authority of Section 229.171(b)(1) of the TFER:
 - (A) Except as allowed under subsection 9-78(f)(2) of this chapter, no dog may be present inside the food establishment or on any playground area of the food establishment.
 - (B)

A separate entrance must be provided from the outside of the food establishment to the outdoor patio so that a dog will have direct access to the patio without entering the interior of the food establishment or any playground area of the food establishment. A dog may not be allowed within seven (7) feet of any entrance to the interior of the food establishment, except when necessary to enter or exit the patio.

- (C) A sign must be posted at the front entrance of the food establishment so that it is easily visible to the public. The sign must state: "DOG FRIENDLY PATIO - DOG ACCESS ONLY THROUGH OUTDOOR PATIO."
- (D) Doors equipped with self-closing devices must be provided at all entrances to the outdoor patio from the interior of the food establishment, and must be kept closed when not in use.
- (E) No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio area, except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment.
- (F) The outdoor patio must be continuously maintained free of visible dog hair, dog dander, and other dog-related waste or debris. The outdoor patio must be hosed down or mopped with a product approved under section 9-77 of this Code at the beginning of each shift during which food or beverages will be served (breakfast, lunch, dinner, or late-hours), except that cleaning under this subparagraph is not required if no dog has been present on the outdoor patio since the last cleaning.
- (G)
 - (a) All table and chair surfaces shall be non-porous, easily cleanable material and cleaned and sanitized with a product approved under section 9-77 of this Code.
 - (b) Spilled food and drink shall be removed from the floor or ground within five (5) minutes of the spill.
- (H) Waste created from a dog's bodily functions must be cleaned up with a product approved under section 9-77 of this Code within five (5) minutes after each occurrence. All dog waste must be disposed of outside of the food establishment in an appropriate waste receptacle. Equipment used to clean the outdoor patio must be kept outside of the food establishment.
- (I) While on duty, wait staff or other food handlers at the food establishment may not pet or have contact with any dog.
- (J) A card, sign, or other effective means of notification shall be displayed to notify patrons in the outdoor patio area that they should wash their hands before eating.
- (K) A dog must be kept on a leash, or in a secure bag or container specifically designed to carry and provide continuous restraint of dogs while providing adequate ventilation, and remain under continuous physical control of the customer while in the outdoor patio area. The dog must be wearing a collar or harness with a current rabies tag attached to it.
- (L) A dog is not allowed on a seat, table, countertop, or similar surface in the outdoor patio area.
- (M)

A dog is not allowed to have contact with any dishes or utensils used for food service or preparation at the food establishment.

- (N) A dog may not be given any food (including, but not limited to, dog kibble, biscuits, and edible treats) while in the outdoor patio area, but may be given water in a disposable container.
 - (O) The food establishment shall maintain written procedures to notify the City of Plano's Animal Services Division of any local rabies control incident as required by section 4-93 of this Code, or any other incident in which two (2) or more dogs are involved in any sort of altercation where they physically come into contact with each other, regardless of whether any of the animals are injured.
- (Ord. No. 2013-12-10, § I, 12-17-13)