

**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

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BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

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

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney