

CITY OF THE COLONY, TEXAS

ORDINANCE NO. 2016-2222

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AMENDING THE CODE OF ORDINANCES, CHAPTER 5, ARTICLE I, BY ADDING A NEW SUBSECTION 5-4(I), ENTITLED “ANIMALS PROHIBITED IN ESTABLISHMENTS SELLING FOOD,” PROHIBITING ANIMALS OTHER THAN SERVICE ANIMALS IN ESTABLISHMENTS SELLING FOOD, AND ESTABLISHING EXCEPTIONS TO THE GENERAL PROHIBITION; AMENDING CHAPTER 6, ARTICLE VI, BY ADDING A NEW SECTION 6-170, ENTITLED “VARIANCE FOR DOGS ON PREMISES OF A FOOD ESTABLISHMENT,” BY ESTABLISHING A VARIANCE PROCEDURE TO THE GENERAL PROHIBITION OF ANIMALS AT FOOD ESTABLISHMENTS; AUTHORIZING THE FOOD AUTHORITY TO GRANT VARIANCES; AUTHORIZING THE FOOD AUTHORITY TO DENY OR REVOKE A VARIANCE; AUTHORIZING THE FOOD AUTHORITY TO GRANT VARIANCES TO FOOD ESTABLISHMENTS TO ALLOW DOGS ON PATIOS OF FOOD ESTABLISHMENTS; ESTABLISHING STANDARDS AND CONDITIONS FOR FOOD ESTABLISHMENTS; ESTABLISHING SIGNAGE REQUIREMENTS FOR FOOD ESTABLISHMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500) FOR EACH AND EVERY OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Title 25, Part 1, Chapter 228, Subchapter F, Section 228.186(o) of the Texas Administrative Code generally prohibits live animals on the premises of a food establishment;” and

WHEREAS, Title 25, Part 1, Chapter 228, Subchapter I, Section 228.243 of the Texas Administrative Code provides the authority for the City of The Colony, Texas, to grant a variance by modifying or waiving the requirements provide in the Texas Administrative Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance; and

WHEREAS, the City Council of the City of The Colony, Texas, finds and determines that a health hazard or nuisance will not result from the granting of variances consistent with this Ordinance, further that the following regulation is necessary in order to protect public health, safety, and welfare of the citizens of the City of The Colony, Texas.

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

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

SECTION 2. That the Code of Ordinances of the City of The Colony, Texas be, and the same is, hereby amended by amending Chapter 5, Article I, Section 5-4, entitled “Animal provisions generally,” by adding a new subsection (i) which shall read as follows:

Sec. 5-4. – Animal provisions generally.

...

“(i) *Animals prohibited in establishments selling food.* It shall be unlawful for any person to allow any animal, other than a dog that is an assistance animal, to enter or remain inside any establishment in the city where food is served or sold.

- (1) Exceptions: as provided by title 25 of the Texas Administrative Code, Section 228.44(a), as amended or pursuant to a variance granted pursuant to section 6-170 of this Code.”

SECTION 3. That the Code of Ordinances of the City of The Colony, Texas be, and the same is, hereby amended by amending Chapter 6, Article VI, entitled “Food and Food Establishments,” by adding a new section 6-170, entitled “Variance for dogs on premises of a food establishment,” which shall read as follows:

“Section 6-170.- Variance for dogs on premises of a food establishment.

- (a) A food establishment with an outdoor patio under its exclusive ownership or control may apply to the health authority for a variance modifying or waiving the prohibition against dogs on the premises of a food establishment contained in section 5-4(i) of this Code, and Section 228.186(o) of the Texas Food Establishment Rules (“TFER”). The food establishment shall apply for the variance on a form provided by the health authority and shall include in the application all of the information required by Section 228.186(o) of the TFER. The application shall be accompanied by a nonrefundable variance application fee per the fee schedule.
- (b) The health authority may grant a variance, as authorized in section 5-4 (i) of this Code and Section 228.243 of the TFER, by modifying or waiving the requirements of TFER or the requirements of section 5-4(i) of this Code.
- (c) A food establishment granted a variance shall comply with any conditions or standards for the variance established by the health authority or this chapter.
- (d) A variance granted under this section is nontransferable. The variance shall expire December 31st of each year once it is granted by the health authority, unless it is revoked by the health authority or terminated by the food establishment. A variance may be renewed through the application process in conjunction with annual health permits.

- (e) The health authority shall deny or revoke a variance if:
 - (1) The application for variance contains a false statement as to a material matter;
 - (2) The food establishment does not hold a valid permit issued under this chapter;
 - (3) The health authority determines that a health hazard or nuisance will result or has resulted from the variance;
 - (4) The food establishment failed to pay fee(s) required at the time it was due; or
 - (5) The food establishment is in violation of any term or condition of the variance as established by the health authority, this chapter, or state law.
- (f) If the health authority denies or revokes a variance, the health 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 6-142 of this article.
- (g) If the health authority grants a variance 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 health authority for the variance under the authority of Section 228.243 of the TFER:
 - (1) Except as allowed under section 5-4 of this Code, no dog may be present inside the food establishment or on any playground area 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 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 feet (7') of any entrance to the interior of the food establishment, except when necessary to enter or exit the patio.
 - (3) 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."
 - (4) 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.
 - (5) 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.

- (6) 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 an approved product 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.
- (7)
 - (A) All table and chair surfaces shall be non-porous, easily cleanable material and cleaned and sanitized with an approved product.
 - (B) Spilled food and drink shall be removed from the floor or ground within five (5) minutes of the spill.
- (8) Waste created from a dog's bodily functions must be cleaned up with an approved product 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.
- (9) While on duty, wait staff or other food handlers at the food establishment may not pet or have contact with any dog.
- (10) 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.
- (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 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.
- (12) A dog is not allowed on a seat, table, countertop, or similar surface in the outdoor patio area.
- (13) A dog is not allowed to have contact with any 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 maintain written procedures to notify the City of The Colony Animal Services Division of any local rabies control incident as required by section 5-13 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.”

SECTION 4. If any section, article paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any persons or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 5. That all provisions of the Ordinances of the City of The Colony, Texas, in conflict with the provisions of this ordinance be, and the same are hereby amended, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 6. Any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of The Colony, Texas, shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense. Every day a violation occurs shall constitute a separate offense.

SECTION 7. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, THIS 5th day of July, 2016.

/s/Joe McCourry, Mayor

ATTEST:

/s/Tina Stewart, Interim City Secretary

APPROVED AS TO FORM:

/s/Jeff Moore, City Attorney