

ORDINANCE NO. 2015-27

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING ARTICLE 3 OF CHAPTER 18 OF THE SAN MARCOS CITY CODE BY ADDING SECTION 18.095 TO CREATE A VARIANCE PROCESS AUTHORIZING FOOD ESTABLISHMENTS TO ALLOW DOGS IN OUTDOOR DINING AREAS PURSUANT TO TITLE 25, SECTION 229.171(C) OF THE TEXAS ADMINISTRATIVE CODE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Article 3, Food Establishments and Food Vending Machines, of Chapter 18, Businesses, of the San Marcos City Code is hereby amended by adding Section 18.095 to read as follows:

Sec. 18.095. Variance for food establishments seeking to permit dogs in outdoor eating areas.

- (a) A food establishment may apply for a variance waiving the prohibition against dogs at a food establishment as permitted by Section 229.171(c) of the Texas Food Establishment Rules. The variance will be granted if the City Environmental Health Division determines a health hazard or nuisance will not result from the granting of the variance. The food establishment must submit an application for a variance on a form provided by the City Environmental Health Division and pay a nonrefundable application fee of two hundred (\$200.00) dollars. A variance granted under this section is nontransferable and shall be reviewed biannually in accordance with City Code Section 18.092.
- (b) The City Environmental Health Division may grant a variance pursuant to this section and Section 229.171(c) of the Texas Food Establishment Rules, to allow dogs on the premises of a food establishment's outdoor patio area, only in accordance with the following standards and conditions intended to prevent a health hazard or nuisance:
 - (1) Except as allowed under Section 229.167(p)(15) of the Texas Food Establishment Rules, no dog may enter or 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 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;

- (3) Signage provided by the City Environmental Health Division must be posted at the front entrance and at the separate entrance to the outdoor patio area of the food establishment to be easily visible to the public. The signage at the front entrance must read: DOG FRIENDLY PATIO (with an arrow showing the direction to the patio entrance) DOG ACCESS ONLY THROUGH OUTDOOR PATIO. Signage to the outdoor patio area must read: DOG ACCESS.
- (4) Doors equipped with self-closing devices must be provided at all entrances to the outdoor patio from the interior of the food establishment;
- (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 food establishment shall have hand sanitizer available at or near all entrances and exits to the establishment;
- (7) 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 subsection 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;
- (8) While on duty, wait staff or other food handlers at the food establishment, may not pet or have contact with any dog;
- (9) A dog must be kept on a leash and remain in the control of the owner while in the outdoor patio area. The dog must be currently vaccinated for rabies and wear a collar or harness with a current rabies tag attached to it;
- (10) A dog is not allowed on a seat, table, countertop, or similar surface in the outdoor patio area;

- (11) A dog is not allowed to have contact with any dish, utensil, tableware, linen, paper product, or any other item used for food service;
 - (12) 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 or from a container provided by the owner; and,
 - (13) The food establishment must maintain written procedures to notify City Animal Services of any rabies control incidents, or any other incident involving any sort of altercation between two or more dogs where the dogs come into physical contact.
- (c) 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.
- (d) A food establishment granted a variance under this section shall comply with all other applicable Texas Food Establishment Rules and the provisions of this chapter.
- (e) The city may deny or revoke a variance under this section if the food establishment is in violation of any term or condition of the variance as established by this section or state law. The process established in Section 18.090 for the revocation of a food establishment permit will be followed when it is determined a violation of this section has occurred.

SECTION 2. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on August 4, 2015.

PASSED, APPROVED AND ADOPTED on second reading on August 18, 2015.

Daniel Guerrero
Mayor

Attest:

Approved:

Jamie Lee Pettijohn
City Clerk

Michael J. Cosentino
City Attorney