

ORDINANCE NO. 2094

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS AMENDING CHAPTER 42, ARTICLE I, "FOOD ESTABLISHMENTS," OF THE CITY OF EULESS CODE OF ORDINANCES BY ADDING SECTION 42-23 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; AND AMENDING CHAPTER 30, "FEES" OF THE CITY OF EULESS CODE OF ORDINANCES; PROVIDING FOR A FEE FOR VARIANCE APPLICATION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVING CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City Council has conducted a public hearing on November 10, 2015, and has determined that the proposed change is in the best interest of the general welfare of the City of Euless and that any foreseeable negative impacts of the proposed change to the Code of Ordinances may be mitigated through the design of such applied variances and conditions.

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

SECTION 1.

Section 42.23 "Variance for food establishments seeking to permit dogs in outdoor eating areas." be added to Chapter 42, Article I, "Food Establishments" as follows:

Sec. 42-23 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 Manager or their designee 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 Manager or their designee and pay a nonrefundable fee as established within Chapter 30 "Fees." A variance granted under this section is nontransferable and shall be reviewed biannually along with any permit granted under Section 42-9.

(b) The City Manager or their designee 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 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) Wait staff or other food handlers may not directly serve a dog any food (including, but not limited to, dog kibble, biscuits, and edible treats) while in the outdoor patio area, but may provide water in a disposable container or in a container provided by the owner; and
 - 13) The food establishment must maintain written procedures to notify the Animal Control Division of Public Works 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 they, 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.

SECTION 2.

Section 30-19 "Food and food service establishments" be amended by the addition of the following:

Food establishment variance for waiving of rules under Section 229.171(c) of the Texas Food Establishment Rules: \$100.00.

SECTION 3.

CUMULATIVE CLAUSE. This Ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Euless, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 4.

SEVERABILITY CLAUSE. It is hereby declared to be the intention of the City Council of the City of Euless that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase.

SECTION 5.

SAVINGS CLAUSE. Chapter 82 of the Code of Ordinances, City of Euless, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6.

PENALTY FOR VIOLATION. Any person, firm, or corporation violating any of the terms and provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1, "General Provisions," Section 1-12, "General Penalty," Euless Code of Ordinances. Each such violation shall be deemed a separate offense and shall be punishable as such hereunder.

SECTION 7.

PUBLICATION CLAUSE. The City Secretary of the City of Euless is hereby directed to publish the caption, penalty clause and effective date of this ordinance in the official newspaper of the City of Euless, as required by Section 12 of Article II of the Charter of the City of Euless.

SECTION 8.

EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage, as provided by the Euless City Charter and the laws of the State of Texas.

PRESENTED AND PASSED ON FIRST AND FINAL READING at a regular meeting of the Euless City Council on November 10, 2015, by a vote of ____ayes, ____nays, and ____abstentions.

APPROVED:

APPROVED AS TO FORM:

Linda Martin, Mayor

Wayne K. Olson, City Attorney

ATTEST:

Kim Sutter, TRMC, City Secretary