

AN ORDINANCE 2010-12-09-1025

**AMENDING CHAPTER 13 OF THE SAN ANTONIO CITY CODE ENTITLED "FOOD AND FOOD HANDLERS" TO PROVIDE FOR A VARIANCE PROCESS FOR FOOD ESTABLISHMENTS SEEKING TO PERMIT DOGS IN OUTDOOR EATING AREAS; ESTABLISHING RELATED FEES; PROVIDING FOR PENALTY AND PUBLICATION; AND AUTHORIZING THE WAIVER OF THE INITIAL PERMIT APPLICATION FEES FOR PILOT PROGRAM FOOD ESTABLISHMENTS.**

\* \* \* \* \*

**WHEREAS**, a Council Consideration Request initiated by District 10 Councilman John G. Clamp requested staff to prepare all available alternatives and costs associated with instituting optional dog-friendly dining areas for restaurants in San Antonio; and

**WHEREAS**, the San Antonio Metropolitan Health District (Metro Health) researched the issue and presented information to the Governance Committee on September 16, 2009, and the Quality of Life Committee on November 10, 2009; and

**WHEREAS**, both council committees recommended that Metro Health conduct a pilot project for dog friendly outdoor dining; and

**WHEREAS**, to accommodate restaurant owners who wish to allow customers to bring their dogs to a food establishment, the City can either adopt an ordinance to allow any restaurant that meets certain criteria to allow dogs on a patio or similar outdoor dining area, or require each restaurant to apply for a variance and pay a fee to offset additional staff costs associated with consultation and inspection of the facility; and

**WHEREAS**, the San Antonio Restaurant Association indicated that it does not endorse or oppose the issue as long as it is voluntary and not required for establishment owners; and

**WHEREAS**, staff proactively reached out to numerous food establishments regarding this initiative and five chose to participate in the pilot program; and

**WHEREAS**, among the five establishments, there were no issues or concerns following implementation; and

**WHEREAS**, in order to participate, restaurants had to meet certain standards that may require reconfiguration of patio space and/or investment in minimal infrastructure; and

**WHEREAS**, since the five pilot program food establishments have implemented these standards, it is recommended the initial permit application fee be waived for the pilot program establishments; and

**WHEREAS**, therefore, given the number of restaurants that expressed interest in the pilot program but did not ultimately commit to participate, it is anticipated that additional restaurants would consider a dog friendly dining option if a permanent program is established; and

**WHEREAS**, Metro Health provided a briefing to the City Council Quality of Life Committee on October 12, 2010 to provide information on the findings of the pilot program and recommendations for future action; and

**WHEREAS**, the Quality of Life Committee recommended staff bring forward the proposed ordinance for City Council consideration; **NOW THEREFORE**:

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Chapter 13 of the San Antonio City Code, Food and Food Handlers, Article III., Food Establishments, is amended to add the following section as follows:

**Section 13-44. Variance for establishments seeking to permit dogs in outdoor eating areas.**

(a) A food establishment may apply to the Director for a variance of section 229.167(p)(15) of the Texas Food Establishment Rules pursuant to section 229.171(c) of the Texas Food Establishment Rules and this section. The application must be accompanied by a nonrefundable application fee of two hundred (\$200.00) dollars. A variance granted under this section is nontransferable and shall expire one year after the date it is granted by the Director, unless sooner revoked by the Director or terminated by the food establishment. A variance may be renewed annually by a food establishment upon payment of an annual fee of fifty (\$50.00) dollars.

(b) If pursuant to this section and the Texas Food Establishment Rules section 229.171(c), the Director grants a variance to Section 229.167(p)(15) 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, 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:

- (1) Except as allowed under Section 229.167 (p)(15) of the Texas Food Establishment Rules, 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 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) 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 (with an arrow showing the direction to the patio entrance) 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.
- (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 customer while in the outdoor patio area. The dog must be currently vaccinated for rabies and wearing a collar or harness with a current license 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 dishes or utensils used for food service or preparation at the food establishment.
- (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 customer.
- (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. The Director 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 the Director, this chapter or state law. The Director may also revoke the variance if thirty (30) or more demerits are assessed on two (2) consecutive food inspections to the food establishment. If the Director denies or revokes the variance, the Director shall notify the food establishment in writing with the reason(s) for the denial or revocation by personal service or regular United States mail. The food establishment may request a hearing if the request is in writing and is filed with the Director within ten (10) working days of the denial or revocation. If no request for hearing is filed within the ten-day period, the denial or revocation of the variance becomes final. If a request for hearing is filed within the ten-day period, the Director shall

MH/mgc  
12/09/10  
Item# 21

hold the hearing and render a decision in writing within ten (10) working days of receipt of the request. The decision of the Director is final.

**SECTION 2.** The Director of the San Antonio Metropolitan Health District is authorized to waive the initial application fee for the five pilot program participating food establishments.

**SECTION 3.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 4.** The City Clerk is directed to promptly publish notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

**SECTION 5.** The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

**SECTION 6.** Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 236000000012 and General Ledger 4407208.

**SECTION 7.** The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

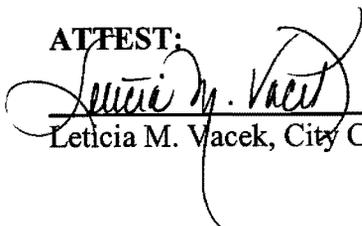
**SECTION 8.** This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

**SECTION 9.** Penalties provided for in Chapter 13 of the City Code of San Antonio, Texas shall be effective five days after publication by the City Clerk.

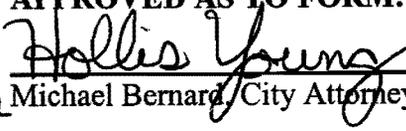
PASSED AND APPROVED this 9<sup>th</sup> day of December, 2010.

  
M A Y O R  
Julián Castro

ATTEST:

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
for Michael Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 21

|                        |  |                    |            |            |                |               |               |
|------------------------|--|--------------------|------------|------------|----------------|---------------|---------------|
| <b>Name:</b>           | 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23A, 23B, 25, 27A, 27B, 29, 30, 31, 34, 35, 36, 37, 38A, 38B, 39A, 39B, 39C, 40A, 40B, 41, 42   |                    |            |            |                |               |               |
| <b>Date:</b>           | 12/09/2010   |                    |            |            |                |               |               |
| <b>Time:</b>           | 10:12:31 AM  |                    |            |            |                |               |               |
| <b>Vote Type:</b>      | Motion to Approve  |                    |            |            |                |               |               |
| <b>Description:</b>    | An Ordinance amending Chapter 13 of the City Code entitled "Food and Food Handlers" to provide for a variance for food establishments seeking to permit dogs in outdoor eating areas; establishing related fees; and providing for a penalty and publication. [Sharon De La Garza, Assistant City Manager; Dr. Fernando A. Guerra, Director, Health] |                    |            |            |                |               |               |
| <b>Result:</b>         | Passed   |                    |            |            |                |               |               |
| <b>Voter</b>           | <b>Group</b>   | <b>Not Present</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Motion</b> | <b>Second</b> |
| Julián Castro          | Mayor  |                    | x          |            |                |               |               |
| Mary Alice P. Cisneros | District 1   |                    | x          |            |                |               |               |
| Ivy R. Taylor          | District 2   |                    | x          |            |                |               |               |
| Jennifer V. Ramos      | District 3   |                    | x          |            |                |               |               |
| Philip A. Cortez       | District 4   |                    | x          |            |                |               |               |
| David Medina Jr.       | District 5   |                    | x          |            |                |               |               |
| Ray Lopez              | District 6   | x                  |            |            |                |               |               |
| Justin Rodriguez       | District 7   |                    | x          |            |                |               |               |
| W. Reed Williams       | District 8   |                    | x          |            |                |               | x             |
| Elisa Chan             | District 9   |                    | x          |            |                |               |               |
| John G. Clamp          | District 10  |                    | x          |            |                | x             |               |