

**ORDINANCE NO. 46-2018**

**AN ORDINANCE AMENDING CHAPTER 11, ARTICLE I OF THE CODE OF THE CITY OF ABILENE BY AMENDING THE ARTICLE AS SET OUT BELOW, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.**

**WHEREAS**, Chapter 11 of the Abilene Code of Ordinances regulates food and food handlers operating within the City of Abilene; and

**WHEREAS**, Chapter 11 adopts the Texas Food Establishment Rules (“TFER”), as amended, found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments; and

**WHEREAS**, the TFER generally prohibit animals, including dogs, from entering the premises of a food establishment; and

**WHEREAS**, the TFER provide a process whereby a regulatory authority may grant a variance to the rules by modifying or waiving the requirements of the rules if in the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance.

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

- PART 1:** That Chapter 11, “Food and Food Handlers”, of the Code of Ordinances of the City of Abilene, Texas, is hereby amended by adding a new Section 11-5 to read as set out in Exhibit A, attached and made a part of this ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.


**PASSED ON FIRST READING this 9<sup>th</sup> day of August, 2018.**

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19<sup>th</sup> day of August, 2018, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 4:30 p.m. on the 23<sup>rd</sup> day of August, 2018, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON SECOND AND FINAL READING this 23<sup>rd</sup> day of August, 2018.**

ATTEST:

  
\_\_\_\_\_  
Rosa Rios, City Secretary

  
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Kyle McAlister, Mayor Pro-tem

APPROVED:

  
\_\_\_\_\_  
Stanley Smith, City Attorney

**Ordinance No. 46-2018**

**EXHIBIT "A"**

**Sec. 11-5**

“Notwithstanding anything to the contrary herein, a food establishment with an outdoor patio may allow dogs to be present in the outdoor patio of the food establishment if the food establishment obtains from the regulatory authority a variance waiving the prohibition against allowing a dog on the premises of the food establishment and complies with the following conditions and standards:

(a) Except as allowed under 228.186(o)(2) of the Texas Food Establishment Rules (TFER), 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.

(b) The term “outdoor patio” means an outdoor service area that is:

- (i) under the exclusive ownership or control of a food establishment;
- (ii) attached or adjacent to the food establishment; and
- (iii) separated from the public areas with a barrier.

A public sidewalk is not considered an “outdoor patio” for the purposes of a variance referenced in this section.

(c) 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 outdoor 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 of any entrance to the interior of the food establishment, except when necessary to enter or exit the outdoor patio.

(d) An approved sign shall be posted at the front or each entrance of the food establishment and at each outdoor patio entrance so that it is easily visible to the public. The sign must state in clearly visible type, in English and Spanish, “DOG FRIENDLY PATIO: DOG ACCESS ONLY THROUGH OUTDOOR PATIO. – PATIO APTO PARA PERROS – ACCESO DE PERROS SOLAMENTE POR EL PATIO EXTERIOR.” and “To report a dog incident, please contact Abilene Animal Services - Para reporter algun incidente de perros, favor de comunicarse con el departamento de animals, Abilene Animal Services.”

(e) 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.

(f) No food preparation may be performed in the outdoor patio area, except that a beverage glass may be filled on the outdoor patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment.

(g) The outdoor patio must be maintained to be free of visible dog hair, dog dander, and other dog-related waste or debris.

(h) All table and chair surfaces must be easily cleanable, non-absorbent material and cleaned and sanitized with a product approved under the TFER. Spilled food and drink must be removed from the floor or ground within five minutes of the spill.

(i) Waste resulting from a dog's bodily functions must be cleaned up with a product approved under the TFER within five minutes of each occurrence of the emission of such waste. All dog waste must be disposed of outside of the food establishment and outside of any outdoor patio in an appropriate waste receptacle. Equipment used to clean the outdoor patio must be kept outside of the food establishment.

(j) While on duty, wait staff and other food handlers at the food establishment may not pet or otherwise come into contact with any dog located on the premises of the food establishment.

(k) Dogs shall not be allowed on a seat, table, countertop, or similar surface in the outdoor patio. Dogs shall also not be allowed in a patron's lap while in the outdoor patio.

(l) A dog may not have contact with any dishes or utensils used for food service or preparation at the food establishment. A dog may not be given food, but may be given water in a disposable container.

(m) The food establishment shall notify and maintain written procedures to notify the Animal Services Director of any local rabies control incident, or any other incident as described under Chapter 6-61 of the Abilene Code of Ordinances. All dogs must be wearing a collar or harness with a clearly visible and current rabies tag. While in the outdoor patio, all dogs must be under the control of the owner by a leash, or at heel beside a competent person and obedient to that person's command.

(n) The flooring of the outdoor patio where dogs are permitted must be constructed of non-porous, approved material and have no covering that would inhibit cleaning.

(o) A food establishment shall not permit dogs to be present in the outdoor patio of the food establishment if:

(i) the administrator determines that a health hazard or nuisance will or has resulted, or

(ii) the administrator determines that the food establishment is in violation of this title or state law.

Any food establishment that allows dogs on its premises without a variance is in violation of this ordinance. The owner or operator of a food establishment with an outdoor patio may apply to the administrator for a variance waiving the prohibition against allowing dogs on the premises of a food establishment.

The applicant must provide a completed application on a form provided by the administrator and the application must be approved before a variance is granted. An inspection must be performed by the administrator to ensure that the food establishment complies with the conditions and standards set forth in this title and state law.

A variance granted under this section is nontransferable and shall expire two (2) years after the date it is granted, unless sooner revoked or terminated by the regulatory authority for noncompliance with this section. A variance that is revoked or terminated may not be reinstated for a time period of twelve (12) months from the date of revocation or termination. A variance may be renewed by completing the application process previously described.

An application for variance may be denied if the administrator finds that a health hazard or nuisance will result from the variance or the applicant is not in compliance with this section or the requirements of state law. If the administrator revokes or denies a variance, the administrator shall notify the applicant in writing, explaining the reasons for the revocation or denial.”