

**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 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.