ORDINANCE NO. 3675

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARROLLTON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING TITLE XI, CHAPTER 116, RESTAURANTS AND FOOD ESTABLISHMENTS, BY ESTABLISHING A NEW SUBCHAPTER TO BE ENTITLED REGULATIONS REGARDING DOGS ON THE PREMISES OF A FOOD ESTABLISHMENT IN THE TRANSIT CENTER DISTRICT; ESTABLISHING THE PURPOSE AND SCOPE; ESTABLISHING REQUIREMENTS GOVERNING THE PERMITTING, OPERATIONS AND MAINTENANCE OF FOOD ESTABLISHMENTS WITH DOGS ON THE PREMISES; AMENDING TITLE III, CHAPTER 31, THE COMPREHENSIVE FEE SCHEDULE OF THE CODE OF ORDINANCES OF THE CITY REGARDING A VARIANCE FEE RELATED TO DOGS ON FOOD ESTABLISHMENT PREMISES; PROVIDING FOR A PENALTY UP TO $2000 PER DAY; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND, PROVIDING FOR AN EFFECTIVE DATE ON AND AFTER ITS ADOPTION AND PUBLICATION.

WHEREAS, the City of Carrollton, Texas (the "City") is a Home Rule municipality possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, Section 54.004 of the Texas Local Government Code provides that a home rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

WHEREAS, Section 229.171(c)(1) of the Texas Food Establishment Rules (TFER) provides that the regulatory authority may grant a variance from TFER by modifying the TFER requirements if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance; and,

WHEREAS, the City Council desires to enact an ordinance which regulates the permitting, operations and maintenance of food establishments with dogs on their premises as part of a Development Plan in the Transit Center District to accommodate the unique character of the community development in the area; and,

WHEREAS, the City Council finds that it is necessary and proper for the good government, health and safety of the City to adopt regulations relating to dogs on the premises of food establishments in order to prevent zoonotic diseases, to reduce the risk of injury to both humans and animals, and to provide for a safe recreational experience by the public;

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

SECTION 1

The above and foregoing premises are found to be true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2

The Code of Ordinances of the City of Carrollton Title XI, Chapter 116, Restaurants and Food Establishments is hereby amended to add Sections 116.70 to 116.76, relative to Regulations Regarding Dogs on Food Establishment Premises in the Transit Center District, to read as follows:

"REGULATIONS REGARDING DOGS ON THE PREMISES OF FOOD ESTABLISHMENTS LOCATED IN THE TRANSIT CENTER DISTRICT

ARTICLE 1. IN GENERAL

Sec. 116.70. – Purpose and Scope.

(A) This subchapter is known as the City of Carrollton regulations regarding Dogs on the Premises of Food Establishments in the Transit Center district.

(B) It is the purpose of this subchapter to provide a clean, safe and healthful environment for the public through the regulation of the permitting, operations and maintenance of food establishments that have dogs on their premises.

(C) The sections in this subchapter establish the permitting standards and procedure for all food establishments in the Transit Center district that allow dogs on their premises; the operations and maintenance minimum requirements; and, penalties and remedies to achieve the public health and safety purpose of these sections.

(D) All food establishments shall comply with the Texas Food Establishment Rules, January 2006 edition, as published by the Texas Board of Health at 25 Texas Administrative Code Chapter 229, Sections 161 through 171 and 173 through 175 ("TFER"). Unless deleted, amended, expanded, or otherwise changed herein, all provisions of said rules shall be fully applicable and binding, except where City of Carrollton Code of Ordinances provides specific provisions which shall prevail over general provisions of these rules.

(E) Nothing in this chapter shall be construed to waive the City's governmental immunity from suit or from liability.

Sec. 116.71 - Administration.

The City Manager or his designee shall administer, implement, and enforce the provisions of this chapter. Any powers granted to, or duties imposed upon the City Manager, or his designee, may be delegated by him to other City personnel or authorized representatives.

ARTICLE II. VARIANCE REQUIREMENT; APPLICATION; CONDITIONS AND STANDARDS; DENIAL OR REVOCATION.

Sec. 116.72 – Variance Required.

(A) A food establishment located in the Transit Center district with an outdoor patio under its exclusive control that desires to allow dogs on its patio shall apply to the DCO for a variance modifying or waiving the prohibition against dogs on the premises of a food establishment as stated in Section 229.167(p)(15) of the TFER and in Section XVII, F of the 2012 Carrollton Food Policy Guide.

(B) Any food establishment that allows dogs on its premises without a variance is in violation of this subchapter.

(C) The variance application shall be on a form provided by the DCO and shall include in the application all of the information required under TFER Section 229.171(c)(2). The application shall be accompanied by a nonrefundable variance application fee provided under Chapter 31, Comprehensive Fee Schedule, of the Carrollton Code of Ordinances.

(D) The variance is non-transferable.

Sec. 116.73 – Conditions and Standards of the Variance.

A food establishment in the Transit Center district that is granted a variance under this subchapter shall comply with the following conditions and standards of the variance, in addition to any other conditions and standards established by the DCO as deemed necessary to protect public health and safety.

(1) The food establishment must have an outdoor patio under the exclusive control of the food establishment.

(2) Except as provided for in TFER Section 229.167(p)(15), no dog shall be present inside the food establishment or on any playground area of the food establishments. Dogs shall only be allowed in the controlled outdoor patio.

(3) 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 may not be allowed within seven (7) feet of any entrance to the interior of the food establishment, except when necessary to enter or exit the patio.

(4) A sign must be posted at all public entrances of the food establishment so that it is easily visible to the public. The sign must state in minimum four (4) inch letters: "DOG FRIENDLY PATIO - DOG ACCESS ONLY THROUGH OUTDOOR PATIO."

(5) All doors from the interior of the food establishment opening into the outdoor patio must be equipped with self-closing devices and must be kept closed when not in use.

(6) All table and chair surfaces in the outdoor patios shall be of non-porous and easily cleanable material.

(7) No food preparation, including mixing drinks or serving ice, may be conducted in the outdoor patio, except that a beverage glass may be filled from a pitcher or other container that has been filled, prepared and stored inside the food establishment.

(8) Hand sanitizer shall be made available to customers and employees in the "dog friendly" outdoor patio.

(9) 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 cleaned and sanitized at the beginning of each shift during which food or beverages will be served (breakfast, lunch, dinner, or late-hours). Cleaning under this subparagraph is not required if no dog has been present on the outdoor patio since the last cleaning.

(10) Waste from a dog's bodily functions must be cleaned up and sanitized immediately 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.

(11) While on duty, food establishment personnel may not pet or have contact with any dog.

(12) A dog must be kept on a leash, or in a secure bag or container specifically designed to carry and provide continuous restraint of dogs while providing adequate ventilation, and remain under continuous physical control of the customer while in the outdoor patio area. The dog must be wearing a collar or harness with a current rabies tag attached to it.

(13) A dog is not allowed on a seat, table, countertop, or similar surface in the outdoor patio area.

(14) A dog is not allowed to have contact with any dishes or utensils used for food service or preparation at the food establishment.

(15) 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. A dog may be given water in a disposable container.

(16) The food establishment shall report to the Carrollton Animal Services any incident of a human bite from a dog; or, any other incident in which two (2) or more dogs are involved in any type of altercation resulting in physical contact, regardless of whether any of the animals are injured.

(17) A sign which reads in minimum two (2) inch letters: "To report any unsanitary or unsafe condition, call 972-466-3333" shall be prominently displayed to inform patrons in the outdoor patio area.

Sec. 116.74 – Denial or Revocation of Variance.

(A) The DCO shall deny or revoke a variance if:

(1) The application for the variance contains a false statement as to a material matter;

(2) The food establishment is not located in the Transit Center District;

(3) The food establishment does not hold a valid food establishment health permit issued under Chapter 116, Restaurants and Food Establishment, of the Carrollton Code of Ordinances;

(4) The DCO determines that a health hazard or a public nuisance will result or has resulted from the variance;

(5) The food establishment failed to pay the variance fee at the time it was due; or,

(6) The food establishment is in violation of any term or condition of the variance as established in this chapter.

(7) If entry sought by the DCO pursuant to Section 116.75 is denied.

(B) If the DCO denies or revokes a variance under this subchapter, the regulatory authority shall notify the applicant in writing by personal service or regular United States mail. The notice must include the reasons for the denial or revocation and a statement informing the applicant of the right to appeal the decision.

(C) A food establishment whose variance under this subchapter is denied may appeal and request a hearing within ten (10) days after service of the notice of denial. Such request shall be in writing, shall specify the reasons why the variance should not be denied, and

shall be filed with the DCO. A hearing shall be conducted by the DCO within fifteen (15) days from receipt of the appeal.

ARTICLE III. AUTHORITY OF ENFORCEMENT

Sec. 116.75 – Inspections and Inspection Reports.

(A) The DCO may enter the premises of the food establishment during regular hours of operation to make an inspection as a condition to the approval of a variance application, to enforce any of the provisions of this subchapter, or whenever the DCO has probable cause to believe that a violation of this chapter exists on such premises.

(B) If entry is denied, the DCO shall have every recourse provided by law to secure entry.

(C) After the inspection, the DCO may prepare a written inspection report. Such report may specify the violations observed during the inspection and require the food establishment to comply with this subchapter by a specified time. The report shall state that failure to comply with the orders of the report may result in the issuance of criminal citations, the suspension or revocation of the variance and the exercise of all remedies allowed by law.

(D) The DCO shall furnish a copy of the inspection report to the food establishment.

Section 116.76 – Penalty.

It shall be unlawful for any person to violate any provision of this subchapter, and any such violation shall be deemed to be a misdemeanor and, upon conviction of such violation, such person shall be punished by a penalty as set forth in section 10.99 for each offense. Each and every day any such violation continues shall be deemed to constitute a separate offense."

SECTION 3.

Subsection (D) of Section 31.01, Establishment of Fees for City Services, of Chapter 31, Comprehensive Fee Schedule, of Title III, Administration, of the Carrollton Code of Ordinances is amended to include the following:

"2) Variance application fee for dogs in restaurant outside patio, non-refundable $150.00."

SECTION 4.

If any section, subsection, sentence, paragraph, clause, phrase, or provision in this Ordinance or application thereof to any person or circumstance, shall be adjudged invalid or held unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 5.

Except as herein amended, Chapter 116, Restaurants and Food Establishments, and Chapter 31, Comprehensive Fee Schedule, of the Carrollton Code of Ordinances, as amended, shall remain in full force and effect. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified, and affirmed.

SECTION 6.

This ordinance shall become and be effective on and after its adoption and publication.

DULY PASSED AND APPROVED by the City Council of the City of Carrollton, Texas, this 7th day of April, 2015.

CITY OF CARROLLTON, TEXAS

Matthew Marchant, Mayor

ATTEST:

Krystle Nelinson, City Secretary

CITY OF CARROLLTON TEXAS

APPROVED AS TO FORM:

Meredith A. Ladd
City Attorney

APPROVED AS TO CONTENT:

Scott Hudson
Environmental Services Director