

AN ORDINANCE AMENDING VARIOUS SECTIONS OF ARTICLE IV, "FOOD SERVICE ESTABLISHMENTS AND FOOD HANDLERS" OF CHAPTER 13 OF THE CODE OF ORDINANCES OF THE CITY OF WACO, TEXAS TO ADOPT THE 2015 VERSION OF THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES "TEXAS FOOD ESTABLISHMENT RULES;" CLARIFYING AND SUPPLEMENTING FOOD ESTABLISHMENT PERMITTING REQUIREMENTS, FOOD MANAGER AND FOOD HANDLER CERTIFICATION REQUIREMENTS AND APPEAL PROCEDURES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A PENALTY; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the Texas Department of State Health Services recently repealed and replaced the Texas Food Establishment Rules; and

WHEREAS, the City Council wishes to adopt the new Texas Food Establishment Rules and to clarify and supplement such rules,

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

Section 1. That Article IV, "Food Service Establishments and Food Handlers" of Chapter 13 of the Code of Ordinances of the City of Waco, Texas, shall be and is hereby amended to read as follows:

ARTICLE IV. FOOD SERVICE ESTABLISHMENTS AND FOOD HANDLERS

DIVISION 1. GENERALLY

Sec. 13-156. - Definitions.

In addition to the definitions found in the Texas Food Establishment Rules, the following words and terms, when used in this article, shall have the following meanings unless the context clearly indicates otherwise:

DSHS—Texas Department of State Health Services.

Food establishment—In addition to the definition found in the Texas Food Establishment Rules, a food establishment includes an establishment that contains more than 100 square feet of display

space of commercially prepackaged food products; or childcare centers that care for seven or more children and which prepare food for consumption by the children other than ready to eat food for snacks and drinks.

Frozen food—Food kept in a solid frozen state in cooling equipment that maintains an air temperature of zero degrees Fahrenheit or below, except for defrost cycles and brief periods of loading or unloading from the cooling equipment when the food temperature shall not exceed 41 degrees Fahrenheit.

Nonprofit organization—an organization with a 501(c)(3) exemption or an exemption as a "church" in section 170(b)(1)(A)(I) of the Internal Revenue Code.

Regulatory authority—The Waco-McLennan County Public Health District.

TCS—Time/Temperature Controlled for Safety Food as defined in the Texas Food Establishment Rules (formerly Potentially Hazardous Food).

Secs. 13-157—13-164. - Reserved.

DIVISION 2. - FOOD ESTABLISHMENTS

Sec. 13-165. - Adoption of Texas Food Establishment Rules.

For the purpose of regulating retail food service and retail food service establishments, the Texas Food Establishment Rules as currently promulgated by DSHS or as hereinafter amended, copies of which are on file with the office of the City Secretary, are hereby adopted and made a part of the Code as if fully set out herein, and the provisions thereof shall govern all matters covered therein within the city, except those provisions which may be in conflict with other provisions of this Code or state law. If any provision of this ordinance conflicts with another provision of this Code, the more stringent provision shall apply.

Sec. 13-166. - Restrictions, not proper facilities.

Food service establishments that do not have facilities for the proper cleaning and sanitizing of utensils and food equipment shall not be allowed to prepare, package or dispense any type of unpackaged food (other than raw and uncut fruits and vegetables) or any TCS food or beverage.

Sec. 13-167. - Food transportation.

All food transported or delivered from a food establishment to another place shall be protected from contamination by the use of packaging or covered containers with lids except for raw, uncut fruits and vegetables. All food and food equipment being transported shall meet the applicable requirements of the food establishment rules relating to food protection, food storage, and food temperatures. Food and food equipment may not be transported exposed or open to the elements. The compartment or area inside the vehicle that the food and food equipment is being transported in shall be kept clean, free of accumulation of dust, dirt, food particles, and any other debris. All surfaces of the compartment are to be smooth, durable, nonporous, and easily cleanable. Articles not associated with the food and food equipment being transported are not to be stored in the same compartment containing the food and food equipment.

Sec. 13-168. - Customer restroom facilities.

Restroom facilities, if provided for customers, or required to be provided by law, must meet all of the provisions of the food establishment rules for restroom, toilet, and hand wash facilities. Customers may not enter food preparation, food storage, ware washing, and security sensitive areas of the food establishment to gain access to restroom facilities.

Sec. 13-169. - Hand wash facilities.

Hand wash signs shall be posted and maintained to be easily readable at all hand wash sinks and restroom facilities used by employees of a food establishment. When hand wash facilities are not available at a bulk food display and self service area, customers, upon request, are permitted access to hand washing facilities located in employee rest rooms, provided that access to employee rest rooms do not allow customers into unauthorized areas such as food preparation, ware washing, and security sensitive areas.

Sec. 13-170. - Mobile food establishments and roadside vendors.

In addition to the requirements set forth in the Texas Food Establishment Rules, vehicles used for and as a mobile food establishment or roadside vendor shall comply with the following:

- (a) *Identification.* Each vehicle permitted as a mobile food establishment or roadside vendor shall have printed on each side of the vehicle the name of the owner or assumed name under which the owner operates, together with the owner's telephone number. That lettering shall be not less than two inches in height and not less than 5/16 stroke in width. The lettering must be maintained and legible at all times. The lettering shall be made in a permanent and durable material or manner. If faded or chipped, the lettering shall be replaced or repaired.
- (b) *Food establishment permit; availability and visibility.* A valid food establishment permit is required for each vehicle or mobile unit. The permit must be visible to customers and inspectors at all times. If a mobile food establishment operates its own central preparation facility, the central preparation facility must be permitted separately.
- (c) *Vehicle cleanliness.* All vehicles shall be reasonably free of dirt or rubbish and maintained in a clean and sanitary condition. The compartment(s) of the vehicle carrying food and food equipment and the food contact surfaces and non-food contact surfaces of the food equipment used in and with the vehicle shall be maintained and cleaned in accordance with the Texas Food Establishment Rules.
- (d) *Driver, assistant with driver; food safety certification.* Drivers and assistants with the drivers are to adhere to the same requirements as a food employee and have in their possession a valid food handler certificate. The driver is responsible for maintaining the cleanliness of the vehicle and food equipment as often as is necessary while on duty.
- (e) *Food equipment; design and temperature criteria.* Food equipment shall meet same design criteria and temperature criteria as a regular food establishment. The vehicle shall be equipped with a permanent power supply for the food equipment used for heating, cooking, cooling, refrigeration, freezing and holding of hot and cold foods. Plug in adapters to cigarette lighters are not allowed.
- (f) *Other requirements regarding mobile food establishments and roadside vendors.* Mobile food establishments and roadside vendors including snow cone stands that prepare food on the vehicle or on location must also:
 - (1) Comply with all requirements of a food establishment including hand wash and dishwashing sinks, cleaning operations, hot water and pest control.
 - (2) Must have a letter of permission from the owner of the property upon which the sales are to take place to operate from that location.

- (3) Must have a letter of permission from the owner of that property or immediately adjacent to the property for use of restroom facilities.
- (4) Comply with employee food education requirements for food handlers and food managers as appropriate.

Sec. 13-171. - Exemptions for temporary food establishments.

- (a) Provided it is operated in full compliance with the provisions of this article and the Texas Food Establishment Rules, a temporary food establishment permit is not required for events or celebrations that meet one of the following conditions:
 - (1) The event is held exclusively for specific identified participants of a specific group or membership and not open to the general public; or
 - (2) The event is operated on the physical property of a permitted food establishment by the permitted food establishment with support facilities for food services operations for use within the permitted food establishment; or
 - (3) A fund raiser for nonprofit organizations that is supervised by a certified food manager or by a minimum of two individuals with food handler's certification who must be in charge and have authority and responsibility to correct problems or violations; or
 - (4) The event provides only commercially prepackaged foods and beverages or dispensed beverages and no TCS foods or beverages; or
 - (5) The meeting, function, event, or celebration is catered from a permitted food establishment and does not require further food preparation on site; or
 - (6) A bake sale is conducted for a nonprofit organization consisting of only non-perishable foods, such as cakes and cookies, but not including pies; or
 - (7) The event provides only whole, uncut, fresh fruits and vegetables; or
 - (8) The food and beverages are provided by a mobile vendor permitted by the Regulatory Authority.

Sec. 13-172. - Reinspection fees.

If an establishment requires a reinspection for (i) failure of the establishment to provide immediate correction of inspection report items or imminent health hazards; (ii) failure to correct specific violations identified from any previous inspection; or (iii) when the total cumulative demerit values of an inspection report exceeds 30 demerits; a reinspection fee will be charged in the amount set out in the fee schedule. Failure to pay the fee to the Regulatory Authority office before the reinspection is due or within five calendar days if the reinspection is for imminent health hazard or priority item violations, is a violation of this article.

Sec. 13-173. - Employee food education.

(a) *Food establishment employees.*

- (1) A food handler certificate must be obtained by any person employed in a food establishment or child care center with duties that require the individual:
 - a. To receive, handle, prepare, cook, display, serve, dispense or store food or drink, whether the food or drink is packaged or unpackaged, TCS or non TCS; or

- b. To handle, store, or clean food equipment and rooms that contain food used in the food establishment.
- (2) Any person required to obtain a food handler certificate must do so within 30 calendar days of employment. The permit holder or person in charge of a food establishment is responsible to ensure that an individual has obtained the food handler certificate within the required time period.
 - (3) Persons not required to obtain a food handler certificate are persons whose only duty is to:
 - a. Cashier;
 - b. Assist customers in carry out of food items;
 - c. Provide direct delivery of a food order;
 - d. Assist children and infants with their foods or meals at a childcare center;
 - e. Volunteer at a temporary event or temporary fund raiser; or
 - f. Volunteer for a particular event or project no more than once a month.
 - (4) Persons possessing a food manager certification accredited by DSHS or the American National Standards Institute (“ANSI”) are not required to obtain a food handler certificate.
 - (5) Food establishments selling only prepackaged foods and that do not dispense foods and beverages are not required to have employees with food manager or food handler certificates.
 - (6) To receive a food handler certificate, a person must pay a fee and successfully complete the training class either over the Internet or in an instructor conducted class. The primary purpose of the class is to orient the individual to food establishment operations, sanitation, and employee practices. It is not a substitute for extensive training which is the responsibility of each food establishment's permit holder, manager, or supervisor.
 - (7) If a person holding a food handler certificate does not demonstrate acceptable personal hygiene, food handling, or food safety practices to the satisfaction of the Regulatory Authority, the person may be required to retake the class within seven calendar days.
 - (8) Food handler certificates must be on display in a conspicuous location at the food establishment or readily available for review by the health inspector.
 - (9) Food handler certificates are valid for two years. Renewal requirements are the same as that for the original certification.
- (b) *Food managers.*
- (1) All permanent and mobile food establishments that prepare, cook, serve, or hold TCS foods, packaged or unpackaged, shall have an individual that possesses a valid food manager certification on duty at the food establishment during the hours that the foods are handled, prepared, cooked, or served. The certified food manager shall have authority to oversee and implement procedures, requirements, instructions and other measures to provide for the safe storage, handling, preparation, and serving of all food products and food equipment.
 - (2) A person employed to serve as a food manager who does not possess a food manager certificate must acquire the certificate within 30 calendar days of employment. The food establishment permit holder or person in charge of the food establishment is responsible to ensure that the person has obtained the required certificate within that required time.

- (3) If a person holding a food manager certificate does not demonstrate acceptable personal hygiene, food handling, or food safety practices to the satisfaction of the Regulatory Authority, the person may be required to retake the class.
- (4) Certification and re-certification shall meet the criteria established by the Texas Health and Safety Code, Chapter 438, Subchapter G, and requirements established by DSHS.
- (5) A person who possesses a valid food manager certification is not required to obtain a food handler certificate.
- (6) Food establishments that provide only commercially prepackaged foods (including limited heating, dispensing, and preparing by the consumer) are not required to have a certified food manager.
- (7) A child care center is not required to have a certified food manager.

Sec. 13-174. - Jurisdictions outside of the Regulatory Authority.

Food from food establishments outside the Regulatory Authority may be sold or served within the jurisdiction of the Regulatory Authority, if such food establishments conform to the provisions of this food code and the Texas Food Establishment Rules including permitting and transportation requirements. A valid food establishment permit from the regulatory authorities in other jurisdictions where such food establishment is located must be presented to the Regulatory Authority.

Sec. 13-175. - Food establishment permit requirements (including mobile, temporary, and other).

- (a) Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the Regulatory Authority. Applications will remain valid for six months. If no permit is issued within six months, a new application and applicable fee must be submitted.
 - (1) The application must contain:
 - a. The applicant's full name;
 - b. An indication of whether such applicant is an individual, business, or a corporation;
 - c. The location and type of the proposed food establishment;
 - d. The applicable fee and the signature of the applicant.
 - (2) If the application is for a temporary food establishment, it shall also include the inclusive dates and times of the proposed operation.
 - (3) Failure to provide all information requested by the Regulatory Authority or providing false information may result in denial or revocation of the permit. An incomplete application will not be accepted.
- (b) Renewals of permits are required on an annual basis, except for temporary establishments.
 - (1) It is the responsibility of the applicant, owner, permit holder or person in charge of each food establishment to renew the permit before the expiration date of the permit.
 - (2) The renewal must include any information that has changed from that provided on the original application.
 - (3) Any owner, permit holder or person in charge may be required to cease operations or temporarily close, if found operating without a valid permit.

- (c) Prior to the approval of an initial permit or the renewal of an existing permit, the Regulatory Authority shall inspect the food establishment to determine compliance with these regulations. A permit cannot be issued or renewed if the food establishment has priority item or priority foundation item violations, imminent health hazards, or previously identified violations not corrected. A permit will not be issued, renewed or reissued if required permit fees have not been paid or if any late or delinquency fees have not been paid.
- (d) Before issuing a permit, the Regulatory Authority may require an applicant to provide plans of the food establishment prior to construction, extensive remodeling or conversion of an existing structure. The plans must indicate the proposed layout, equipment arrangement, mechanical plans, construction of materials of work areas, and the type and model of proposed fixed equipment and facilities.
- (e) The Regulatory Authority may charge and collect a fee for permits and permit renewals at the time of application in accordance with the approved fee schedule.
 - (1) Failure to submit an application with the required fee for a temporary food establishment at least five working days prior to the event or celebration will result in the assessment of a late fee double the amount of the normal fee amount.
 - (2) Food establishment application permit fees are non-transferrable and non-refundable and shall be due as follows:
 - a. Temporary Food Establishments: upon receipt;
 - b. All other Food Establishments: upon commencement of the onsite inspection.
- (f) A food establishment, except for a temporary food establishment, is not required to obtain more than one permit for each location. Food establishments operating at one location with different management or ownership or franchise are required to obtain separate permits. Permits are required for each temporary establishment at each location.
- (g) A permit shall be for a specific food establishment at a specific location. Permits are not transferable from person to person. Permits are not transferable from location to location, except for mobile and roadside food establishments.
- (h) If an application for a permit is denied, the Regulatory Authority shall send written notice to the permit applicant of the reasons for such denial. The denial may be appealed in accordance with this Article.

Sec. 13-176. - Suspension or revocation of permit.

- (a) *Suspension of permits.* A permit may be suspended temporarily by the Regulatory Authority for failure of the permit holder or person in charge of the food establishment to comply with the requirements of these regulations.
 - (1) Whenever a permit holder or person in charge of a food establishment has failed to comply with any notice issued under the provisions of these regulations, the permit holder or person in charge of the food establishment shall be notified in writing that the permit is, immediately suspended upon service of the notice and that all food service operations of the affected food establishment must immediately cease.
 - (2) Whenever the Regulatory Authority determines in its sole judgment that conditions in the operation of a food establishment constitute a substantial or imminent health hazard, the

Regulatory Authority may issue a written notice to the permit holder or person in charge of the food establishment citing such conditions, specifying the corrective actions to be taken, and, if deemed necessary, stating that the permit is suspended and that all food service operations of the affected food establishment must immediately cease.

- (3) Any permit holder or person in charge of a food establishment to whom a suspension notice is issued shall comply immediately therewith.
 - (4) The holder of a suspended permit will be provided with an opportunity for a hearing if a written request for a hearing is filed with the Regulatory Authority no later than the fifth calendar day after receipt of notice of the suspension. A request for a hearing does not relieve the permit holder of the duty to comply with the suspension fully and continuously until the date of the hearing. If a hearing is not requested as provided herein, the permit holder shall fully and continuously comply with the suspension order until the permit is reinstated.
- (b) *Reinstatement of suspended permits.* Any permit holder or person in charge of a food establishment for which the permit has been suspended, after making all corrections, may request a reinspection to be performed during normal business hours of the Regulatory Authority, for the purpose of determining if the permit shall be reinstated.
- (1) A reinspection fee in accordance with the approved fee schedule must be paid to the office of the Regulatory Authority before the reinspection will be performed.
 - (2) The Regulatory Authority will arrange a time with the permit holder or person in charge of the food establishment to perform the reinspection.
 - (3) If the permit holder or person in charge of the food establishment is found to have complied with the requirements of these regulations, the permit shall be reinstated.
- (c) *Revocation of permits.* For serious or repeated health hazards and violations of any of the requirements of these regulations, or for interference with the Regulatory Authority in the performance of its duties, the permit may be revoked.
- (1) Prior to revocation, the Regulatory Authority shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be revoked on the fifth calendar day after service of such notice, unless a written request for a hearing is filed with the Regulatory Authority by the permit holder no later than the fifth calendar day after receipt of the notice.
 - (2) A permit may be suspended pending its revocation or revocation hearing.

Sec. 13-177 Appeal of Denial, Suspension or Revocation of Permit.

(a) *Notice of Appeal.*

- (1) The initial decision and notice by an inspector to suspend or revoke a permit may be appealed to the supervisor over the inspector by giving written notice to the supervisor no later than the fifth calendar day after receipt of the written notice of the decision. The supervisor may uphold, reverse, or modify the decision of the inspector. If an appeal is not filed as provided herein, the decision of the inspector is final and no further appeal will be considered.
- (2) The initial denial of a permit, or the decision of the supervisor over the inspector following an appeal of the inspector's decision to suspend or revoke a permit as provided in (1) above, may be appealed to the Director of the Regulatory Authority by filing a written notice of appeal with the Director no later than the fifth day after receipt of written notice of the initial or appeal decision. The Director of the Regulatory Authority may uphold, reverse, or modify the decision

to deny, suspend or revoke the permit. If an appeal is not filed as provided herein, the initial or appeal decision is final and no further appeal will be considered.

- (3) The decision of the Director may be appealed to the City Manager by filing notice of the appeal with the City Manager no later than the fifth calendar day after receipt of written notice of the Director's decision. The City Manager may uphold, reverse, or modify the decision of the Director. If an appeal is not filed as provided herein, the decision of the Director is final and no further appeal will be considered.
 - (4) The decision of the City Manager is final.
- (b) *Hearings.*
- (1) A hearing provided for in this section shall be conducted at a time and place designated by the party conducting the hearing. A hearing shall be conducted as soon as possible after a written request for a hearing.
 - (2) Based upon the record and information and evidence presented during the hearing and these regulations, the party conducting the hearing shall make a finding and shall uphold, reverse or modify the prior decision to deny, suspend or revoke the permit.
 - (3) Written notice of the hearing decision shall be furnished to the permit holder.
 - (4) If the decision results in revocation of the permit, the permit holder may not apply for a new permit for one calendar year from the date of the decision at any location within the city.
- (c) *Counting days.* When counting the calendar day time period specified in this section, if the final day is a Saturday, Sunday, or holiday for the Regulatory Authority, then the time period ends on the next day that is not a Saturday, Sunday, or holiday for the Regulatory Authority. In determining a date that occurs after a certain event, the first day to be counted is the calendar day after the day of the event.

Section 2. Conflict with other ordinances.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed, and all other provisions of the ordinances of the City of Waco not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 3. Severability.

That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 4. Savings Clause.

That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 5. Inclusion in the Code.

That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance be renumbered or re-lettered to accomplish such intention.

Section 6. Compliance with the Texas Open Meetings Act.

That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public, and that public notice of the time, place and purpose of said meeting was given as required by law.

Section 7. Penalty.

That a violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-14 of the Code of Ordinances of the City of Waco, which shall be a fine of not less than one dollar (\$1.00) and no more than two thousand dollars (\$2,000.00), and each day a violation exists shall be a separate offense.

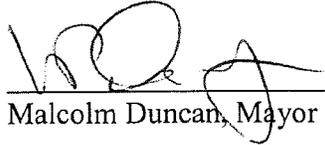
Section 8. Effective Date.

That this ordinance shall take effect upon its passage and publication as provided by the City Charter of the City of Waco.

PASSED AND APPROVED:

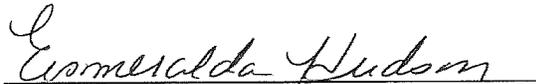
First Reading: the 19th day of January, 2016.

Second Reading: the 2nd day of February, 2016.



Malcolm Duncan, Mayor

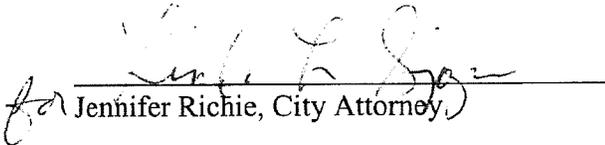
ATTEST:



Esmeralda Hudson, City Secretary



APPROVED AS TO FORM & LEGALITY:



for Jennifer Richie, City Attorney