

ARTICLE 6.03 FOOD ESTABLISHMENTS*

Sec. 6.03.001 Adoption of food establishment rules

The city adopts in this article the rules entitled “Texas Food Establishments,” 25 Texas Administrative Code, sections 229.161–229.171, and 229.173–229.175, as amended (the “rules”). A certified copy of the rules shall be filed and maintained in the office of the city secretary, and the rules are hereby adopted and incorporated herein as if the same were copied in their entirety in this article and all the provisions thereof shall be controlling within the city.

Sec. 6.03.002 Definitions

The following words and terms, when used in this article, shall have the following meanings unless the context clearly indicates otherwise:

Beverage. A liquid for drinking, including water.

Child-care center. Any facility licensed by the regulatory authority to receive thirteen (13) or more children for child care and that prepares food for on-site consumption.

City health officer. The person(s) employed by or with whom the city has a contract to provide inspection and other services necessary for the administration and enforcement of the rules and ordinances regulating food establishments and the service and/or sale of food within the city.

City manager. The city manager of the City of Oak Point, Texas, or the city manager’s designee.

Comminuted. Reduced in size by methods including chopping, flaking, grinding or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

Commissary. A catering establishment, restaurant or any other place in which food, food containers, or food supplies are kept, handled, prepared, packaged or stored. Commissary shall not mean a residential kitchen, but constitutes a commercial food service operation that is operated and maintained pursuant to state rules and regulations.

Consumer. A person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

Critical violations. Critical items as defined on the food service establishment inspection report, distributed by the department of state health services, with a demerit weight of four (4) or five (5) and requiring immediate attention.

Drinking water. Water that meets the standards of 30 Texas Administrative Code, sections 290.101–290.121 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). The term is traditionally known as “potable water” and

includes the term “water” except where the term connotes that the water is not potable, such as “boiler,” “mop water,” “rain,” or “waste” water, and “nondrinking” water.

Extensive remodeling. The remodeling of a twenty percent (20%) or greater area of a food establishment, which necessitates obtaining a permit prior to performing any remodeling.

Follow-up inspection. Any inspection, other than a routine inspection or full follow-up reinspection, of a permitted food establishment, after notice has been given to the establishment to correct a violation, conducted to document that the violation has been corrected.

Food. Raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Food-borne illness. Diseases, usually either infectious or toxic in nature, caused by agents that enter the body through the ingestion of food.

Food-contact surface. A surface of equipment or utensil with which food normally comes into contact; or a surface of equipment or utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

Food establishment or establishment. A restaurant, cafe, dining room, grocery store, meat market, soft drink stand, hamburger stand, ice cream wagon, commissary, day care center or any place where food or drink for human consumption is offered for sale, given in exchange or given away, including temporary food establishments and mobile units. The term includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility where consumption is on or off the premises; and regardless of whether there is a charge for the food.

The term does not include the following operations and establishments, provided that the operations do not expose the public to a substantial and imminent health hazard as determined by the city health officer:

- (1) An establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a bed and breakfast limited facility as defined in these rules; or a private home.
- (2) An organization that serves only its own membership and immediate guests or other structured groups of persons who gather occasionally for fellowship and society that provide the food from amongst their membership;
- (3) The sale, distribution or service of food at an event, party or other special gathering that is not open to persons other than the members or invited guests of the sponsor, provided that there is no public advertisement of the event, public solicitation of funds at or for the event, or participation by the

general public in the event.

Food establishment permit or permit. The permit issued to a food establishment to operate within the city.

Food manager. A person who has shown proficiency of required information through passing a test that is part of a food protection management program accredited by the department of state health services, pursuant to 25 Texas Administrative Code, section 229.172, and has responded correctly to questions as they relate to specific food operations.

Full follow-up reinspection. A complete inspection of a permitted food establishment, which takes place after a full routine inspection that resulted in a rating in which the cumulative demerit value of the establishment exceeded thirty (30) demerits.

Group residence. A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons, such as a retirement home, correctional facility, or a long-term health care facility.

Health code. Refers to the Texas Food Establishments, 25 Texas Administrative Code, sections 229.161–229.171, and 229.173–229.175, as amended.

Imminent health hazard. A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

Law. Federal, state and local statutes, ordinances and regulations.

Mobile unit. A vehicle-mounted food establishment or a food establishment pulled behind a vehicle so as to be readily moveable.

Nonprofit organization. A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing an Internal Revenue Code, section 501(c)(3) exemption; or a religious organization meeting the definition of “church” under the Internal Revenue Code, section 170(b)(1)(A)(i).

Packaged. Bottled, canned, cartoned, securely bagged or securely wrapped, whether packaged in a food establishment or a food processing plant. The term does not include a wrapper, carry-out box or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

Permit. The document, issued by the regulatory authority, which authorizes a person to operate a food establishment.

Permit holder. The entity that is legally responsible for the operation of the food establishment such as the owner, the owner’s agent, or other person; and who possesses a valid permit to operate a food establishment.

Person. Any individual, partnership, corporation, association or other legal entity.

Person in charge. The person present in a food establishment who is the apparent supervisor of the food establishment at the time of inspection. If no person is the apparent supervisor, then any employee present is the person in charge.

Plumbing fixture. A receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

Plumbing system. The water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

Potentially hazardous food. Food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; the growth and toxin production of clostridium botulinum; or, in raw shell eggs, the growth of salmonella enteritidis.

Premises. The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the permit holder that may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

Public water system. Has the meaning stated in 30 Texas Administrative Code, sections 290.101–290.121 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

Pushcart. A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially hazardous foods requiring a limited amount of preparation as authorized by the regulatory authority. A pushcart is classified as a mobile food establishment.

Ready-to-eat food. Food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. The term includes unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under 25 Texas Administrative Code, section 229.164(k) (relating to food); raw, washed, cut fruits and vegetables; whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

Regulatory authority. The State of Texas and/or the City of Oak Point, Texas.

Routine inspection. An unannounced inspection conducted of a permitted food establishment to determine the compliance of the establishment with the provisions of this article.

Rules. The rules of the department of state health services, entitled “Texas Food Establishments,” 25 Texas Administrative Code, sections 229.161–229.171, and 229.173–229.175, as amended.

Sanitization. The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of five (5) logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

Sewage. Liquid waste containing animal or vegetable matter in suspension or solution and which may include liquids containing chemicals in solution.

Special event. Any occasion including, but not limited to, fairs, shows, exhibitions, city-wide celebrations, festivals, etc., within a specifically-defined area of the city for a period of time less than fourteen (14) days.

Stand. Any newsstand, table bench, booth rack, handcart, pushcart, vehicle or any other fixture or device used for the display or storage of articles offered for sale by a vendor or peddler. Such stands must be located at least ten (10) feet away from all other property lines adjacent to a street.

Stationary cart. A food unit that serves only pre-packaged foods or foods requiring minimal preparation or handling from a cart that remains stationary at one location.

Supervisory personnel. The permit holder, the individual having supervisory or management duties, and any other person working in a food establishment who may be in charge of its operation.

Temporary food establishment. A food establishment that operates at a fixed location for a period of no more than fourteen (14) days in conjunction with a single event or celebration.

Vending machine. A self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

Vendor. Any individual who offers food, beverages, goods, merchandise, or services from a certain location, for a period of more than fifteen (15) minutes, that is not within a building or structure for which a certificate of occupancy is required by the city. This term shall not apply to businesses that operate from within a building or structure within the city for which a certificate of occupancy is required and also display, serve, or sell food, beverages, goods, merchandise, etc. outside.

Sec. 6.03.003 Enforcement of these provisions

The city manager is responsible for the enforcement of the rules and the provisions of this article.

Sec. 6.03.004 Permits and exceptions

(a) No person shall operate a food establishment who does not have a valid permit issued by the regulatory authority. Only a person who complies with the requirements of this article shall be entitled to receive or retain a permit. A valid permit shall be posted and visible to the public in every food establishment. Permits are not transferable from one person to another or from one location to another except as otherwise permitted by this article.

(b) The following are exempt from the permitting process:

(1) An establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a bed and breakfast limited facility as defined in these rules; or a private home.

(2) An organization that serves only its own membership and immediate guests or other structured groups of persons who gather occasionally for fellowship and society that provide the food from amongst their membership;

(3) The sale, distribution or service of food at an event, party or other special gathering that is not open to persons other than the members or invited guests of the sponsor, provided that there is no public advertisement of the event, public solicitation of funds at or for the event, or participation by the general public in the event.

Sec. 6.03.005 Permit requirements

(a) Permit requirements to operate a food establishment.

(1) A person commits an offense if the person sells, offers to sell, gives away, trades, or otherwise conveys food to the public or operates a food establishment within the city, without having first obtained a food establishment permit issued by the regulatory authority.

(2) A person commits an offense if the person operates a food establishment in violation of the rules or this article.

(b) Issuance of permits.

(1) A person desiring to operate a food establishment shall make written application for a permit on forms provided by the city. The application shall include:

(A) The applicant's full name and street address and whether such applicant is an individual, firm, corporation or partnership. If the applicant is a partnership, the names of the partners, together with their addresses shall be included;

(B) The location and type of proposed food establishment;

(C) The signature of the applicant or applicants, or agents;

(D) Copy of the valid driver's license or other state identification card of the applicant or the applicant's agent;

(E) Copy of valid food manager's certificate; and

(F) Such other information as the director deems necessary.

(2) A mobile unit, or temporary food establishment which operates from a fixed food facility or commissary located outside the city, shall include with the completed application a copy of the facility's current, valid state and/or local health permit.

(3) Prior to approval of an application for an existing, proposed or extensively remodeled food

establishment, the city health officer shall review all available documentation for such establishment to insure compliance with the rules and this article. An application for a permit shall be denied if any part of the application is improperly or erroneously completed, or if any part of the required documentation is not properly submitted. A person whose application is denied may appeal the denial in accordance with the provisions of [section 6.03.007](#) of this article.

(4) If a single building or establishment contains multiple, separate, distinct food operations, regardless of whether one or all of the operations are owned or operated by one or more individuals or entities, a separate food establishment permit and payment of a separate permit fee shall be required for each operation.

(c) Permit fee and duration.

(1) Except as set forth in subsection 3 [sic] of this section, each food establishment operating within the corporate limits of the city shall pay the permit fee to the city as provided in [appendix A](#) to this code at the time of application.

(2) With the exception of temporary or special events, a permit shall remain in force for one year from the date of issuance unless suspended or revoked for cause as provided herein.

Sec. 6.03.006 Suspension of permit

(a) Order of suspension.

(1) The city health officer shall notify the permit holder, operator, or person in charge of the food establishment at the time of inspection, in writing, that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if the permit holder submits a written request for a hearing within ten (10) days. The hearing shall be held in accordance with [section 6.03.007](#) of this article. Notwithstanding the other provisions of this article, whenever the city finds unsanitary or other conditions in the operation of a food establishment that constitute a substantial hazard to the public health, a written notice may be issued to the permit holder, operator or person in charge citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken. If necessary, the order may state that the permit is immediately suspended and all food operations are to be immediately discontinued.

(2) If a permit holder, operator, or person in charge has failed to correct a violation of this article after receiving two (2) written notices for the same violation, whether noted during a routine inspection or reinspection, the city health officer may suspend the food establishment permit. Suspension may be appealed in accordance with [section 6.03.007](#) of this article.

(b) Sign. If a permit is suspended, a sign stating "Closed by Order of the City of Oak Point Health Officer" shall be placed on the entrance to the food establishment in plain view of the public. A person commits an offense if the person removes, covers, alters, defaces, or otherwise makes or causes such sign to be unreadable.

(c) Reinstatement of suspended permit. A person whose food establishment permit has been suspended

may, at any time, make written application for a reinspection for the purpose of reinstating the permit. The application shall include, a statement signed by the applicant, stating the conditions causing suspension of the permit have been corrected, and how each has been corrected. A reinspection shall be made. If upon reinspection, the food establishment is found to be in compliance with the requirements of this article, the city health officer shall reinstate the permit upon payment of the reinstatement fee as per the city's schedule of fees [sic].

Sec. 6.03.007 Revocation of permit

(a) Basis. The city manager may revoke a food establishment permit if the permit holder has received two (2) written notices for the same critical violation(s) or for repeated violations of any of the requirements of this article, or for interference with the city health officer in the performance of his or her duties. Prior to such action, the city 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 permanently revoked at the end of ten (10) days following service of such notice, unless the permit holder files a written request for an appeal with the city manager, within such ten (10) day period, which shall state the reasons the revocation is not authorized. A permit may be suspended pending its revocation or a hearing relative thereto.

(b) Appeal hearing. If requested, an appeal hearing shall be conducted by the municipal court. Such hearing shall be an administrative hearing and shall be conducted within twenty (20) days of the date that the appeal is filed with the city. The municipal court judge shall make a finding and shall sustain, modify or rescind any official notice or order considered in the hearing.

Sec. 6.03.008 Inspection of food establishments

(a) Inspection frequency. An inspection of a food establishment shall be performed a minimum of twice a year for food services, daycares, mobile vendors, and schools; a minimum of once a year for seasonal businesses; and as needed for complaints, court appearances, reinspections, and other food related occasions. Additional inspections of the food establishment shall be performed as often as necessary for the enforcement of the rules, this article, other applicable law, and upon request.

(b) Fee. The cost of two annual inspections is included in the permit fee. Fees for reinspections or investigative or valid complaint-oriented inspections are outlined in subsection (g).

(c) Right of entry. As a condition of the food establishment permit, the city health officer or city manager, after presenting proper identification, shall be allowed to enter any permitted food establishment at any reasonable time, for the purpose of making inspections to determine compliance this article. The agent shall be permitted to examine the records of the establishment to obtain information pertaining to employees or to food and supplies purchased, received, or used.

(d) Findings. Whenever an inspection of a food establishment or commissary is made, the city health officer shall record the findings on an inspection report form. The inspection report form shall summarize the requirements of the rules and of this article and shall set forth a weighted point value for each

requirement. Inspection remarks shall reference, by section number, the section violated and shall state the correction to be made. The rating score of the food establishment shall be the total of the weighted point values for all violations, subtracted from one hundred (100).

(e) Report. A copy of the inspection report form shall be furnished to the person in charge of the food establishment at the conclusion of the inspection. The completed inspection report form is public information that shall be made available for public disclosure to any person who requests it in accordance with applicable law.

(f) Posting of finding.

(1) Posting. The findings, or score, of the city health officer must be posted in an area that is clearly visible to patrons and the public, at or near each entrance to the restaurant. The grade of each restaurant shall be evidenced by the posting of a grade card bearing a letter, "A," "B," "C," or "D." The letter "A" shall indicate a grade of ninety percent or higher. The letter "B" shall indicate a grade of less than ninety percent, but not less than eighty percent. The letter "C" shall indicate a grade of less than eighty percent. The letter "D" shall indicate a grade less than seventy percent. The grade/score card must remain posted until the next inspection, when the inspector will issue a new scorecard. Removal of the grade/score card is a violation of this article and may result in the suspension or revocation of the public health.

(2) Providing of scorecard.

(A) The scorecard shall be provided by the city health officer. Grade A cards shall be printed on blue paper, grade B cards on green paper, grade C cards on yellow paper, and grade D on red paper all with black lettering.

(B) The language of the grade cards shall be worded, as follows:

THIS ESTABLISHMENT HAS COMPLIED WITH

FOOD ESTABLISHMENT REGULATIONS

REQUIREMENTS FOR

GRADE ____

CITY OF OAK POINT

PENALTY FOR REMOVAL

(g) Reinspection fee.

(1) Follow-up inspection.

(A) If a follow-up inspection of a food establishment is required by the city health officer to verify correction of a violation, a reinspection fee shall be paid to the city by the food establishment prior to the follow-up inspection being conducted. If an investigative inspection is conducted by the city health officer based on a valid complaint, an inspection fee shall be paid by the food establishment to the city

within seventy-two (72) hours of the complaint oriented inspection. Fees for follow-up inspections or investigative or valid complaint-oriented inspections are as established in [appendix A](#) of this code.

(B) A permit shall not be renewed unless the permit holder has paid all fees previously assessed.

(2) Multiple violations. If a routine inspection of a food establishment reveals serious, multiple violations in food safety or overall level of sanitation as identified in the inspection report, a full follow up reinspection will be conducted of the food establishment to verify correction of the existing condition. In this instance, a fee as provided in [appendix A](#) to this code shall be submitted to the city, along with a signed letter stating that each identified violation is corrected, and the method of correction, prior to the scheduled date of reinspection.

(h) Failure to pay. Failure to pay the required reinspection fee(s) or to timely remedy all violations shall result in the immediate suspension of the establishment's permit, and the food establishment shall be ordered to cease operation immediately. The food establishment shall remain closed until the violation(s) are corrected, all required fees are paid, and a reinspection is conducted to verify that the violations are corrected.

(i) Correction of violations.

(1) Correction periods. The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified in accordance with the following provisions:

(A) If an imminent health hazard exists such as complete lack of refrigeration or sewage backup into the food establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until all violations are corrected and operations are authorized by the city.

(B) All violations of four- (4) or five- (5) point weighted items shall be corrected as soon as possible; but, in any event, within ten (10) days following inspection, the holder of the permit, license, or certificate shall submit a written report to the regulatory authority stating that four- (4) or five- (5) point violations have been corrected. A follow-up inspection shall be conducted to confirm correction.

(C) All one (1) or two (2) point weighted items shall be corrected within the time frame specified by the city health officer listed on the inspection report.

(D) The restaurant or facility manager will be required to write a letter to the city within 10 days of the required correction stating how and when each deficiency was corrected. This letter will be kept in the inspection file.

(E) Food establishments with an overall score under 70 or with one critical violation fail the inspection and require a follow-up inspection. Corrections and reinspection must occur within 10 days. If the follow-up inspection finds uncorrected critical items, the city may close the restaurant until corrections are made.

(2) Contents. The inspection report shall state that failure to comply with any time limits specified for

corrections may result in suspension or the cessation of food service operations. An opportunity for appeal from the inspection findings and time limitations will be provided if a written request for a hearing is filed with the city manager within ten (10) days following suspension. If a request for a hearing is received, the city manager shall hold a hearing within twenty (20) days of receipt of the request.

(3) Closure. Whenever a food establishment is required under the provisions of this section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time given the applicable deadlines for correcting violations.

Sec. 6.03.009 Examination and condemnation of food

(a) Hold order. The city health officer or city manager may examine or sample food as often as necessary for enforcement of this article and any other applicable law. The city health officer or city manager may, upon written notice to the owner or person in charge specify with particularity the reasons therefor, place a hold order on any food, which he or she believes is in violation of any provision of this article and any other applicable law. The city health officer or city manager or other regulatory authority shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served or moved from the establishment prior to a hearing. The city health officer or city manager shall allow storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.

(b) Hearing. The hold order shall state that a request for hearing may be filed within ten (10) days and that if no hearing is requested the food shall be destroyed. The municipal court judge shall hold an administrative hearing if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this article.

(c) Procedure when infection is suspected. When the city health officer or city manager has reasonable cause to suspect the possibility of disease transmission from any food establishment employee, he or she may secure morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. In this instance, the city health officer or city manager may require any or all of the following measures:

- (1) The immediate exclusion of the employee from all food establishments;
- (2) The immediate closing of the food establishment concerned until, in the opinion of the city health officer or city manager, no further danger of disease outbreak exists;
- (3) Restriction of the employee's services to some area of the food establishment in which no danger exists for transmission of the disease; and
- (4) Adequate medical and laboratory examination of the employee, of other employees and of his/her and their bodily discharges, at the food establishment's expense.

Sec. 6.03.010 Submission and review of plans required

- (a) Requirements. A person commits an offense if the person:
- (1) Constructs a food establishment without submitting plans and specifications for such construction, remodeling, or conversion to the city health officer or city manager for review and approval before construction begins;
 - (2) Extensively remodels a food establishment without submitting plans and specifications for such remodeling to the city health officer or city manager for review and approval before remodeling; or
 - (3) Converts an existing structure to a food establishment without submitting properly prepared plans and specifications for the conversion to the city health officer or city manager for review and approval before conversion begins.
- (b) Plans. The plans and specifications shall indicate the proposed layout of the facility, arrangement of all intended equipment, mechanical plans, and types of construction materials and finish schedules for all areas, and the type and model of all proposed equipment to be installed. The city health officer or city manager shall review and approve the plans and specifications to determine if they meet the requirements of this article.
- (c) Compliance with code. No food establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the city health officer or city manager. Food establishment owners/operators as well as all general contractors and subcontractors, shall ensure during plan review, construction, and operation that their facilities comply with all applicable city plumbing, mechanical, electrical, building, zoning, and fire prevention and protection codes. All properly prepared plans and specifications shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun.
- (d) Permit. A building permit to begin construction shall not be issued until the city has reviewed and approved the plans and specifications for the proposed construction.
- (e) Approved materials. Only commercial-quality equipment, utensils, and materials that meet or exceed current accepted National Sanitation Foundation (NSF) standards, or their equivalent, will be approved for installation and use.
- (f) Inspections. The city health officer or city manager shall conduct one or more inspections of the food establishment prior to the start of operations to determine compliance with the approved plans and specifications, the requirements of this section, this article, and any other applicable law.
- (g) Closure. If, upon inspection at any time, the food establishment is found not to be constructed in accordance with approved plans, and/or any fixed equipment has been added or removed without prior approval by the city, the city health officer or city manager shall order the establishment to cease operation immediately, and to replace or remove the equipment in question, before resuming operation.
- (h) Fee. A fee as provided for in [appendix A](#) of this code shall be paid by the food establishment for

the review of plans.

Sec. 6.03.011 Food manager

(a) Requirement. The city requires that at least one certified food manager to be on-site during all hours of operation. A person commits an offense if the person owns, manages or operates a food establishment and fails to employ at least one person in charge who is on site during all hours of operation of that food establishment; who is responsible for food preparation, presentation, sales and service; and who has a valid food manager certificate issued by or through the department of state health services.

Exception: Establishments which have fewer than three (3) employees are not required to have at least one certified food manager on site at all times.

(b) Additional managers.

(1) The city may require additional certified food managers in sufficient number to insure that all areas of food preparation, presentation, sales and service, during times of operation are under the direction of certified supervisory personnel.

(2) A person commits an offense if the person owns, manages or operates a food establishment and allows said establishment to operate with fewer than the required number of certified food managers.

(c) Replacement required.

(1) A person commits an offense if the person owns, manages or operates a food establishment and fails to:

(A) Provide the city written notice within seven (7) days of the effective date of termination or permanent transfer of the certified food manager;

(B) Employ or assign another registered food manager within thirty (30) days of the effective date of termination or permanent transfer of the previous certified food manager.

(d) Additional training. The city health officer or city manager may require a registered food manager to successfully complete additional training when:

(1) The employing food establishment has repeated or persistent violations of health code requirements and effective corrective action has not been instituted over a period of time as instructed by the city health officer or city manager; or

(2) The employing food establishment has been implicated by the regulatory authority as the source of a food-borne illness.

(e) Evidence of certification.

(1) During those times a food manager is on duty at a food establishment, the food manager must possess evidence of current valid certification.

(2) The food manager's certificate shall be prominently posted in the permitted establishment.

- (3) A food manager certificate is not transferable.
- (f) Responsibilities of food managers. A food manager shall be responsible for adequate instruction of the employees of the food establishment for which the food manager works to ensure and maintain safe food handling practices within the establishment.
- (g) Exemption from requirements.
- (1) The city health officer or city manager may waive the requirements of this section for:
- (A) Food establishments that serve, sell, or distribute only prepackaged foods, and/or open foods that are not potentially hazardous; and/or
- (B) Temporary food establishments, special facilities and/or events.
- (C) Establishments serving only fountain drinks, coffee, popcorn, and/or snow cones;
- (D) Food warehouses/wholesalers.
- (E) Public school food service workers who attend accredited training courses.
- (2) The city health officer or city manager may require the manager of a food establishment exempted under subsection (1) to comply with the food manager's certification requirements if critical food safety violations are observed, or, in the judgment of the city health officer or city manager, the nature of the operation requires such certification.

Sec. 6.03.012 Stationary cart establishments

- (a) Permit requirements for stationary cart establishments. A person commits an offense if the person:
- (1) Operates a stationary cart establishment out of a temporary building without a food establishment permit issued by the city; or
- (2) Operates a stationary cart establishment in violation of the requirements of [section 6.03.005](#) of this article.
- (b) Direction. Unless suspended or revoked under the provisions of this article, a permit for a stationary cart establishment shall be valid for a period of twelve (12) months from the date of issuance, which may be renewed annually.
- (c) Revocation and appeal. A permit is subject to revocation in accordance with the procedures set forth in [section 6.03.007](#) of this article, for violations of the provisions of this article. A revoked permit is subject to appeal in accordance with the provisions of [section 6.03.007](#) or other applicable provisions of this article, or other local, state or federal law.
- (d) Fee. An applicant shall pay a permit fee at the time of application in accordance with [section 6.03.005](#) of this article.
- (e) Special requirements for stationary cart establishments. A person who operates a stationary cart establishment shall:
- (1) Prepare or offer for sale only hot dogs, ice cream, coffee, fresh produce, such related foods, an/or

commercially prepackaged non-potentially hazardous foods and all products must come from an approved source, as defined by state law;

(2) Not serve or utilize potentially hazardous foods, toppings, or flavorings, as defined by the rules; and

(3) Have a permitted commissary as a base of operations. This commissary is to provide:

(A) Storage for food products and single service articles;

(B) Utensil washing facilities; and

(C) Site for obtaining potable water and disposing of wastewater.

(f) Sink requirements.

(1) A stationary cart shall contain a hand sink with hot and cold running water, dispensable soap, and disposable towels. The water must be under pressure, and water must be heated to a minimum of 105 degrees Fahrenheit. A mixing valve in good working condition must be available.

(2) All carts with utensils must provide a three-compartment sink for washing, rinsing, and sanitizing of utensils. If a three-compartment sink is provided on the cart that is of sufficient size to accommodate all of the utensils and equipment, no additional utensil wash sink is required at the commissary.

Otherwise, the commissary must provide a three-compartment sink in addition to the hand sink.

(3) The commissary must provide at least a single-compartment utility sink for cleaning the cart and for providing water and wastewater disposal.

(4) Carts that sell only pre-packaged potentially hazardous foods, such as ice cream, are not required to provide a hand sink or utensil sinks.

(g) Construction.

(1) Carts must be constructed of smooth, easy-to-clean materials such as stainless steel, fiberglass reinforced plastic panels or other approved water-resistant materials. The bottom of the cart must be at least six (6) inches above the ground.

(2) Electrical cords must not extend beyond six (6) feet, and must be installed so as not to be a safety hazard.

(3) The design of carts with cooking or grilling equipment is subject to the approval of the city's department of public safety and the city's building official.

(4) The stationary cart must have overhead protection, including, but not limited to, an umbrella, to protect the food and equipment from contamination.

(h) Potable water tanks/retention tanks.

(1) For carts with a hand sink only, at least four (4) gallons of water must be provided.

(2) For carts with utensil wash sinks, at least nine (9) gallons of potable water must be provided.

- (3) For carts using water for preparation, such as coffee carts, additional water may be required but will not be calculated in determining retention tank requirements.
- (4) All hoses used for potable water must be made for that purpose (white or clear).
- (5) All potable water tanks must be located and installed in such a way as to prevent any cross contamination.
- (6) A capacity of at least fifteen percent (15%) more than the available water is required for the retention tanks.
- (7) The retention tanks must be easy to service with the top closed, except that the top is not required to be closed as the fill line is filling the tank.
- (8) The owner must bring the required amount of water at the time of the permitting inspection in order to measure the size of the tanks. Permits will not be issued to carts requiring hand sinks unless the tanks are filled in front of the health inspector during the time of the permitting inspection.

(i) Operations.

- (1) The stationary cart owner must provide the city manager with a letter from the owner/director of the business in which the cart will be located that grants permission to the owner of the stationary cart to operate on the premises.
- (2) All foods that are to be sold must be stated on the application. A stationary cart is limited to serving pre-packaged foods or foods requiring minimal preparation. Preparation of potentially hazardous foods is limited to items such as hot dogs or nachos. Only foods approved by the director may be sold.
- (3) Food temperature requirements as required by the health ordinance for cooking, holding, and reheating must be met.
- (4) Food handlers must minimize contact with ready-to-eat foods by the use of utensils, tongs, spoons, deli tissues, or gloves and must thoroughly wash hands as required by the health ordinance. Any employee who directly handles food must use sanitizing gel after thoroughly washing their hands. If food is handled with bare hands, a bare hand contact policy must be filed with the city health officer.
- (5) Food carts must be located within three hundred (300) feet of approved restroom facilities. Operators must have written permission from the restroom owner or person in charge to utilize the restroom facilities.
- (6) All wastewater must be disposed into the sanitary sewer.

(j) Refrigeration/hot holding.

- (1) All potentially hazardous foods requiring refrigeration must be stored in a mechanical refrigerator located on the cart. Additional refrigeration may be required at the commissary to maintain product temperature. A numerically scaled thermometer must be located in each refrigeration and freezer unit

that is accurate to +/- 2 degrees Fahrenheit. During cold holding, all potentially hazardous food must be maintained at 41 degrees Fahrenheit or below.

(2) All potentially hazardous foods requiring hot holding must provide mechanical devices that will maintain the required temperature of 140 degrees Fahrenheit or above. A numerically scaled thermometer must be located in each hot holding unit. Note: Liquid petroleum gas (LPG) may not be used unless the department of public safety has given approval. In addition, no Sterno is allowed.

Sec. 6.03.013 Mobile units

(a) Permit requirements for mobile units.

(1) All mobile units originating from or serving food within the city must have a food establishment permit, which must be kept in the vehicle at all times. The permit must bear the name of the registered owner of the truck and truck license plate number.

(2) The permit is subject to revocation pursuant to [section 6.03.007](#). If a permit is revoked, the permit holder has the right to appeal in accordance with the provisions of [section 6.03.007](#) and other applicable provisions of this article.

(b) Mobile unit requirements. The permit holder for a mobile unit shall:

(1) Protect food from contamination and keep the truck clean and free of rust and corrosion;

(2) Identify the trucks using the same name that is on the permit;

(3) Serve all condiments and spices, such as salt, pepper, sugar, catsup, mustard, mayonnaise, sauces, non-dairy creamer, etc. in single-serving containers. No bulk dispensers, bottles or cans shall be permitted;

(4) Use all single-service tableware individually wrapped in plastic;

(5) Dispose of sewage, wastewater and solid waste according to law;

(6) Ensure that the wastewater tank outlet is lower than the inlet to the potable water supply; and

(7) Provide the director a route plan upon request.

(c) Penalty. A person commits an offense if the person violates the provisions of this article, or interferes with the city manager or city health officer in the exercise of his or her duties under this section. Notwithstanding any provisions contained herein to the contrary, the city manager or city health officer is hereby granted the authority to issue immediate citations to persons violating any provision of this article in the city manager's or city health officer's presence.

(d) Responsible person. If the owner, manager, person in charge at the time of inspection, or other responsible party of a permitted food establishment is found to have violated any provisions of this section, a citation may be issued.

Sec. 6.03.014 General food establishment guidelines

Food establishments shall be maintained and operated in accordance with this article, which

incorporates the Texas Food Establishments rules, as amended (the “rules” or TFER). The following guidelines are excerpted from TFER. Please consult TFER for complete standards. TFER is available on the Secretary of State’s website at <http://www.sos.state.tx.us/>.

- (1) Handwashing sink. A separate sink designated for handwashing only shall be provided. Enough handwashing sinks are required to be readily accessible to each food preparation area and accessible to employees at all times. Hot water, soap, disposable towels and trash containers are required at each sink.
- (2) Utility/mop sink. Utility sink or curbed floor sink used for the cleaning of mops and other janitorial equipment as well as the proper disposal of dirty mop water are required. This sink shall not be used as a handwashing sink and should not be closer than 18 inches to any food preparation, food or utensil storage area, to prevent potential splash contamination.
- (3) Three compartment sink. Required to wash, rinse and sanitize. Compartments should be large enough to submerge the largest piece of portable equipment, utensils, pots or pans. Automatic dishwashers are recommended, especially when multi-use utensils and tableware are utilized.
- (4) Restrooms. At least one restroom is required for employee use. Number of required customer restrooms is regulated under the building code. Entrance doors must be self-closing when opening into dining area.
- (5) Floors, walls, ceilings. Must be in good repair, installed using good construction standards, properly sealed with no cracks or seams and constructed of smooth durable materials to withstand repeated sanitizing. Protective shielding over light bulbs in food prep, utensil and unprotected food storage areas are required.
- (6) Proper temperature control. All equipment shall be in good working order and be able to maintain temperature requirements. All potentially hazardous foods (PHFs) shall be maintained at proper temperatures. Cold storage units shall be maintained at 41 degrees Fahrenheit or below. Hot PHFs display/holding units shall be at 140 degrees Fahrenheit or higher. Reserved foods shall be reheated to a minimum of 165 degrees Fahrenheit before serving. Routinely check internal temperatures of hot and cold foods.
- (7) Consumer protection. Food shall be offered in a way that does not mislead or misinform the consumer. Inspect all merchandise upon receipt to insure items have not been tampered or damaged. Report immediately any tampered merchandise.
- (8) Tobacco, hair restraints, jewelry. Smoking or use of any tobacco product is prohibited at all times in food prep areas. No children are allowed in food prep areas. Cooks and food prep workers shall use hair restraints such as hats, hair coverings or nets, hairspray to effectively control and keep hair from contacting exposed food, cooking equipment, utensils, etc. Hair restraints keep food workers from touching hair and contaminating hands. Food prep workers shall not wear jewelry on arms or hands other than plain ring such as a band style.

(9) Food protection. Foods shall be covered and protected at all times. This includes inside coolers and freezers. Meat products shall be stored on lower shelves to prevent cross contamination from juices on to other foods or products. Keep foods and products six inches off the floor to prevent contamination while mopping.

(10) Disposable utensils. Single service utensils shall be presented to the public with handles up. Toothpicks must be individually wrapped or available from a dispenser. Sanitizing. All food contact surfaces of utensils and equipment shall be washed, rinsed and sanitized after use and on a continual basis. If unused, then clean a minimum of every twenty-four (24) hours.

(11) Food safety. Separate and store cleaning products away from food products. All bulk foods once opened shall be labeled by its common name and stored in a container with a lid, such as sugar, salt and flour.

(12) Date markings. When keeping longer than twenty-four (24) hours after preparing, defrosting or opening the original container, PHFs (including meats and cheeses) shall be date marked. These PHFs shall be consumed or destroyed within seven (7) days or less if temperature was maintained at 41 degrees Fahrenheit or lower.

(13) Employee health. Managers/supervisors shall be aware of the health of their employees and not permit employees who have acute gastrointestinal illness (diarrhea, fever) to work near food. Refer to the rules, section 229.163(d), regarding employees who have been diagnosed with or have symptoms of specific infectious diseases.

(14) Grease trap. Grease traps designed in accordance with the city's current building and plumbing codes are required to prevent blockage of sewage lines. Routine monitoring and cleaning are required to keep the grease trap working efficiently.

(15) Pesticides. Pesticides shall be used only when applied by a certified applicator or under the direct supervision of a certified applicator. Personnel of food establishments are advised to keep receipts from pesticide applications.

Sec. 6.03.015 Penalty

(a) Any person violating any of the provisions of this article shall be deemed guilty of a class C misdemeanor upon conviction and shall be fined, except as otherwise provided herein, in a sum not to exceed two thousand dollars (\$2,000.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(b) If the governing body of the city determines that a violation of this article creates a threat to the public safety, the city may bring suit in the district court to enjoin such violation as allowed by law.

(Ordinance 2012-02-337 adopted 1/16/12)