

Food Establishment Ordinance

GENERAL PROVISIONS

~~§ 94.01 DEFINITIONS.~~

~~—For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—**CHILDCARE FACILITY.** A facility keeping more than 12 unrelated children that provides care, training, education, custody or supervision for children under 15 years of age, who are not related by blood, marriage or adoption to the owner or operator of the facility, for all or part of the day, whether or not the facility is operated for profit or charges for the services it offers. Nonprofit facilities will be required to make application for a permit and meet current requirements but are exempt from payment of the permit fee.~~

~~—**FOOD or FOODSTUFF.** Any article used for human consumption as food or drink whether simple, mixed or compounded.~~

~~—**FOOD ESTABLISHMENT.** All places where food or drink are manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared or otherwise handled, whether offered for sale, given in exchange or given away for use as food or furnished for human consumption. The term does not apply to private homes where food is prepared or served for guests and individual family consumption. The location of commercially packaged, single-portion, nonpotentially hazardous snack items and wrapped candy sold over the counter is excluded.~~

~~—**HEALTH DEPARTMENT.** The County Health Department.~~

~~—**MULTIPLE PERMITS.** A separate permit shall be required for every food establishment or temporary food establishment with separate and distinct facilities and operations (as determined by the Health Department) whether situated in the same building or at separate locations. Separate and distinct lounge operations (in a food facility) will require a separate permit from food operations. However, multiple lounges on the same floor in the same building and under the same liquor license will not require a separate permit.~~

~~—**OWNERSHIP OF BUSINESS.** The owner or operator of the business. Each new business owner or operator shall comply with the current code of the city.~~

~~—**REGULATORY OR HEALTH AUTHORITY.** The representative of the County Health Department.~~

~~—**SERVICE OF NOTICE.** A notice provided for in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit.~~

Sec. § 94.01.2 DESIGNATION OF HEALTH AUTHORITY.

(a) The director of the Tarrant County Public Health Department is hereby designated as the regulatory authority in charge of insuring minimum standards of environmental health and sanitation within the scope of that department's functions.

(b) Whenever necessary to make inspections to enforce any of the standards or provisions

adopted herein for the preparation and handling of food, the regulatory authority may enter food establishments at all reasonable times.

~~The city designates the County Health Department Director, or his/her representative, as its health authority for the purpose of ensuring minimum standards of environmental health and sanitation within the scope of that department's function.~~

PERMITS

Sec. 94.02. STATE REGULATIONS ADOPTED.

(a) The City of Mansfield adopts by reference the provisions of the rules adopted by the Executive Commissioner of the Health and Human Services Commission, as amended from time to time, found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in the city.

(b) A certified copy of each rule manual shall be kept on file in the office of the city secretary.

Sec. 94.03. DEFINITIONS.

In addition to the definitions adopted in the rules listed in Sec. 94.02 above, the following definitions shall apply to this chapter:

(1) *Regulatory authority* means the Tarrant County Public Health Department.

(2) *Authorized agent, representative, or employee* means the employees of the regulatory authority.

(3) *Ownership of business* means the owner or operator of the business. Each new business owner or operator shall comply with the current code of the city.

(4) *Food establishment* means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

(5) *State rules* means the state rules found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

§Sec. 94.04.15 PERMIT REQUIRED.

(a) *Requirement.* It shall be unlawful for any person to operate a food establishment in the city, unless he possesses a current and valid health permit issued by the regulatory authority.

(b) *Posting.* A valid permit shall be posted in public view in a conspicuous place at every

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food establishment regulated by this ordinance.

(c) *Nontransferable (change of ownership).* Permits issued under the provisions of this chapter are not transferable. Upon change of ownership of a business the new business owner will be required to meet current standards as defined in city ordinances, state laws and state rules before a permit will be issued.

(d) *Application for Permit.* Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name, address, and phone number of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

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(e) *Inspection for Permits.* Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.

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(f) *Suspension of permit.* The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by Paragraph (g) of this section. When a permit is suspended, the holder of the permit shall immediately cease all food operations. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten days of receipt of a request for a hearing.

(g) *Notification of right to hearing.* Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

(h) *Revocation of permit.* The regulatory authority, after providing notice and an opportunity for a hearing, may revoke a permit for serious or repeated violations of any of the requirements of these rules or the state rules or for interference with regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the

holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice. Unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten-day period, the revocation of the permit becomes final.

(i) *Service of notice.* A notice provided for in these rules is properly served when it is delivered to the holder of the permit or certificate, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit or certificate. A copy of the notice shall be filed in the records of the regulatory authority.

(j) *Hearings.* The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearings, the regulatory authority shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit or certificate by the regulatory authority.

(k) *Right of appeal.* Any permit holder who wishes to dispute the decision of a hearing may appeal the decision to the director of the regulatory authority.

(l) *Application after revocation.* Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit to the regulatory authority.

(m) *Permit fees.* A fee, as set out, adopted and defined in the annual budget of the city, shall be required to be paid for the preoperational inspection and, thereafter, on an annual basis. Fees shall be paid to Tarrant County Public Health Department at 1101 South Main, Fort Worth, Texas 76104.

~~—No bakery, confectionery, candy factory, cannery, coffee house, community kitchen, ice cream parlor, soda fountain, candy store, restaurant, oyster house, hotel, club, lunch counter, boardinghouse, tea room, dining room, café, soft drink parlor, grocery, abattoir, packing house, meat market, sausage factory, chili or hot tamale factory, delicatessen, milk plant, ice cream factory, dairy products factory, butter factory, commission house, poultry establishment, egg-breaking or egg-canning establishment, fish market, cold storage warehouse, beverage plant, bottling plant, barbecue, vegetable or fruit store or place or any other place or store where any food, drink or commodity for human consumption is produced, mixed, baked, canned, encased, wrapped, packed, bottled, preserved, pickled, stored, served, offered for sale or sold or any basket, wagon or any other vehicle or device, hand steamer or tank, house or place from which any food, drink or other commodity for human consumption is vended, peddled, offered for sale or sold, shall be operated, or permitted or suffered to be operated unless the owner, lessee, agent,~~

~~operator or person operating or having control thereof shall have first made application for and obtained from the health authority a permit as hereby provided.~~

~~§ 94.16 APPLICATION.~~

~~—The application for a permit shall be filed with the health authority on a form furnished by the health authority and shall contain the information as the health authority may require for the purpose of the application and of this chapter.~~

~~§ 94.17 ISSUANCE; RENEWAL.~~

~~—(A) Upon receipt of the application, the health authority shall cause an inspection to be made of the premises where, and the equipment with which the applicant carries on, or intends to carry on, the business for which a permit is sought, and if upon the inspection it is found to the satisfaction of the health authority that the premises, including all buildings, rooms or places and the equipment used or to be used by the applicant in the prosecution of the business conforms to the food and sanitary laws of the state, ordinances of the city, regulations of the Health Department and all official orders pursuant to the laws, ordinances and regulations, or if the premises do not conform, but upon notice to that effect by the health authority to the applicant, shall be made to conform, then the health authority shall cause a permit to be issued to the applicant during the period for which the permit is sought.~~

~~—(B) The permit may be renewed if, upon application for the renewal on a form furnished by the health authority, the applicant's place of business and equipment conform to the requirements of the regulations, ordinances, laws and orders as aforesaid to the satisfaction of the health authority.~~

~~§ 94.18 FEE SCHEDULE.~~

~~—(A) Food service and retail establishments that prepare food. A fee of \$150 per health permit is required annually. Fees are due and payable on or before October 31, and are to be paid to Tarrant County Health Department at 1800 University Drive, Fort Worth, Texas 76017.~~

~~—(B) Retail establishments that do not prepare food. A fee of \$100 per health permit is required annually. Fees are due and payable as listed in division (A) of this section.~~

~~—(C) Temporary establishments. A fee of \$35 per health permit is required of any food establishment operating less than 14 days. Fees are due and payable as listed in division (A) of this section.~~

~~§ 94.19 POSTING OF PERMIT REQUIRED.~~

~~—Each permit granted shall be posted in a conspicuous place in the establishment or place of business of the grantee thereof, or if the grantee shall have no fixed place of business or establishment, then the grantee shall post or affix the permit visibly and conspicuously upon some part of his/her equipment.~~

~~§ 94.20 REVOCATION OF PERMIT.~~

~~—Any permit granted hereunder shall be subject to revocation at the direction of the health authority for failure of the grantee named therein, or any of his/her employees, agents or~~

~~representatives to carry on the business or activities described in the permit in compliance with all food and sanitary laws of the state, ordinances of the city, regulations of the Health Department and all official orders issued pursuant thereto. Upon notice of the revocation, the operation of the business or activities shall immediately be discontinued until the terms and provisions of this subchapter are complied with.~~

REGULATIONS

~~§ 94.30 BUILDING REQUIREMENTS.~~

~~—Every place, enclosure, vehicle, wagon, house, building or room used as a food handling establishment in the city shall be constructed or reconstructed so as to conform to the following requirements:~~

~~—(A) All floors, walls and ceilings shall be of tight, sound material consisting of wood, metal, tile, concrete or material of a similar character which can be easily cleaned.~~

~~—(B) All doors, windows or other openings which might permit the ingress of flies shall be covered with tight fitting, sound wire screening of not less than 14 meshes to the inch, and all screened doors shall be equipped with suitable self closing devices.~~

~~—(C) All rooms or places used for the preparation, handling or displaying of foods, confections or drinks shall be well lighted and ventilated, free from dampness, clean and free from all kinds of dirt, refuse, rubbish, useless or offensive material, flies, ants, roaches, rats and mice.~~

~~—(D) The sleeping or living quarters of any person in any food handling establishment in the city shall be separate and apart from the rooms where the food is manufactured, prepared, stored, handled or sold.~~

~~—(E) In connection with every establishment where foods are prepared or served, suitable rooms shall be provided for the changing and storing of wearing apparel of the employees which shall be separate and apart from where foods are prepared or served.~~

~~§ 94.31 EQUIPMENT REQUIRED; SANITATION.~~

~~—(A) Garbage and waste material shall not be allowed to become a nuisance about any place or establishment but shall be placed in suitable galvanized iron or other sanitary metal cans which are watertight and which shall be kept covered with close fitting lids.~~

~~—(B) Buildings and all other places used for the preparation or serving of foods or drinks shall have a suitable sink properly connected to the city sewer, and if a sewer is not available, the sink shall be connected to an approved septic tank for the disposal of all liquid waste. These establishments shall also have hot running water available at all times.~~

~~—(C) Adequate washing facilities for the use of employees shall be provided, as well as an abundant supply of clean running water, soap and individual towels. No common towel shall be used or be permitted to be used in any food handling establishment.~~

~~—(D) Foods not in original containers which must be protected from public handling, flies, dirt, dust and other contamination shall be displayed or stored or offered for sale only in suitable and adequate equipment consisting of glass, wood, sheet metal or material of similar character.~~

~~—(E) Every wagon, cart or other vehicle used as a food handling or food vending establishment in the city shall be constructed of tight, sound, smooth material consisting of wood, metal or similar material so as to be easily cleaned and shall be provided with suitable and adequate equipment consisting of glass, wood, sheet metal or material of similar character for the storage or display of foods, which must be protected from public handling, flies, dirt, dust and other contamination.~~

~~—(F) Clean outer garments must be worn by personnel while handling foods, and in the case of persons serving foods or drinks in restaurants, hotels, lunch counters, soda fountains and the like, clean aprons and hair cover of a washable material must be worn at all times while on duty.~~

§ 94.32 PROTECTION FOR FOODS.

~~—It shall be unlawful for any person to store or to keep for the purpose of selling, to expose or offer for sale or to transport, convey or carry from one place to another any food for human consumption or any food sold or procured for the purpose of selling, offering or exposing the same for sale in the city, unless the food is protected from dust, dirt, flies, vermin, rats, mice, dogs, cats and other contamination.~~

~~—(A) This section relating to foods in buildings which are required to be protected at all times from contamination, shall be interpreted to mean any article of food, confection, condiment or drink used for human consumption, including raw cut meat, but not including raw vegetables, and other articles of food which are usually peeled, shelled or cooked after sale and before consumption. Fresh fruit, such as apricots or peaches, shall be classed as foods commonly peeled or cooked before consumption. Sausage, cheese, pickles, sauerkraut, cantaloupes and watermelon when sliced, dried fruits and foods of a similar character, unless within dust proof covering, casing or container, consisting of canvas, heavy wrapping paper, glass, wood, fiber or other suitable and similar material shall be classed as goods which are required to be protected at all times.~~

~~—(B) The protection which shall be considered adequate for food kept outside of buildings or in the open air or in unenclosed, roofed structures or wagons or other vehicles shall consist of a complete enclosure of a fixed or permanent character constructed of glass, wood or sheet metal or material of a similar character which is impermeable so as to protect against flies, dust, dirt, vermin, rats, mice, dogs, cats and other contamination. However, in the case of fruits, bakery goods or other goods subject to sweating when completely enclosed, openings may be allowed on two sides of the enclosure required, which opening shall not exceed 10% of the area of the sides and which openings shall be completely covered with 20 mesh screen or material of a similar character. Covering the top and all sides of a container with paper, cloth, canvas, tarpaulin or material of a similar character shall be considered an adequate covering for food while being conveyed or transported in vehicles.~~

~~—(C) The original box, crate or container and the usual cover for the container left in place and intact shall be considered adequate protection for fruits sold or offered for sale in the containers, provided the fruits are protected from dust, dirt, flies, vermin, rats, mice, dogs and cats.~~

~~—(D) A complete enclosure in a box, carton, wrapper or package of similar character shall be considered adequate protection for all foods required to be protected.~~

~~—(E) Nothing in this section shall be construed to prohibit the necessary exposure of food during the immediate process of preparation, cooking, assortment or packing in a building or place screened and free from flies or during loading or unloading or during the actual process of serving or selling.~~

~~—(F) Unwrapped foodstuff stored in a refrigerator must not touch the sides, bottom or top or any other part of the refrigerator. The unwrapped foods shall only be stored in a refrigerator after being placed in a stone, glass, porcelain or aluminum container. All food establishments keeping bulk foodstuffs in refrigerators must keep on hand at all times a disinfectant suitable for use in refrigerators for disinfecting and deodorizing, and it shall be used at least once each week in cleaning the refrigerator. A solution of hypochloride or chloride of lime is recognized as suitable for the above purpose.~~

~~—(G) Cakes, pies and all similar unwrapped foods must be protected from dust, flies and vermin by glass, wood, metal, fiber or other similar material. The food sold in grocery stores and similar places must be delivered wrapped by the bakery or other establishment or placed directly inside glass cases by the driver delivering for the baker or other establishment.~~

~~—(H) All bakery products delivered from wagons, trucks or other vehicles shall be delivered in clean baskets or other containers, lined with clean paper and shall not come in contact with the clothing of the person who delivers the same. All wagons, trucks and other vehicles and containers shall be so constructed as to prevent dust, dirt, flies and other contamination from coming in contact with the products.~~

~~—(I) All foodstuff in tin cases such as oysters, catsup and the like must be emptied immediately upon being open into crock, glass or enamel containers.~~

~~—(J) No food shall be deposited or allowed to remain within two feet of the surface of the floor when exhibited, unless the same shall be contained in tight boxes or other receptacles adequately protected from dogs, cats and other possible sources of contamination.~~

~~—(K) Straws, sugar and toothpicks offered for public use must be protected from dust, flies and handling by glass, china or other similar means.~~

~~—(L) Candies, confections, baked goods, soda fountain syrup, crushed fruits, nut meats, ice cream, whipped cream and the like which are sold in retail establishments must not be exposed to contamination from flies, dirt, dust and the like and shall not be sold or offered for sale without being at all times and seasons of the year kept tightly covered either in glass jars, cases, boxes or other similar means. Food products such as candy, peanuts, butter and the like shall be handled with scoops, forks or ladles.~~

~~—(M) Soda fountains shall at all times be kept clean and sanitary. Ice cream cans, syrup tanks, fruit juice extractors, malted milk containers and all other receptacles for crushed fruits and the like shall be thoroughly clean at all times. Ice to be chipped or crushed for use in drinks must be washed clean before chipping or crushing and put in clean receptacles.~~

~~—(N) Floors of kitchens, soda fountains and other places where foods are prepared or served shall be scrubbed daily, all walls and ceilings of kitchens kept clean and painted at least once each year.~~

~~§ 94.33 CLEANSING AND STERILIZATION OF EQUIPMENT.~~

~~—(A) Every vessel, glass, cup, dish or other utensil used in the consumption of foods or drinks in any hotel, café, restaurant, lunchroom, soda fountain, ice cream parlor, stand or other public eating or drinking place in the city shall, after each individual service, be thoroughly cleansed with a suitable alkaline cleansing agent and immersed in boiling water or exposed to dry heat of 300°F, or to live steam for at least three minutes, or thoroughly cleansed in clean hot water by immersion for at least three minutes in water at least 180°F and afterwards immersed for at least three minutes in clean water to which has been added a solution of hypochlorite, chloride of lime or other disinfectant approved by the health authority, which has been prepared according to directions upon the label of the container in which the disinfectant was purchased. The strength of the disinfectant in rinse water shall at no time be less than 35 parts per million of available chlorine. Establishments using disinfectants for the purpose mentioned above or for cleansing for the purposes mentioned above or for cleansing refrigerators and the like shall have a supply of same available at all times. Individual utensils for one service only may be used and are recommended by the health authority.~~

~~—(B) Soda fountain glasses and containers that have been cleansed and sterilized must be stored inverted upon the back bar or preferably in a glass showcase on the back bar of the soda fountain. The use of unsterilized glasses and the like for service is positively prohibited. In addition to sterilizing glasses and containers used at fountains and other places serving drinks as required in division (A) of this section, there must be kept on hand at all times suitable alkaline cleansing agents.~~

~~§ 94.34 INSPECTIONS.~~

~~—The health authority is hereby authorized to make thorough inspection and collect samples from any food handling establishment or any place where food is stored or kept in the city at any reasonable time, and the health authority shall prescribe the rules and regulations for the inspection and control of sanitary conditions in the establishments as he/she may deem necessary to protect the public health.~~

~~§ 94.35 POWER TO FORBID SALE OF UNFIT FOODSTUFF.~~

~~—Whenever the sanitary conditions of any food handling establishment shall, in the judgment of the health authority, be such as to render the establishment a menace to public health, the health authority is authorized to forbid the sale of foodstuff from the establishment as long as such conditions exist.~~

~~94.36 ALTERING NOTICES AND THE LIKE.~~

~~—It shall be unlawful and constitute a misdemeanor for anyone to alter, deface, erase, obstruct or remove any card or notice posted by the city health authority, or his/her duly authorized agent, for the purpose of enforcing this subchapter, the food and sanitary laws of the state or regulations of the health department.~~

~~TEXAS DEPARTMENT OF HEALTH RULES OF FOOD SERVICE SANITATION § 94.50 ADOPTION.~~

~~—The definition, the inspection of food service establishments, the issuance, suspension and revocation of permits to operate food service establishments, the prohibiting of the sale of unsound or mislabeled food or drink and the enforcement thereof shall be regulated in accordance with the Texas Department of Health, Division of Food and Drugs Rules on Food Service Sanitation, 229.161 through 229.175, the Rules on Retail Food Store Sanitation 229.231 through .239, The Texas Food, Drug and Cosmetic Act (Tex. Health & Safety Code §§ 431.001 *et seq.*) and Texas Sanitation and Health Protection Law (Tex. Health & Safety Code §§ 341.001 *et seq.*), which are adopted by reference the same as if copied verbatim herein, three certified copies of which shall be on file in the office of the City Secretary, and the words "regulatory authority" shall be understood to refer to representatives of the County Health Department.~~

~~§ 94.51 PERMITS, LICENSES OR CERTIFICATES, GENERALLY.~~

~~—No person shall operate a food service establishment who does not have a valid permit, license or certification issued to him/her by the health authority. Only a person who complies with the requirements of these rules shall be entitled to receive or retain such a permit, license or certificate. Permits, licenses or certificates are not transferable. Upon change of ownership of a business, the new business owner will be required to meet current standards as defined in city ordinances and state law before a permit will be issued. A valid permit, license or certificate shall be posted in public view in a conspicuous place at the food establishment for which it is issued. A separate permit shall be required for every type food establishment, temporary food establishment and childcare facility whether situated in the same building or at a separate location. Lounge operations located in the same building on the same floor and operated under the same liquor license will not require a separate permit.~~

~~§ 94.52 ISSUANCE OF PERMIT, LICENSE OR CERTIFICATE.~~

~~—(A) Any person desiring to operate a food service establishment shall make written application for a permit, license or certificate on forms provided by the health authority. The application shall include the name and address of each applicant, the location and type of the proposed food service establishment and the signature of each applicant.~~

~~—(B) Prior to approval of an application for permit, license or certificate, the health authority shall inspect the proposed food service establishment to determine compliance with the requirements of this division.~~

~~—(C) The health authority shall issue a permit, license or certificate to the applicant if its inspection reveals that the proposed food service establishment complies with the requirements of this section.~~

~~§ 94.53 SUSPENSION OF PERMIT, LICENSE OR CERTIFICATE.~~

~~—(A) The health authority may suspend any permit to operate a food establishment if the holder of the permit, license or certificate does not comply with the requirements of this subchapter, or if the operation of the establishment does not comply with the requirements of this subchapter, or if the operation of the food service establishment otherwise constitutes an imminent hazard to public health. Before a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten days of receipt of a written request for a hearing. Suspension is effective after a ten-day notice period is given by the health authority in the event a public~~

hearing is not requested. When a permit is suspended, food service operations shall immediately cease.

~~—(B) Whenever a permit, license or certificate is suspended, the holder of the permit, license or certificate, or the person in charge shall be notified in writing that an opportunity for a hearing will be provided if a written request for a hearing is filed with the health authority by the holder of the permit, license or certificate within ten days. If no written request for a hearing is filed within ten days, the suspension is sustained. The health authority may end the suspension at any time if reasons for suspension no longer exist.~~

~~§ 94.54 REVOCATION OF PERMIT, LICENSE OR CERTIFICATE.~~

~~—The health authority may, after providing opportunity for a hearing, revoke a permit, license or certificate for serious or repeated violations of any of the requirements of these rules or for interference with the health authority in the performance of his/her duties. Prior to revocation, the health authority shall notify the holder of the permit, license or certificate, or the person in charge, in writing of the reason for which the permit, license or certificate is subject to revocation, and that the permit, license or certificate shall be revoked at the end of the ten days following service of the notice unless a written request for a hearing is filed with the health authority by the holder of the permit, license or certificate within the ten-day period, the revocation of the permit, license or certificate becomes final.~~

~~§ 94.55 SERVICE OF NOTICE.~~

~~—A notice provided for in these rules is properly served when it is delivered to the holder of the permit, license or certificate, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit, license or certificate. A copy of the notice shall be filed in the records of the health authority.~~

~~§ 94.56 HEARINGS.~~

~~—The hearings provided for in these rules shall be conducted by the health authority at a time and place designated by him/her. Based upon the recorded evidence of the hearing, the health authority shall make a final finding and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit, license or certificate by the health authority.~~

~~§ 94.57 APPLICATION AFTER REVOCATION.~~

~~—Whenever a revocation of a permit, license or certificate has become final, the holder of the revoked permit, license or certificate may make written application for a new permit, license or certificate.~~

Sec. 94.05. REVIEW OF PLANS.

(a) Submission of plans. Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for the construction, remodeling or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. Extensive remodeling means that 20% or greater of the area of the food

establishment is to be remodeled or when equipment required by these rules is to be relocated or removed. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of the state rules. No food establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority.

(B) *Pre-operational inspection.* Whenever plans and specifications are required by this subchapter to be submitted to the health authority, the health authority shall inspect the food service establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this subchapter.

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§Sec. 94.06.58 INSPECTIONS.

(aA) Before a permit is issued, the regulatory authority shall inspect and approve the food establishment. An inspection of a food establishment shall be performed at least once annually and shall be prioritized based upon assessment of the food establishment's compliance and potential of causing foodborne illness according to 25 TAC 229.171(h). ~~Inspection frequency.~~ An inspection of a food service establishment shall be performed at least once every six months. Additional inspections of the food service establishment shall be performed as often as necessary for the enforcement of these rules.

(bB) The regulatory authority shall classify food establishments as special priority, high priority, medium priority, or low priority, according to the type of operation; particular foods that are prepared; number of people served; susceptibility of the population served; history of violations and any other risk factor deemed relevant to the operation. ~~Access.~~ The health authority or his/her agents, after proper identification, shall be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with these rules. The agent shall be permitted to examine the records of the establishment to obtain information pertaining to food supplies purchased, received or used or to persons employed.

(cC) Refusal of an owner, manager or employee to allow the authorized representative of the regulatory authority, upon presentation of credentials, to inspect any permitted business or operation therein during normal business hours will result in an immediate suspension of the permit, requiring all permitted activities to abate until after such time as a hearing may be held per Sec. 94.04(g). ~~Report of inspections.~~ Whenever an inspection of a food service establishment or commissary is made, the findings shall be recorded on the inspection report form set out in § 94.52(E). The inspection report form shall summarize the requirements of this section and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The rating score of the establishment shall be the total weighted point values for all violations, subtracted from 100. A copy of the inspection report form shall be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

~~—(D) *Correction of violations.*~~

~~—(1) The inspection report form shall specify a reasonable period of time for the correction of 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 a complete lack of refrigeration or sewage backup into the establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the health authority.~~

~~—(b) All violations of four or five point weighted items shall be corrected as soon as possible, but in any event, within ten days following inspection. Within 15 days after the inspection, the holder of the permit, license or certificate shall contact the health authority, notifying him/her that the four or five point violations have been corrected. A follow-up inspection shall be conducted to confirm correction.~~

~~—(c) All one or two point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.~~

~~—(d) When the rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.~~

~~—(e) In the case of temporary food service establishments, all violations shall be corrected within 24 hours. If violations are not corrected within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the health authority.~~

~~—(2) The inspection report shall state that failure to comply with any time limits for corrections may result in 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 health authority within ten days following cessation of operations. If a request for a hearing is received, a hearing shall be held within ten days of receipt of that request.~~

~~—(3) Whenever a food service establishment is required under the provisions of this decision 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 exists. Opportunity for reinspection shall be offered within a reasonable time.~~

~~—(E) *Inspection report form.*—An inspection report form based on the requirements of this section is appended to the Texas Department of Health, Division of Foods and Drugs, Rules on Food Service Sanitation 301.73.11.001 through .011.~~

~~§ 94.59 EXAMINATION AND CONDEMNATION OF FOOD.~~

~~—Food may be examined or sampled by the health authority as often as necessary for enforcement of this subchapter. The health authority may, upon written notice to the owner or person in charge specifying with particularity the reasons therefor, place a hold order on any food which he/she believes is in violation of rule .003, division (1), or any other provision of this subchapter. The health 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.~~

~~The health authority shall permit 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. The hold order shall state that a request for hearing may be filed within ten days and that if no hearing is requested, the food shall be destroyed. A hearing shall be held 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 the food or to bring it into compliance with the provisions of these rules.~~

~~§ 94.60 REVIEW OF PLANS.~~

~~—(A) *Submission of plans.* Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for the construction, remodeling or conversion shall be submitted to the health authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas and the type and model of proposed fixed equipment and facilities. The health authority shall approve the plans and specifications if they meet the requirements of these rules. No food establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the health authority.~~

~~—(B) *Pre operational inspection.* Whenever plans and specifications are required by this subchapter to be submitted to the health authority, the health authority shall inspect the food service establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this subchapter.~~

~~§ 94.61 PROCEDURE WHEN INFECTION IS SUSPECTED.~~

~~—When the health authority has reasonable cause to suspect the possibility of disease transmission from any food service establishment employee, he/she may secure morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The health authority may require any or all of the following measures:~~

- ~~—(A) The immediate exclusion of the employee from all food service establishments.~~
- ~~—(B) The immediate closing of the food service establishment concerned until, in the opinion of the health authority, no further danger of disease outbreak exists.~~
- ~~—(C) Restriction of the employee's service to some area of the establishment where there would be no danger of transmitting disease.~~
- ~~—(D) Adequate medical and laboratory examination of the employee, of other employees and of his/her and their body discharges.~~

~~§Sec. 94.07.62 FOOD MANAGER/FOOD HANDLER CERTIFICATION.~~

- ~~(aA) *Requirement.*~~

(1) Each food establishment shall have at least one person employed in a managerial capacity possessing a current food manager certificate approved by the regulatory authority. ~~—(1) Every permitted food establishment that is required to have a food manager certification shall have a person employed in a managerial capacity possessing a current food manager's certificate issued by the Health Department.~~

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(2) Each food establishment with six or more employees must have at least one employee with a current food manager certificate on site during all operations. ~~—(2) Establishments handling open foods and/or beverages and having six or more employees per eight-hour shift shall also have at least one certified food manager on duty during all hours of operation.~~

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(3) Every employee of a food establishment who does not hold a current food manager certificate must maintain a valid food handler certification registered with the regulatory authority. ~~—(3) Establishments that are required to have certified food managers must provide proof of certification to the Health Department prior to opening the establishment.~~

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(4) Food manager and food handler certificates must be maintained in the food establishment and presented upon request by the regulatory authority. ~~—(4) Existing establishments that are required to have certified food managers shall have 60 days to meet certified food manager requirements upon the transfer or termination of a certified food manager.~~

(5) In the event of a change of ownership of an establishment, the establishment shall provide proof to the Health Department that the appropriate number of certified food managers will be on duty, if required in division (A)(1), within 60 days of the effective date of the change of ownership.

~~—(6) All food handlers must obtain an annual food handler certification after they have attended the food handler class offered at the Health Department, 1800 University Drive, Fort Worth, Texas. Food handlers must obtain these certificates prior to working at a food establishment.~~

(bB) Expiration.

(1) Food manager certificates are valid for a period of three years from the date issued up to five years as determined by the regulatory authority, unless revoked by the Health Department regulatory authority prior to the expiration date.

(2) Food handler certifications shall be valid for one year unless revoked by the Health Department a period of up to three years, as determined by the regulatory authority.

(3) Exemptions from food manager certification requirement are granted for the following:

- ~~—(a) Temporary food establishments.~~
- ~~—(b) Establishments with uncut produce or prepackaged food only.~~
- ~~—(c) Establishments serving only fountain drinks, coffee and/or popcorn.~~

~~—(d) Day care centers that do not prepare food other than heating/cooling of prepackaged items.~~

~~—(e) Establishments with fewer than seven employees.~~

~~—(f) Farmer's markets.~~

Secs. 94.08—94.98. RESERVED.

§Sec. 94.99. PENALTY.

Sec. 94.99. PENALTIES.

(a) It is an offense for a person, firm, company, or corporation to violate any provision of this chapter.

(b) It is an offense for the holder of a permit issued under this chapter to allow a food establishment to be operated in violation of any provision of this chapter.

(c) Each day that a violation is committed, continued, or permitted shall constitute a separate offense.

~~—(A) (1) A person who violates a provision of §§ 94.30 et seq. is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued or permitted, and each offense is punishable by a fine of not more than \$2,000.~~

~~—(2) In addition to prohibiting or requiring certain conduct of individuals, it is the intent of §§ 94.30 et seq. to hold a corporation, partnership or other association criminally responsible for acts or omissions performed by an agent acting in behalf of the corporation, partnership or other association and within the scope of his/her employment.~~

~~—(B) Any person who violates a provision of §§ 94.50 et seq. and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of §§ 94.50 et seq. and any responsible officer of a permit holder or those persons shall be fined not more than \$2,000. A person who violates a provision of §§ 94.50 et seq. is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued or permitted. In addition to prohibiting or requiring certain conduct of the individual, it is the intent to hold a corporation, partnership or other association criminally responsible for acts or omissions performed by an agent acting in behalf of the corporation, partnership or other association and within the scope of his/her employment.~~

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