

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF MANSFIELD TEXAS, AMENDING CHAPTER 94, "FOOD ESTABLISHMENTS", OF THE CITY OF MANSFIELD CODE OF ORDINANCES, AS AMENDED, BY AMENDING, REVISING, AND MODIFYING THE REGULATIONS FOR FOOD ESTABLISHMENTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Mansfield is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

**WHEREAS**, Chapter 94 of the City of Mansfield Code of Ordinances provides for health and sanitation regulations that were adopted to protect the public health, safety, and welfare; and

**WHEREAS**, the City Council now desires to amend certain provisions of the health and sanitation regulations providing for the regulation of food service establishments, retail food stores, temporary food establishments, mobile food units, and roadside food vendors;

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

**SECTION 1.**

That Chapter 94, "Food Establishments", of the Code of Ordinances of the City of Mansfield, is hereby amended by amending, revising, and modifying the chapter in its entirety to read as follows:

**GENERAL PROVISIONS**

**Sec. 94.01. 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.

**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. 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 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.

(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.

(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.

#### **Sec. 94.05. REVIEW OF PLANS.**

(a) *Submission of plans.* Whenever a food 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 such 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) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

(c) *Preoperational inspection.* The regulatory authority shall inspect any food establishment prior to its beginning operation to determine compliance with approved plans and specifications and with the requirements of these rules.

(d) The fees for the review of plans shall be set out, adopted and defined in the annual budget of the city.

#### **Sec. 94.06. INSPECTIONS.**

(a) 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).

(b) 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.

(c) 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).

#### **Sec. 94.07. FOOD MANAGER/FOOD HANDLER CERTIFICATION.**

(a) *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.

(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.

(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.

(4) Food manager and food handler certificates must be maintained in the food establishment and presented upon request by the regulatory authority.

(b) *Expiration.*

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

(2) Food handler certification shall be valid for a period of up to three years, as determined by the regulatory authority.

#### **Secs. 94.08—94.98. RESERVED.**

#### **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.

## **SECTION 2.**

That this ordinance shall be cumulative of all other ordinances of the City of Mansfield and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

## **SECTION 3.**

Should any paragraph, sentence, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of the Mansfield Code of Ordinances as a whole.

## **SECTION 4.**

That all rights or remedies of the City of Mansfield, Texas, are expressly saved as to any and all violations of the City Code or any amendments thereto regarding food establishments that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

## **SECTION 5.**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined as provided for in this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

## **SECTION 6.**

The City Secretary of the City of Mansfield is hereby directed to publish the caption and penalty clause of this ordinance at least once in the official newspaper of the City of Mansfield.

## **SECTION 7.**

This Ordinance shall take effect immediately from and after its passage on third and final reading and the publication of the caption, as the law and charter in such cases provide.

The first reading approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Second reading approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**DULY PASSED** on the third and final reading by the City Council of the City of Mansfield, Texas, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**David L. Cook**, Mayor

ATTEST:

\_\_\_\_\_  
**Vicki Collins**, City Secretary

APPROVED AS TO FORM AND LEGALITY:

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**Allen Taylor**, City Attorney