



## ARTICLE IV – REGULATION OF FOOD ESTABLISHMENTS

### Section 4.01 Texas Food Establishment Rules Adopted

A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Food Establishment Rules found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article IV, Regulation of Food Establishments, of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspecting of food establishments in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the handling of food in such establishments. The enforcement of this ordinance and the fixing of penalties shall be regulated in accordance with this chapter and the terms of the unabridged form of the Texas Food Establishment Rules, a copy of which is on file in the Office of the City Secretary.

C. In the event of a conflict between any provision of the Texas Food Establishment Rules and any provision of this ordinance, this ordinance shall prevail.

D. The adopting by reference of the Texas Food Establishment Rules, as provided in Section 4.01(A) above, is made subject to and is modified and amended as follows:

1. The words "regulatory authority" in said Rules shall mean the City of Arlington **Health Department**; and
2. The sentence: "A sign shall be prominently displayed in view of each rest room lavatory used by food service employees that states: 'Employees must thoroughly wash hands before returning to work after using the rest room'" shall be **added** to 229.163(C) as item (13).
3. After June 1, 2000, the sentence in 229.163(b) shall be amended to "The person in charge shall demonstrate this knowledge by compliance with these rules, by being a Certified Food Protection Manager who has shown proficiency of required information through passing a test that is part of a Food Protection Management Program accredited by the Texas Department of Health according to 25 TAC Section 229.172, and by responding correctly to the inspector's questions as they relate to the specific food operation."

- a. The permit holder of every Food Establishment shall ensure that at least one person in charge at each location, who is responsible for supervising food preparation and service, has a valid Food Protection Management Training Certificate issued by the Texas Department of Health as proof of successful completion of a Texas Department of Health accredited Food Protection Management Training Program as defined in 25 TAC§ 229.172.
- b. The permit holder shall make Food Protection Manager Certificates available for immediate inspection upon request by the regulatory authority.
- c. The permit holder of a new Food Establishment, an existing Food Establishment that has changed ownership, or a Food Establishment whose Certified Food Protection Manager has transferred or resigned shall have thirty (30) days to comply with the requirements of this Section.
- d. The permit holder of an existing Food Establishment shall notify the Health Department within forty-eight (48) hours of the termination or transfer of a Certified Food Protection Manager. The permit holder shall have thirty (30) days from the effective date of the termination or transfer to comply with the requirements of this Section.
- e. The following Food Establishments are exempt from the requirements of this Section: Temporary Food Establishments; Food Establishments that sell or distribute only prepackaged foods or uncut produce; and Food Establishments that serve only fountain drinks, coffee, alcoholic beverages, popcorn, and/or snow cones.
- f. A permit holder is in compliance with the provisions of this section if there is one Certified Food Protection Manager employed in a supervisory capacity for several Food Establishments located in the same building and under the same ownership and management.

**Section 4.02 Food Establishment**

- A. No person or firm shall operate a Food Establishment, Temporary Food Establishment, or Mobile Food Establishment in the City of Arlington without a valid permit issued by the Administrator or his designee.
- B. In cases where a person or firm conducts, in a single building or at the same address, more than one (1) operation, vocation or business, whether such operation, vocation or business constitutes a Food Establishment or Temporary Food Establishment, then a separate permit shall be required for each such operation, vocation or business.

**Section 4.03 Food Handler - Permit Required**

A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handler Permit, issued by the City of Arlington Health Department.

B. No person who owns, manages or otherwise controls any Food Service Establishment shall permit any Food Service Employee to be employed therein who does not after thirty (30) days of employment possess a current valid Food Handler Permit issued by the City of Arlington Health Department.

#### **Section 4.04 Permits - Authority to Issue**

The Administrator or his designee is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Mobile Food Establishment, Temporary Food Establishment Permit or a Food Establishment Permit in the City of Arlington; provided that only a person or firm that complies with the requirements of this ordinance shall be entitled to receive and retain such permit.

#### **Section 4.05 Permits - Application**

A. Application for such permit as required of this ordinance in Sections 4.02 and 4.03 shall be made in writing to the Administrator or his designee upon forms prescribed and furnished by the City of Arlington Health Department.

B. A Food Establishment permit Plan Review fee shall be due for each Food Establishment that requires plans to be submitted according to Section 4.18 of this chapter.

C. A Food Establishment permit application fee shall be due for each Food Establishment that requires a new Food Establishment permit due to change of ownership, change in type of operation, or revocation, and a new application shall be made for a permit as required by Section 4.02 of this ordinance. Whenever a new Food Establishment Permit is required, the regulatory authority shall inspect the Food Establishment prior to beginning operation to determine compliance with requirements of this ordinance.

D. Failure to provide all required information, or falsifying information required on the application, may result in denial or revocation of the permit.

#### **Section 4.06 Food Handling School Required - Food Handler Permit**

In order to receive a Food Handler Permit, every person owning, employed by, or otherwise connected with a Food Establishment whose work brings him into contact with food, utensils or food service equipment shall be required to attend a Food Handling School

held by the City of Arlington Health Department before a Food Handler Permit will be issued. This requirement must be met upon expiration of the permit and upon application for a new permit.

#### **Section 4.07 Posting of Food Handler, Food Establishment, and Temporary Food Establishment Permits**

Every permit holder or person in charge shall at all times have available on the premises for inspection the Food Handler Permit of its employees, and shall at all times display in public view the Food Establishment Permit, Mobile Food Establishment Permit, or Temporary Food Establishment Permit.

#### **Section 4.08 Permits - Duration**

A. Any Food Establishment Permit or Mobile Food Permit granted under the provision of Section 4.02 of this ordinance shall remain in full force and effect twelve (12) months from the date of issuance as long as the annual food establishment permit fee is paid unless denied, or sooner, suspended or revoked for cause. A Food Establishment Permit that lapses for non-payment of the annual food establishment permit fee, will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

B. An exception to 4.08(A) above is that a Temporary Food Establishment Permit shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause.

C. Any permit granted under provisions of Section 4.03(A), of this ordinance shall remain in full force and effect for thirty-six (36) months from the date of issuance unless sooner suspended or revoked for cause.

#### **Section 4.09 Permits - Non-Transferable**

Every permit issued under the provisions of this ordinance shall be nontransferable and nonrefundable. A Food Establishment or Temporary Food Establishment Permit shall permit the operation of the establishment only at the location, for the type of food service, and for the permit holder for which granted.

#### **Section 4.10 Suspension or Revocation of Food Handler's Permit**

The Administrator or his designee shall have the right to suspend or revoke a valid Food Handler Permit at any time the holder of such card becomes affected with any disease in a communicable form, becomes a carrier of any such disease or is suspected of being affected with or being a carrier of any such disease as stated in Texas Food Establishment Rules, Section 229.171(o)(2). Such

suspension or revocation shall remain in effect until such person is released from restrictions or exclusions according to the Texas Health and Safety Code, Chapter 438.033, and the conditions stated in the Texas Food Establishment Rules, Section 229.171(o)(4).

#### **Section 4.11 Suspension of a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment Permit**

A. The Administrator or his designee may, without prior notice or hearing, suspend any permit granted under Section 4.02 of this ordinance to operate a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment if the permit holder or person in charge does not comply with the requirements of this ordinance, or if the operation of the Food Establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 4.15 of this ordinance. When a permit is suspended, food service operations shall immediately cease.

B. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

C. Whenever a Food Establishment, Mobile Food Establishment, or Temporary 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. During the time a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The Arlington Health Department."

#### **Section 4.12 Denial of a Food Establishment, Mobile Food Permit, or Temporary Permit**

The Administrator or his designee may, after providing notice of opportunity for a hearing according to Section 4.15 of this ordinance, deny a permit to operate a Food Establishment, Mobile Food Permit, or Temporary Food Permit if the applicant for the permit does not comply with the requirements of this ordinance, or if the operation otherwise constitutes a substantial hazard to public health. Whenever a denial of a permit has become final, the applicant may make written application for a permit according to Section 4.05 of this ordinance.

#### **Section 4.13 Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit**

The Administrator or his designee may, after providing opportunity for a hearing according to Section 4.15 of this ordinance, revoke a permit granted under Section 4.02 of this ordinance for serious or repeated violations of any of the requirements of this ordinance, failure to maintain a Food Establishment permit due to failure to pay fees according to Section 4.08 of the ordinance, or for interference with the regulatory authority in the performance of its duty. 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 (10) days following service of such notice, unless a written request for a hearing is filed with the Administrator or his designee by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit according to Section 4.05(C) of this ordinance.

#### **Section 4.14 Service of Notices**

A notice provided for in this ordinance is properly served when it is delivered to the permit holder or 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. A copy of the notice shall be filed in the records of the Administrator or his designee.

#### **Section 4.15 Notice of Appeal; Hearing**

A. Upon denial, suspension, or revocation of a Food Establishment, Mobile Food Establishment Permit, or a Temporary Food Establishment; the regulatory authority shall notify the applicant, permit holder, or person in charge, in writing, of the reason for which the permit is subject of denial, suspension, or revocation. The applicant, permit holder, or person in charge shall file a written request for a hearing with the Administrator or his designee within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial, suspension, or revocation is sustained.

B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

C. The hearings provided for in this ordinance shall be conducted by the Administrator or his designee at a time and place designated by it. Based upon the recorded evidence of such hearing, the Administrator or his designee 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 permit holder of the permit by the Administrator or his designee.

D. After such hearing, an applicant that has had a permit denied, suspended, or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

#### **Section 4.16 Inspection Frequency**

A. An inspection of a Food Service Establishment shall be performed at least once annually and shall be prioritized based upon assessment of a Food Establishment's compliance and potential of causing foodborne illness according to Section 229.171(h) of the Texas Food Establishment Rules.

B. The Administrator or his designee shall classify Food Establishments as high priority, medium priority, or low priority, according to the type of operations, particular foods that are prepared, numbers of people served, susceptibility of the population served, and any other risk factor deemed relevant to the operation.

C. Additional inspections of the Food Establishment shall be performed as often as necessary for the enforcement of this ordinance.

D. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Administrator or his designee has reasonable cause to believe that there exists in any building or upon any premises any condition or violation of this Chapter, the Administrator or his designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrator or his designee by this Chapter. If such building or premises is occupied, he shall first present proper credentials and request entry. If such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused or if no owner or other person having charge or control of the building or premises can be located, the Administrator or his designee shall have recourse to every remedy provided by law to secure entry.

#### **Section 4.17 Examination and Condemnation of Food**

Food may be examined or sampled by Administrator or his designee as often as necessary for enforcement of this ordinance. The regulatory authority may, upon written notice to the owner or person in charge specifying with particularity the reasons therefore, place a hold order on any food which it believes is in violation of any section of this ordinance. The Administrator or his designee 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 removed from the establishment. The Administrator or his designee 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 (10) 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 such food or to bring it into compliance with the provisions of this ordinance.

#### **Section 4.18 Review of Plans**

A. 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. 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 this ordinance. No Food Establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the regulatory authority.

B. Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the Food Establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

C. Failure to follow the approved plans and specifications may result in a permit denial, suspension, or revocation.

#### **Section 4.19 Operation of Mobile Food Establishment**

A. Any person or firm who operates a Mobile Food Unit or a Mobile Food Establishment as defined in this ordinance shall not operate such establishment within one block of any block containing an elementary or junior high school.

B. Only food items previously approved by the regulatory authority may be sold on a Mobile Food Unit. Non-food items such as toys, fireworks, or any hazardous substances such as stink bombs are prohibited.

#### **Section 4.20 Fees**

The various requirements for permits, licenses, certificates, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Health Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.

#### **Section 4.21 Responsibilities of the Owner, Manager, or Person-in-Charge**

The permit holder, owner, manager, or person-in-charge of a food establishment shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Administrator or his designee. (Amend Ord 99-90, 7/27/99)

(Amend Ord 99-90, 7/27/99)