

Ordinances Governing
HEALTH AND SANITATION
in the
CITY OF ARLINGTON
TEXAS

Amended by Ordinance No. 15-056
(November 10, 2015)

(Chapter Designator: HEALTH)

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
88-46	03/15/88	
90-37	04/03/90	Amend Section 1.01 , redefining “Infectious Waste”; amend Section 2.08 , providing proper treatment and disposal of infectious wastes; amend Section 9.01 , providing a penalty for violation.
91-15	02/05/91	Addition of Article XI, <u>Retail Sales of Tobacco Products</u> , regulating the sale of tobacco products; addition of Appendix “A”, regulating sale decals.
91-18	02/19/91	Amend Section 10.01, <u>Definitions</u> , to add definitions of “Administrative Area,” “Eating Establishment,” “Net Floor Area,” “Retail or Service Establishment” and “Tobacco Product”; amend Section 10.02, <u>Smoking Prohibited - Public Places</u> , prohibiting smoking in public places, and providing exceptions and defenses; amend Section 10.03, <u>Regulation of Smoking - Eating Establishments</u> , prohibiting smoking in eating establishments, and providing exceptions and defenses; addition of Section 10.04, <u>Regulation of Smoking - Bars</u> , regulating smoking in bars; amend Section 10.05, <u>Posting of Signs and Placing of Receptacles Required</u> , establishing requirements for no smoking signs and extinguishment facilities; amend Section 10.07, <u>Structural Modifications Not Required</u> , providing for exceptions; addition of Section 10.10, <u>Culpability</u> , providing for a strict liability offense.
91-58	6/18/91	Amend Section 10.01, <u>Definitions</u> , to add definitions for “Billiard Hall”, “Bingo Parlor” and “Tobacco Shop”, and to delete the definition for “Bar”; amend Section 10.02, <u>Smoking Prohibited - Public Places</u> , to add Subsection (F) , allowing an exemption for tobacco shops; amend Section 10.04, <u>Regulation of Smoking in Bars, Nightclubs, Adult Entertainment Establishments, Billiard Halls and Bingo Parlors</u> , regulating smoking in certain public places; amend Section 10.05, <u>Posting of Signs and Placing of</u>

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		<u>Receptacles Required</u> , relative to signage and smoking extinguishment facilities in certain public places.
93-07	02/02/93	Amend Section 10.02 , <u>Smoking Prohibited - Public Places</u> , Subsection (A) , <u>Prohibited Places</u> , to prohibit smoking in outdoor service lines, athletic facilities, theaters and amphitheaters; amend Subsection (C) , <u>Defenses</u> , to provide a defense to smoking in private areas, private seating areas and press boxes of outdoor athletic facilities, theaters and amphitheaters; amend Section 10.05 , <u>Posting of Signs, Placing of Receptacles and Public Address System Announcement Required</u> , to provide for public address system announcements.
93-25	03/23/93	Amend Section 10.01 , <u>Definitions</u> , to revise definition of “employer” and add definition for “physically separated section”; amend Section 10.06 , <u>Regulation of Smoking - Workplace</u> , creating regulations for smoking in the workplace.
93-26	03/30/93	Amend Section 4.01 , <u>Texas State Department of Health Rules on Food Service Sanitation Adopted</u> , to add Subsection 4.01(G) eliminating the requirement for controlled air currents in certain outdoor serving areas.
94-02	01/04/94	Amend Section 10.03 , <u>Regulation of Smoking - Eating Establishments</u> , to include the regulation of bars, night clubs, adult entertainment establishments, billiard halls and bingo parlors; repeal Section 10.04 , <u>Regulation of Smoking in Bars, Nightclubs, Adult Entertainment Establishments, Billiard Halls and Bingo Parlors</u> ; repeal Article XI and adopt a new Article XI , <u>Retail Sales of Tobacco Products</u> , to prohibit the sale of tobacco products by vending machines.
94-26	02/08/94	Amend Section 10.02(D)(4) , <u>Smoking Prohibited - Public Places</u> ; Section 10.03(C)(2) and (3) , <u>Regulation</u>

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		<u>of Smoking - Eating Establishments; Section 10.06, Structural Modifications Not Required; Section 10.07, Exemptions</u> , to revise certain references. Amend Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required , relative to requirements for posting of signs; amend Section 11.03, Vending Machines , to provide an exception to the prohibition of the sale of tobacco products by vending machines within the City limits.
94-109	07/19/94	Amend Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls and Bingo Parlors , to regulate smoking in such establishments, including bowling centers.
94-146	10/25/94	Amend Article V, Child Care Centers , relative to the minimum standards for the operation of child care centers within the City of Arlington.
95-89	07/05/95	Amend Section 4.01, Texas State Department of Health Rules on Food Sanitation Adopted , relative to the definitions of “food processing establishment” and “Commissary”.
96-20	01/30/96	Addition of Article XII, On-Site Sewage Disposal , adopting rules regulating on-site sewage facilities to abate or prevent injury or pollution to the public health.
96-135	10/15/96	The adoption of a new Article VII, entitled Public and Semipublic Swimming Pools .
96-136	10/15/96	Amend Section 5.10 , relative to fingerprinting and denial of license; amend Section 5.20, at subsection (D) , relative to chain-link fence exemptions; amend Section 5.23, at subsection (C) , relative to uninsured/underinsured motorist insurance.

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97-19	02/04/97	Amend Article I , <u>Definitions</u> , Section 1.01 , <u>Definitions</u> , relative to the addition of the definitions of “deep areas”, “extensively remodeled”, “free available chlorine”, “non-profit organization”, “service animal” and “shallow area”, the deletion of the definitions of “environmental health official”, “free chlorine residual” and “manager of operations”, and the amendment of the definition of “lifeguard”; amend Article IV , <u>Regulation of Food Service Establishments</u> , Section 4.01 , <u>Texas State Department of Health Rules on Food Service Sanitation Adopted</u> , relative to the adoption of the rules on food service sanitation as adopted and published by the Texas Department of Health; amend Section 4.02 , <u>Food Service Establishment</u> , relative to permit requirement; amend Section 4.04 , <u>Permits - Authority To Issue</u> , relative to the designation of the proper authority; amend Section 4.05 , <u>Permits - Application</u> , relative to permit application requirements; amend Section 4.08 , <u>Permits - Duration</u> , relative to nonpayment of permit fee and suspension of permit; amendment of Section 4.09 , <u>Permits - Non-Transferable</u> , relative to the nonrefundability of a permit and validity of a permit only for the owner for which granted; amend Section 4.10 , <u>Revocation of Food Handling Permit</u> , relative to the designation of the proper authority; amend Section 4.11 , <u>Suspension of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit</u> , relative to the addition of language to include mobile food service establishment; amendment of Section 4.12 , <u>Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit</u> , relative to the addition of language to include mobile food service establishment; amend Section 4.13 , <u>Service of Notices</u> , Section 4.14 , <u>Hearing</u> , Section 4.16 , <u>Inspection Frequency</u> , and Section 4.17 , <u>Examination and Condemnation of Food</u> ,

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<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		relative to the designation of the proper authority; amend Section 4.19, <u>Operation of Mobile Food Service Establishment Near Schools</u> , relative to items sold on a mobile food unit; amend Section 4.20, <u>Fees</u> , relative to consolidation of the section into one paragraph; amend Article VII, <u>Public and Semipublic Swimming Pools</u> , Section 7.10, Subsection (C) , relative to the wording on signs for diving in water greater than five (5) feet in depth.
97-98	07/15/97	Addition of Article XII, <u>Youth Tobacco Use</u> , relative to prohibiting the possession of tobacco products by minors.
97-108	07/29/97	Amend Ordinance 97-98 relative to the renumbering of Article XII, <u>Youth Tobacco Use</u> .
97-126	09/02/97	Amendment of Article II, Section 2.02, <u>Residential Collection - Placement of Containers</u>, Subsection (D) , relative to the time that residential garbage may be placed at the curbside for collection.
98-12	01/20/98	Amend Article I, Section 1.01, <u>Definitions</u> , relative to the addition of a definition for “Food Service Employee”; amend Article IV, Section 4.01, <u>Texas Department of Health Rules on Food Service Sanitation Adopted</u> , by the addition of a new subsection (D)(13) , relative to the requirement of food service employees to keep their hands and exposed portions of their arms clean and renumbering the remaining subsections; amend Section 4.01, Subsection (D)(13) , relative to the minimization of bare-hand contact with exposed, ready-to-eat food; amend Section 4.03, <u>Food Handlers - Permit Required</u> , relative to food handling permits; addition of Section 4.21, <u>Responsibilities of the Owner, Manager, or Person-In-Charge</u> , relative to the responsibilities of the owner, manager or person-in-charge.

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99-16	02/02/99	Temporarily suspend application of portions of the “Health And Sanitation” Chapter of the Code of the City of Arlington, Texas, 1987, Section 2.01, Duties of Customer, Subsection (A) , and the first sentence of Section 2.04, Residential Collection - Charges , to the extent of conflict with the City’s automated trash collection pilot program from February 1, 1999 to June 30, 1999.
99-90	07/27/99	Amend Article I, Definitions, Section 1.01, Definitions , relative to the deletion of the definitions of “Mingle, mingling”, “Private Parts”, and “Promoter” and the addition of the definitions of “Permit Holder” and “Person in charge”; amend Article IV, Regulation of Food Service Establishments , relative to adoption of Texas Food Establishment Rules; amend Article V, Child Care Centers , relative to changes in application process, worker qualifications and safety and sanitation.
00-037	04/04/00	Amend Article I, Definitions, Section 1.01, Definitions , relative to the deletion of definitions of “Deep Areas”, “Free Available Chlorine”, “Lifeguard”, “Semipublic Pool”, “Service Animal”, “Shallow Area”, “Spa” and “Swimming Pool or Pool”, the addition of the definitions of “Therapy Pool” and “Trained Pool Operator”, and the amendment of the definitions of “Issuing Officer”, “Private Pool” and “Public Pool”; amend Article VII, Public and Semipublic Swimming Pools , relative to updating the ordinance to conform to recent changes in State law.
01-045	04/24/01	Amend Article II, Garbage and Trash, Section 2.02, Residential Collection - Placement of Containers, Subsection (D) relative to recycling containers.
03-039	04/01/03	Amend Article IV, Regulation of Food Establishments, Section 4.01, Texas Food Establishment Rules Adopted, Subsection (D)(3) ,

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04-007	01/13/04	<p>relative to the addition of a registration fee for a Certified Food Protection Manager and the addition of Commissary; Section 4.02, <u>Food Establishment, Subsection (A)</u>, and Section 4.04, <u>Permits – Authority to Issue</u>, relative to the addition of Commissary and Catering Vehicle; Section 4.05, <u>Permits – Application</u>, and Section 4.07, <u>Posting of Food Handler, Food Establishment, and Temporary Food Establishment Permits</u>, relative to the addition of Commissary; Section 4.08, <u>Permits - Duration</u>, relative to the duration of a Food Handler Permit and the addition of Commissary and Catering Vehicle; Section 4.09, <u>Permits – Non-Transferable</u>, relative to the addition of Commissary; Section 4.11, <u>Suspension of a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment Permit</u>, Section 4.12, <u>Denial of a Food Establishment, Mobile Food Permit, or Temporary Permit</u>, Section 4.13, <u>Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit</u>, and Section 4.15, <u>Notice of Appeal; Hearing, Subsection (A)</u>, relative to the addition of Commissary and Catering Vehicle; Section 4.16, <u>Inspection Frequency</u>, and Section 4.18, <u>Review of Plans</u>, relative to the addition of Commissary; amend Article V, <u>Child Care Centers</u>, Section 5.07, <u>Permit Duration and Renewal</u>, relative to a Permit Reinstatement Fee; amend Article VII, <u>Public Swimming Pools</u>, Section 7.01, <u>Texas Standards for Public Swimming Pool and Spa Rules Adopted</u>, Subsection (D)(5)(a), relative to registration of Trained Pool Operators.</p> <p>Amend Article I, Section 1.01, relative to the definitions of “Issuing Officer” and “Health Authority”; Article II, Section 2.09, to update the reference to the proper notification agent; Section 2.19, Article IV, Section 4.01(D)(1), Section</p>

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		4.01(D)(3)(d), Section 4.03, Section 4.05(A), Section 4.06, Section 4.11(C), Article V, Section 5.07, Section 5.08(B)(1), Section 5.08(D), Section 5.10, Section 5.11, Section 5.17(A), Section 5.23(G), and Section 5.25(B), to update the reference to the Neighborhood Services Department; Article VII, Section 7.01(D)(1), and Section 7.01(D)(2), to delete references to the Health Division; Section 7.04(A), Section 7.08(A), and Section 7.12, to update the references to the Neighborhood Services Department; Article VIII, Section 8.01(A), Section 8.02(A), Section 8.03, Section 8.04(A), Section 8.05, Section 8.06, and Section 8.07, to update the reference of Issuing Officer to Administrator; Section 8.08, Article X, Section 10.02(D)(5), Section 10.03(F)(1)(e), Section 10.03(G), and Section 10.07(A), to update the references of Health Official and Health Department to Administrator; Section 12.02, Section 12.06, Section 12.07, Section 12.08, Section 12.13(B)(1), and Section 12.15, to update the references of Health Department and Texas Natural Resource Conservation Commission.
04-100	11/09/04	Amend Article X, <u>Regulation of Smoking</u>, Section 10.02, <u>Smoking Prohibited - Public Places</u> , by the addition of Subsection (A)(16) , relative to the prohibition of smoking in common areas of a multi-family development.
04-101	11/09/04	Amend Article IV, <u>Regulation of Food Establishments</u>, Section 4.06, <u>Food Handling School Required – Food Handler Permit</u> , relative to Food Handling Training Course; Section 4.08, <u>Permits – Duration</u>, Subsection (B) , relative to Mobile Food Permit and Catering Vehicle Permit expiration date; amend Article V, <u>Child Care Centers</u>, Section 5.11, <u>Child Care Workers Class Required</u> , relative to Child Care Workers Training Course.

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05-010	02/08/05	Amend Article VII , <u>Public Swimming Pools</u> , Section 7.01 , <u>Texas Standards for Public Swimming Pool and Spa Rules Adopted</u> , and Section 7.08 , <u>Review of Plans</u> , relative to the adoption of new State regulations.
05-092	10/11/05	Amend Article X , <u>Regulation of Smoking</u> , Section 10.01 , <u>Definitions</u> , by the addition of the definition of “Condominium”; amend Section 10.02 , <u>Smoking Prohibited – Public Places</u> , Subsection (B) , by the addition of Subsections (5) and (6) , relative to multi-family developments.
06-083	08/22/06	Amend Article II , <u>Garbage and Trash</u> , Section 2.19 , <u>City Disposal Site</u> , Subsection (C)(1) ; Article IV , <u>Regulation of Food Establishments</u> , Section 4.01 , <u>Texas Food Establishment Rules Adopted</u> , Subsection (D) ; Section 4.03 , <u>Food Handler – Permit Required</u> ; Section 4.05 , <u>Permits – Application</u> , Subsection (A) ; Section 4.06 , <u>Food Handling Training Required – Food Handler Permit</u> ; Section 4.11 , <u>Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle</u> , Subsection (C) ; Section 4.20 , <u>Fees</u> ; Article V , <u>Child Care Centers</u> , Section 5.07 , <u>Permit Duration and Renewal</u> ; Section 5.08 , <u>Permit Renewal Denial, Suspension and Revocation</u> , Subsections (B)(1) and (D) ; Section 5.10 , <u>Child Care Workers Permit</u> ; Section 5.11 , <u>Child Care Workers Training Required</u> ; Section 5.17 , <u>Fees</u> , Subsection (A) ; Section 5.23 , <u>Safety and Sanitation</u> , Subsection (G) ; Section 5.25 , <u>Liability Insurance</u> , Subsection (B) ; Article VII , <u>Public Swimming Pools</u> , Section 7.01 , <u>Adoption of the Texas Standards for Public Swimming Pools and Spas</u> , Subsection (D)(4)(m)(1) ; Section 7.04 , <u>Fees</u> , Subsection (A) ; Section 7.08 , <u>Review of Plans</u> , Subsection (A) ; Section 7.12 , <u>Failure to Comply</u> ; Article X ,

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		<u>Regulation of Smoking, Section 10.02, Smoking Prohibited – Public Places, Subsection (D)(5); Article XII, On-Site Sewage Disposal, Section 12.06, Amendments, Additions and Deletions, Subsection (B); Section 12.08, Duties and Powers, first two paragraphs, relative to updating the reference to the Community Services Department.</u>
06-103	10/10/06	Amend Article X, Regulation of Smoking, Section 10.01, Definitions , by the addition of the definitions of “Bar”, “Health care facility” and “Shared HVAC system” and the amendment of the definitions of “Bingo parlor” and “Eating establishment”; Section 10.02, Smoking Prohibited – Public Places; Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers; Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, Subsection (A) , relative to the posting of signs; by the deletion of Section 10.06, Structural Modifications Not Required ; and by the deletion of Section 10.07, Exemptions .
06-110	11/28/06	Amend Article X, Regulation of Smoking, Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers, Subsection (F)(2) , relative to the posting of signs; Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, Subsection (B) , relative to receptacles; Subsection (D) relative to offenses; Section 10.06, Penalty for Violation ; and by the deletion of Section 10.07, Culpability .
07-022	04/10/07	Amend Article X, Regulation of Smoking, Section 10.01, Definitions , by the addition of the definitions of

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<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		<p>“Fraternal Organization”, “Nursing Home”, “Park” and “Private Club”; Section 10.02, <u>Smoking Prohibited – Public Places.</u></p>
07-097	12/18/07	<p>Amend Article IV, <u>Regulation of Food Establishments, Section 4.01, Texas Food Establishment Rules Adopted, Subsection (D)(3)(a),</u> relative to updating references to state law, department and rules; Subsection (D)(3)(d), relative to requiring written notice; Section 4.04, <u>Permits – Authority to Issue,</u> relative to limiting the number of Temporary Food Establishment Permits issued; Section 4.16, <u>Inspection Frequency,</u> relative to inspections; Section 4.20, <u>Fees,</u> relative to specifying fees; Article V, <u>Child Care Centers, Section 5.02, Texas Department of Protective and Regulatory Services Regulations Adopted,</u> relative to updating references to state law, department and rules; Section 5.04, <u>Permit Required, Subsection (B)(5), (6) and (12),</u> relative to updating references to state departments; Section 5.05, <u>Permit Application, Subsections (A) and (B),</u> relative to updating references to Arlington Health Division and required information on permit applications; Section 5.08, <u>Permit Renewal Denial, Suspension and Revocation, Subsections (A) and (B),</u> relative to updating references to a state department; Section 5.11, <u>Child Care Workers Training Required,</u> relative to certifying course instructors; Section 5.14, <u>Display of Child Care Workers Permit,</u> relative to displaying the original permit; Section 5.15, <u>Appeal of Permit Denial, Suspension or Revocation,</u> relative to denying, suspending or revoking permits or certifications; Section 5.17, <u>Fees, Subsection (A),</u> relative to specifying fees; Section 5.20, <u>Diaper Changing Provisions, Subsection (B),</u> relative to sanitization; Article VII, <u>Public Swimming Pools, Section 7.01, Adoption of the Texas Standards for Public Swimming Pools and Spas, Subsections (A) and (B),</u> relative to</p>

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		updating references to state law; Section 7.01, Subsection (D)(3) , relative to electrical inspections; Section 7.02, <u>Swimming Pool Permit Required</u>, Subsection (A) , relative to requiring permits; Section 7.04, <u>Fees</u>, Subsection (A) , relative to specifying fees; Section 7.09, <u>Inspections</u> , relative to updating references to the Administrator or designee; Section 7.10, <u>Maintenance and Operation</u> , relative to compliance with City ordinances; Section 7.11, <u>Regulations in Pool Area</u> , by the amendment of Subsection (B) and the addition of Subsection (F) , relative to offenses; Section 7.12, <u>Failure to Comply</u> , relative to references to the Arlington Health Division; Article VIII, <u>Mass Gatherings</u>, Section 8.08, <u>Rules and Regulations</u>, Subsection (A) , relative to updating references to a State department; Article XII, <u>On-Site Sewage Disposal</u>, Section 12.02, <u>On Site Sewage Facility Rules Adopted</u> , relative to updating references to state law; Section 12.09, <u>Collection of Fees</u> , relative to specifying fees; Section 12.13, <u>Penalties</u> , relative to updating references to state law.
08-020	03/18/08	Amend Article X, <u>Regulation of Smoking</u>, Section 10.01, <u>Definitions</u> ; and Section 10.02, <u>Smoking Prohibited - Public Places</u>, Subsection (B), <u>Exceptions</u> .
10-021	01/26/10	Amend Article II, <u>Garbage and Trash</u>, Section 2.13, <u>Private Collection and Disposal</u>, Subsection (B)(1) , relative to Class A license requirements.
10-069	09/14/10	Article I, <u>Definitions</u>, Section 1.01, <u>Definitions</u> , by the addition of the definition of “Seasonal Food Establishment”; amend Article IV, <u>Regulation of Food Establishments</u>, Section 4.01, <u>Texas Food Establishment Rules Adopted</u>, Subsection (D)(3)(e); Section 4.02, <u>Food Establishment</u>; Section 4.04, <u>Permits - Authority to Issue</u>; Section 4.05, <u>Permits -</u>

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		<p><u>Application, Subsection (A); Section 4.07, Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment or Commissary Permits</u>, by the amendment of the title and the section; Section 4.08, Permits - Duration, Subsection (B); Section 4.09, Permits - Non-transferable; Section 4.11, Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title and the section; Section 4.12, Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title and the section; Section 4.13, Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title; Section 4.15, Notice of Appeal; Hearing, Subsection (A); relative to Seasonal Food Establishment.</p>
11-049	09/13/11	Amend Article XII, On-Site Sewage Disposal , by the amendment of the title and article relative to adopting on-site sewage facilities regulations to prevent injury or pollution to the public health.
15-056	11/10/15	Amend Article I, Definitions, Section 1.01, Definitions , by the addition of the definitions of “Recycle”, “Recyclable Materials, Recyclables or Recycling” and “Reusable Recycling Container”; amend Article II, Garbage and Trash , by the addition of Section 2.02.01, Residential Storage of Reusable Recycling Containers .

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ARTICLE I
DEFINITIONS

Section 1.01 Definitions:

The following words and terms, when used in this Chapter, shall have the meanings respectively ascribed to them in this section.

Administrator - Such officers and employees of the City as may be designated by the City Manager to enforce and administer the provisions of this Chapter. The designated administrator shall promulgate rules necessary to enforce the provisions of this Chapter. (Amend Ord 88-46, 3/15/88)

Approved Container - A reusable container utilized by the collector as set forth in Section 2.06(C) of Article II of this Chapter and referred to as commercial type containers, or a nonreusable container of sufficient size and strength to adequately hold garbage and trash without spillage.

Brush - Cuttings or trimmings from trees, shrubs or similar materials which are not susceptible to placement in disposable containers.

City - The City of Arlington, Texas.

Collector - The person or entity designated by the City, pursuant to a contract with the City, to collect garbage, trash, brush and debris within the corporate limits of the City of Arlington.

Container - An approved container meeting City designated standards. A description of approved containers may be obtained in the office of the Administrator. (Amend Ord 88-46, 3/15/88)

Customer - Any owner, occupant, tenant or person otherwise in control of any premises in the City on which garbage and trash are accumulated and from which the same is removed or required to be removed pursuant to the terms of this Chapter.

Debris - Dirt, concrete, rocks, bricks or other waste building materials.

Extensively Remodeled - Structural changes that require the issuance of a Building Permit, included but not limited to changes in walls, floors, equipment, and/or plumbing. (Amend Ord 97-19, 2/4/97)

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Food Service Employee - an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces. (Amend Ord 98-12, 1/20/98)

Garbage - Animal and vegetable waste matter resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products.

Health Authority - The physician appointed by the Arlington City Council as required by law. (Amend Ord 04-007, 1/13/04)

Infectious Waste - A solid waste containing pathogens or biologically active material which, because of its type, concentration and quantity is capable of transmitting disease and which is comprised of the following:

1. Animal waste - Includes carcasses, body parts, bedding and whole bulk blood or other blood components of animals intentionally exposed to pathogens.
2. Bulk blood and blood products - Includes all waste bulk human blood, serum, plasma and other blood components.
3. Microbiological waste - Includes cultures and stocks of infectious agents and associated biologicals, cultures from laboratories, discarded vaccines, disposable culture dishes, and disposable devices used to transfer, inoculate and mix cultures.
4. Pathological waste - Includes but is not limited to human materials (including body parts, tissues and/or fluids) removed from a body; and anatomical remains.
5. Sharps - Includes the following materials when contaminated: hypodermic needles and syringes with attached needles; scalpel and razor blades used for medical procedures; pasteur pipettes; and broken glass from laboratories. (Amend Ord 90-37, 4/3/90)

Jurisdictional Area - The area within the corporate limits of the City of Arlington and the unincorporated area within five thousand feet (5,000') thereof, within which areas home rule cities are empowered by Section 19 of Article 1175 of the Revised Civil Statutes of Texas to define and prohibit nuisances.

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(Amend Ord 04-007, 1/13/04)

Mass Gathering - Any meeting or gathering held inside the limits of the City which attracts or can be expected to attract more than one hundred (100) persons who will remain at the location of the gathering and not inside a permanent structure for a period of more than twelve (12) continuous hours.

Non-profit Organization - A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing an Internal Revenue Code § 501(C)(3) exemption, or a religious organization meeting the definition of "church" under the Internal Revenue Code § 170(b)(1)(A)(I). (Amend Ord 97-19, 2/4/97)

Permit Holder - The entity that is legally responsible for the operations of the business such as the owner, owners' agent, or other person; and who possesses a valid permit to operate the business. (Amend Ord 99-90, 7/27/99)

Person - Any individual, partnership, co-partnership, firm, company, corporation, association, joint-stock company, trust, estate, political subdivision or any other legal representatives, agents or assigns.

Person in Charge - The individual present at a location who is responsible for the operation at the time of inspection. (Amend Ord 99-90, 7/27/99)

Private Pool - A pool or spa serving only one or two dwellings (a single or duplex residential pool), regardless of whether the pool/spa is permanently or temporarily installed in the ground, on the ground or above the ground, the use of which is limited to members of the homeowner's or tenant's family or invited guests. (Amend Ord 00-037, 4/4/00)

Property - Any real or personal property of any type.

Public Pool - Any pool or spa which is intended to be used by the general public for swimming, diving, recreational bathing or other related purposes, operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. This definition excludes any private pool or therapy pool as defined in this ordinance. (Amend Ord 00-037, 4/4/00)

Recycle - The process of collecting, sorting, cleansing, treating, and reconstituting trash for reuse or to gain reusable material for the manufacture of a new product. (Amend Ord 15-056, 11/10/15)

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Recyclable Materials, Recyclables or Recycling - Shall mean all trash susceptible of being recycled, including, without limitation: newsprint; cardboard; chipboard; paper; magazines; aluminum beverage containers; steel tin cans; clear, brown and green glass; plastics (excluding Styrofoam); and such other materials as may be designated by the Administrator. (Amend Ord 15-056, 11/10/15)

Residential - Pertaining to any structure or premises used for permanent living quarters of whatever type, including conventional single-family residences, duplexes, multi-family residences, apartments or mobile homes.

Reusable Recycling Container – A container supplied to a customer by the City for residential use and which remains the property of the City of Arlington, the Collector, or as otherwise specified in the contract between the City and the Collector entered into under this Article. Such container is assigned to a specific address, and may be removed from the assigned address only by the Administrator or his/her designee. (Amend Ord 15-056, 11/10/15)

Seasonal Food Establishment - A food establishment that operates for a period of time between 15 and 180 days where one or more food vendors operate pursuant to one Seasonal Food Establishment permit at a single building or at the same address for a single event. The food establishment hours of operations during the allowed time period shall be either 1) between one to two days a week for no more than six hours a day or 2) between one to five days a week for no more than two hours a day. (Amend Ord 10-069, 9/14/10)

Therapy Pool – A pool or spa operated exclusively for therapeutic purposes such as medical treatment or physical therapy. (Amend Ord 00-037, 4/4/00)

Trained Pool Operator – A person who has attended a certified training course of at least six (6) classroom hours approved by the Administrator. (Amend Ord 00-037, 4/4/00)

Trash - All solid waste (as defined by the Municipal Solid Waste Management Regulations of the Texas Department of Health) other than garbage, debris and brush.

Waste Material - Refuse, garbage, rubbish, other solid or liquid wastes and useless, unused, unwanted or discarded materials.

Water Slide - Any recreational water slide flume designed to provide a descending ride into a splash-down pool at the base of the slide.

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(Amend Ord 15-056, 11/10/15)

ARTICLE II

GARBAGE AND TRASH

Section 2.00 **Policy**

The City Council shall, in the exercise of its sound discretion, determine what means shall be employed for the collection, hauling and disposal of trash, garbage, debris, brush and refuse within the City of Arlington so as to preserve and protect the public health, and may in the exercise of its sound discretion, by ordinance, designate one (1) Collector subject to such conditions as the City Council may impose to ensure protection of the public health. The City Council may, pursuant to V.T.C.S., Local Government Code, Section 252.002(a)(2), expend funds and enter contracts for such services to protect the public health without the necessity of requiring competitive bids. Should the City Council, by ordinance, designate one (1) Collector for the collection, hauling and disposal of garbage, trash, debris, brush and refuse or any combination thereof, such Collector shall be governed by the requirements of this Chapter and by any contract authorized by the City Council to govern the relationship between the City and Collector.

Section 2.01 **Duties of Customer**

- A. To Provide Containers: Every customer shall provide and use approved containers sufficient in number to hold the garbage and trash normally accumulating on the premises of said customer.
- B. To Secure Containers: Every customer shall keep all garbage and trash containers used by it securely closed in such a manner as to prevent the scattering of the contents thereof and to render said contents inaccessible to insects, rodents and other animals.

Section 2.02 **Residential Collection - Placement of Containers**

It shall be the duty of each customer of residential premises in the City to place garbage and trash containers at locations as follows:

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- A. Premises on Alleys: If the premises from which garbage and trash are to be collected is adjacent to a dedicated public alley, the customer shall place all containers adjacent to the alley at a location on the premises and easily accessible to the Collector from outside said premises.
- B. Other Premises: In the event there is no alley adjacent to the premises, the customer shall place all containers for collection at curbside on the street on which said premises are addressed.
- C. Designation of Collection Point: In the event it is not practical to place containers for collection at locations hereinabove provided, the Administrator or his duly authorized representative shall designate the point most easily accessible for collection in such instances.
- D. Time of Placement: All containers shall be placed at the hereinabove prescribed locations not later than 7:00 a.m. on the day of scheduled collection. In this regard, it shall be unlawful for any customer to place containers of garbage or recycling at said location prior to 7:00 p.m. the evening prior to the day of scheduled collection. Reusable recycling containers must be removed from the curb prior to 7:00 a.m. of the morning following the day of scheduled collection. (Amend Ord 01-045, 4/24/01)

Section 2.02.01 Residential Storage of Reusable Recycling Containers

- A. When not placed at the curb for collection during the permitted times for scheduled collection under this Article, reusable recycling containers shall be stored so as not to be visible from the public street or right-of-way in front of the customer's residential premises. A violation of this section is not a criminal offense.
 - 1. Upon the occurrence of three (3) separate violations of this section at least ten (10) days apart within a period of six months, and after sending a written warning by certified mail, return receipt requested, to the customer for each violation, the Administrator or his/her designee may, after the third such written warning, remove a reusable recycling container if the violation of this section is not corrected on or before the tenth (10th) day after the date that the customer receives the third written warning. The customer is deemed to have received any such warnings three (3) days after the date mailed.

2. Upon request by the customer and payment of a fee in an amount set by resolution of the City Council, the reusable recycling container will be returned to the customer's residential premises. Such request and payment shall constitute a waiver of an administrative review.
 3. Removal of the reusable recycling container shall not entitle the customer to a reduction or refund of any portion of the charges associated with the collection of recyclables authorized by this Article or other ordinance or resolution.
- B. A customer whose assigned reusable recycling container has been removed may appeal the removal.
1. An appeal may be perfected by making, on or before the expiration of ten (10) days after the removal, a written request to the Administrator for an administrative review. The Administrator or his/her designee shall complete the administrative review on or before the expiration of ten (10) days after receipt of the written request.
 2. The Administrator may establish procedures consistent with this section for the administrative review as well as the conditions under which a reusable recycling container may be returned.
 3. The reusable recycling container will be returned to the customer's residential premises without payment of a fee upon a finding by the Administrator or his/her designee that:
 - a. the customer was not responsible for one or more of the violations,
 - b. one or more of the violations did not occur,
 - c. the customer had no reasonable alternative to the storage location of the reusable recycling container that would comply with this section, or
 - d. no person living at the residential premises was physically able, by reason of bodily condition or disability, to comply with this section.
 4. If the Administrator or his/her designee does not find that the customer meets the requirements under this section to have the reusable recycling

container returned without payment of a fee, the reusable recycling container will be returned to the customer's residential premises upon request by the customer and payment of a fee in an amount set by resolution of the City Council.

(Amend Ord 15-056, 11/10/15)

Section 2.03 Residential Collection - Bundled Trash and Brush

In the event trash is of such a nature that it cannot be placed in approved containers, it shall be placed in tied bundles or nonreusable receptacles having no outside dimension of more than four feet (4') and shall be placed for collection as provided in Section 2.02 hereof. Brush shall be cut in lengths not to exceed four feet (4') and shall be trimmed and stacked at curbside to a height of not more than three feet (3') with the larger ends placed toward the curb or street. Trash or brush that is not placed for collection in approved containers shall be collected at the rate of one (1) cubic yard per pick-up day. All vines and thorny bushes shall be placed in disposable containers. No bundle, container or other item shall weigh more than fifty (50) pounds nor constitute more than one (1) cubic yard.

Section 2.04 Residential Collection - Charges

The collection and removal of garbage and trash in nonreusable containers from premises used for residential purposes shall be made two (2) times each week. Fair and reasonable charges for the provision of such service shall be set by resolution from time to time by the City Council. For new accounts, said charges shall be prorated for each and every day of the month during which such service is available and provided to the customer for the first month's billing. When a customer has an active water account with the City, said charges shall be due and payable simultaneously with charges for water service. There shall be no refunds made to customers for missed pickups or when no service is provided due to holidays or days on which there exists inclement weather which prevents the collection and removal of garbage and trash. Additionally, there shall be no refunds made due to customer vacations or when the premises are vacated for whatever reason when the water account remains active.

Section 2.05 **Duties of Commercial, Institutional and Industrial Customers -
Location of Containers**

It shall be the duty of the owner or person otherwise in control of commercial, institutional or industrial premises within the City which avails itself of regular City of Arlington disposal service, to cause all garbage and trash accumulated on said premises to be placed at a location on the premises which is readily accessible to the Collector and approved by the Administrator. Commercial-type containers shall be placed at a location on the premises arranged by the customer and Collector; if such container is enclosed by fencing or any material, such customer shall provide an opening of at least twelve feet (12') for container access. If gates are used, the customer will ensure that they are tied open for easy access by Collector on the dates collection is scheduled. Commercial-type containers shall be provided by the City's designated Collector. Should the City have no designated Collector, commercial-type containers shall be provided by the customer subject to approval of the Administrator.

Section 2.06 **Commercial, Institutional and Industrial Collection Charges**

- A. Frequency of Collection: The collection and removal of garbage and trash from houses, buildings and premises used for commercial, institutional or industrial purposes shall be made as often as necessary in order to maintain such premises free of accumulations of garbage and trash. In this regard, garbage collection shall be made not less than two (2) times each week.

- B. Charges - Nonreusable Containers: The collection and removal of garbage and trash in nonreusable containers, as defined in this Chapter, from the premises of commercial, institutional and industrial customers, shall be made two (2) times each week. Fair and reasonable charges for the provision of such service shall be set by resolution of the City Council.

- C. Charges - Commercial-type Containers: As an alternative to the collection methods provided in 2.06B above, commercial, institutional and industrial customers may dispose of garbage and trash by means of commercial-type portable containers meeting City specifications. Additionally, multi-family residential complexes may employ said commercial-type containers for garbage and trash collection in the same manner as commercial, institutional and industrial customers. Fair and reasonable charges for such services shall be set by resolution from time to time by the City Council.

D. Additional Charges: In addition to the charges described in this section, there shall be set by resolution by the City Council additional charges for the following services:

1. Delivery of container to new customer
2. Delivery of container to old customer after pick-up for nonpayment
3. Container with casters
4. Container inside fence
5. Mileage (if located south of I-20) for:
 - Front Loaders
 - Roll Off
6. Charges will be assessed all commercial account customers that have obstructions in front of the containers or have containers that have not been moved by the customer to the collection area on the day of pick-up that result in return trips; and also, the same charge would apply for containers being picked up for past due billings.
7. A daily lease charge and a dump charge will be assessed for a special 8 yard bottom dump.
8. Customers with containers which are burned will be assessed an additional charge which shall be based upon the size of the container.

Section 2.07 Collection of Charges

The charges for the removal and disposal of all garbage and trash shall be entered by the City against the customer. A person who shall fail or refuse to pay the charge within fifteen (15) days from the date same shall become due and payable may have his garbage service suspended and the Administrator shall be notified immediately for appropriate action in accordance with the provisions of this Ordinance. The authorized Collector of the City is hereby authorized at the City's option, to act as agent for the City in the collection of charges herein provided. The City or its Collector may, at the commencement of service to any customer, require a cash deposit in an amount equal to one (1) month's bill, as estimated by the City. Said deposit shall be refunded to the

customer upon termination of service and the payment of all service charges then due and owing.

Section 2.08 Collection to be Carried on in Systematic, Efficient and Sanitary Manner

- A. The collection, removal and disposal of all garbage and trash shall be carried on in a systematic, efficient manner to keep the entire City in a clean and sanitary condition.

- B. All garbage or trash that is mixed with water or other liquids shall be drained before being put into a garbage or trash container. All animal matter subject to decomposition shall be well wrapped in paper or other material before being deposited in such container.

- C. The customer shall not commingle infectious wastes with routine solid waste but shall segregate infectious wastes for special collection and transportation by the collector.
 - 1. The customer shall secure infectious waste within an approved infectious waste container provided by the collector. This container shall be:
 - a. puncture-resistant;
 - b. leak-proof; and
 - c. clearly marked “infectious waste.”

 - 2. The customer shall store the containers holding infectious waste in a secured compartment so as to render the contents inaccessible to any insects, animals and unauthorized persons until picked up by the collector.

 - 3. This subsection does not apply to waste generated by:
 - a. single or multi-family dwellings; and
 - b. hotels, motels or other accommodations which provide lodging and other similar services for the public.

4. This subsection applies to special waste generated by the operation of the following types of publicly or privately owned or operated health care related facilities, including but not limited to: ambulatory surgical centers; abortion clinics; birthing centers; blood banks and blood drawing centers; clinics, including but not limited to medical, dental and veterinary; clinical, diagnostic, pathological or biomedical research laboratories; educational institution health centers; educational institution research laboratories; emergency medical services; end stage renal dialysis facilities; funeral establishments; home health agencies; hospitals; long term care facilities; mental health and mental retardation facilities, including but not limited to hospitals, schools, and community centers; minor emergency centers; occupational health clinics and clinical laboratories; pharmacies; pharmaceutical manufacturing plants and research laboratories; professional offices, including but not limited to the offices of physicians and dentists; special residential care facilities; and veterinary clinical and research laboratories. (Amend Ord 90-37, 4/3/90)

Section 2.09 **Duty of Customer to See that Containers are Emptied; Reporting Requirement**

Every customer is hereby required to maintain constant supervision and surveillance over garbage containers on his premises. If, after having been timely placed for collection, the containers are not collected or emptied and the contents removed, as the case may be, by an agent or representative of the City or other duly authorized person within a period of twenty-four (24) hours of scheduled collection, the customer shall promptly notify the agent of this fact. (Amend Ord 04-007, 1/13/04)

Section 2.10 **Prohibited Acts**

- A. **Debris in Container**: It shall be unlawful for any person to place debris in any container herein required to be used for garbage and trash.
- B. **Open Bins Prohibited**: It shall be unlawful for any person to deposit or maintain garbage and trash in open bins or other containers not designated as approved containers as that term is herein defined.
- C. **Burning Materials**: It shall be unlawful for any person to deposit any burning match, charcoal, ember or flammable substance or similar material in any container used for the disposal of garbage or trash.

- D. Unauthorized Use of Containers: It shall be unlawful for any person to deposit debris, garbage, trash or brush in a container or on private property of another without the consent of the owner of such container or of such property. No hazardous waste, as that term is defined in the “Industrial Waste” Chapter, may be deposited at any location within the City regardless of consent of the owner of the property.
- E. Overfilling Prohibited: Commercial-type containers with open tops shall not be filled with garbage or trash above the top flange of such container.

Section 2.11 **(Repealed as Section 1.12)**
(Amend Ord 2298, 8-18-70)

Section 2.12 **(Repealed as Section 1.13)**
(Amend Ord 2298, 8-18-70)

Section 2.13 **Private Collection and Disposal**

- A. License Required: Except as otherwise provided in this Chapter, no person shall empty garbage or trash containers of another, convey or transport garbage or trash of another, or collect and transport garbage and trash from his nonresidential premises or place of business using his own vehicles and equipment without a license.
1. Nothing in this Section shall be construed to require duly authorized agents or employees of the City, County, State or any political subdivision thereof, or persons acting pursuant to a contract with the City, County, State or any political subdivision thereof for public collection and disposal, to secure a license otherwise required herein.
 2. No garbage or trash shall be removed from non-residential premises or places of business, for hire or otherwise, unless same is removed by the City’s designated Collector, by one possessing a Class A or Class B License as described in this Section, or by one excluded from licensing requirements by Section 2.13 A.1. or Section 2.20 of this Chapter.

B. Classifications of Licenses: There shall be two (2) classifications of licenses as follows:

1. Class A - A license that authorizes a person who generates an average of less than 3 tons of garbage and trash per operating day to engage in the collection and transportation of garbage and trash from such person's own non-residential premises or place of business using such person's own vehicles and equipment. For purposes of this Section, "operating day" shall be defined as six days per week excluding the legal holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Said license shall be granted by the Administrator upon compliance with the same provisions required for applying for a permit in Section 2.14 hereof (but no permit shall be required) and upon payment of the Class A License Fee which shall be set by resolution of the City Council. A Class A License shall expire on December 31st of each year and shall be renewed by submitting a new application therefor in accordance with this Section. A separate license shall be required for each nonresidential premises or place of business of an applicant. The Administrator may revoke a Class A License if the Licensee is convicted of a violation of any of the provisions of this Article, if the Licensee commits fraud or misrepresentation in the application for said license or if the Licensee operates outside the scope of the Class A License. (Amend Ord 10-021, 1/26/10)
2. Class B - For the collection and transportation of garbage and trash for hire, or for the collection and transportation of same from any point other than licensee's nonresidential premises or place of business, if City Council has not designated a Collector to perform such service. Said license may be issued by the City Council, upon compliance with the provisions of Section 2.14 and 2.15 hereof. Only one (1) license shall be required for operations hereunder, but permits shall be required, as provided in subparagraph (D) hereof.
 - a. Should City Council designate a Collector, no Class B License shall be issued for so long as the City Council continues to authorize such Collector to operate as the designated Collector for the City of Arlington.
 - b. However, nothing in this Section shall be construed as prohibiting the City Council from taking such action as may be required to protect the public health.

- C. Frequency of Collection: Licensees, as well as any designated Collector hereunder, must dispose of garbage or trash collected by them at City garbage and trash disposal sites not less than two (2) times a week.
- D. Permits Under Class B License; Fees:
1. Class B Licensees (but not a City designated Collector) shall obtain from the Administrator a separate permit for each customer service or pick-up, and an application for said permit shall state the location of the pick-up, the type of garbage or trash facility to be used, and such other information as the Administrator may deem necessary.
 2. The annual fee for each permit obtained by a Class B licensee shall be an amount equal to one (1) month's charge for City service of the same class, as the same is prescribed in Sections 2.04 and 2.06 of this Chapter.
- E. Permit Required: It shall be unlawful for any person with a Class B License to engage in the collection or transportation of garbage and trash for hire from any premises for which a permit has not been obtained, as hereinabove provided.
- F. Identification of Vehicles: All trucks and containers used for the collection and transportation of garbage and trash shall be clearly marked with the owner's name and telephone number in letters not less than two inches (2") high.
- G. Covers on Trucks: All vehicles used for the collection and transportation of garbage and trash shall be enclosed or covered with net, canvas or wire to prevent the contents thereof from falling or blowing into the public streets or adjacent property.

Section 2.14 Permit - Application; Information to be Shown

The application for a permit required by Section 2.13 of this ordinance shall set forth:

1. the name and address of the applicant;
2. the trade name under which the applicant does or proposes to do business;

3. the number of vehicles the applicant desires to operate, the class, size and design of each vehicle;
4. whether or not the applicant has been convicted of the violation of any felony or misdemeanor, whether or not the applicant, or any persons with whom he has been associated or employed, has a claim or judgment against him for damages resulting from the negligent operation of a vehicle;
5. the financial ability and responsibility of the applicant;
6. his ability to respond to damages in the event of damages to persons or damage to property by reason of the negligent operation of a vehicle on the streets or public thoroughfares of the City;
7. the nature and character of the service the applicant proposes to render;
8. the experience he has had in rendering such service;
9. the patrons for whom he proposes to render this service; and,
10. such other information as the City Council may require.

Section 2.15 Class B License; Investigation of Application by City Council

- A. If the City Council fails to designate a Collector, or if the Collector fails to provide the services required of him, Council may choose to issue a Class B License or Licenses. Any person desiring a Class B License shall make application to the City Council, which shall make or cause to be made such investigation as it may consider necessary in order to determine whether public convenience and necessity requires the granting of such license, and whether the applicant is a fit and proper person to conduct such business. The City Council may obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for said license. The City Council may disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license, because of a person's conviction of a felony or misdemeanor if the crime relates directly to the duties and responsibilities of one who engages in the business of the collection and transportation of garbage and trash for hire. If the City Council denies a person a Class B License or the opportunity to be examined for a Class B License

because of the person's prior conviction of a crime and the relationship of the crime to the license, the City shall notify the person in writing:

1. of the reason for the denial or disqualification;
 2. of the review procedure provided by Subsection B of this Section; and
 3. of the earliest date that the person may appeal.
- B. A person who has been denied a license or the opportunity to be examined for a license by the City Council may file an action in the District Court of Tarrant County, Texas, for a review of the evidence presented to the City Council and its decision. The person must begin the judicial review by filing a petition with the court within thirty (30) days after the City Council's decision is final and appealable. This subsection shall not apply during the time City trash and garbage services are provided by a designated Collector with an exclusive contract with the City.

Section 2.16 Permit - Nontransferable; Revocation

All licenses, or any other authority granted by the City Council for the collection, removal and disposal of garbage and trash, shall be nontransferable and may be revoked by the City Council at any time after notice and hearing when it has been determined by the City Council that such action is necessary for the public health, safety and welfare, and that the license holder or other authorized service-provider has failed to meet the requirements of this ordinance or has failed to comply with conditions placed upon such license or authority pursuant to Section 2.22.

Section 2.17 Permit - Kept in Possession of Person Rendering Service; Inspection

In all cases where permits have been issued for the collection, removal and disposal of garbage and trash, such permit shall be in the possession of the person rendering such service and shall be subject to inspection at all times; if such permit is not in the possession of such person, such person will not be allowed to dispose of such garbage or trash within the City of Arlington.

Section 2.18 **Duty of Administrator as to Inspection and Enforcement of Ordinance**

In the event it is found that this Ordinance or any other applicable ordinance is being violated, appropriate timely action shall be taken by the Administrator to ensure full compliance with its provision.

Section 2.19 **City Disposal Site**

- A. No persons other than those having valid licenses and those excepted by Section 2.13A from the licensing requirements shall use any garbage and trash disposal site of the City for disposal purposes; provided, however, that persons on regular City of Arlington disposal service may use such facilities without license for dumping excess garbage, trash or brush.

- B. Except as provided below, persons disposing of garbage, trash, brush or debris at any garbage or trash disposal site of the City, including persons holding a valid license for private collection and disposal of same, shall pay a disposal fee for each and every load of garbage, trash, brush or debris disposed or deposited in accordance with the schedule of charges set by resolution by the City Council. Said Charges shall not be applied to loads of waste materials which result from the activities of any department of the City government or loads which are disposed of pursuant to contract with the City where the City Council has waived such fees. Only Arlington residents, businesses and contractors that generate garbage, trash, brush or debris within the Arlington City Limits may use the City's disposal sites. Proof of residency or location of origin of such garbage, trash, brush or debris may be required before same will be allowed to be unloaded. Persons disposing of garbage, trash, brush or debris at a City garbage and trash disposal site shall dispose of same at locations within such disposal site designated by signage or as directed by City personnel.

- C.
 - 1. No person shall dispose of garbage, trash, brush or debris at a site other than a City designated garbage and trash site without a permit issued by the Community Services Department. (Amend Ord 06-083, 8/22/06)

 - 2. Such permit shall be issued only if the materials and site are compatible with existing health and sanitation laws.

3. It is an affirmative defense to prosecution that the person is the owner of the site or has written consent from the owner and the items being disposed of or to be disposed of are rock or dirt.

Section 2.20 **Wastes from Building Operations or Property Clean-Up**

Debris, trash or brush resulting from construction, major cleanup or major remodeling and repair, resulting from a general cleanup of vacant or improved property just prior to its occupancy, or resulting from sizable amounts of trees, trash, brush and debris cleared from property in preparation for construction, will not be removed by the City as regular service performed by the designated City Collector. A person needing the removal of such debris, trash or brush shall have same removed at his expense, and such person shall not be required to have a license or permit to collect or transport such debris, trash or brush. Although such person is not required to place any type of container on his property, any container used must be provided by the designated City Collector. Should the City's Collector supply a person a commercial-type container to dispose of debris, trash or brush, such person shall pay the disposal fee required by the City Collector to dispose of the waste in addition to the normal charge for such service.

Section 2.21 **Hazardous Wastes**

No hazardous waste, radioactive waste, or Class I industrial solid waste, as those terms are defined in the Municipal Solid Waste Management Regulations by the Texas Department of Health, shall be accepted for the disposal at the City garbage and trash disposal sites.

Section 2.22 **Emergency Powers**

- A. Should the Administrator make a determination that:
 1. the designated Collector, or any other person acting by authority of this Ordinance, is unable to provide the services required pursuant to this Ordinance, and
 2. public health, safety and welfare requires that alternative garbage and trash hauling services be procured,

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- the Administrator may take whatever measures may be required to protect the public health, safety and welfare. Such measures may include contracting for services previously provided by the designated Collector issuing temporary permits or licenses or other measures determined by the Administrator to be required.
- B. Any determination made pursuant to Section 2.22A above, must be in writing and must delineate the grounds for such determination.
- C. Any contract, license or permit issued pursuant to Section 2.22A above, shall be temporary in nature, and shall in no event extend beyond twenty-one (21) days from the date issued or executed unless authorized by the City Council for an extended period within the twenty-one (21) days.
- D. Any determination of the public necessity made by the Administrator, pursuant to Subsection A above, shall be reviewed by the City Council if a written request for such review is submitted by a party materially affected by the determination to the Administrator within five (5) days of the Administrator's written determination of public necessity. The Administrator shall promptly place the matter on the City Council agenda, and the City Council shall make an independent determination of public necessity [items A(1) and A(2), above]; and shall:
1. Affirm the findings of the Administrator and take such action as is necessary to protect the public interest; or
 2. Modify the Administrator's findings and impose such conditions upon continued operation as may be necessary to protect the public interest; or
 3. Reverse the Administrator's findings. However, reversal of the Administrator's findings shall not affect the terms of any action taken by the Administrator pursuant to Section 2.22A of this Chapter. (Amend Ord 88-46, 3/15/88)

ARTICLE III

HOSPITAL AUTHORITY

Section 3.01 Hospital Authority Created

There is hereby created, under Chapter 472, Acts of the 55th Legislature (Article 4437e Vernon's Texas Civil Statutes), a Hospital Authority in the City of Arlington, and said Authority shall comprise the territory included within the boundaries of said City. Said Authority shall be a body politic and corporate.

Section 3.02 Name

The name of said Authority shall be "Arlington Hospital Authority".

Section 3.03 Board of Directors

The Authority shall be governed by a Board of Directors consisting of seven (7) members to be appointed by the governing body of the City and they shall serve until their successors are appointed as hereinafter provided, subject to the provisions of Section 4 of the law cited in Section 3.01 above. The Board of Directors shall be divided into two classes. There shall be four (4) Directors in the first class and their terms shall expire on the 31st day of March 1959, and on the 1st day of July in odd numbered years thereafter. There shall be three directors in the second class and their terms shall expire on the 31st day of March, 1960, and on the 1st day of July in even numbered years thereafter.

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 **Community Services 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. After April 15, 2003, compliance will be demonstrated by presenting the certificate to the Community Services Department and payment of a fee set by resolution of the Arlington City Council."
 - a. The permit holder of every Food Establishment or Commissary 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 State Health Services as proof of successful completion of a Texas Department of State Health Services accredited Food Protection Management Training Program as defined in 25 TAC § 229.176 and registered with the City of Arlington. (Amend Ord 07-097, 12/18/07)
 - b. The permit holder shall make Food Protection Manager Certificates and proof of City registration available for immediate inspection upon request by the regulatory authority.
 - c. The permit holder of a new Food Establishment or Commissary, or an existing Food Establishment or Commissary that has changed ownership, or a Food Establishment or Commissary 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 or Commissary shall notify the Community Services Department in writing 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.
(Amend Ord 07-097, 12/18/07)

- e. The following Food Establishments are exempt from the requirements of this Section: Temporary Food Establishments; Seasonal 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.
(Amend Ord 10-069, 9/14/10)
- 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.
(Amend Ord 06-083, 8/22/06)

Section 4.02 Food Establishment

- A. No person or firm shall operate a Food Establishment, Temporary Food Establishment, Mobile Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle 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 except for an operation, vocation or business at a Seasonal Food Establishment where more than one (1) operation, vocation or business may operate under one valid Seasonal Food Establishment permit issued for that single building or location. (Amend Ord 10-069, 9/14/10)

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 Community Services 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 Community Services Department. (Amend Ord 06-083, 8/22/06)

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 Permit, Temporary Food Establishment Permit, Food Establishment Permit, Seasonal Food Establishment Permit, Commissary Permit, or Catering Vehicle 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 and provided that a person or firm applying for a Temporary Food Establishment Permit has not been issued the maximum number of Temporary Food Establishment Permits that are allowed to be issued to any person or firm during any one year period. The maximum number of Temporary Food Establishment Permits that may be issued shall be set by policy of the regulatory authority. (Amend Ord 10-069, 9/14/10)

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 Community Services Department. If the application for permit is being made to operate in conjunction with a single event or is for a single event, a copy of all City of Arlington required event permits, if any, shall accompany the application. (Amend Ord 10-069, 9/14/10)
- B. A Food Establishment permit Plan Review fee shall be due for each Food Establishment or Commissary 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 or Commissary 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 or Commissary 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. (Amend Ord 03-039, 4/01/03)

Section 4.06 Food Handling Training 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 satisfactorily complete a Food Handling Training Course conducted by an instructor who has been approved by the City of Arlington Community Services Department. This requirement must be met upon expiration of the permit and upon application for a new permit. (Amend Ord 06-083, 8/22/06)

Section 4.07 Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment or Commissary 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, Temporary Food Establishment Permit, Seasonal Food Establishment or Commissary Permit. (Amend Ord 10-069, 9/14/10)

Section 4.08 Permits - Duration

- A. Any Food Establishment Permit, Mobile Food Permit, Commissary Permit, or Catering Vehicle 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 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. Exceptions to 4.08(A) above are: 1) 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; 2) a Seasonal Food Establishment Permit shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed 180 days in conjunction with or as the single event attracting one or more food vendors at a single building or address; and 3) a Mobile Food Permit or Catering Vehicle Permit shall expire on December 31st of each year. (Amend Ord 10-069, 9/14/10)
- C. Any permit granted under provisions of Section 4.03(A) of this ordinance shall remain in full force and effect for twenty-four (24) months from the date of issuance unless sooner suspended or revoked for cause. (Amend Ord 03-039, 4/01/03)

Section 4.09 Permits - Non-transferable

Every permit issued under the provisions of this ordinance shall be nontransferable and nonrefundable. A Food Establishment, Temporary Food Establishment, Seasonal Food Establishment or Commissary 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. (Amend Ord 10-069, 9/14/10)

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 Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle

- 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, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle 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, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle 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, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle 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 Community Services Department." (Amend Ord 10-069, 9/14/10)

Section 4.12 Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle

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 Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary or Catering Vehicle, 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. (Amend Ord 10-069, 9/14/10)

Section 4.13 Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle (Amend Ord 10-069, 9/14/10)

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. (Amend Ord 03-039, 4/01/03)

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 permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle, 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. (Amend Ord 10-069, 9/14/10)
- 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 or Commissary shall be performed at least once annually and shall be prioritized based upon assessment of the Food Establishment or Commissary's compliance and potential risk factors for causing foodborne illness according to Section 229.171(h) of the Texas Food Establishment Rules and Community Services Department evaluations.
- B. The Administrator or his designee shall classify Food Establishments and Commissaries 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, or any other risk factor deemed relevant to the operation by the Community Services Department.
- C. Additional inspections of the Food Establishment or Commissary 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.
- E. Permit holders shall display in public view at all customer entrances a copy of the last routine inspection. (Amend Ord 07-097, 12/18/07)

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 therefor, 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 or Commissary is constructed or extensively remodeled and whenever an existing structure is converted to use as a Food Establishment or Commissary, 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 or Commissary 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 or Commissary 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. (Amend Ord 03-039, 4/01/03)

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 review of plans, permits, licenses, certificates, inspections, reinspections and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Community Services 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. (Amend Ord 07-097, 12/18/07)

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)

ARTICLE V

CHILD CARE CENTERS

Section 5.01 Purpose

The purpose of this Article is to provide minimum standards for the operation of child care centers in the City of Arlington to protect the health, safety and welfare of the occupants and patrons.

Section 5.02 Texas Department of Family and Protective Services Regulations Adopted

- A. The provisions of the current rules or rules as amended, known as the "Minimum Standards for Day Care Centers", found in 40 Texas Administrative Code, Chapter 746, Section 101 through 5621 are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article V, Child Care Centers, of the "Health and Sanitation" Chapter of the Code of the City of Arlington.
- B. An unabridged copy of the "Minimum Standards for Day Care Centers" shall be kept on file in the Office of the City Secretary. The provisions of the "Minimum Standard Rules for Licensed Child - Care Centers" shall apply, as though such regulations were copied at length herein, except where specific other provisions are expressed within this Article. (Amend Ord 07-097, 12/18/07)

Section 5.03 Administration: Permit, Issue, Inspection, Compliance, Enforcement

- A. The Administrator or his designee is hereby authorized to issue a child care center permit in the City of Arlington when he finds that the permit applicant has complied with the requirements of this Article and other applicable sections of the Code of the City of Arlington. The Administrator shall cause the child care center to be inspected annually to ensure that the facilities, grounds and equipment are maintained in compliance with this Article and in a safe and sanitary condition for the welfare of the occupants and patrons of the child care center, along with appropriate

directives to resolve deficiencies observed in the inspections. The Administrator shall have the authority to enforce the provisions of this Article and to issue citations for violation of any of its provisions.

- B. The permit holder and/or the person in charge of the child care center 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.

Section 5.04 Permit Required

No person, firm or corporation shall operate a child care center in the City of Arlington unless and until a permit for such purposes has been issued by the Administrator or his designee. For purposes of this Chapter, "child care center" is hereby defined as follows:

- A. **Child Care Center.** A facility where child care occurs. The term "child care" shall be applied where:
1. Care, guidance or supervision is provided for thirteen (13) or more children under the age of fourteen (14), exclusive of persons who are related by blood, marriage or adoption to the owner or operator of the facility; and
 2. Care, guidance or supervision is provided for a period of less than a twenty-four (24) hour day at least three (3) days a week, whether or not the facility is operated for profit or charges for the service it offers.
- B. The term "child care" shall **not** apply to:
1. A State-operated facility;
 2. An agency home as defined by the Texas Human Resources Code, Chapter 42, Section 42.002(11);
 3. A facility that is operated in connection with a shopping center, business, religious organization or establishment where children are cared for during short periods while parents or persons

- responsible for the children are attending religious services, shopping or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;
4. A school or class for religious instruction that does not last longer than two (2) weeks and is conducted by a religious organization during the summer months;
 5. A youth camp licensed by the Texas Department of State Health Services; (Amend Ord 07-097, 12/18/07)
 6. A hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of State Health Services; (Amend Ord 07-097, 12/18/07)
 7. An educational facility accredited by the Texas Education Agency or the Texas Private School Accreditation Commission that operates primarily for educational purposes in grades Kindergarten and above;
 8. An educational facility that operates solely for educational purposes in grades Kindergarten through at least Grade 2, that does not provide custodial care for more than one (1) hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes and requires compliance with health, safety, fire and sanitation standards equal to standards required by State, county and municipal codes;
 9. Kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency or the Texas Private School Accreditation Commission, that offers educational programs through Grade 6, and that does not provide custodial care during the hours before or after the customary school day;
 10. A family home as defined by the Texas Human Resources Code, Chapter 42, Section 42.002(9);
 11. An educational facility that is integral to and inseparable from its sponsoring religious organi-

zation or an educational facility, both of which do not provide custodial care for more than two (2) hours maximum per day, and that offers educational programs for children age five (5) and above in one (1) or more of the following: Kindergarten through at least Grade 3, elementary or secondary grades; provided, however, that a religious organization, such as that described in Subsection B(3), above, where children are cared for during short periods while parents or persons responsible for the children are attending religious services or engaged in other activities on or near the premises, may provide custodial care for more than two (2) hours per day; or

12. After-school care facilities in public schools that provide care before or after the usual school day, or full day care for the same children on school holidays or during summer vacation for more than twelve (12) children, ages five (5) through thirteen (13) years, for children enrolled in the public school provided that the facility is properly licensed by the Texas Department of Family and Protective Services. (Amend Ord 07-097, 12/18/07)

C. For purposes of this Article, "religious organization" shall be defined as a church, synagogue or other religious institution which purpose is to support and serve the propagation of truly held religious beliefs.

Section 5.05 Permit Application

A. Application for a permit to operate a child care center shall be submitted by the owner on a form specified by the Arlington Health Division.

B. The permit application shall state the owner's name, address and telephone number and the name of all employees and staff members of the child care center. (Amend Ord 07-097, 12/18/07)

C. The permit application shall indicate the name, street and mailing addresses of the child care center, status of food service provided for children, and times of operation.

- D. Child Care Center permit application fee shall be due for each child care center that requires plans to be submitted according to Section 5.06 of this chapter.
- E. Upon change of ownership, a change of ownership fee is due and a new application shall be made for a permit as required in this Section. The regulatory authority shall inspect the Child Care Center prior to its beginning operation to determine compliance with the requirements of this ordinance. Failure to comply with the requirements of this ordinance may result in denial, suspension, or revocation.
- F. The owner shall affirm that a Certificate of Occupancy has been applied for with the Arlington Building Inspection Department, its issuance contingent in part on the successful application for a child care center permit.
- G. The permit application shall include a certificate of liability insurance coverage that complies with Section 5.25.
- H. Failure to provide all required information, or falsifying information required on the application may result in denial, suspension, or revocation of the permit.

Section 5.06 Review of Plans

- A. Whenever a Child Care Center is constructed or extensively remodeled and whenever an existing structure is converted to use as a Child Care Center, 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 layout and arrangement of any proposed food service areas, indoor and outdoor areas to be used for the child care center including mechanical plans; construction materials; plumbing fixtures; the type of fixed equipment; and playground and fall zone specifications. The regulatory authority shall approve the plans and specifications if they meet the requirements of this ordinance.

- B. No Child Care Center shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the regulatory authority. The approved plans and specifications must be followed in construction, remodeling, or conversion.
- C. Whenever plans and specifications are required to be submitted, the regulatory authority shall inspect the Child Care Center prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.
- D. Failure to follow the approved plans and specifications may result in permit denial, suspension, or revocation.

Section 5.07 Permit Duration and Renewal

A Child Care Center Permit shall be valid for one (1) year from the date of issuance, unless suspended or revoked as hereinafter provided. Application for renewal of a permit shall be made on a form specified by the Arlington Community Services Department. The permit holder shall contact the Arlington Community Services Department for renewal purposes not later than four (4) weeks prior to impending expiration of the permit. The procedure of renewal shall require that the operator of the child care center confirm the accuracy of the records of the Arlington Community Services Department regarding facilities, equipment, manner of operation and employees, stated in Section 5.05. Any incorrect information in the records of the Arlington Community Services Department for the child care center shall be corrected before the permit may be renewed. A Child Care Center Permit that lapses for non-payment of the annual Child Care Center 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. (Amend Ord 06-083, 8/22/06)

Section 5.08 Permit Renewal Denial, Suspension and Revocation

- A. The Administrator or his designee is hereby authorized to deny, suspend, or revoke a Child Care Center Permit for a violation of any provision of this Article. Denial, suspension or revocation of a permit shall be effected by notice, in writing, setting forth the reasons therefore and specifying any requirements or schedules of time for further action related to the suspension or revocation.

- B. The following actions shall constitute cause for denial or suspension:
1. Failure to respond within specified limits of time regarding violations observed during an Arlington Community Services Department inspection of the premises and operation;
 2. Any violation of this Article which poses a safety or public health hazard to any child entrusted to the care of the child care center; and
 3. Failure to keep continually in force the required liability insurance, according to Section 5.25.
 4. Failure to possess a valid Child Care Center License or Accreditation issued by Texas Department of Family and Protective Services according to Chapter 42 of the Human Resources Code.
 5. Failure to meet the requirements of Chapter 42 of the Texas Department of Family and Protective Services, Human Resources Code, related to the requirements for criminal history check and background search of central registry of reported cases of child abuse for all persons who are present while children are in care. (Amend Ord 07-097, 12/18/07)
- C. The following actions shall constitute cause for revocation:
1. Failure to correct a violation following suspension of the permit; and
 2. Knowingly submitting false information, or allowing false information to be submitted, in the application for a permit.
- D. Whenever a permit is denied, suspended or revoked, the permit holder or person in charge shall cease operations. Parents must be immediately notified of the denial, suspension, or revocation so that alternative child care arrangements can be made. Operations shall not resume until such time as a reinspection determines that conditions no longer exist causing denial or suspension. The permit holder shall notify the Administrator when the conditions causing

the denial or suspension have been corrected. The center may not resume operations until the Administrator verifies that the conditions have been corrected and written authorization given. A sign shall be posted by the Administrator at the entrance of the building clearly visible to a reasonably observant person which states "Closed By The Arlington Community Services Department". Signs posted by the Administrator or his designee shall not be altered or removed unless authorized by the Administrator or his designee. (Amend Ord 06-083, 8/22/06)

E. A permit that has been revoked shall not be reissued.

Section 5.09 Display of Permit

The Child Care Center Permit shall be conspicuously posted on an inside wall of the main facility and shall be continuously displayed in public view.

Section 5.10 Child Care Workers Permit

- A. Every person owning, employed by or otherwise connected with a child care center whose work involves caring for children shall within thirty (30) days of the date of employment, be the holder of a current Child Care Workers Permit, issued by the City of Arlington Community Services Department.
- B. No person who owns, operates, or otherwise controls any child care center shall permit any person to be employed therein whose work involves caring for children who does not after thirty (30) days of employment possess a current valid Child Care Workers Permit issued by the City of Arlington Community Services Department. (Amend Ord 06-083, 8/22/06)

Section 5.11 Child Care Workers Training Required and Certification of Certain Course Instructors

- A. In order to receive a Child Care Workers Permit, every person shall be required to satisfactorily complete a Child Care Workers Training Course conducted by an instructor who has been approved by the City of Arlington Community Services Department. This requirement must be met upon expiration of a permit and upon application for a new permit.

- B. A currently State certified Child Care Director may apply to the City of Arlington Community Services Department for certification as an approved instructor of the Child Care Workers Training Course. Application for certification shall be submitted on the form specified by the Director of Community Services. The application shall be submitted with the proposed class curriculum and a copy of the applicant's valid State certification as a Child Care Director. Upon approval of the proposed curriculum and verification of the information on the application, the City of Arlington Community Services Department shall certify the applicant as an approved instructor. Failure to provide all required information including material required for the approval of the curriculum or falsifying information required on the application may result in denial, suspension or revocation of the certification pursuant to the provisions provided in this Chapter. A City of Arlington Child Care Workers Training Certification shall be valid for three (3) years from the date of issuance unless suspended or revoked for cause. Suspension or revocation shall occur pursuant to the provisions in this Chapter. (Amend Ord 07-097, 12/18/07)

Section 5.12 Child Care Workers Permit Duration and Renewal

A Child Care Workers Permit shall be valid for three (3) years from the date of its issue, unless revoked as herein provided.

Section 5.13 Child Care Workers Permit Suspension - Revocation

The Administrator or his designee shall have the right to suspend or revoke a valid Child Care Workers 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. Such suspension or revocation shall remain in effect until a licensed physician certifies that such person is free of communicable disease according to Texas Health and Safety Code, Chapter 438.033.

Section 5.14 Display of Child Care Workers Permit

The original current Child Care Workers Permit shall be maintained at the child care center for each of its

employees or staff members and shall be available for review upon the request of the Administrator or his designee. (Amend Ord 07-097, 12/18/07)

Section 5.15 Appeal of Permit or Certification - Denial, Suspension or Revocation

- A. Upon finding that the Child Care Center Permit or Child Care Workers Training Certification should be denied, suspended or revoked, the Administrator or his designee shall, within ten (10) days of the finding, notify the owner or person in charge in writing, specifying the result of the finding and the reasons therefore. The applicant may request a hearing before the Administrator.
- B. Notice of appeal shall be filed within twenty (20) days of the date of the written notice of denial, suspension or revocation.
- C. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.
- D. After such hearing, the owner or the person in charge that has had a permit or certification 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, suspension or revocation of a license, permit or certification unless otherwise directed by the Administrator. (Amend Ord 07-097, 12/18/07)

Section 5.16 Permits - Non-transferable

No permit issued under this Article shall be used for any purpose other than the intent for which it was issued, nor be transferred or assigned to, or in any manner used by, any person, firm or corporation other than the one to whom issued by the Administrator.

Section 5.17 Fees

- A. The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections, and such administrative function of this Article shall

require the payment of fees, submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council. Fees shall not be refundable or transferable. (Amend Ord 07-097, 12/18/07)

- B. For the purpose of fees, centers with a Food Establishment, as defined in Article IV of this Chapter, must permit as a "Center with Food Service."

Section 5.18 Food Service in Child Care Centers

A child care center in which food is prepared or served for human consumption shall comply with the pertinent food service regulations contained in Article IV of this Chapter. The fees set forth in Article IV for Food Establishments shall not be required for the food service portion of a child care center. For the purpose of Food Handler's Permit, as defined in Article IV of this chapter, a worker who has been issued a Child Care Workers Permit need not also obtain a Food Handler's Permit.

Section 5.19 Plumbing and Toilet Facilities

- A. Plumbing and toilet fixtures shall be provided in accordance with the Plumbing Code of the City of Arlington.
- B. The temperature of any water available to the occupants or patrons of a child care center shall not exceed 120° Fahrenheit.
- C. Except where intended only for use by the children, each lavatory shall be provided with both hot and cold water, tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing or metering faucet shall provide a flow of water for at least twenty (20) seconds without the need to reactivate the faucet.
- D. Toilet tissue, paper towels or clean cloths and soap shall be available at all times for the use of occupants and patrons. The use of common towels is prohibited.
- E. Toilet facilities must be maintained clean and sanitary.

- F. Toilet facilities including diaper changing areas must be constructed with smooth, easily cleanable walls, floors and work surfaces.

Section 5.20 Diaper Changing Provisions

- A. When diapering a child, a separate diaper changing station such as a changing table, counter-top, or other elevated structure must be used. The use of the floor or crib for diaper changing is prohibited.
- B. The diapering surface must be smooth, easily cleanable, and in good repair, free of cracks and tears. The diapering surface must be cleaned by removing all visible debris and waste, and then sanitized using a solution of $\frac{1}{4}$ cup of household bleach per gallon of water after changing each child. Bleach measurement shall be adjusted to equal 200PPM when mixed with one gallon of water. (Amend Ord 07-097, 12/18/07)
- C. Diaper changing areas must be provided with a properly designed and maintained hand washing lavatory equipped with both hot and cold water, tempered by means of a mixing valve or combination faucet, soap and sanitary single use towels.
- D. Diaper pails or trash cans equipped with tight-fitting lids shall be provided for disposal of soiled diapers.
- E. Diaper changing procedures shall be posted at all diaper changing stations.
- F. Diapering and food preparation areas shall be physically separate from one another, and their surfaces shall be kept clean, uncluttered, and dry. The diapering surface shall only be used for diapering a child. Whenever possible, the same staff member should not prepare food and change diapers.

Section 5.21 Playground Provisions

- A. An outdoor playground shall be provided and shall be supervised by adults in an adult-child ratio not less than that maintained in indoor activities.
- B. A playground shall provide not less than 100 square feet of area for each child occupying the area at one time.

- C. The indoor and outdoor playground area, including all play equipment, shall be maintained in a safe condition. No sharp edges, dangerous protrusions or other obvious hazards shall be allowed in the play area. All equipment must be designed to protect against entrapment. Fall zones under equipment should be of wood chips, small gravel, sand, or other material designed to effectively absorb shock and prevent injury. All play areas and playground equipment installed, modified, or repaired after October 1, 1999, must meet Consumer Product Safety Commission Handbook for Public Playgrounds Safety Guidelines Publication No. 325.
- D. A playground shall be surrounded by a chain-link fence not less than six feet (6') in height. When screening is required by the "Zoning" Chapter of the Code of the City of Arlington, screening devices of at least six feet (6') may substitute for the chain-link fence, as long as at least one (1) side of the play area remains constructed of chain-link. Fences at child care centers in existence prior to October, 1985, may be continued and maintained if they are a minimum of four feet (4') in height. Administrator or his designee may exempt this requirement if the playground is used in association with seasonal or special activities for children five (5) years old and older. Exemptions must be approved in writing for the specific activity and for a limited period of time.
- E. Any pool, pond or other body of water greater than two feet (2') in depth shall be separated from a playground by a fence not less than six feet (6') in height, constructed so that children cannot easily climb over it, with self-closing, self-latching gate(s). Gates to the pool enclosure must be kept locked at all times that the pool is not in use. In all other ways, the pool must comply with the "Construction" Chapter of the Code of the City of Arlington and State law relative to pool construction and safety. All pools used by the children must comply with the pertinent regulations contained in Article VII of this Chapter for public and semi-public swimming pools. Permits are required, as set forth in Article VII of this Chapter, and all fees must be paid.
- F. Outdoor activities and field trips where children may encounter a pool, a pond or other body of water shall be attended by an adult competent in water-safety procedures, as certified by the American Red Cross, and

trained in life-saving techniques stated in Section 5.23(F).

- G. Tires must be provided with adequate drainage to prevent breeding of mosquitoes.

Section 5.22 Release of Child

- A. The child care center shall maintain a register for the signature of persons to whom children are released. Daily signatures shall not be required by this Article for authorized persons to whom children are regularly released. However, the child care center may require such signature of any persons at its discretion.
- B. An enrollment agreement required upon admission of any child to the child care center shall include a statement that the child will be released only to a parent or person named by the parent, and a statement that persons bringing the child or picking up the child will ensure that a staff member is aware of the child's arrival or departure. School-age children who leave the facility to go to classes or other approved activities shall have written permission from their parents; parents shall specify the activity, time and method of transportation. The child care center shall maintain a record of parents and other persons to whom the child is authorized for release. Each parent shall provide the child care center with the final four (4) digits of their social security number for purposes of security in emergency conditions, as identified in Subsection C below. In the case of a divorce after a child has been enrolled, it shall be the responsibility of the one who is granted custody of the child (being the one with whom the child lives) to provide the child care center with a copy of the custody decree or agreement, and request that the authorization records for release of the child be changed.
- C. When emergency conditions require that a child be released to a person not identified in the release authorization records, the child care center shall require the parent's prior approval, which may be submitted by telephone. The parent, identified for security by the four (4) digit social security number, shall designate the person to whom the child is to be released. The person to whom the child is to be released must in turn provide the parent's four (4)

digit number as identification, and shall be photographed by the child care center and provide a signature and date on the photograph, which shall be retained by the child care center for at least three (3) months.

Section 5.23 Safety and Sanitation

- A. A fire evacuation and relocation diagram shall be conspicuously posted in assembly rooms and classrooms in a child care center. All employees and staff members shall be instructed in fire emergency procedures. Fire evacuation drills shall be conducted at sufficient intervals to assure familiarity with emergency procedures among employees and staff members.
- B. Electrical outlets accessible to children shall be protected with child-proof covers or safety outlets when not being used.
- C. A child care center shall not be located in a mobile home or in any part of a building other than the ground level unless approved by the Arlington Fire Department.
- D. A child care center shall maintain an adequate amount of first-aid supplies including, but not limited to soap, antiseptic solutions, absorbent cotton, cotton-tip applicators, sterile gauze, adhesive tape and adhesive bandages. One (1) medium-sized package or container of each of these first-aid supplies shall be maintained in unopened reserve at all times. A magnifying glass, thermometer and tweezers shall also be available. First-aid procedures and supplies shall be applied, including cleaning and bandaging, for any cut or bleeding abrasion of the skin.
- E. Smoke detectors or other approved fire alarm equipment shall be installed to provide an effective warning to the building occupants of fire in any kitchen area, sleeping area or any area containing mechanical equipment. Centers with fifty (50) or more occupancy must install a fire alarm system that complies with the "Fire Prevention" Chapter of the Code of the City of Arlington for child care centers. Smoke detectors may be used in place of fire alarm systems in centers with less than fifty (50) occupants.
- F. One (1) staff per group of children must have current certification within the last two (2) years in first aid with rescue breathing and choking. One (1) staff per facility (as well as one (1) staff per group of

children away from the facility) having current training within the last two (2) years in cardiopulmonary resuscitation (CPR) for infants and children must be present at all times the center is in operation. Certificates evidencing such training shall be available upon request from any City official.

- G. The child care center shall take effective measures to maintain the structure and grounds free of insect and rodent infestation. Pest control services shall be provided by an individual or business that is properly licensed by and in compliance with the Texas Structural Pest Control Board requirements. Pest control records must be maintained by the child care center for a period of two (2) years and must be available for review by the Arlington Community Services Department. (Amend Ord 06-083, 8/22/06)
- H. All equipment and furnishings such as high chairs, chairs, tables, cribs, swings, or playpens shall be in good repair and shall be free of entrapment and entanglement hazards
- I. The interior of the building shall be maintained free of debris and filth. Walls and floors shall be maintained in good repair, structurally sound and free of holes, dangerous protrusions or other obvious hazards. The floors including carpeting, tile or other coverings shall be kept clean and free of accumulation of debris and filth.
- J. Grounds around the child care facility must be maintained free of debris, unnecessary items or any harborage for rodents or mosquitoes.
- K. All fences, bridges, railings, and other ornaments or equipment on the grounds that are accessible to the children must not pose an entrapment or entanglement hazard.

Section 5.24 Provisions for the Control of Communicable Disease

- A. All Staff shall clean their hands and exposed portions of their arms with a cleaning compound by vigorously rubbing together the surfaces of their lathered hands and arms for at least twenty (20) seconds and thoroughly rinsing with clean water and shall pay particular attention to the areas underneath the fingernails and between the fingers. Staff shall keep

- their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.
- B. Staff must wash before preparing or serving food, before feeding a child or handling food, after caring for a sick child, after diapering, after assisting a child with toileting, after coughing and sneezing, after cleaning soiled surfaces, and after engaging in other activity that contaminates the hands.
 - C. Staff must assist children to ensure that their hands are thoroughly washed before eating, after using the toilet, after a diaper change, after playing outdoors, after playing with pets, after coughing or sneezing, or after any activity that contaminates the hands.
 - D. Permanent signs shall be conspicuously posted by all handsinks including those in the restrooms, food service areas, and classrooms, so as to be noticed by normally observant individuals, reminding all persons to wash hands. Permanent signs, including pictorial messages, shall be posted for communication with children unable to read.
 - E. Employees and staff members shall have received a Mantoux tuberculosis skin test, with negative results, within the last 2 years. In the case of a positive result or when a Mantoux tuberculosis skin test can not be administered, a tuberculosis examination shall be conducted by a physician and the person found not to be a risk for the communication of tuberculosis. Subsequent testing may be required by the health authority if the person is exposed to tuberculosis.
 - F. Employees and staff members shall not present themselves for work when ill with a contagious virus or other disease that may affect the health of other persons. Persons shall not be permitted in the child care center whose health status or behavior suggests a hazard to the health, safety and welfare of others, including symptoms of a contagious illness, a dangerous mental or physical condition or symptoms of drug or alcohol intoxication.
 - G. Any child with symptoms of a communicable disease such as oral fever 100.4, uncontrolled diarrhea (2 or more loose, watery stools in 24 hours) or vomiting (2 or more episodes in 24 hours) shall be isolated from other children at the child care center. Extra attention must be given to handwashing and sanitation until the child can be picked up by a parent or other person(s)

authorized by the parent according to Section 5.22 of this Chapter.

Section 5.25 Liability Insurance

- A. The child care center applicant must have liability insurance coverage in the minimum amount of \$300,000 for each occurrence of negligence according to Chapter 42 of the Texas Human Resources Code. The policy must cover injury or death that occurs while a child is in the care of the facility and must remain in effect at all times that the center is operating.

- B. A licensee who does not have coverage for any of the reasons stated in Chapter 42 of the Texas Human Resources Code must provide proof to the Arlington Community Services Department that each child's parent(s), caretaker(s) or conservator has been properly notified. This proof must be presented to the City of Arlington Community Services Department within three (3) working days from the time coverage is discontinued, exhausted or denied. (Amend Ord 06-083, 8/22/06)

- C. The child care center applicant must have liability insurance coverage in the minimum amount of \$300,000 combined single limit for each occurrence of bodily injury or death and property damage that occurs due to motor vehicle accident during transportation of a child. Coverage shall be provided for all owned/leased nonowned and hired vehicles. Such insurance is to include coverage for uninsured/underinsured motorist. (Amend Ord 99-90, 7/27/99)

ARTICLE VI
AMBIENT AIR AND EMISSION STANDARDS
(Repealed)

ARTICLE VII

PUBLIC SWIMMING POOLS

Section 7.01 Adoption of the Texas Standards for Public Swimming Pools and Spas

- A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Department of State Health Services Standards for Public Swimming Pools and Spas found in Texas Administrative Code, Title 25, Health Services, Part 1, Chapter 265, Subchapter L, Sections 181 through 206, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article VII, Public Swimming Pools, 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 inspection of public and semi-public swimming pools in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the operations of public and semi-public pools. 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 Standards for Public Swimming Pools and Spas, a copy of which is on file in the Office of the City Secretary. (Amend Ord 07-097, 12/18/07)
- C. In the event of a conflict between any provision of the Texas Standards for Public Pools and Spas regulations and any provision of this ordinance, this ordinance shall prevail.
- D. The adopting by reference of the Texas Standards for Public Swimming Pools and Spas, as provided in Section 7.01(A) above, is made subject to and is modified and amended as follows:
1. The words "regulatory authority" in said regulations shall mean the Administrator or his designee.

2. Section 265.183(a) shall read:

The Administrator may require that a registered professional engineer or registered architect licensed by the State of Texas to practice as such be consulted to assure that the pool and spa are designed and built in compliance with these regulations and applicable federal, state, and or local regulatory requirements. The engineers or architect's professional seal shall be affixed to the plans and a statement attesting to the fact that the pool or spa was designed, constructed, and able to operate in compliance with these standards. This statement shall also be made available for review at a reasonable time upon request by the Administrator.

3. Section 265.192(e) shall read as follows:

All post-10/01/1999 and pre-10/01/1999 ground fault circuit interrupters of pools and spas shall be inspected by a licensed electrician in this state at least once a year prior to the beginning of swimming pool season and/or as required by the Administrator. The licensed electrician shall submit verification in writing that the pool related electrical components are in proper working order. (Amend Ord 07-097, 12/18/07)

4. Section 265.203 is amended by the addition of the following:

(m) Class C Pool Requirements:

1. After May 1, 2001, the permit holder or person-in-charge of every new and existing Class C pool shall ensure that the pool and/or spa is cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.05 of this Chapter. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the pool in compliance with this Chapter. After October 1, 2003, compliance will be demonstrated by presenting proof of training to the Community Services

Department and payment of a registration fee set by resolution of the Arlington City Council; (Amend Ord 06-083, 8/22/06)

2. The permit holder or person-in-charge of a Class C pool whose Trained Pool Operator has transferred, resigned, or is no longer employed shall have thirty (30) days to comply with the requirements of this Section;
3. A permit holder or person-in-charge is in compliance with the provisions of this section if they employ a swimming pool service company whose employee servicing the pool has a valid pool training certificate. (Amend Ord 05-010, 2/8/05)

Section 7.02 Swimming Pool Permit Required

- A. No person or firm shall own or operate a public pool without a valid Swimming Pool Permit from the City of Arlington, issued by the Administrator or his designee. (Amend Ord 07-097, 12/18/07)
- B. The Administrator or his designee shall issue a Swimming Pool Permit to any person or firm making application in the City of Arlington; providing that the person or firm complies with the requirements of this ordinance and the annual swimming pool permit fee is paid.

Section 7.03 Swimming Pool Permits Application

- A. Application for a Swimming Pool Permit shall be made in writing on the form provided by the Administrator or his designee. A separate application is required for each pool for which a permit is sought. An application shall be made for a permit for each pool that is constructed or extensively remodeled according to Article 7.08(A) of this chapter or at any time there is a change of ownership.
- B. Swimming pool application fee is due for each pool that is constructed or extensively remodeled according to Section 7.08(A) of this chapter. A separate fee is

required for each pool for which a swimming pool permit is sought.

Section 7.04 Fees

- A. The requirements for permits, inspections, reinspections and administrative fees of this Article shall require the payment to be submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated swimming pools. (Amend Ord 07-097, 12/18/07)
- B. Fees are not transferable or refundable. Every permit issued under the provision of this ordinance shall be non-transferable and non-refundable. A Swimming Pool Permit shall permit the operation of the pool only at the location and for the owner for which granted.

Section 7.05 Pool Operators' Training

- A. Pool Operators' training courses shall consist of at least six (6) classroom hours instructed by a Certified Pool Operator with content approved by the Administrator.
- B. A certificate of completion within the last two (2) years of issue date must be provided for review upon request by the Administrator.

Section 7.06 Posting of Swimming Pool Permits and Pool Operator's Training Certificate

The Swimming Pool Permit and Pool Operator's Training Certificate shall at all times be available on the premises for inspection and shall at all times be displayed in public view.

Section 7.07 Permits - Duration

- A. Swimming Pool Permits shall expire on March 1 of each year unless annual swimming pool permit fee is paid, or unless suspended for cause before expiration date.

- B. Swimming Pool Permits that lapse for non-payment of the annual swimming pool permit fee will be reinstated upon payment of reinstatement fee.

Section 7.08 Review of Plans

- A. Whenever a public swimming pool is constructed or extensively remodeled, properly prepared plans and specifications for such construction or remodeling according to Section 265.183 (a) of the Ordinance along with the Application Fee shall be submitted to the City of Arlington Community Services Department for review and approval before construction or remodeling is started. (Amend Ord 06-083, 8/22/06)
- B. Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the pool during construction and prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance. (Amend Ord 05-010, 2/8/05)

Section 7.09 Inspections

The Administrator or his designee is authorized to conduct such inspections as he deems necessary to ensure compliance with all provisions of this ordinance. Administrator or designee shall have right of entry at any reasonable hour upon the premises where a public or semi-public pool is located. Administrator or designee shall have the authority to collect water samples from the pool. (Amend Ord 07-097, 12/18/07)

Section 7.10 Maintenance and Operation

The owner or person-in-charge of every public pool shall be responsible for compliance with all parts of this Article relating to pool maintenance, pool operation and safety of swimmers. It shall be unlawful for the owner or person-in-charge to cause or permit the existence of a condition which is in violation of any part of this Article or other City ordinances. (Amend Ord 07-097, 12/18/07)

Section 7.11 Regulations in Pool Area

A person commits an offense if he/she:

- A. Allows an animal under his/her control to enter or remain within the pool area or pool enclosure of a public or semipublic pool, except that service animals may be allowed in the pool area or enclosure and not in the pool water unless the person can show that the service animal is providing a service; or
- B. Has skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge or a communicable disease and swims in a semi-public or public pool; or (Amend Ord 07-097, 12/18/07)
- C. Works at a public pool while infected with a communicable disease; or
- D. Alters or removes safety equipment from a public or semipublic pool except in an emergency; or
- E. Carries glass within a public or semipublic pool area or enclosure.
- F. Allows persons access to any public or semi-public pool where violations exist. (Amend Ord 07-097, 12/18/07)

Section 7.12 Failure to Comply

- A. Failure to comply with any section of this ordinance may result in the immediate closure of the pool and/or the initiation of legal action. Upon determination that the pool does not comply with the provisions of this ordinance, the Administrator or his designee shall notify the owner or person-in-charge of the existing violations. If Administrator or his designee determines that the condition of the pool is hazardous to the health or safety of the swimmers or of the general public, the pool shall be immediately closed. Signs shall be posted at all entrances to the swimming pool. Said sign shall be clearly visible to a reasonably observant person and shall state, "Closed By The Health Division". A reinspection of the pool will be conducted during the regular working hours of the Community Services Department at the request of the pool Manager of Operations. If compliance has been achieved, the owner or person-in-charge shall be notified that the pool may be opened.
- B. Signs posted by the Administrator or his designee stating "Closed By the Health Division" shall not be altered or removed unless authorized by the Administrator or his designee.

- C. Each public and semi-public pool shall be required to post signage at all public pool entrances stating "All violations should be reported to the Department of Community Services - Health Division at 817-459-6777." Signage should be in at least two contrasting colors and lettering should be no smaller than 1 inch in height. (Amend Ord 07-097, 12/18/07)

Section 7.13 Violation of Closure Order

When the Administrator or his designee has ordered that a pool be closed due to non-compliance with any provision of this ordinance, the owner of such pool shall not knowingly allow the pool to be used for swimming, diving or bathing purposes and shall immediately take every reasonable step to prevent the use of such pool for such purposes. By way of example and without limiting such duty, the owner shall (1) immediately post notices reasonably likely to come to the attention of potential users of the pool, advising of the closure, and (2) shall immediately lock all gates and doorways in any fence or other enclosure surrounding such pool.

Use of the pool by an individual for swimming, diving or bathing purposes after the Administrator or his designee has ordered such pool to be closed shall be deemed prima facie evidence that the owner of said pool has knowingly allowed the pool to be used for such purposes.

Section 7.14 Enforcement Responsibility

The Administrator or his designee shall have enforcement responsibility for this ordinance. (Amend Ord 00-037, 4/4/00)

ARTICLE VIII
MASS GATHERINGS

Section 8.01 Prohibition

- A. No person may act as a promoter of a mass gathering unless he obtains a permit from the Administrator under the provisions of this Article. If the owner of the property on which the mass gathering will be held is not the promoter as defined in Section 1.01, the owner of the property shall not be required to obtain a permit under the provisions of this Article. (Amend Ord 04-007, 1/13/04)
- B. No person may direct or control or participate in the production of a mass gathering unless a valid permit for the event has been issued as provided in this Article.
- C. No person may direct or control or participate in the production of a mass gathering in violation of the terms and conditions of a permit issued in accordance with this Article.

Section 8.02 Application for Permit

- A. At least sixty (60) days before a mass gathering is to be held, the promoter of the mass gathering shall file with the Administrator an application for a permit. This provision may be waived by the Administrator if the provisions of this Article will otherwise be complied with. (Amend Ord 04-007, 1/13/04)
- B. The application shall include the following:
 - 1. The name and address of the promoter;
 - 2. The name and address of the owner of the property on which the mass gathering is to be held and a letter from the owner stating that the promoter has his permission to use his property;
 - 3. The location and a description of the property on which the mass gathering is to be held;
 - 4. The dates and the times that the mass gathering will be held;
 - 5. The number of persons the promoter will allow to attend the mass gathering and the plan which the

promoter intends to use to limit attendance to this number;

6. The names and addresses of all paid performers, if any, who have agreed to appear and their agents;
7. A description of all steps taken by the promoter to assure that minimum standards of sanitation and health will be maintained during the mass gathering;
8. A description of all preparations being made to provide traffic control and to assure that the mass gathering will be conducted in an orderly fashion and that the physical safety of the persons in attendance will be protected;
9. A description of the preparations made to provide adequate medical and nursing care; and
10. A description of the preparations made to supervise minor persons who may attend the mass gathering, for compliance with laws which impose limitations on the behavior of minors.

Section 8.03 Investigation

- A. After an application is filed with the Administrator, he shall send copies to the Chief of Police.
- B. The Administrator shall inquire into preparations for the mass gathering and at least five (5) days before the hearing shall submit a report to the Administrator stating whether he believes that the minimum standards of health and sanitation provided by state and local laws, rules, regulations, and orders will be maintained.
- C. The Chief of Police shall investigate preparations for the mass gathering and at least five (5) days before the hearing shall submit a report to the Administrator stating whether he believes that minimum standards provided by state and local laws, rules, regulations, and orders for assuring public safety and order will be maintained.
- D. The Administrator and the Chief of Police shall be available to give testimony relating to their reports at the hearing. (Amend Ord 04-007, 1/13/04)

Section 8.04 Hearing

- A. The Administrator shall set a date and a time for a hearing on the application which shall be held at least ten (10) days before the day on which the mass gathering is to begin. In the event waiver of Section 8.02(A) has been made the hearing shall be as close to the ten (10) day requirement as practicable. (Amend Ord 04-007, 1/13/04)
- B. Notice of the time and place of the hearing shall be given to the promoter and to any persons who have an interest in the granting or denial of the permit.
- C. At the hearing, any person may appear and testify for or against the granting of the permit.

Section 8.05 Findings of Administrator

- A. After the hearing is completed, the Administrator shall enter his findings in the record and shall grant or deny the permit.
- B. The Administrator may deny the permit if he finds that:
 - 1. The application contains false or misleading information or required information is omitted;
 - 2. The location selected for the mass gathering is inadequate for the purpose for which it is to be used;
 - 3. The promoter has not made adequate preparations to limit the number of persons attending the mass gathering;
 - 4. The promoter does not have assurance that performers who are scheduled to appear will appear;
 - 5. The preparations for the mass gathering do not assure that minimum standards of sanitation and health will be maintained or that the mass gathering will be conducted in an orderly fashion and the physical safety of persons in attendance will be protected, or that adequate supervision of minor persons will be provided;
 - 6. Adequate arrangements for traffic control have not been provided; or

7. Adequate medical and nursing care will not be available.
- C. If the Administrator denies the permit, the City shall notify the promoter in writing:
1. of the reasons for denial;
 2. that the promoter may file an action in the District Court of Tarrant County, Texas, for review of the evidence presented to the Administrator at the hearing, the findings of the Administrator, and his decision. Said judicial review shall be perfected by the filing of a petition with the court within ten (10) days of the date of the hearing.
- D. The Administrator may impose reasonable conditions or restrictions on the granting of a permit, including but not limited to, any of the following:
1. Restrictions on fires, fireworks, amplified sound, use of alcoholic beverages, dancing, sports, use of animals, equipment, or vehicles, the number of persons to be present, the location of any bandstand or stage, or any other use which appears likely to create a risk of unreasonable harm to the public;
 2. A requirement that the applicant pay a reasonable deposit of security for the repair of any damage to City property, or the cost of cleanup, or both;
 3. A requirement that the applicant pay a reasonable fee to defray the cost of furnishing adequate forces for security and traffic control by the Police Department at the proposed use or activity.
 4. A requirement that the permittee furnish additional sanitary and refuse facilities that might be reasonably necessary, based on the use or activity for which the permit is being sought. (Amend Ord 04-007, 1/13/04)

Section 8.06 Revocation of Permit

- A. After a permit is issued, if the Administrator finds that preparations for the event will not be completed by the time the mass gathering is to begin or that the permit has been obtained by fraud or misrepresentation, he may revoke the permit.

- B. The Administrator must give notice to the promoter forty-eight (48) hours in advance of the revocation, and hold a hearing on the revocation if requested by the promoter. (Amend Ord 04-007, 1/13/04)

Section 8.07 Appeal

Any promoter or person affected by the action of the Administrator in granting or revoking a permit under this Article may appeal to the City Manager. Any promoter who seeks review of the Administrator's denial of a permit shall follow the appeal procedure outlined in Section 8.05(C) of this article. (Amend Ord 04-007, 1/13/04)

Section 8.08 Rules and Regulations

- A. The Administrator shall adopt rules and regulations consistent with the Texas Department of State Health Services rules and regulations relating to minimum standards of health and sanitation to be maintained at mass gatherings. (Amend Ord 07-097, 12/18/07)
- B. The Chief of Police shall adopt rules and regulations consistent with the Texas Department of Public Safety rules and regulations relating to minimum standards which must be maintained to protect public safety and maintain order at a mass gathering. (Amend Ord 04-007, 1/13/04)

ARTICLE IX
VIOLATIONS AND PENALTIES

Section 9.01 Penalty for Violation

Any person or corporation who violates any of the provisions of this Chapter shall be guilty of a misdemeanor and each day the violation continues shall be a separate offense. Each offense shall be punishable by a fine not to exceed \$2,000.00. (Amend Ord 90-37, 4/3/90)

ARTICLE X

REGULATION OF SMOKING

Section 10.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Administrative area" shall mean that part of any place or establishment not generally accessible to the public, including but not limited to individual offices, stock rooms, meeting rooms and employee lounges.

"Bar" shall mean any establishment licensed by the State for the sale of alcoholic beverages that derives more than 75% of the establishment's gross revenue from the on-premise sale of alcoholic beverages for on-premise consumption. For purposes of this Ordinance, any establishment which sells or serves alcoholic beverages in quantities which exceed 75% of the estimated daily gross sales is defined as a bar. For purposes of this definition, "daily gross sales" shall be calculated using the normal selling price of all items of food and alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the daily gross sales figure is calculated, whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours, and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of daily gross sales. (Amend Ord 06-103, 10/10/06)

"Billiard hall" shall mean a place of amusement whose chief purpose is providing the use of billiard/pool tables to the public for a fee.

"Bingo parlor" shall mean a facility regulated under V.T.C.A., Occupations Code §2001.001 et seq. - "Bingo Enabling Act". (Amend Ord 06-103, 10/10/06)

"Bus" shall mean every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

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"Condominium" shall mean a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners. (Amend Ord 05-092, 10/11/05)

"Eating establishment" shall mean any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually served or available to be served to patrons at all times such establishment is open to the public, and where food sales constitute not less than 25% of the daily gross sales of said establishment; and for purposes of this Ordinance, any establishment which sells or serves alcoholic beverages in quantities which exceed 75% of the daily gross sales of said establishment is excluded from the category of establishments defined as restaurants and shall be included in the category of establishments defined as bars. For purposes of this definition, "daily gross sales" shall be calculated using the normal selling price of all items of food and alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the daily gross sales figure is calculated whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours, and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of daily gross sales. (Amend Ord 06-103, 10/10/06)

"Employee" shall mean any person who is employed by any employer for direct or indirect monetary wages or profit.

"Employer" shall mean any person who employs the services of an individual person or any person in control of the workplace. (Amend Ord 93-25, 3/23/93)

"Enclosed" shall mean closed in by a roof and walls with appropriate openings for ingress and egress.

"Fraternal Organization" shall mean a facility or area for a special purpose organization or for the sharing of sports, arts, literature, politics or other similar interests, but not primarily for profit or to render a service that is customarily carried on as a business, excluding churches, synagogues, or other houses of worship. (Amend Ord 07-022, 4/10/07)

"Health care facility" shall mean any ambulatory surgical center, rehabilitation center, or minor emergency treatment facility. (Amend Ord 06-103, 10/10/06)

"Motion picture theater" shall mean any theater engaged in the business of exhibiting motion pictures to the public.

"Net floor area" shall mean the total floor area of the interior of an eating establishment, excluding the kitchen, restrooms, storage areas and offices.

"Nursing Home" shall mean a facility or area furnishing food and shelter in single or multiple facilities to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment. In addition, the facility provides minor treatment under the direction and supervision of a physician, or provides a service which meets some need beyond the basic provision of food, shelter and laundry. (Amend Ord 07-022, 4/10/07)

"Park" shall mean any land selected, obtained, or acquired by the City for use as a public park, or recreation or playground area, and any building or facility thereon, owned and maintained by the City as a public park, or recreation or playground area, whether or not such areas have been formally dedicated to such purpose. (Amend Ord 07-022, 4/10/07)

"Physically separated section" shall mean areas totally enclosed by walls and doors. (Amend Ord 93-25, 3/23/93)

"Private Club" shall mean the private quarters for a private organization, a principal purpose of which is the preparation and service of food and/or drink for members and their guests only. (Amend Ord 07-022, 4/10/07)

"Public business" shall mean any deliberation between a quorum of members of any board, commission, department, committee or agency within the executive or legislative department of the State of Texas, or the City Council or any Board or Commission of the City of Arlington at which any

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public business or public policy is discussed or considered or at which any formal action is taken.

"Retail or service establishment" shall mean any establishment which sells goods or services to the general public, except eating establishments and establishments regulated by Section 10.03 of this article.

"Shared HVAC system" shall mean a heating/ventilation/air conditioning system that circulates air through more than one retail or service establishment in which public or private business is conducted. (Amend Ord 06-103, 10/10/06)

"Smoker's lounge" shall mean any facility that is attached to a retail tobacco shop for the purpose of enjoyment of tobacco products purchased from the attached tobacco shop. (Amend Ord 08-020, 3/18/08)

"Smoking" shall mean the combustion of any cigar, cigarette, pipe or similar article using any form of tobacco or other combustible substance in any form.

"Stand Alone Tobacco Shop" shall mean a tobacco shop that is housed in a facility that shares no common mechanical equipment systems or physical properties such as walls, ceilings, or hallways with any other establishment, occupancy or use. (Amend Ord 08-020, 3/18/08)

"Tobacco product" shall mean a cigarette, cheroot, stogee, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

"Tobacco shop" shall mean a retail establishment whose annual gross revenues from the sale of tobacco products and smoking accessories are at least fifty percent (50%).

"Workplace" shall mean any enclosed area of a structure, or portion thereof, intended for occupancy by employees who provide primarily clerical, professional or business services of a business entity, or which provide primarily clerical, professional or business services to other business entities or to the public at that location. (Amend Ord 91-58, 6/18/91)

Section 10.02 Smoking Prohibited - Public Places

- A. Prohibited Places. A person commits an offense if he possesses a burning tobacco product or smokes a tobacco product within:
1. A public primary or secondary school;
 2. An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;
 3. A library;
 4. A museum;
 5. The buildings or grounds of a hospital, health care facility or nursing home;
 6. A transit system bus;
 7. A room or enclosed place of public assembly in which public business is conducted when the public business requires or provides an opportunity for direct participation or observation by the general public;
 8. Indoor or outdoor service lines in which more than one (1) person is giving or receiving goods or services of any kind;
 9. Retail or service establishments;
 10. Public rest rooms;
 11. Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event;
 12. Any portion of any publicly or privately owned room, building or other enclosed place to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

13. Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;
14. Any seating area of any publicly or privately owned outdoor athletic facility having an overall fixed seating capacity of at least six hundred (600) people and used for the purpose of viewing a single athletic field;
15. Any designated seating area of any publicly or privately owned outdoor theater or amphitheater having an overall fixed or temporary seating capacity of at least five thousand (5,000) people or more and used for the purpose of viewing live performances;
16. Any common area of a multi-family development; or
17. Fifty feet of outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article, so as to ensure that tobacco smoke does not enter those areas.
18. the following areas of a park:
 - a. while seated in or within fifty (50) feet of a dugout or bleacher provided for spectators at outdoor athletic events;
 - b. a park playground or within fifty (50) feet of a park playground;
 - c. in plaza areas at athletic complexes or within fifty (50) feet of such area;
 - d. in a park restroom or within fifty (50) feet of such restroom; or
 - e. within the fenced areas at a swimming pool or within fifty (50) feet of such area.

B. Exceptions.

1. It is an exception to Subsection (A) that the smoking or possession was by a person as part of his participation in an authorized theatrical performance.

2. It is an exception to Subsection (A)(16) that the smoking or possession occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area.
3. It is an exception to Subsection (A)(16) if the multi-unit development is owner occupied condominiums.
4. It is an exception to Subsection (A)(5) that the smoking or possession occurred on the grounds of a nursing home in an outdoor area, that may be enclosed by fixed walls, which has been designated by the owner, manager, or operator or other person having control of such area, as a smoking area.

Said designated smoking area must be at least fifty feet from outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article.

5. It is an exception to Subsection (A) that the smoking or possession occurred in a fraternal organization or private club unless the smoking occurred in an area that has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area.
6. It is an exception to Subsection (A) that the smoking or possession was by a person in a smoker's lounge attached to a tobacco shop that meets the following requirements:
 - a. The smoker's lounge shall not allow or employ persons under the age of eighteen (18). Signs shall be conspicuously posted at all entrances of the smoker's lounge which state: **"No One Under Age 18 Allowed."**
 - b. Smoking is prohibited within the tobacco shop. Signs shall be conspicuously posted at all entrances to the tobacco shop in accordance with Section 10.04(A)(1) of this ordinance.
 - c. The smoker's lounge shall have separate entrances, exits and restroom facilities from the attached tobacco shop.

- d. The smoker's lounge shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.
- e. The smoker's lounge must have a separate heating and cooling system from the tobacco shop and any other establishment, occupancy or use where smoking is prohibited.
- f. The smoker's lounge shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.
- g. The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the smoker's lounge is not allowed or drawn into the tobacco shop or any other establishment where smoking is prohibited.
- h. The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.
- i. The Administrator may deny the opportunity to operate a smoker's lounge upon a finding that:
 - (1) Smoke is migrating from the smoker's lounge into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited; or
 - (2) The smoker's lounge has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

Upon such a finding, the smoker's lounge shall be deemed to be nonsmoking until successfully tested.

- j. The owner, manager or operator of a tobacco shop commits an offense if he or she allows smoking of a tobacco product in an area deemed to be nonsmoking by the Administrator.
 - k. The owner, manager or operator of a tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section.
7. Exception for Tobacco Shops meeting the requirements set forth below:
- a. Stand Alone Tobacco Shop. It is an exception to Subsection (A) that the smoking or possession was by a person in a Stand Alone Tobacco Shop that meets the following requirements:
 - (1) The stand alone tobacco shop shall not allow or employ persons under the age of eighteen (18).
 - (2) Signs shall be conspicuously posted at all entrances of the stand alone tobacco shop which state: **"No One Under 18 Allowed."**
 - b. Tobacco Shop. It is an exception to Subsection (A) that the smoking or possession was by a person in a tobacco shop that meets the following requirements:
 - (1) The tobacco shop shall not allow or employ persons under the age of eighteen (18).
 - (2) Signs shall be conspicuously posted at all entrances of the tobacco shop which state: **"No One Under Age 18 Allowed."**
 - (3) The tobacco shop shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing

air from the tobacco shop to migrate into the any other establishment, occupancy or use where smoking is prohibited.

- (4) The tobacco shop must have a separate heating and cooling system from any other establishment, occupancy or use where smoking is prohibited.
- (5) The tobacco shop shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the tobacco shop to migrate into any other establishment, occupancy or use where smoking is prohibited.
- (6) The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the tobacco shop is not allowed or drawn into any other establishment where smoking is prohibited.
- (7) The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.
- (8) The Administrator may deem the tobacco shop nonsmoking upon a finding that:
 - (a) Smoke is migrating from the tobacco shop into any other establishment, occupancy or use where smoking is prohibited; or
 - (b) The tobacco shop has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

Upon such a finding, the tobacco shop shall be deemed to be nonsmoking until successfully tested.

- c. The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she allows smoking of a tobacco product in an area deemed to be nonsmoking by the Administrator.
- d. The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section. (Amend Ord 08-020, 3/18/08)

C. Defenses.

- 1. It is a defense to prosecution under this section that the conveyance or public place within which the offense occurred did not have prominently displayed a reasonably sized notice that smoking was prohibited.
- 2. It is a defense to prosecution under this section that facilities for the extinguishment of smoking materials were not located within the conveyance or within fifty feet (50') of the public entrances to the place or establishment.
- 3. It is a defense to prosecution under Sections 10.02(A)(14) and 10.02(A)(15) that the offense occurred in an open concourse designated as a smoking area by the owner, operator or person in control of the outdoor athletic facility, theater or amphitheater.

D. Eating Establishments. An eating establishment within a use governed by this section shall be governed by Section 10.03.

E. Shared HVAC System. Notwithstanding other provisions to the contrary, smoking shall be prohibited in all facilities that have shared HVAC systems, unless smoking is otherwise permitted in all the establishments using a shared HVAC system.

F. Rangers Ballpark in Arlington. Smoking at the Rangers Ballpark in Arlington is allowed only at designated

areas near the outer perimeter of the first level and upper concourse. When food kiosks are located in the smoking areas, smoking is prohibited in the kiosk line and within fifty (50) feet of the food kiosk. Signage must indicate that smoking is not permitted in a kiosk line or within fifty (50) feet of the food kiosk. Smoking is not restricted in private club areas of the Rangers Ballpark in Arlington. (Amend Ord 07-022, 4/10/07)

Section 10.03 Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers

- A. A person commits an offense if he or she smokes tobacco or possesses a burning tobacco product in an eating establishment, bar, night club, sexually oriented business, billiard hall, bingo parlor or bowling center.
- B. An owner, manager or operator of an eating establishment, bar, nightclub, sexually oriented business, billiard hall, bingo parlor or bowling center commits an offense if he or she allows smoking of a tobacco product.
- C. Exceptions.
 - 1. It is an exception to Subsection (A) and (B) that the smoking or possession occurred in a bar, nightclub, sexually oriented business, billiard hall, bingo parlor or bowling center that:
 - a. does not allow or employ persons under the age of eighteen (18) years; and
 - b. does not open into an eating establishment, hotel, motel or any other establishment in which smoking is prohibited under this Article.
 - 2. Notwithstanding Subsection (1), smoking shall be prohibited in all facilities that have shared HVAC systems, unless all the establishments using a shared HVAC system meet the requirements for exception as outlined in subsection (1) above.

D. Defenses.

1. It is a defense to a prosecution under Subsection (A) that the establishment did not have prominently displayed a reasonably sized notice that smoking was prohibited.
2. It is a defense to a prosecution under Subsection (A) that the facilities for the extinguishment of smoking materials were not located within fifty feet (50') and outside of the public entrances of the establishment.

E. The owner, manager or operator of an eating establishment, bar, nightclub, sexually oriented business, billiard hall, bingo parlor or bowling center commits an offense if he or she designates or maintains a smoking area in violation of this section.

- F.
1. An establishment which does not meet the exception requirements of Subsection (C) shall post a sign at all public entrances stating: **"No Smoking - City Ordinance."**
 2. The owner or manager of an establishment governed by this subsection commits an offense if he or she fails to post and maintain the required signs. There shall be no requirement of a culpable mental state for this offense. (Amend Ord 06-110, 11/28/06)
 3. All children's playgrounds associated with eating establishments shall be nonsmoking. All doors and gates leading to such play areas shall be posted: **"No Smoking - City Ordinance."** (Amend Ord 06-103, 10/10/06)

Section 10.04 Posting of Signs, Placing of Receptacles and Public Address System Announcement Required

A. Signs.

1. A place or conveyance regulated by Sections 10.02 or 10.03; that is required to be totally nonsmoking, shall have signs conspicuously posted at all entrances which state: **"No Smoking - City Ordinance."**

2. If a place or conveyance regulated by Section 10.02 has a designated smoking area, such signs may also state: **"Except In Designated Areas."**
 3. A designated smoking area shall have signs conspicuously posted in the area which state: **"Smoking In This Area Only."**
 4. Establishments exempt under Subsection 10.03(C) shall have signs conspicuously posted at all entrances which state: **"We Do Not Have A Nonsmoking Area."** (Amend Ord 06-103, 10/10/06)
- B. Receptacles. A place, establishment or conveyance regulated by Sections 10.02 or 10.03, which is partially or totally nonsmoking, shall have facilities for the extinguishment of smoking materials located within fifty feet (50') of all entrances and within all designated smoking areas. (Amend Ord 06-110, 11/28/06)
- C. Public Address System Announcement. In those outdoor athletic facilities, theaters and amphitheatres where a public address system is used, the owner, operator or person in control of an outdoor athletic facility, theater or amphitheater shall announce prior to each game or performance the prohibition of smoking in seating areas.
- D. Offenses.
1. The owner, manager or operator of a place, conveyance or establishment commits an offense if he fails to post signs and provide extinguishment facilities as required by this section. There shall be no requirement of a culpable mental state for this offense.
 2. The owner, manager or operator of a place, conveyance or establishment commits an offense if he places or maintains facilities for the extinguishment of smoking materials in public areas other than as provided for in Subsection (B). There shall be no requirement of a culpable mental state for this offense.
 3. The owner, manager or operator of an outdoor athletic facility, theater or amphitheater where a public address system is used, commits an offense if he operates such a facility without announcing

or causing to be announced prior to each game or performance the prohibition of smoking in seating areas. (Amend Ord 06-110, 11/28/06)

Section 10.05 Regulation of Smoking - Workplace

- A. The purpose of this section is to assure that all employers provide working conditions for nonsmoking employees which will eliminate exposure to secondhand smoke while working or using common facilities.
- B. Employers shall:
1. Designate all common areas of the workplace including, but not limited to, conference rooms, break areas, rest rooms, and dining areas as nonsmoking except where separate areas are provided for smokers as described in Subsections (B)(3) and (E)(2), below.
 2. Designate as nonsmoking areas of shared office space except where separate areas are provided for smokers as described in Subsection (E)(2) below.
 3. Not designate smoking common areas which are larger than comparable areas designated for nonsmokers.
 4. Prominently display signs at the place of business with the universal symbol or wording to indicate that smoking is prohibited or permitted only in designated areas.
 5. Communicate the requirements of this ordinance to all employees.
 6. Not discriminate, discharge, or in any other manner retaliate against any employee exercising a right created by this ordinance.
- C. Multiple employers sharing common ventilation/air handling systems shall be designated as nonsmoking.
- D. Building managers or owners shall prominently display signs at the place of business indicating "smoking in designated areas only" if the building is occupied by more than one employer. Buildings where all tenants have their own separate entrances to the outdoors and

- no common areas are shared are exempt from the requirements of this paragraph.
- E. An employer may:
1. Designate the entire workplace as nonsmoking or have more stringent requirements than the requirements of this ordinance.
 2. Allow smoking in a physically separated section of the workplace if all employees in that area are smokers; and:
 - a. The air handling/ventilation system serving such section does not serve any other area of the workplace; or
 - b. No return air is permitted from such section to a common air handling/ventilation system, exhaust ventilation equal to four (4) air changes per hour is provided, and exhaust ventilation shall terminate outside the building.
- F. Designated smoking areas may be provided if:
1. Tenant spaces not sharing ventilation systems with any other tenant are totally separated with walls and doors from other parts of the business; or
 2. Buildings with more than one (1) employer are totally separated with walls and doors from other parts of the building and are equipped with a separate ventilation system which serves smoking areas only.
- G. Employers are encouraged to promote employee participation in tobacco education and smoke cessation programs.
- H. An employer commits an offense if he violates any provision of this section.
- I. Customer smoking areas in establishments regulated elsewhere in this article are exempt from the provisions of this section. (Amend Ord 94-02, 01/04/94)

Section 10.06 Penalty For Violation

- A. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined an amount not less than Twenty-five and No/100 Dollars (\$25.00) nor more than Two Hundred and No/100 Dollars (\$200.00); provided, however, in the event the actor has previously been convicted under this section, the actor shall be fined an amount not less than Fifty and No/100 Dollars (\$50.00) nor more than Five Hundred and No/100 Dollars (\$500.00) for a second conviction hereunder, and shall be fined an amount not less than One Hundred and No/100 Dollars (\$100.00) nor more than Two Thousand and No/100 Dollars (\$2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense.
- B. Notwithstanding Subsection (A) above, the fine for violations of Subsections 10.03(F)(2), 10.04(D)(1) and 10.04(D)(2) or any other offense within this Article where the culpable mental state is specifically dispensed, shall be an amount not less than One Hundred and No/100 Dollars (\$100.00) nor more than Five Hundred and No/100 Dollars (\$500.00) for a third conviction hereunder and for each conviction thereafter. (Amend Ord 06-110, 11/28/06)

ARTICLE XI

RETAIL SALES OF TOBACCO PRODUCTS

Section 11.01 Definitions

"**Tobacco product**" shall have the same definition as in Article X of this chapter.

"**Vending machine**" shall mean any mechanical, electric or electronic self-serving device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

Section 11.02 Purpose

The purpose of this article is to protect the health, safety and welfare of persons under the age of eighteen (18) from the health risks caused by the use of tobacco products.

Section 11.03 Vending Machines

A. A person commits an offense if he or she sells, offers for sale, allows the sale of, allows the offer for sale of or allows the display for sale of tobacco products by use of a vending machine.

B. Exceptions.

1. It is an exception to Subsection (A) that a cigarette vending machine is located within an enclosed facility which does not admit any persons under the age of eighteen (18) years. The establishment shall post a sign at each entrance of the enclosed facility that persons under the age of eighteen (18) years are prohibited from the enclosed facility. Enclosed facility means an area surrounded by a wall and which area may not be accessed except by doorway.
2. It shall also be an exception to Subsection (A) that a cigarette vending machine is located in a portion of a facility to which the general public or members of a private club do not have access. The establishment shall post a sign at the entrances to this area to which the general public or members of a private club are prohibited.
(Amend Ord 94-26, 2/8/94)

Section 11.04 Penalty and Culpability

- A. A violation of this article is punishable by a fine not to exceed **\$2,000.00**.
- B. There shall be no requirement of a culpable mental state for a violation of this article.

Section 11.05 Effective Date

This article shall become effective on February 1, 1994. (Amend Ord 94-02, 01/04/94)

ARTICLE XII

ON-SITE SEWAGE FACILITIES

Section 12.01 Adopting Chapter 366, Texas Health and Safety Code

Chapter 366 of the Texas Health and Safety Code, as amended, is hereby adopted and designated together with all amendments, deletions and addenda hereinafter contained, the same as though it were copied at length herein.

The City of Arlington, Texas clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the Texas Health and Safety Code and Chapters 7 and 37 of the Texas Water Code, and associated rules referenced in Section 12.04 of this Article.

Section 12.02 Area of Jurisdiction

The Rules shall apply to all the area lying within the incorporated limits of Arlington, Texas.

Section 12.03 On-Site Sewage Facility Rules

Any permit issued for an on-site sewage facility within the jurisdictional area of Arlington, Texas, must comply with the Rules adopted in Section 12.04 of this Ordinance.

Section 12.04 On-Site Sewage Facility Rules Adopted

The Rules, Title 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Arlington, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Section 12.05 Incorporation By Reference

The Rules, 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

Section 12.06 Amendments

The City of Arlington, Texas, wishing to adopt more stringent Rules for its On-Site Sewage Facility Ordinance understands that the more stringent local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Arlington, Texas:

- A. All on-site sewage facilities must be permitted regardless of lot size; and
- B. Real estate inspections of on-site sewage facilities necessary for mortgage financing approval shall be conducted by the City of Arlington, Texas.

Section 12.07 Development or Organized Disposal Systems

In order to implement the stated policy of the legislature and the Texas Commission on Environmental Quality to encourage the development and use of organized disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution, protect the public health, and maintain and enhance the quality of water in the state, the following requirements are made:

- A. No person may cause or allow the installation of an on-site sewage facility when any part of the facility is located on property adjacent to an existing organized system, unless one of the following requirements has been met:
 - 1. The person has received a written denial of service from the owner or governing body of the organized disposal system; or
 - 2. The person has received a written determination from the designated representative that it is not feasible for the person to connect to the organized disposal system.

- B. Whenever an organized disposal system is developed adjacent to a property served by any private sewage facility, that private sewage facility shall be connected to the organized system unless one of the requirements set forth in subsections A(1) or A(2) of this section has been met.

Section 12.08 Duties and Powers

Designated personnel of the City of Arlington, Texas, are herewith declared the designated representatives for the enforcement of these Rules within its jurisdictional area.

The appointed individual(s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of the designated representative of the City of Arlington, Texas. The designated representative duties and concomitant powers shall include the following:

1. To resolve any question regarding any interpretation of these Rules;
2. To enforce these Rules and to make appropriate recommendations to proper city officials when instances of noncompliance with these Rules have been determined;
3. To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities;
4. To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules;
5. To make monthly reports to the authorized agent on all actions, including legal actions, taken concerning these Rules;
6. To investigate nuisance complaints within twenty-one (21) days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within thirty (30) days; and
7. To perform all other duties necessary to meet the requirements of these Rules.

Section 12.09 Collection of Fees

The various requirements for permits, installation, application, repairs, inspections, re-inspections and such administrative function of this Article shall require payment of fees submitted to the City of Arlington, Texas, in an amount set by resolution of the City Council. All fees collected shall be made payable to the City of Arlington, Texas. A fee of \$10 will also be collected for each on-site sewage facility permit to be paid to the On-Site Wastewater Treatment Research Council as required by the Texas Health and Safety Code, Chapter 367. This fee may be amended from time to time by resolution of the City Council.

Section 12.10 License to Operate

Each new on-site sewage facility shall be inspected and approved by the designated representative prior to the final covering of the facility.

- A. The applicant or registered installer shall notify the designated representative that an inspection is desired at least five (5) working days prior to the need for inspection.
- B. The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to make the inspection.
- C. The applicant or registered installer must be present at the time of the inspection for that facility.

Section 12.11 Appeals

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Appeal Officer designated by the City Manager to hear such appeals.

Section 12.12 Enforcement Plan

The City of Arlington, Texas, clearly understands that, at a minimum, it must follow the requirements in 30 Texas

Administrative Code § 285.71 Authorized Agent Enforcement of On-Site Sewage Facilities. This Ordinance adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to those found in Chapters 341 and 366 of the Texas Health and Safety Code, Chapters 7, 26, and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285.

Further, the designated representative may routinely inspect on-site sewage facilities to assure continued compliance with these Rules.

The designated representative shall inspect any on-site system that is believed to be causing pollution, a threat to the public health, nuisance conditions, or illegally installed or altered. If upon inspection it is found that any of these conditions exist, the owner of the on-site sewage facility will be notified in writing of the violation and what must be done to achieve compliance, and provide a reasonable amount of time to comply. The on-site sewage facility shall be re-inspected at the expiration of the allotted time.

- A. If the facility is found to be compliant, a license may be issued or the existing license may be modified.
- B. If the facility is found to be noncompliant, appropriate enforcement shall be taken.

Section 12.13 Penalties

The City of Arlington, Texas, adopts the criminal, injunction or civil suit, and civil penalty provisions as set forth in Chapters 366 and 341 of the Texas Health and Safety Code, Chapters 7, 26 and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285. Each day of a continuing violation is a separate offense and is punishable as such. The penalties shall include, but are not limited to the following penalties.

A. Criminal Penalties

- 1. A person commits an offense if a person operates as an installer unless the person is registered by the state.

2. A person commits an offense if the person violates a rule adopted by the Texas Commission on Environmental Quality under this chapter or an order or resolution adopted by an authorized agent under Section 366.0515 of the Texas Health and Safety Code.
3. A person commits an offense if the person begins to construct, alter, extend or repair an on-site sewage facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend or repair the on-site system as required.
4. An emergency repair to an on-site sewage facility without a permit is not an offense under the Rules if such repairs meet the criteria of Section 12.14.
5. An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is punishable under the provisions of state law.
6. Each day that a violation occurs constitutes a separate offense.
7. A person commits an offense if the person violates the provisions of this Section regarding nuisances.
 - a. A public health nuisance is sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.
 - (1) An offense under this section is a misdemeanor punishable by a fine of not less than \$10.00 or more than \$200.00.
 - (2) If the Defendant has previously been convicted of an offense under this Chapter, the offense is punishable under the provisions of State law.

B. Injunction or Civil Suit

1. The Administrator may, in partnership with the Texas Commission on Environmental Quality, request the Attorney General to bring a civil suit, if it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit or other order of the Commission issued pursuant to Chapter 366, Texas Health and Safety Code for:
 - a. mandatory or prohibitory injunctive relief, as warranted by the facts;
 - b. a civil penalty as provided by Chapter 366, Texas Health and Safety Code; or
 - c. both injunctive relief and civil penalty.

C. Civil Penalty

The authorized agent may request that the Texas Commission on Environmental Quality initiate an enforcement action pursuant to these sections through a petition filed with the Commission. If the Commission initiates an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of the enforcement action.

D. Fees and Costs Recoverable

If an authorized agent or the state prevails in a suit pursuant to Subchapter F of Chapter 366 of the Texas Health and Safety Code, it may recover reasonable attorney's fees, court costs and reasonable investigative costs incurred in relation the proceeding.

Section 12.14 Emergency Repair

An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if the following procedures are carried out:

- A. The repair is made for the purpose of abatement of an immediate, dangerous and serious health hazard;

- B. That said repair does meet minimum state design criteria;
- C. That said repair does not constitute an alteration of the on-site system;
- D. That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within seventy-two (72) hours of the date of the repair; and
- E. That said repair must be inspected for compliance with the state's design criteria.

Section 12.15 Relinquishment of Ordinance

If the City Council of Arlington, Texas, decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council shall follow the procedures outlined in 30 Texas Administrative Code § 285.10 (d)(1) through 4.

After relinquishing its on-site sewage facility authority, the authorized agent understands that it may be subject to charge-back fees in accordance with Texas Administrative Code § 285.10 (d)(5) and § 285.14 after the date that delegation has been relinquished.

Section 12.16 Severability

It is hereby declared to be the intention of the City Council of Arlington, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of such unconstitutional phrases, clause, sentence, paragraph, or section.

Section 12.17 Effective Date

This Ordinance shall be in full force and effect from and after its date of approval as required by law and upon the approval of the Texas Commission on Environmental Quality.

(Amend Ord 11-049, 9/13/11)

ARTICLE XIII
YOUTH TOBACCO USE

Section 13.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Tobacco Product" shall mean a cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

Section 13.02 Purpose

The purpose of this article is to protect the health, safety and welfare of persons under the age of eighteen (18) from the health risks caused by the use of tobacco products.

Section 13.03 Possession of Tobacco Products by Minors Prohibited

- A. An individual who is younger than eighteen (18) years of age commits an offense if the individual:
1. possesses, purchases, consumes, or accepts a tobacco product; or
 2. falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.
- B. It is an exception to the application of this section that the individual younger than eighteen (18) years of age possessed the cigarette or tobacco product in the presence of:
1. an adult parent, a guardian, or a spouse of the individual; or
 2. an employer of the individual, if possession or receipt of the tobacco product is required in the

performance of the employee's duties as an employee.

- C. It is an exception to the application of this section that the individual younger than eighteen (18) years of age is participating in an inspection or test of compliance while under the direction and supervision of a police officer in the process of enforcing this article.

Section 13.04 Penalty and Culpability

- A. Except as provided in Subsection (B), a violation of this article is punishable by a fine of not less than Twenty Five and No/100 Dollars (\$25) nor more than Seventy Five and No/100 Dollars (\$75).
- B. If a person has been previously convicted of a violation of this article, a violation of this article is punishable by a fine of not less than One Hundred and No/100 Dollars (\$100) nor more than Two Hundred Fifty and No/100 Dollars (\$250).
- C. There shall be no requirement of a culpable mental state for a violation of this article.

Section 13.05 Effective Date

This article shall become effective on August 1, 1997, and shall expire on January 1, 1998." (Amend Ord 97-108, 7/29/97)