

## ORDINANCE NUMBER 1066

AN ORDINANCE ESTABLISHING REGULATIONS FOR FOOD ESTABLISHMENTS, INCLUDING FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS AND ROADSIDE FOOD VENDORS; PROHIBITING ANY VIOLATION OF SUCH REGULATIONS; ESTABLISHING A FINE; FINDING AND DETERMING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

THIS ORDINANCE SUPERCEDES ANY PREVIOUS ORDINANCE ENTIRELY BY SETTING NEW OPERATING PROCEDURES FOR PERMITTING OF AFORE MENTIONED ESTABLISHMENTS.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Burkburnett, Texas:

**Section 1. That Chapter 95 of the Code of Ordinances of the City of Burkburnett, Texas be superseded by adding the following:**

### **FOOD AND FOOD VENDORS AND ESTABLISHMENTS.**

#### **DIVISION 1-GENERAL**

##### **§95.30 Definitions**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bed and breakfast extended* means an establishment with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests. A bed and breakfast extended would be required to hold a retail food establishment permit.

*Bed and breakfast limited* means an establishment that has seven or fewer rooms for rent, serves breakfast to overnight guests, and is not considered a retail food establishment.

*Caterer* means any person/entity who operates from a permitted food facility where food is prepared or stored then served at an off premises caterer function

*Central Preparation Facility* also known as a commissary means an approved and permitted facility or space where food is prepared, stored, and packaged. Central preparation facilities may be required when the food establishment's operations are not wholly contained to a single location such as, but not limited to, with retail food establishments mobile, certain catering operations, or pop-up food vendors.

*Concession Stand* means a food establishment, which is not mobile and is operated for the purpose of providing food at events associated with an independent school district, community college, for-profit or non-profit organization, university, private school, or municipality.

*Cook-for-Hire* means any person hired to prepare and/or serve food at a private home. Cook-for Hire shall not provide catered food. All food prepared by a cook-for-hire is handled at the location of the private home where the client provided the food, utensils, equipment, and kitchen. No permit is required since only food preparation services, not food, are offered for sale/service at a private home.

*Delivery* means a service offered by retail food establishments in which the order is transferred from the establishment to the end consumer at a location designated by the end consumer. A catering permit is not required for delivery or large orders.

*Farmer's Market* means a designated location used for a recurring event at which a majority of the vendors are farmers or other food producers who sell food directly to consumers. A farmers' market must include at least two vendors who meet the definition of "farmer" as defined in 25 TAC Chapter 229.702 and may include vendors who meet the definition of "food producer" as defined 25 TAC 229.702. In addition, a farmers' market may include vendors who are not "farmers" or "food producers," provided that "farmers" and "food producers" constitute the majority of vendors who participate in the market throughout the year.

*Farmer's Market Vendor* means a farmer or food producer who sells food at a farmers' market. Covers sales at all farmers' markets, farm stands, and farms within the jurisdiction of the permitting authority.

*FDA Food Code* means the 2017 FDA Food Code, as amended, or as referenced by the Texas Food Establishment Rules, as amended.

*Food* means a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

*Food Contact Surface* means a substance that comes into contact with food and is not intended to have a technical effect on such food. Including but not limited to: food packaging and its components, processing equipment, food preparation surfaces, or cookware.

*Food establishment:*

- (a) Means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(1) Such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location (machine); self-service food market; conveyance used to transport people; institution; or food bank; and

(2) That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(b) Includes:

(1) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(2) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(c) Does not include:

(1) An establishment that offers only prepackaged foods that are not time/temperature control for safety food;

(2) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(3) A food processing plant;

(4) A cottage food production operation as defined by Texas Health and Safety Code § 437.001;

(5) An area where food that is in a cottage food production operation is sold or offered for human consumption;

(6) A “bed and breakfast limited” facility as that phrase is defined by 25 Texas Administrative Code §228.2; if the consumer is informed by statements contained in published advertisements, mailed brochures, or placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the Wichita City/County Public Health District; or

(7) A private home that receives catered or home-delivered food.

- (8) A third-party Delivery Service.
- (9) Operation of a lemonade, or other beverage stand on a temporary basis by persons under the age of 18. In this instance, neither the beverage stand nor the kitchen in the private home in which the product was prepared shall be considered a food establishment.
- (10) A food establishment shall not include, and no permit shall be required under this article for, the preparation of food of any kind in a kitchen in a private home for a non-commercial purpose, including but not limited to: potluck suppers, picnics, tailgating, office parties, school functions, or other similar private events.

*Frozen dessert(s)* means soft serve, gelato, frozen custard, frozen yogurt or other frozen dessert prepared by adding a mix to a specialized machine.

*Ghost Kitchen(s)* also known as virtual kitchens, or dark kitchens, means a food service business that serves customers exclusively by delivery and pick-up based on phone and online ordering. They may be stand-alone businesses that operate out of either an existing restaurant's kitchen or an extension of the existing business.

*Highly susceptible population* means persons who are more likely than other people in the general population to experience foodborne disease because they are:

- (1) Immunocompromised; preschool age children, or older adults; and
- (2) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as but not limited to a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

*Imminent Hazard to Public Health* also called imminent health hazard means a significant threat or danger to health due to a product, practice, circumstance, or event that creates a situation that would likely lead to foodborne illness as determined by the regulator authority. Imminent health hazards include but are not limited to: no water service, no electrical power, sewage backup, rodent or insect infestation as determined by the regulator authority, a food establishment that receives an inspection score of 69 or below during an inspection, or a food vendor, who is not required to obtain a permit, whose practices are likely to lead to foodborne illness.

*Laboratory* means a biological, physical or chemical laboratory which is under the supervision of the state or local health authority.

*Multi-departmental Grocery Store* means a retail food establishment that offers for sale various TCS and non-TCSs packaged food items for consumers to purchase and primarily consume off-site with or without additional food preparation activities in addition to

having specialized food departments such as a deli, snack bar, meat market, fish market, or produce market.

- (1) *Deli*- department which specializes in sliced meats and cheeses or other cold cuts
- (2) *Snack Bar*- department which provides ready to eat food concessions such as but not limited to: hot dogs, burgers, pizza, salad bar, soups
- (3) *Bakery*- department which specializes in baked goods.
- (4) *Meat Market*- department which cuts and or packages raw meat products. For the purpose of this ordinance, a facility that sells only pre-packaged products shall not require the meat market endorsement on their permit.
- (5) *Fish Market*- department which cuts or packages raw fish, crustaceans, mollusks, or other seafood or fresh water animals. For the purposes of this ordinance, a facility that sells only pre-packaged products shall not require the fish market endorsement on their permit.
- (6) *Produce Market*- department which cuts or packages produce. For the purposes of this ordinance, a facility that sells only whole-uncut produce or which sells pre-cut produce that is received in that state shall not require the produce endorsement on their permit.
- (7) *Other Department* a department that does not meet the definition of any other department

*Mobile food unit (MFU)* A vehicle mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to catering trucks, trailers, push carts) and used to store, prepare, display, serve or sell food. Mobile units must completely retain their mobility at all times. A Mobile Food Unit does not mean a stand or a booth.

*Non-profit Organization* means a corporation where no part of the income is distributable to a member, director, or officer of the corporation.

*Off-Premises Caterer Function* means a private caterer function (weddings, birthdays, etc.) or public caterer function (individual business functions, non-profit organization fundraiser, etc.) where a caterer provides food and related services for a person or persons at a location other than their permitted food facility.

*Outdoor Food Court* means a lot or parcel of land established to provide facilities allowing two or more mobile food units to be parked on the property for the purpose of vending to the public on that property.

*Person in Charge* The individual present at a food establishment who is responsible for the operation at the time of inspection.

*Pop-Up Food Vendor* a food establishment that operates on a temporary basis and may “pop-up” at various locations. A pop-up food vendor must comply with all of the sanitation regulations required of temporary food establishments. A pop-up food vendor does not have to operate in conjunction with a public event. Pop-up food vendors must

have a contract with a central preparation facility and at least one certified food protection manager scheduled and available.

*Regulatory authority* means the Wichita Falls-Wichita County Public Health District.

*Retail Food Establishment (Restricted Operation)* means a brick-and-mortar retail food establishment that operates on a routine basis and that handles packaged food products.

*Retail Food Establishment Permit* means a permit for a brick-and-mortar retail food establishment that operates on a routine basis and is not a multi-departmental grocery store.

*Retail Food Establishment Mobile (Restricted Operation)* means a mobile food unit that only handles packaged food products such as prepackaged novelty ice cream.

*Retail Food Establishment Mobile* means a mobile food unit that handles and/or prepares unpackaged food items.

*Sampling* means the preparation of food as an example, instruction, or for marketing purposes at an event including but not limited to, a farmers market, fair, restaurant food show, or other similar event that is served, sold, or otherwise offered for human consumption.

*Sample Permit* means an add on permit that allows a food establishment to provide open samples of their products to customers prior to sale at locations other than their permitted food establishment. A sampling permit must meet the sanitation requirements of a temporary food event. Sampling permits do not have to be tied to a public event. A sampling permit is not required to provide samples within a permitted food establishment. If a third party retailer is providing samples within an establishment it is the responsibility of the permitted food establishment to ensure that are meeting the food safety standards outlined in this ordinance.

*Shared Community Kitchen* means a retail food establishment kitchen designed to accommodate multiple businesses either through the use of time sharing or separate spaces. Shared community kitchen spaces may also serve as commissary and/or central preparation facilities to mobile food units. These can help growing businesses reduce overhead cost while ensuring the retail food establishment standards are maintained.

*State rules* means the state rules found at 25 Texas Administrative Code, chapter §§ 228.1, 228.2, 228.31, 228.32, 228.61—228.64, 228.141—228.143, 228.171, 228.172, 228.211, 228.221—228.225, 228.241—228.246, as amended by the Texas Legislature from time to time. These rules are also known as the Texas Food Establishment Rules (TFER).

*Third-party Delivery Service* means an individual or business that advertises to the public that they are available to hire to transport food in exchange for a fee. Also called a common carrier.

*Temporary Event Coordinator*, also known as the promoter, means the person responsible for sponsoring or organizing and/or advertising the activities of an event and for facilitation of utilities to vendors throughout the event. The event coordinator shall provide a written statement describing the event and listing all proposed temporary food establishments. The event coordinator of an event at which a temporary food establishment is operated shall ensure that a permit is obtained for each temporary food establishment. The temporary event coordinator must identify and ensure that each vendor has utilities including but not limited to maintaining access to potable water connections, backflow prevention, proper wastewater and grease disposal, electrical needs of vendors, toilet facilities, crowd control, trash control, securing qualified temporary food vendors, and coordinating the health and safety of invited guests. A temporary event coordinator is required whenever an event is expected to have 2 or more food vendors.

*Temporary Permit* means a food facility that operates for a temporary period of time. The facility operates at a fixed location for no longer than 14 consecutive days. No more than 15 temporary event permits will be issued per business or applicant per calendar year. If an establishment wishes to operate more frequently than is permitted with a temporary permit they may upgrade to the pop-up food vendor permit.

*Vend and vending* means any act or process by which food is offered free of charge or offered, exchanged, transferred, or otherwise made available to another party in return for monetary payment, barter, trade, or any other form of consideration, regardless of whether such transaction occurs through physical or electronic means for human consumption.

### **§95.31 Rules of state board of health adopted.**

The City adopts by reference the provisions of the current rules or the rules as amended by the state Board of Health found in 25 Texas Administrative Code, §§ 228.1, 228.2, 228.31, 228.32, 228.61—228.64, 228.141—228.143, 228.171, 228.172, 228.211, 228.221—228.225, and 228.241—228.246 regarding the regulation of food establishments, as amended by the Texas Legislature from time to time.

## **DIVISION 2- FOOD ESTABLISHMENTS**

### **§95.32 Permit Required**

A person shall not operate a retail food establishment nor vend food without a valid, current permit issued by the regulatory authority unless exempt herein. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this division. A valid permit must be posted in or on every food establishment regulated by this division.

### **§95.33 Compliance required; posting; term; fee.**

(A) Only persons who comply with the requirements of this division shall be entitled to receive and retain a permit required by this subdivision. Such permit shall be posted in a conspicuous place in public view in or on the food establishment. All permits issued under this subdivision remain in force one year from the date of issuance unless revoked or suspended.

The following permits will be issued under this subdivision. The Wichita Falls-Wichita County Public Health District shall be authorized to collect fees for permits annually.

Fees shall be as in ordinance number 19-2024, adopted by the City of Wichita Falls, or as amended:

- (1) Retail Food Establishment (Restricted Operation): Valid for 1 year.
- (2) Retail Food Establishment: Valid for 1 year.
  - (a) Small: 0-2500 sq ft
  - (b) Medium: 2501-5000 sq ft
  - (c) Large: 5001 + sq ft
- (3) Retail Food Establishment Mobile (Restricted Operation): Valid for 1 year.
- (4) Retail Food Establishment Mobile: Valid for 1 year.
- (5) Multi-departmental Grocery Store: Valid for 1 year.
  - (a) Which may include a combination of the following endorsements:
    - (i) Deli
    - (ii) Snack Bar
    - (iii) Bakery
    - (iv) Meat Market
    - (v) Fish Market
    - (vi) Produce Market
    - (vii) Other Department
- (6) Caterer: Valid for 1 year.
- (7) Ghost Kitchen: Valid for 1 year.
- (8) Pop-Up Food Vendor: Valid for 1 year.
- (9) Shared Community Kitchen: Valid for 1 year.
- (10) Frozen Dessert: Valid for 1 year.
- (11) Sample Permit: Valid for the event duration not to exceed 14 days.
- (12) Temporary Event Coordinator: Valid for the length of the event not to exceed 14 days.
- (13) Temporary Event Permit: Valid for event duration not to exceed 14 days.
- (14) Concession Stand: Valid for 1 year.
- (15) Farmer's Market: Valid for 1 year.
- (16) Farmer's Market Vendor: Valid for 1 year.

(B) Permit-exempt entities, such as non-profit organizations, shall still comply with all sections herein.

### **§95.34 Review Of Plans**

All applicants for a food establishment shall fill out and submit a plan review packet in a form provided by the regulatory authority to include a basic facility layout drawing. Whenever a food establishment is constructed or more than 20 percent of its square footage is remodeled or whenever an existing structure is converted to use as a food establishment, plans and specifications properly prepared for such construction, remodeling or conversion shall be submitted to the City of Wichita Falls Building Inspection Division for dissemination to the regulatory authority for review before work is begun, except mobile food units which shall submit plans directly to the regulatory authority.

- (1) The submitted plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities.
- (2) Food establishments that have been closed and are being reopened under new management as the same type of establishment shall be required to submit new equipment specifications and a floor plan of the food establishment.
- (3) The regulatory authority shall approve the plans and specifications if they meet the requirements of the rules adopted by this division. The approved plans and specifications must be followed in construction, remodeling or conversion.
- (4) Failure to follow the approved plans and specifications may result in a permit denial, suspension, or revocation.

The regulatory authority shall collect fees in consideration of reviewing plans as established by separate ordinance.

### **§95.35 Application and Renewal**

Any person desiring to operate a food establishment shall make a written application for a permit on forms provided by the regulatory authority. The application must be submitted with the applicable fee. An incomplete application will not be accepted.

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

All permits issued under this subdivision shall remain in force for one year from the date of issuance unless revoked or suspended by the regulatory authority.

- (1) The permit fee may be prorated to align with any other existing permit expiration date for other inspection services at the same establishment. Examples include but are not limited to: a hotel with a lodging establishment permit, aquatic facility permit, and retail food establishment.
- (2) Permit fees shall be paid to the regulatory authority at the time of application for initial permits and 15 days prior to permit expiration for renewal permits.
- (3) All permit holders, including nonprofits, that submit renewal applications or fees after the permit expires will be assessed a late fee.

A complete application with updated information is required for each renewal permit. Any changes to the physical facility, menu or equipment must be reported to the regulatory authority when renewing permits.

## **§95.36 Physical Facilities**

Physical Facilities shall be constructed and operated in compliance with the standards listed in this section in addition to the requirements of FDA Food Code, Chapter 6 – Physical Facilities and the Texas Food Establishment Rules.

(1) Floors, walls, and ceilings in food preparation or ware washing areas of food establishments shall be smooth, nonabsorbent, durable, and easily cleanable as determined by the regulatory authority.

(2) Walls including non-supporting partitions, wall covering and ceilings of the walk-in refrigeration units, food preparation areas, equipment and utensil washing areas, toilet rooms and vestibules should be light in color or meet the requirements and approval of the regulatory authority.

(3) Darker-colored coverings for the items listed in (2) of this section may require additional lighting, as specified in FDA Food Code, §6-303.11, or meet the requirements set by the regulatory authority, to allow cleaning of the surface.

(4) Plumbing

(a) Hot water and cold water under pressure must be available to all sinks.

(b) Backflow Prevention

(i) An air gap between the water supply inlet and the flood level rim of the plumbing fixture shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).

(ii) A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

(c) A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified in FDA Food Code, §6-301.11 and §6-301.12 and §5-501.16(C).

(i) Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(d) Food preparation sinks, handwashing sinks, and warewashing sinks and equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

(5) Manual Warewashing Sinks

- (a) Except as specified in (d) of this subsection, a sink with at least 3 compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.
- (b) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in (c) of this subsection shall be used.
- (c) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:
  - (i) High-pressure detergent sprayers;
  - (ii) Low-or line-pressure spray detergent foamers;
  - (iii) Other task-specific cleaning equipment;
  - (iv) Brushes or other implements;
  - (v) 2-compartment sinks as specified under (d) and (e) of this subsection; or
  - (vi) Receptacles that substitute for the compartments of a multicompartiment sink.

- (d) Before a 2-compartment sink is used:
  - (i) The permit holder shall have its use approved; and
  - (ii) The permit holder shall limit the number of kitchenware items cleaned and sanitized in the 2-compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:
    - (iii) Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use, and
    - (iv) Use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and as specified in FDA Food Code, §4-501.115, or
    - (v) Use a hot water sanitization immersion step as specified in FDA Food Code §4-603.16(C).
- (e) A 2-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.
- (f) Sinks and drainboards of warewashing sinks and machines shall be self-draining.

- (6) Service Sink or Curbed Cleaning Facility
  - (a) At least 1 service sink or 1 curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.
  - (b) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.
- (7) Handwashing Sinks

(a) Handwashing sinks shall be located within 20 unobstructed linear feet of a food preparation or warewashing areas and in, or immediately adjacent to, toilet rooms.

(i) A doorway or cased opening, with or without a door, is considered an obstruction and handwashing sinks shall be installed on both sides of the doorway or opening in these areas of food preparation and warewashing.

(b) A handwashing sink shall be equipped to provide water at a temperature of at least 38°C (100°F) through a mixing valve or combination faucet.

(i) A steam mixing valve may not be used at a handwashing sink.

(ii) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(iii) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

(c) Each handwashing sink shall be provided with the following:

(i) A supply of hand cleaning liquid, powder, or bar soap;

(ii) An approved method of hand drying:

(1) Individual, disposable towels;

(2) A continuous towel system that supplies the user with a clean towel; or

(3) A heated-air hand drying device if the faucet provides automatic water; or

(4) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures if the faucet provides automatic water.

(iii) A handwashing sink that is provided with disposable towels shall be provided with a waste receptacle as specified in FDA Food Code, §5-501.16(C).

(iv) A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

(v) A sign or poster that notifies food employees to report symptoms and diagnosis information about their health as it relates to diseases that are transmissible through food shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

(vi) A handwashing sink may not be used for purposes other than handwashing.

(8) This section shall not apply to existing food establishments in operation with a valid food establishment permit in existence on the date of adoption of this chapter. Food establishments that contain physical features that are not in compliance with this section and that present a clear threat to public health, safety, or welfare shall be required to bring said physical feature into conformance with this section. All new or extensively remodeled food

establishments shall comply with the physical facility standards set forth in this section and all other applicable regulations within the City of Wichita Falls Code of Ordinances. Extensive remodeling shall mean the repair or alteration of 50% or more of the existing square footage of an existing building, a change of occupancy, an addition, or the relocation of an existing building.

### **§95.37 Cleaning Standards for Equipment**

- (1) Multiuse food contact surfaces shall be:
  - (a) Smooth;
  - (b) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
  - (c) Free of sharp internal angles, corners, and crevices;
  - (d) Finished to have smooth welds and joints; and
  - (e) Except as specified in (2) of this section, accessible for cleaning and inspection by one of the following methods:
    - (i) Without being disassembled,
    - (ii) By disassembling without the use of tools, or
    - (iii) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.
- (2) Subparagraph (1)(e) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.
- (3) Food equipment, found to be in good repair, which is certified or classified for Sanitation by National Sanitation Foundation (NSF) or the American National Standards Institute (ANSI) will be deemed to comply with (1) of this section. The use of equipment explicitly designed and labeled for "household use only" is prohibited within the confines of a retail food establishment. Such prohibition extends to all appliances, apparatuses, and machinery not certified nor intended for commercial food service operations.

### **§95.38 Certified Food Protection Manager and Food Handler Requirements**

#### **Certified Food Protection Manager**

- (1) The original food manager certificate shall be posted in the food establishment in a location that is conspicuous to consumers.
- (2) Except as specified in subsection (3) below, a certified food protection manager shall be scheduled and available to the food establishment or pop-up food vendor during all hours of operation as required in FDA Food Code, §2-101.11 and §2-102.12.
- (3) A certified food protection manager is not required for food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation, such as but not limited to:

- (a) establishments that handle only prepackaged food and do not package food;
- (b) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS), as defined by the FDA Food Code; or
- (c) temporary food establishments are exempt from the requirements in subsection (b) of this section.

#### Food Handlers

- (1) All food employees, except for the certified food protection manager, that prepare or handle exposed Time/Temperature Control for Safety (TCS) food shall successfully complete an accredited food handler training course, prior to preparing or handling exposed TCS food.
- (2) Volunteers working with exposed TCS food are not required to have a valid food handler's card provided that they are under direct supervision of a person who has a valid Certified Food Protection Manager Certificate or food handler's certificate.
- (3) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee.

### **§95.39 Food handler's and certified food manager's training certificate training courses accepted.**

The regulatory authority shall accept training issued by all companies or programs approved by the Texas Department of State Health Services under 25 Texas Administrative Code § 228.31 or a course accredited by the American National Standards Institute.

### **§95.40 Inspections**

#### Permit Inspections:

- (1) The regulatory authority shall inspect the food establishment prior to the issuance of the food establishment permit to determine compliance with any approved plans and specifications, compliance with other requirements of this chapter, and whether a certificate of occupancy has been issued for the building in which the establishment is to be located. Upon making such findings, the regulatory authority may issue a food establishment permit subject to: annual renewal, continued compliance with the provisions of this chapter, and the existence of a valid certificate of occupancy for the building in which the establishment is located.

#### Routine Inspections:

- (1) The regulatory authority shall routinely inspect a food establishment, including permit-exempt food establishments, at a frequency which is determined by a prioritization schedule based upon assessment of the food establishment's history of compliance and potential risk factors of causing foodborne illness according to 25 Tex. Admin. Code § 228.244, as amended, and evaluated by the regulatory authority.

(2) Inspection frequency of a food establishments may be increased, at the regulatory authority's discretion, and as often as necessary for the enforcement of this chapter and for any conditions listed in this chapter such as:

- (a) Prior nonconformance with this chapter or with state or federal regulations, including priority items or priority foundation items, as defined in FDA Food Code 1-201.10;
- (b) Prior violations of this chapter or with state or federal requirements, including core items as defined in FDA Food Code 1-201.10;
- (c) Prior complaints investigated and found to be valid by the regulatory authority;
- (d) Hazards associated with the particular foods that are prepared, stored, or served at the food establishment;
- (e) The type of operations, including the methods and extent of food storage, preparation, and service;
- (f) If the primary population served is a highly susceptible population; and
- (g) Any other risk factors deemed relevant to the operation by the regulatory authority.

(3) Food establishments shall receive a deduction of three points for each violation of a priority item, deduction of two points for each violation of a priority foundation item, and deduction of one point for each violation of a core item, as defined by the Texas Food Establishment Rules, as found by an inspector during an inspection.

- (a) Food establishments that score between 70 to 79 points will be inspected quarterly until three consecutive inspections in which a score of 85 points or more is met.
- (b) Food establishments that score 69 points or less shall constitute an imminent health hazard and the food establishment shall immediately cease operations and remain closed until the regulatory authority conducts a reinspection. The inspector shall endeavor to perform a reinspection as soon as possible. It shall be the responsibility of the permit holder to contact the regulatory authority and schedule a reinspection and pay the reinspection fee prior to the reinspection being conducted. The food establishment shall remain closed until a reinspection of the food establishment results in a score of 80 points or more.
- (c) Food establishments that score 69 points or less, upon resuming operations based on the requirements of division (3)(b) above, shall be inspected one time per month for three consecutive months. During these consecutive monthly inspections, a reinspection fee will be paid for each inspection. The food establishment must attain a score of 80 points or more in each consecutive inspection. If any one of the three consecutive follow-up inspections is below 80, the establishment will continue to receive follow-up inspections until three consecutive inspections score 80 or higher.

(4) Based upon the scoring process outlined in subsection (3) above a letter grade for each food establishment shall be determined by the regulatory authority. The

grade of each food establishment shall be evidenced by the posting of an inspection card as outlined in the following division (1).

- (a) Grade cards shall be provided by the regulatory authority and shall be posted in a conspicuous place, so as to be clearly visible to the general public and to the patrons entering the food establishment.
  - (i) The grade of each food establishment shall be evidenced by the posting of a grade card in the form of a matrix barcode (QR code) provided by the regulatory authority.
  - (ii) Grade cards shall be posted in a location as directed and determined at the discretion of the regulatory authority to ensure proper notice to the general public and to patrons.
  - (iii) The grade card shall be posted in a location which is accessible to all food establishment patrons to scan with a mobile device. The QR code will direct patrons to an online posting in which the most recent inspection score and letter grade for the food establishment will be available and that is managed by the regulatory authority.
  - (iv) In the event that a mobile or other device is unavailable in order to use the QR code function, food establishments will have readily available and furnish a copy of their most recent inspection report, upon request, to the public for viewing.
- (b) In the event that a food establishment is operated in the same building or space as a separately licensed or permitted business, or in the event that a food establishment shares a common patron entrance with such a separately licensed or permitted business, or in the event of both, the letter grade card shall be posted in the initial patron contact area, or in a location determined at the discretion of the regulatory authority.
- (c) The grade card shall not be altered, defaced, marred, camouflaged, hidden or removed. It shall be unlawful to operate a food establishment unless the letter grade card is in place as set forth in this chapter. Removal or alteration of the letter grade card is a violation of this chapter and may result in the suspension or revocation of the food establishment permit.
- (d) In the event the grade card is lost or stolen, it is the responsibility of the owner and/or manager to notify the regulatory authority for a replacement card.

Complaint Investigations:

- (1) The regulatory authority may investigate complaints related to this ordinance.
- (2) The regulatory authority may take and retain samples of food and other substances used in the preparation of food and examine it for the detection of unwholesome and deleterious qualities. The regulatory authority may condemn and forbid the sale of or cause to be removed or destroyed, any food which is adulterated, tainted, diseased, fermented, decaying or otherwise unwholesome, unclean or deleterious to health. The owner, operator or other person in charge of such food shall immediately and in the presence of the regulatory authority, destroy such adulterated, tainted, diseased, fermented, decaying or otherwise unwholesome, unclean food as directed by the regulatory authority.

(3) Denial of access by a food establishment to the regulatory authority shall be cause for suspension or revocation of the food establishment's permit.

#### **§95.41 Compliance With Applicable Laws Required**

All persons who manage, operate, accept employment in, or are employed in any food establishment shall comply with all applicable federal and state statutes and regulations and with all applicable sections of this Code and city ordinances.

#### **§95.42 Modification**

Wherever there are practical difficulties involved in carrying out the provisions of this code, the regulatory authority shall have the authority to grant modifications for individual cases, upon application, provided the regulatory authority shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, or life, or safety of structural requirements.

#### **§95.43 Suspension.**

- (1) If during the course of an inspection, the operation of the food establishment constitutes an imminent hazard to public health the regulatory authority may offer the owner or manager of the food establishment the choice to voluntarily close. Voluntary closure must last until the imminent hazard has been resolved and a facility may not reopen until cleared by the regulatory authority.
- (2) The regulatory authority may, without warning, notice, or hearing, suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. A supervisor at the regulatory authority will confirm the hazard before suspension is effective when possible. Suspension is effective upon service of the written notice required by this subdivision. When a permit is suspended, food operations shall immediately cease and a sign provided by the regulatory authority shall be posted in a visible location to customers. The regulatory authority may end the suspension at any time if the reason for suspension no longer exists.
- (3) Whenever a permit is suspended, the holder of the permit or the person in charge of the food establishment at the time of suspension shall be notified in writing that the permit is, upon service of the notice, immediately suspended. An opportunity for a hearing will be provided if the holder of the permit files a written request with the regulatory authority within ten days of receipt of written notice of suspension. Whenever a permit is suspended and a request for hearing made, the holder of the permit shall be afforded a hearing within ten days of the receipt by the regulatory authority of a request for a hearing. If no written request for a hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

#### **§95.44 Revocation of permit.**

The regulatory authority may, after providing an opportunity for a hearing, revoke a food establishment permit for serious or repeated violations of any of the requirements of this ordinance or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge of the food establishment at the time of revocation, in writing, of the reason for which the permit is subject to revocation. The permit shall be revoked at the end of ten days following service of such notice unless the holder of the permit files a written request for a hearing with the regulatory authority within such ten-day period. If no request for a hearing is filed within the ten-day period, the revocation of the permit becomes final.

A permit holder is not eligible to reapply for a food permit for 90 days following the revocation of a permit.

#### **§95.45 Service of notice; conduct of hearings.**

- (1) A notice as required in this subdivision is properly served when it is delivered to the holder of the permit or the person in charge of the food establishment at the time of the notice 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 regulatory authority.
- (2) The regulatory authority shall conduct the hearings provided for in this subdivision at a time and place designated by the regulatory authority. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings and shall sustain, modify or rescind any notice or order considered in the hearing. The regulatory authority shall furnish a written report of the hearing decision to the holder of the permit.
- (3) The regulatory authority may charge re-inspection fees for compliance inspections scheduled as a result of a revocation hearing that may require additional inspections. Fee amounts will be set by separate ordinance.

### **DIVISION 3-SPECIALIZED FOOD ESTABLISHMENTS**

#### **§95.46 General**

Specialized food establishments must comply with the rules in Division I and II unless there is an exception in this section.

### **SUB-DIVISION 1-TEMPORARY FOOD ESTABLISHMENTS**

#### **§95.47 Temporary Food Establishments**

- (1) The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all time and temperature control for safety foods (TCS foods), and when no health hazard will result, such as children's neighborhood beverage stands, may waive or modify requirements of this chapter.

- (a) Foods that are not prepared on-site or that require extensive preparation or cooking must be prepared at a licensed food establishment.
- (b) Each temporary establishment may be required by the regulatory authority to have at least one person on-site who has a minimum of an accredited food handler certification.
- (2) All food temperature requirements shall be met as contained in FDA Food Code, Subparts 3-202, 3-401-403, and 3-501, Texas Food Establishment Rules 228.62 (relating to Specifications for Receiving), and Texas Food Establishment Rules §228.64 (relating to Donation of Foods).
- (3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of FDA Food Code, Chapter 3 - Food. The ice shall be obtained only in blocked, chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice for consumption shall be held in the bags until it is dispensed and be dispensed in a way that protects it from contamination.
- (4) Equipment and utensils.
  - (a) Design and construction. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.
  - (b) Location and installation. Equipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the temporary food establishment.
  - (c) Hot and cold holding equipment. Equipment for cooling or heating food and holding cold or hot food shall be adequate in number and capacity to provide food temperatures as specified in FDA Food Code, Subparts 3-401-403 and 3-501.
  - (d) Protection from contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.
  - (e) Alternative manual warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a three-compartment sink, may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of alternative equipment. Each compartment shall be large enough to immerse the largest piece of equipment that will be used. A means to heat water must also be provided.
- (5) Single-service articles. A temporary food establishment shall provide only single-service articles for use by the consumer.
- (6) Water.
  - (a) Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment.
  - (b) Water does not need to be under pressure but shall come from approved sources which include:
    - (1) commercially bottled drinking water;

- (2) closed portable water containers;
- (3) enclosed vehicular water tanks;
- (4) on-premise water storage tanks; or
- (5) piping, tubing or hoses connected to an approved source.
- (7) Wet storage. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.
- (8) Sewage. All waste water and sewage generated from the temporary food establishment shall be disposed of through an approved sanitary sewage system that is:
  - (a) a public sewage system; or
  - (b) an individual sewage disposal system that is sized, constructed, maintained, and operated according to 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).
- (9) Handwashing. Handwashing facilities shall include a container with a spigot that provides potable, clean, warm water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially pre-packaged foods that are dispensed in their original containers.
- (10) Floors. If graded to drain, a floor may be concrete, machine-laid asphalt, dirt, or gravel covered with mats, plywood, removable platforms, duckboards if covered with mats, or other suitable materials approved by the regulatory authority, such as tarps, that effectively control dust and mud.
- (11) Ceilings and outer openings of food preparation areas.
  - (a) Walls and Ceilings. Walls and ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather, windblown dust, birds, and debris.
  - (b) Outer openings. The outer openings shall be protected against entry of insects and rodents by:
    - (1) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screens;
    - (2) properly designed and installed air curtains; or
    - (3) other effective means.
  - (c) Exclusion provision. Paragraph (b) of this subsection does not apply if flying insects and other pests are absent due to the location of the temporary food establishment or other limiting conditions.

## **SUB-DIVISION 2- MOBILE FOOD ESTABLISHMENTS**

### **§95.48 Mobile Food Establishments**

No person shall operate a mobile food unit who does not possess a valid, current mobile food unit permit from the regulatory authority as provided in this article. A valid permit sticker shall be displayed in an area visible to customers by a mobile food unit.

- (1) A person seeking a mobile food unit permit from the regulatory authority shall make application on a form provided by the regulatory authority, and shall

provide all of the information listed in the following subsections as part of the application:

- (a) The name and address of the owner and operator;
- (b) A copy of a current driver's license of the owner and operator, if the mobile food unit is to be powered by a motor or towed;
- (c) If the applicant represents a corporation, limited liability company, association, or partnership, the names and addresses of the persons responsible for the entity's operations;
- (d) The name under which the mobile food unit will be operated;
- (e) A description of the type of food or the specific foods to be vended;
- (f) The manner of mobile food vending operation to be conducted;
- (g) A description of all vehicles to be used in the mobile food unit operation along with the license or registration and vehicle identification number of said vehicles, and a copy of the current certificate of liability for all said vehicles;
- (h) The address and food establishment permit number of the central preparation facility for all vehicles to be used in the mobile food unit operation; and
- (i) Any other information required by the regulatory authority as it pertains to the safe operation of the mobile food unit.

(2) Upon receiving a proper application for a mobile food unit permit, the regulatory authority shall inspect the location, food, equipment, vehicles and other reasonable matters concerning the mobile food unit operation and shall issue a permit and a sticker only if:

- (a) The application complies with (1 subsection (b); and
- (b) The inspection reveals compliance with the applicable requirements of all federal and state statutes and regulations, and city ordinances governing the proposed mobile food unit operation.

(3) Mobile food unit permits shall be valid for one year from the date of issuance unless suspended or revoked.

(4) Mobile food unit permits shall not be transferred or assigned and shall be considered revoked should the character of the food vending operation be changed from that specified in the permit.

(5) Every mobile food unit permit shall be renewed each year in like manner as the original permit application.

(6) The regulatory authority shall make routine, unannounced inspections of mobile food units, outdoor food courts, and commissaries when applicable, to determine whether or not the operation is being conducted in such a manner as to comply with the conditions of the permit, the provisions of this article, other applicable city ordinances and state and federal statutes, regulations and rules.

(7) The regulatory authority may take and retain samples of food and other substances used in the preparation of food and examine it for the detection of unwholesome and deleterious qualities. The regulatory authority may condemn and forbid the sale of or cause to be removed or destroyed, any food which is adulterated, tainted, diseased, fermented, decaying or otherwise unwholesome, unclean or deleterious to health. The owner, operator or other person in charge of

such food shall immediately and in the presence of the regulatory authority, destroy such adulterated, tainted, diseased, fermented, decaying or otherwise unwholesome, unclean food as directed by the regulatory authority.

8) Denial of access by a food establishment to the regulatory authority shall be cause for suspension or revocation of the food establishment's permit.

#### **§95.49 Operation Requirements and Restrictions**

Mobile food units are subject to the following requirements and restrictions unless specifically addressed otherwise:

- (1) Mobile food units shall comply with all zoning regulations.
- (2) It shall be unlawful for a person to vend on any portion of city streets where the speed limit exceeds 30 miles per hour or on four-lane divided roadways.
- (3) It shall be unlawful for a person to vend from a mobile food unit within an "active school crossing zone" as defined by the Texas Transportation Code.
- (4) It shall be unlawful for a person to vend from a mobile food unit unless the mobile food unit is lawfully parked or stopped.
- (5) It shall be unlawful for a person to vend from the side of the mobile food unit facing moving traffic. Mobile food units shall vend from as near as possible to the curb or edge of the street.
- (6) It shall be unlawful for a person to vend from a mobile food unit to a person standing in the roadway.
- (7) It shall be unlawful for a person to stop a mobile food unit on the left side of a one-way street to vend.
- (8) It shall be unlawful for a person to vend from a mobile food unit on a street unless there is a clear view of the mobile food unit for a distance of 200 feet in each direction.

#### **§95.50 Sanitation Requirements For All Mobile Food Units**

General.

- (1) Except as otherwise provided in this paragraph and in section (2) of this subsection below, the regulatory authority:
  - (a) may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation;
  - (b) may prohibit the sale of some or all time and temperature control for safety foods (TCS foods); and
  - (c) when no health hazard will result, may waive or modify requirements of this section relating to physical facilities, except those requirements as specified in paragraphs (7) – (9) of this subsection, subsection (c)(1)(A) - (E) of this section, and FDA Food Code, Subparts 3-401, 3-402, 3-403, 3-404, and 3-501.
- (2) Restricted operation.
  - (a) A mobile food unit that serves only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are non-time and

temperature control for safety food and are dispensed from covered urns or other protected equipment, need not comply with the requirements of this chapter, relating to the necessity of water and sewage systems nor to those requirements, relating to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its central preparation facility.

(3) Readily movable.

- (a) The regulatory authority prohibits alteration, removal, attachments, additions, placement, or change in, under, or upon the mobile food unit that prevents or otherwise reduces ready mobility.
- (b) A regulatory authority may require a mobile food unit to come, on an annual basis or as often as required, to a location designated by the regulatory authority as proof that the mobile food unit is readily moveable.

(4) Initial Permitting Inspection.

- (a) The mobile food unit shall come to a location designated by the regulatory authority for inspection and permit approval. The mobile unit must be totally operable at time of inspection, including handwash facilities, warewash facilities, refrigeration, and wastewater disposal.

Required documentation to have available includes:

- (i) Certified Food Protection Manager Certification.
- (ii) Central Preparation Facility Authorization (if required). A signed letter of authorization is required, to verify facility use, if the central preparation facility is not owned by the mobile unit operator.
- (iii) Central Preparation Facility Inspection Report. A copy of the most current health inspection of the central preparation facility must be maintained on the mobile unit at all times.
- (iv) Servicing Area Authorization. A signed letter of authorization may be required by the regulatory authority to verify service area use, if the servicing area is not owned by the mobile unit operator.
- (v) Menu. A menu of all food items to be sold.

(5) Single-service articles. A mobile food unit shall provide only single service articles for use by the consumer.

(6) Equipment, numbers, and capacities.

- (a) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under FDA Food Code, Chapter 3 - Food.

(b) Manual ware washing, sink compartment requirements.

- (i) A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils as specified in FDA Food Code, Paragraph 4-301.12(A).
- (ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils as specified in FDA Food Code, Paragraph 4301.12(B).

(c) At least one handwashing sink equipped to provide water of at least 38°C (100°F) through a mixing valve or combination faucet shall be available for convenient use by employees and properly provisioned with a supply of hand cleaning liquid, powder, or bar soap and disposable towels.

(7) Mobile water system materials, design, and operation. Mobile food unit water systems shall meet the requirements of FDA Food Code, Part 5-3.

(8) Mobile food unit drinking water tank shall meet the requirements of FDA Food Code, §5-303.13.

(a) Fill hose and water holding tank shall be labeled as "Potable Water."

(b) Drinking water in a mobile food unit holding tank shall be tested for contamination by sampling upon request by the regulatory authority.

(9) Sewage and other liquid waste.

(a) If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank for waste retention.

(b) A leak-proof sewage holding tank in an mobile food unit shall be:

(i) Sized 15% larger than the water supply tank

(ii) Slopped to a drain that is 25mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(c) All connections on the vehicle for servicing the mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit.

(d) Discharge liquid waste shall not be discharged from the retention tank while the mobile food unit is in motion.

(e) Flushing a waste retention tank shall meet the requirements of FDA Food Code, §5-402.15.

(f) Removing mobile food unit wastes:

(i) Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

(g) Liquid waste holding tank shall be labeled as "waste water."

(10) Mobile food unit water and wastewater exemption.

(a) A mobile food unit that sells only prepackaged food is exempt from the requirements of this chapter relating to water and wastewater.

(b) A mobile food unit that prepares food requiring no water for operations and no hand contact with food is exempt from the requirements of this chapter relating to water and wastewater if the required cleaning and sanitization equipment exists at its central preparation facility.

Chemically treated towelettes for handwashing may be used as specified in FDA Food Code, Paragraph 5-203.11(C) if approved by the regulatory authority in advance.

(11) Toilet rooms, convenience and accessibility. Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(b) Central preparation facility.

(1) Supplies, cleaning, and servicing operations. A mobile food unit shall operate from a central preparation facility or other fixed food establishment and shall report to such location daily for supplies, cleaning, and servicing operations.

(a) Mobile food units shall keep a log of all visits to the central preparation facility.

(2) Construction.

(a) The central preparation facility or other fixed food establishment, used as a base of operation for a mobile food unit, shall be constructed and operated in compliance with the requirements of FDA Food Code, Chapter 6 – Physical Facilities.

(c) Outdoor servicing area and operations.

(1) Protection.

(a) A mobile food unit servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operation. Those areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(b) Within the servicing area, the location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies.

(c) A servicing area will not be required where only packaged food is placed on the mobile food unit or where a mobile food unit does not contain waste retention tanks.

(d) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(e) Potable water servicing equipment shall be installed in the servicing area according to the Plumbing Code and shall be stored and handled in a way that protects the water and equipment from contamination.

(2) Construction exemption. The construction of the walls and ceilings of the servicing area is exempted from the provisions of FDA Food Code, §6-201.11.

### **SUB-DIVISION 3-FROZEN DESSERTS**

#### **§95.51 Frozen Dessert Standards.**

Frozen desserts and mix shall comply with the standards set out in TAC Title 25, 217.45.

#### **§95.52 Frozen Dessert Permit Required.**

- (1) Every food establishment that prepares, serves, provides, sells, displays or stores for future sale, or offers for sale frozen desserts that are dairy-based, contain dairy, or a dairy alternative prepared in a frozen dessert mixing machine for human consumption must have a frozen dessert permit in addition to its permit, regardless of permit category.
- 2) Any frozen dessert pre-mix or any final frozen dessert product may be sampled by the regulatory authority from each machine operated by a food establishment. Each sample will be submitted to an approved laboratory for analysis of its content.
  - (a) If any samples collected from a food establishment are not within the standards established in Sec.95.51, additional samples will be collected and an inspection of the equipment and facility will be conducted to determine the reason for the violation of the standards.
  - (b) No food establishment shall adopt any procedures that would result in repeated failures of the first samples collected for any annual inspection.
  - (c) Two consecutive frozen dessert samples determined by laboratory analysis to be above the limits of the standards will result in suspension of the permit to operate the food establishment or suspension of the frozen dessert certification.
  - (d) A resample and inspection fee will be charged for each consecutive inspection and sample tested after a permit or certification has been suspended.

- (3) The permit shall be posted in a conspicuous place in public view.

- (4) All permits issued under this subdivision shall remain in force for one year from the date of issuance unless revoked or suspended.

### **§95.53 Suspension, revocation and reinstatement of frozen dessert certification.**

- (1) A frozen dessert permit issued under this subdivision may be suspended or revoked by the regulatory authority upon the violation by the holder of any of the terms of this article.
- (2) Any person or food establishment whose frozen dessert permit has been suspended or revoked shall immediately discontinue the preparation, service, provision, sale, display or storage for future sale of frozen dessert until the defects that caused the suspension have been corrected and the permit reinstated.
- (3) Following correction, the applicant may request reinstatement of the certification by the regulatory authority. The regulatory authority may require the certification holder to demonstrate proper cleaning procedures and maintenance of the frozen dessert equipment before reinstating the certification.
- (4) Notice of suspension or revocation, and the conduct of hearing for any suspension or revocation of a frozen dessert certification shall be conducted under the procedures established in Division 2.

## **§95.54 Labeling.**

All frozen dessert products and frozen dessert pre-mix not sold at the point of manufactured origin must be properly labeled according to current Food and Drug Administration guidelines.

## **§95.55 Vending Without Certification.**

It shall be unlawful for any person to prepare, serve, provide, sell, display or store for future sale, or offer for sale frozen desserts at a food establishment that does not hold a current frozen dessert certification.

## **SUB-DIVISION 4- DOG PATIOS**

### **§95.56 Requirements For Dogs In Outdoor Dining**

A food service establishment may permit a customer to be accompanied by a dog in an outdoor dining area if:

- (1) The establishment posts a sign in a conspicuous location stating that dogs are permitted.
- (2) The customer and dog access the area directly from the exterior of the establishment.
- (3) The dog does not enter the interior of the establishment.
- (4) The customer keeps the dog on a leash and controls the dog.
- (5) The customer does not allow the dog on a seat, table, countertop, or similar surface; and the establishment does not prepare food in the area or permit open food other than food that is being served to a customer.

The requirements described in this section do not apply to a service animal, as defined by Texas Health and Safety Code Section 437.023(c)

## **SUB-DIVISION 5-BED AND BREAKFASTS**

### **§95.57 Bed And Breakfast Establishments**

- 1) General.
  - a) A bed and breakfast extended, in addition to licensing with the applicable regulatory authority, shall comply with the minimum requirements of this section if the establishment:
    - i) has more than seven rooms for rent; or
    - ii) provides food service other than breakfast to overnight guests.
  - b) A bed and breakfast food establishment that provides food service to customers in addition to its overnight guests must comply with the rules and regulations applicable to retail food establishments, including licensing with the applicable regulatory authority.
  - c) A bed and breakfast limited:
    - i) has seven or fewer rooms for rent;
    - ii) serves only breakfast to overnight guests;

- iii) is not a retail food establishment; and
  - iv) complies with subsection (b) of this section.
- 2) Certified food protection manager. The owner or manager shall successfully complete a food manager's certification course accredited by this department.
- 3) Food supplies. Food shall be obtained from approved sources in accordance with Food Code, Subpart 3-201, Texas Food Establishment Rules §228.61 (relating to Approved Sources for Exotic Game Animals), and Texas Food Establishment Rules §228.62 (relating to Specifications for Receiving) and shall be in sound condition and be safe for human consumption.
- 4) Food preparation and protection.
  - a) Food preparation and protection. Food shall be prepared and protected in accordance with FDA Food Code, Chapter 3 - Food.
  - b) Temperature requirements. All food temperature requirements shall be met as contained in FDA Food Code, Subparts 3-202, 3-401-403, and 3-501, Texas Food Establishment Rules §228.62, and Texas Food Establishment Rules §228.64 of this chapter (relating to Donation of Foods).
- 5) Cleaning and sanitizing.
  - a) Manual. A three-compartment sink shall be used if washing, rinsing, and sanitizing of utensils and equipment is done manually; or a two-compartment sink may be utilized if single service tableware is provided, and if an approved detergent sanitizer is used.
  - b) Mechanical. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.
- 6) Personal hygiene. Employees shall conform to good hygienic practices as required in FDA Food Code, Subparts 2-301-304 and 2-401-402.
- 7) Employee restrooms. A restroom shall be available for use by employees.
- 8) Equipment and utensil design and construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.
- 9) Handwash sinks.
  - a) Location. An accessible and conveniently located handwash sink shall be provided in or immediately adjacent to food preparation areas and restrooms.
  - b) Intended use. Handwash sinks shall be used for no other purpose other than handwashing.
- 10) Food-contact surfaces. All food contact surfaces, counters, or work surfaces in the bed and breakfast establishment shall be smooth, non-absorbent and easily cleanable.
- 11) Insect proof/rodent proof.
  - a) Construction. Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.
  - b) Chemical control. Pesticides and rodenticides shall be applied in accordance with FDA Food Code, Subpart 7-206.
- 12) Equipment. Equipment shall be provided to maintain time and temperature control for safety foods (TCS foods) at the temperatures required in accordance with FDA Food Code, Chapter 3 - Food.
- 13) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.
- 14) Sewage. Sewage shall be disposed through an approved facility that is:
  - a) a public sewage system; or
  - b) an individual sewage disposal system that is sized, constructed, maintained, and operated according to law in 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).
- 15) Water supply. Hot and cold water under pressure shall be provided and shall be from an approved source that meets the standards in accordance with:

- a) state drinking water quality standards in accordance with 30 TAC §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems); or
- b) private water system standards as provided in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), concerning transient noncommunity water systems.

#### **DIVISION 4-PENALTY**

##### **§95.58**

Any person who violates this article shall, upon conviction of such violation, be deemed guilty of a Class C misdemeanor and subject to a fine as provided in Section 10.99.

**PASSED AND APPROVED ON** this 19<sup>th</sup> day of August 2024.

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Lori Kemp, Mayor

**ATTEST:**

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Nikki Tepfer, City Clerk