

DIVISION 2. FOOD ESTABLISHMENTS

Sec. 6-234. Adoption of the Texas Food Establishment Rules.

(a) Adopted. The Texas Food Establishment Rules (TFER) codified at Texas Administrative Code Title 25 Chapter 228 adopted by the Texas Department of Health Services, effective August 8, 2021, as amended from time to time are hereby adopted as the minimum standards for food service operations within the corporate limits of the city, and shall constitute the regulations governing the preparation, service, and sale of food within the city, except as amended and modified in this section. For purposes of this section, the phrase "food establishment rules" means collectively (i) the Texas Food Establishment Rules as adopted by this section and (ii) the local amendments adopted pursuant to section 6-234(b). The city manager, or authorized representative, is hereby authorized and directed to enforce all provisions of the food establishment rules.

(b) The following sections, paragraphs, definitions, and sections of TFER are amended and modified as follows:

(1) The following definitions are amended or added to read as follows:

Agricultural product. An agricultural, apicultural, or horticultural product, either in its natural or processed state that has been produced, processed, or otherwise had value added for use as human food.

Authorized representative. The official, or designee, charged with administration and enforcement of this article by the city manager.

Central preparation facility (CPF). An approved and permitted food service facility, excluding a restaurant or food establishment, at which:

- (1) food offered by a mobile food unit may be prepared, stored, and/or wrapped;
- (2) a mobile food unit is supplied with fresh water and ice;
- (3) emptied of wastewater into a proper liquid waste disposal system; and/or
- (4) cleaned, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in the mobile food unit's utensil-washing sink.

Use of a private residence as a central preparation facility is prohibited. A restaurant or food establishment that also owns and operates a mobile food unit may be used as a central preparation facility only for that mobile food unit.

Childcare facility. Any facility licensed by the State of Texas to provide care for less than twenty-four (24) hours a day for seven (7) or more children and which prepares, serves, or receives food for on-site or off-site consumption. These facilities may be titled nursery school, kindergarten, child development center, day care center, private school, Montessori, etc.

Concession stand. A food establishment that 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 City of Allen.

Easily movable means:

-
- (1) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
 - (2) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent to the area; and
 - (3) Small and light enough to be moved easily by one (1) person.

Farmers' market. A type of food establishment that is an area at which two (2) or more vendors offer produce and other agricultural products for retail sale, sample, or consumption. It shall not include stands that only sell whole, uncut produce.

Farmers' market vendor. Any person who offers or sells produce or agricultural products at a farmers' market.

Light in color. A surface which has a light reflective value (LRV) of 55 to 100.

Mobile food unit (MFU). A vehicle-mounted, self-propelled, self-contained food service operation designed to be readily movable and used to store, prepare, display, serve, sell, or otherwise offer food. A MFU shall retain full mobility at all times. A MFU does not include a stand, trailer, or a booth. A roadside food vendor is classified as a MFU.

Regulatory authority. City of Allen Environmental Health, or other department authorized by the city manager.

Sampling. Preparation of food as an example, instruction, or for marketing purposes.

Seasonal food establishment. A food establishment that operates at a fixed location for a period greater than fourteen (14) consecutive days, but less than thirty (30) consecutive days in conjunction with a single event or celebration.

- (2) [Section] 3-306.11 Food Display is amended to read as follows:

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination through use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means approved by the regulatory authority. Food guards and display cases shall meet requirements of an American National Standards Institute (ANSI)-accredited certification program.

- (3) [Section] 3-306.13 Consumer Self-Service Operations shall be amended to add (D) and read as follows:

- (D) The seller shall post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing food.

- (4) [Section] 3-403.11 Reheating for Hot Holding shall be amended to add (F) and read as follows:

- (F) Steam tables, bain-maries, warmers, and similar hot food holding facilities shall not be used for rapid reheating as specified under (A) and (C) of this section.

- (5) [Section] 4-205.10 Food Equipment, Certification and Classification shall be amended to read as follows:

Food equipment that is certified or classified for sanitation and commercial use by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply with Parts 4-1 and 4-2 of this chapter.

- (6) [Section] 4-301.14 Ventilation Hood Systems, Adequacy shall be amended to read as follows:

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on floors, walls and ceilings, and shall not cause grease discharge to accumulate on the ground outside the physical facilities.

- (7) [Section] 5-203.12 Toilets and Urinals shall be amended to read as follows:

At least 1 toilet and not fewer than the toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified by law. Restrooms shall be made available to the public in establishments with on-site consumption and shall not be accessible through food preparation or storage areas, or areas where other food service equipment or supplies are stored.

- (8) [Section] 5-204.11 Handwashing Sinks (A) shall be amended and (C) added to read as follows:

(A) Within twenty-five (25) unobstructed linear feet, or to allow convenient use by employees in food preparation, food dispensing and warewashing areas; and

(C) Handwashing sinks located within eighteen (18) inches of food preparation or storage areas shall have a splash guard.

- (9) [Section] 5-402.12 Grease Trap shall be amended to add (A) and (B) to read as follows:

If used, a grease trap shall be located to be easily accessible for cleaning.

(A) Grease traps shall be located outside the physical facility, unless otherwise approved by the regulatory authority, and shall not be located in a fire lane.

(B) A best management practices (BMP) poster provided by the regulatory authority shall be posted in all rooms with warewashing equipment.

- (10) [Section] 6-202.15 Outer Openings, Protected shall be amended to add (F) to read as follows:

(F) If an opening to the outside is near an exterior trash receptacle, grease trap, or other pest attractant, the regulatory authority may require an automatic air curtain, or other effective means to mitigate pest entry.

- (11) [Section] 6-301.11 Handwashing Cleanser, Availability shall be amended to read as follows:

Each handwashing sink or group of 2 adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid.

- (12) [Section] 6-301.12 Hand Drying Provision shall be amended to read as follows:

Except as specified in part (E) of this section, each handwashing sink or group of adjacent handwashing sinks shall be provided with:

(A) Individual, disposable towels;

(B) A continuous disposable towel system that supplies the user with a clean towel;

(C) A heated-air hand drying device, provided:

(1) The sink has a touchless faucet, and

(2) There is a kick plate or foot pull to avoid recontamination of hands when exiting the restroom facilities, except where the toilet room swings outward; or

(D) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperature, provided:

(1) The sink has a touchless faucet, and

-
- (2) There is a kick plate or foot pull to avoid recontamination of hands when exiting the restroom facilities, except where the toilet room door swings outward.
- (E) In food preparation or processing areas and warewashing areas, only (A) or (B) shall be used.
- (13) [Section] 6-501.111 Controlling Pests (C) shall be amended to read as follows:
- (C) Using routine preventive pest control services and methods specified under §§ 7-202.12, 7-206.12, and 7-206.13; and
- (14) [Section] 6-101.11 Surface Characteristics section (A)(3) shall be amended to read as follows:
- (3) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods. Flooring that is considered nonabsorbent includes terrazzo, ceramic or quarry tile, epoxy, or an equivalent as approved by the regulatory authority. Epoxy and other durable seamless flooring systems shall be installed to a finished product thickness of a minimum ¼ inch. Flooring that is not smooth, durable, and easily cleanable includes, but is not limited to, vinyl composite tile (VCT), cardboard, sawdust, wood shavings, peanut hulls, or similar material, and are not acceptable.
- (15) [Section] 6-201.13 Floor and Wall Junctures, Coved, and Enclosed or Sealed section (A) shall be amended to read as follows:
- (A) Floors shall be coved at the juncture of the floor and wall and shall utilize a six-inch coved tile base installed integral and flush with the finished floor. Epoxy and seamless floor systems may be installed with an integral six-inch coved base. An aluminum cove shaped tile edge trim, installed integral and flush with the finished floor, may be used in dry storage areas, dressing rooms, locker rooms, employee toilet rooms, mop sink areas, and vestibules.
- (16) Section 228.221 Mobile Food Units section (a)(3)(B) shall be amended and (C) added to read as follows:
- (B) The regulatory authority shall require an MFU to come, on an annual basis or as often as required, to a location designated by the regulatory authority as proof that the MFU is readily moveable.
- (C) The Person in charge of a MFU shall document dates and times the MFU has utilized services of a central preparation facility and servicing area and provide this documentation to the regulatory authority upon request.
- (17) Section 228.241 Facility and Operating Plans shall be amended to read as follows:
- Plans and appropriate fees shall be required by the regulatory authority for:
- (1) the construction of a food establishment;
 - (2) the conversion of an existing structure for use as a food establishment; or
 - (3) the remodeling of a food establishment, change of ownership, a change of type of food establishment or food operation, or under the conditions set by the regulatory authority, if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this section.

(Ord. No. 3477-6-17 , § 1, 6-13-2017; Ord. No. 3692-8-19 , § 1, 8-27-2019; Ord. No. 3918-6-22 , § 1, 6-14-2022)

Sec. 6-235. Farmers' markets.

- (a) All farmers' markets and each vendor attending a farmers' market shall comply with requirements of this chapter, unless otherwise restricted by applicable state or federal law.
- (b) *Responsibility, assignment.*
- (1) The farmers' market permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the farmer's market during all hours of operation. The person in charge shall be responsible to ensure all vendors comply with requirements of this chapter and shall provide proof of successfully passing an ANSI-accredited certified food protection managers' course upon request.
 - (2) Farmers' market vendors that offer, sell, or distribute temperature control for safety (TCS) food shall have a person in charge that can provide proof upon request of successfully passing a Texas Department of State Health Services (TDSHS) recognized certified food handler course. Farmers' market vendors that offer, sell, or distribute only prepackaged non-TCS food and plants, nuts in the shell, or whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, are exempt from the certified food handler requirement.
 - (3) The person in charge of the farmers' market shall maintain, and provide upon request, a list of all farmers' market vendors. This list shall be maintained for at least ninety (90) calendar days from the date of the end of the market, and shall include:
 - i. The name, address, and phone number of each farmers' market vendor;
 - ii. The date(s) the farmers' market vendor operated at the farmers' market;
 - iii. A list of food(s) offered by a farmers' market vendor for each date operated at the farmers' market;
 - iv. A copy of any applicable permit(s) held by the farmers' market vendor; and
 - v. The address or location of each food item's origin, including information on where the food was grown, cultivated, or otherwise obtained by the farmers' market vendor.
- (c) *Food.*
- (1) *Approved source.* Only food from an approved source as defined in this chapter, or cottage food prepared in a private residence, may be offered at a farmers' market.
 - (2) *Prohibited items.* Fish, foraged foods, game animals, gleaned food, and non-pasteurized dairy items are prohibited at a farmers' market.
 - (3) *Temperature requirements.* Food temperatures must comply with temperatures specified in this chapter.
 - i. Meats, refrigerated dairy items, and poultry shall be maintained at or below forty-one (41) degrees Fahrenheit for the duration of the market, and while transported to the market.
 - ii. Raw shell eggs shall be maintained at or below forty-five (45) degrees Fahrenheit for the duration of the market, and while transported to the market.
 - (4) *Sampling.* Sampling shall meet requirements of V.T.C.A., Health and Safety Code § 437.020 as amended.
 - (5) *Preventing contamination.* Except for plants, nuts in the shell, and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by use of packaging; counter, service line, or sneeze

-
- guards that comply with NSF or equivalent standards; be in completely enclosed display cases accessible only to farmers' market vendor staff; or by other means approved by the regulatory authority.
- (6) *Food prepared at a farmers' market.* Any vendor who offers for sale or distribution to consumers any food prepared or cooked at a farmers' market shall obtain a separate permit and meet requirements under this chapter.
- (d) *Equipment, utensils, and facilities.*
- (1) *Functionality of equipment.*
- i. Equipment used to keep food refrigerated or frozen shall comply with this code and shall be able to maintain required temperatures for the duration of operations and transportation.
 - ii. Tables used within the vending area shall be made of durable, non-porous material and be easily cleanable.
- (2) *Equipment, numbers, and capacities.*
- i. Where required, at least one (1) hand washing facility approved by the regulatory authority that provides potable, clean, warm water; a wastewater catch basin, if needed; soap; disposable towels; and a waste receptacle, shall be located in each vending space for each vendor that conducts sampling operations.
 - ii. A hand wash facility is not required for vendors with only pre-packaged products, plants, nuts in the shell, and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by consumers before consumption.
- (3) *Physical facilities.*
- i. *Floor construction.* Floors and floor coverings of all vending areas shall be located on a concrete or asphalt surface, or other suitable materials approved by the regulatory authority that effectively control dust and mud and provide adequate drainage.
 - ii. *Covered area.* Vending areas shall be covered, free of pests, and capable of providing shelter for vendors and customers.

(Ord. No. 3477-6-17 , § 1, 6-13-2017; Ord. No. 3572-5-18 , §§ 1.A—D, 5-22-2018; Ord. No. 3613-9-18 , §§ 1.A—E, 9-25-2018; Ord. No. 3692-8-19 , § 1, 8-27-2019; Ord. No. 3918-6-22 , § 2, 6-14-2022)

Sec. 6-236. Permits, fees, and inspections.

- (a) *Authority.*
- (1) The provisions of this article shall be enforced by the regulatory authority. It shall be unlawful for any person to interfere with the regulatory authority, or its representatives and designees in the performance of their duties as prescribed in this article.
 - (2) *Variance.* A variance from this article may be granted by the regulatory authority in accordance with the provisions set out in 8-103.10 through 8-103.12 of the Federal Drug Administration Food Code adopted by the State of Texas.
 - (3) *Additional requirements.* As necessary to protect against public health hazards or nuisances, the regulatory authority may impose additional requirements in addition to the requirements contained in this article that are authorized by law set out in 8-102.10 of the Federal Drug Administration Food Code adopted by the State of Texas.

(b) *Permit required.*

- (1) It shall be unlawful for any person to operate a food establishment, food processing establishment, mobile food unit, temporary food establishment, seasonal food establishment, bed and breakfast food establishment, childcare facility, or farmers' market subject to this article, within the city without a valid permit issued by the regulatory authority. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person or entity to another person, location, or entity. A valid permit shall be conspicuously posted in every establishment.
- (2) Any person desiring to operate a food establishment, food processing establishment, mobile food unit, temporary food establishment, seasonal food establishment, bed and breakfast food establishment, childcare facility, or farmers' market shall make application in a manner provided by the regulatory authority and pay the appropriate fee.
- (3) Annual permits. All permit categories issued under this article, excluding temporary food establishment permits and seasonal food establishment permits, shall expire on December 31 annually, unless otherwise revoked or suspended under this article.
- (4) Temporary food establishment permits.
 - (i) The operation of a temporary food establishment, including sampling food product, may not exceed fourteen (14) consecutive days per event and must be in conjunction with a special event or celebration as approved by the regulatory authority.
 - (ii) Application and fees must be submitted not later than five (5) working days prior to the event, or not later than ten (10) working days prior to the event if five (5) or more booths are to be permitted for the same vendor.
 - (iii) At events where vendors may have more than one (1) booth, each booth will be required to obtain a separate permit.
 - (iv) Vendors with a valid annual permit issued under subsection (a) of this section must obtain a separate temporary food establishment permit when participating in an event, except for mobile food establishments that have an annual permit.
 - (v) A permit fee waiver may be approved by the regulatory authority if the food establishment owner submits proof of charitable nonprofit status, i.e., school district or nonprofit with 501(c)(3) status, with application.
- (5) Seasonal food establishment permits.
 - (i) The operation of a seasonal food establishment is greater than fourteen (14) days but less than thirty (30) consecutive days per event per vendor. Seasonal permits are limited to two (2) per calendar year per vendor per location, or such shorter time as may be established pursuant to the Allen Land Development Code, as amended.
 - (ii) Seasonal food establishment permit applications must be submitted at least five (5) working days prior to the start date.
 - (iii) Vendors with a valid annual permit issued under subsection (a) of this section must obtain a separate seasonal food establishment permit when participating in an event, except for mobile food establishments that have an annual permit.
- (6) Late fees. Annual permit renewal applications received more than ten (10) days after the expiration date shall pay an administrative late fee in the amount set by the city council. Any renewal application received more than thirty (30) days after the expiration date shall make reapplication for a new permit.

-
- (c) *Access.* Representatives of the regulatory authority, after proper identification, shall be permitted to enter any food establishment or entity subject to this article at any reasonable time, for the purpose of making inspections to determine compliance with this article as set out in TFER.
 - (d) *Inspections.* Shall be conducted at a frequency as described in § 228.244 of the Texas Food Establishment Rules, and findings shall be recorded in a manner determined by the regulatory authority.
 - (e) *[Compliance.]* Physical facilities or equipment of a food establishment not in compliance with the applicable ordinances and regulations of this chapter shall be brought into compliance with the provisions of this chapter when:
 - (1) A new permit is issued for a food service establishment resulting from a change in ownership; or
 - (2) A change in type of operation; or
 - (3) When it is determined by the regulatory authority that continued operation or use of the non-compliant facility or equipment poses an imminent risk to public health or safety.

(Ord. No. 3918-6-22 , § 3, 6-14-2022)

Sec. 6-237. Suspension, revocation, denial of permit, notice, appeals.

- (a) *Suspension, revocation, or denial of permit.*
 - (1) The regulatory authority may suspend, revoke, or deny a permit for failure to comply with any of the terms or provisions of this article.
 - (2) Whenever a permit is suspended or revoked, the holder of the permit shall be notified in writing that the permit is, upon delivery of the notice, immediately suspended or revoked. The suspension or revocation shall continue until the regulatory authority determines that the operation is in compliance with this article, or a permit has been reinstated. Suspension or revocation of a permit shall not preclude the regulatory authority from taking other enforcement action authorized by law.
 - (3) The regulatory authority may, without advance notice, suspend the permit of an establishment it is found to have one or more violations that constitutes an imminent hazard to public health or safety.
 - (4) The applicant for, or holder of a permit may appeal the suspension, denial, or revocation of the permit to the authorized representative, by submitting a written appeal stating the reasons for such appeal within five (5) business days after receipt of notice of such denial or suspension.
 - (5) Within five (5) business days after receipt of an appeal, the authorized representative shall set a date, time, and place for the hearing of the appeal and deliver written notice thereof to such person in accordance with this article. The authorized representative shall make a final decision by sustaining, modifying, or rescinding any notice or order considered in the appeal hearing. The authorized representative shall provide a written decision to the permit holder.
- (b) *Notice.* A notice required to be provided or delivered by the city pursuant to this article is deemed to have been delivered by the city on the date that it is hand delivered, or three (3) days after the date the notice is sent by first class mail United States mail postage prepaid addressed to the person provided in the appeal or permit application.

(Ord. No. 3918-6-22 , § 4, 6-14-2022)

Secs. 6-238—6-240. Reserved.

DIVISION 5. ENFORCEMENT AND FEES¹

Sec. 6-256. Penalties.

- (a) Any person who knowingly violates any provision of this article, or any order issued hereunder, shall, upon conviction be guilty of a misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000.00) per violation. Each day a violation continues to exist shall be considered a separate offense.
- (b) In addition to and cumulative of all penalties, notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city, the enforcement officer or both for injunctive relief as may be necessary to enforce the provisions of this article.
- (c) Additionally, the city shall be entitled to pursue any civil and criminal remedies to which it is entitled under law.

(Ord. No. 3477-6-17 , § 1, 6-13-2017; Ord. No. 3918-6-22 , § 6, 6-14-2022)

Sec. 6-257. Fees.

All permit categories and fees referenced in this article shall be set by resolution by the city council of the city, a copy of which shall be on file in the city secretary's office for public inspection.

(Ord. No. 3477-6-17 , § 1, 6-13-2017; Ord. No. 3918-6-22 , § 6, 6-14-2022)

Secs. 6-258—6-400. Reserved.

¹Ord. No. 3477-6-17 , § 1, adopted June 13, 2017, set out provisions intended for use as Div. 3. For purposes of maintaining numerical order, and at the editor's discretion, these provisions have been included as Div. 5.