

ORDINANCE NO. ORD-2016-9884

AN ORDINANCE AMENDING CHAPTER 18 ENTITLED "FOOD AND FOOD ESTABLISHMENTS" OF THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, BY ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES WITH AMENDMENTS, MODIFICATIONS AND DELETIONS; DESIGNATING IT AS THE FOOD ESTABLISHMENT CODE FOR THE CITY OF IRVING; REGULATING FOOD HANDLER CERTIFICATIONS AND TEMPORARY EVENTS; PROVIDING FEES; PROVIDING PENALTY AND ENFORCEMENT PROVISIONS; PROVIDING SEVERABILITY AND SAVINGS CLAUSES; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION 1. That Section 18-1 of Chapter 18 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended to read as follows:

Sec. 18-1. Adoption.

(a) Adopted. That the Texas Food Establishment Rules, Sections 228.1 - 228.278 of the Texas Administrative Code, Title 25, a copy of which is on file with the Office of the City Secretary, is hereby adopted as the Food Establishment Code for the City of Irving, except as amended, modified, and deleted by this Chapter.

(b) Amendments, modifications and deletions. The Texas Food Establishment Rules effective October 11, 2015 as set forth in Texas Administrative Code Title 25 – Texas Department of State Health Services, Chapter 228, Sections 228.1 - 228.278, and as subsequently amended, is amended as follows:

Section 228.2. Definitions. Section 228.2 (111) is amended to read as follows:

(111) Pushcart--A non-self-propelled Mobile Food Unit limited to serving pre-packaged non TCS foods and is readily movable by one or two persons. A pushcart does not include non-self-propelled units owned and operated within a retail food store.

Section 228.2. Definitions. Section 228.2 is amended by adding the following definitions:

ANSI--The American National Standards Institute, a private non-profit organization that oversees the development of voluntary consensus standards for products to assure the safety and health of consumers.

Certificate of occupancy--A document issued by the regulatory authority indicating that a business complies with local and state laws.

Contamination--The unintended presence of harmful substance(s) or microorganisms.

Director--The director of the City of Irving Department of Inspections or his/her designee.

Follow-up inspection--Any inspection conducted after notice has been given to the owner or operator to correct a violation to determine compliance with this chapter. This term includes any subsequent inspection at a food establishment, mobile food unit or temporary food establishment until the certificate of occupancy or permit has been approved by the regulatory authority. The term does not include a routine inspection, reinspection, complaint investigation, initial certificate of occupancy inspection or initial temporary food establishment inspection.

NSF--NSF International (previously The National Sanitation Foundation), a global organization in the certification sector of products and materials destined to come into contact with foodstuffs and drinking water, which provides standards to establish minimum food protection and sanitation requirements for the materials, design, fabrication, construction and performance for commercial food establishment equipment and utensils.

Pre-packaged food--Food that has been sealed in a bottle, can, carton, secure wrapping or other container and that remains sealed in the bottle, can, carton, secure wrapping, or other container until after the food product is conveyed to the customer. The term does not include TCS foods or open foods.

Reinspection--A scored and thorough examination of a food establishment that is conducted after the demerit value of a previous inspection exceeds thirty (30) demerits. This term also includes an inspection conducted at a food establishment or mobile food unit after the suspension of a permit by the regulatory authority to ensure corrective action has been taken to reinstate the permit.

Routine inspection--A scored and thorough examination of a food establishment to determine compliance with this chapter.

Section 228.33. Certified Food Protection Manager and Food Handler Requirements. Section 228.33(a) is amended to read as follows:

- (a) At least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program and has registered this certification with the regulatory authority.
 - (1) Certified food protection manager replacement. If a food establishment cannot meet the requirements of this section because the registered certified food protection manager is no longer employed there, the food establishment shall:
 - (A) Notify the regulatory authority in writing within ten (10) days of the effective date of loss of the registered certified food protection manager; and

- (B) Register another certified food protection manager with the city within 30 days of the effective date of loss or transfer of the previous one.
- (2) Registration. A certified food protection manager's certificate shall be issued to any person who submits the required fee and application to the regulatory authority and provides evidence of a food protection manager certification in accordance with Section 228.2 (59).
- (3) Term of registration. Unless a certified food protection manager's certification is revoked by the Department of State Health Services or other issuing body, the certified food protection manager's City of Irving registration shall be valid up to the expiration date of the certification.
- (4) Applicants for a certified food protection manager registration must maintain an active food protection manager certification in accordance with Section 228.2 (59).
- (5) Certificate transferability. The City of Irving certified food protection manager certificate cannot be transferred from one person to another. However, with notification to the regulatory authority, the registration may be transferred from one food establishment to another within the city limits.
- (6) A City of Irving certified food protection manager certificate assigned to an applicant is only valid at one permitted food establishment address in Irving.

Section 228.33. Certified Food Protection Manager and Food Handler Requirements. Section 228.33(d) is amended to read as follows:

- (d) Except in a temporary food establishment and the certified food manager, all food employees shall successfully complete an accredited food handler training course, within fourteen (14) days of employment.

Section 228.61. Condition Safe, Unadulterated, and Honestly Presented. Section 228.61 is amended to read as follows:

Condition Safe, Unadulterated, and Honestly Presented. Food shall be safe for human consumption, unadulterated, and, as specified under §228.78(b) of this title, honestly presented.

^P It shall not be beyond its "sell by, use by" date.

Section 228.103. Durability and Strength. Section 228.103(a) is amended to read as follows:

- (a) Equipment and utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions. All equipment and utensils shall be NSF approved, ANSI approved or approved by the regulatory authority.

Section 228.146. Plumbing Design, Construction, and Installation. Section 228.146(b) is amended to read as follows:

(b) Handwashing facility, installation.

- (1) A handwashing sink shall be equipped to provide water at a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) through a mixing valve or combination faucet.
 - (A) If a handwashing sink in food preparation areas, food dispensing areas, ware washing areas, and employee only restrooms uses a combination faucet, it shall be equipped with four-inch wing-style handles.
 - (B) A handwashing sink shall be able to provide a minimum of at least 38 degrees Celsius (100 degrees Fahrenheit) water within sixty (60) seconds of the faucet activation when located in food preparation areas, food dispensing areas, ware washing areas, and employee only restrooms.
- (2) A steam mixing valve may not be used at a handwashing sink.
- (3) 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.
- (4) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

Section 228.147. Plumbing, Numbers and Capacities. Section 228.147(e) is amended to read as follows:

(e) Backflow prevention assembly, carbonator.

- (1) If not provided with an air gap as specified under 228.146(c) of this title, a reduced pressure zone principle backflow assembly shall be installed upstream from a carbonating device and downstream from any copper in the water supply line. ^P
- (2) The water supply line downstream of the required reduced pressure backflow assembly device or approved air gap shall not serve any potable water fixtures other than the carbonating device/devices it serves.

Section 228.147. Plumbing, Numbers and Capacities. Section 228.147 is amended by adding subsection (f) to read as follows:

- (f) Food preparation sink. At the discretion of the regulatory authority a food preparation sink may be required for washing of food if the menu or method of preparation requires frequent soaking, rinsing, culling, or cleaning of raw ingredients or produce.

Section 228.173. Floors, Walls, and Ceilings. Section 228.173(c) is amended to read as follows:

(c) Floors, floor and wall junctures, approved materials, coved, and enclosed or sealed.

- (1) In food establishments in which cleaning methods other than water flushing methods are used for cleaning floors, the floors shall be VCT (vinyl composition tile), sheet

vinyl, or other material approved by the regulatory authority. The floor and wall junctures shall be coved and closed to no larger than 1 mm (one thirty-second inch).

- (2) The floors in food establishments where excessive grease is used or produced or in which water flushing cleaning methods are used shall be constructed of terrazzo, quarry tile or other material approved by the regulatory authority. They shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed. Wall bases shall be constructed of terrazzo, quarry tile or other material approved by the regulatory authority.

Section 228.173. Floors, Walls, and Ceilings. Section 228.173(f) is amended to read as follows:

(f) Wall and ceiling coverings and coatings.

- (1) Wall and ceiling covering materials shall be constructed and attached so that they are easily cleanable.
 - (A) Walls behind plumbing structures, in food preparation areas, food dispensing areas, equipment washing and utensil washing areas shall be FRP (fiberglass reinforced plastic) or other material approved by the regulatory authority from the floor to the highest level of moisture, soil, splash or spray.
 - (B) Walls behind cooking equipment shall be a stainless steel covering or other material approved by the regulatory authority from vent hood to floor.
- (2) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.
- (3) Walls including non-supporting partitions, wall covering and ceilings of the walk-in refrigeration units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules shall be light in color.

Section 228.174. Functionality. Section 228.174(d) is amended to read as follows:

- (d) Toilet rooms, enclosed. Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door. The premises shall not require the patrons to pass through the kitchen or food preparation area to use a restroom.

Section 228.175. Handwashing Sinks. Section 228.175(c) is amended to read as follows:

- (e) Hand drying provision. Each handwashing sink or group of adjacent sinks shall be provided with:
 - (1) Individual, disposable towels; or

- (2) In customer and employee restrooms only, a heated-air hand drying device or a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.

Section 228.221. Mobile Food Units. Section 228.221(a) is amended to read as follows:

(a) Mobile Food Unit provisions.

- (1) General. Except as otherwise provided in this paragraph and in paragraph (2) of this subsection, the regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all time/temperature controlled for safety (TCS) food, and when no health hazard will result, may waive or modify requirements of this rule relating to physical facilities, except those requirements as specified in paragraphs (7) and (8) of this subsection; subsection (c)(1)(A) - (E) of this section and §§228.71 - 228.75 of this title (relating to Food). The regulatory authority shall require a Mobile Food Unit operator to demonstrate that the vehicle is readily moveable.
- (2) Restricted operation. Mobile Food Units that serve 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/temperature controlled for safety (NTCS) food and are dispensed from covered urns or other protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining 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. The regulatory authority prohibits alteration, removal, attachments, additions, placement or change in, under, or upon the Mobile Food Unit that would prevent or otherwise reduce ready mobility. 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. The regulatory authority shall require a Mobile Food Unit to come to a location designated by the authority. The mobile unit must be totally operable at time of inspection, including but not limited to handwash/warewash facilities, refrigeration and wastewater disposal. Required documentation to have available includes:
 - (A) Certified Food Manager Certification.
 - (B) 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.

- (C) 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.
 - (D) 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.
 - (E) Menu of all food items to be sold.
 - (F) Current vehicle liability insurance.
 - (G) A valid driver's license for the mobile food unit operator.
 - (H) The owner's name, address and government issued photo identification; If a partnership, or corporation; the names and addresses of partners, officers, and registered agents; and
 - (I) Other documentation may be required by the regulatory authority.
- (5) Single-service articles. Mobile Food Units shall provide only single service articles for use by the consumer.
- (6) Equipment, construction, 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 Subchapter C of this rule.
 - (B) Manual warewashing, 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 under §228.107(b)(1) of this title.
 - (ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils as specified under §228.107(b)(2) of this title.
 - (C) At least one handwashing sink shall be available for convenient use by employees and properly provisioned in accordance with §228.175(b) - (c) of this title.
 - (D) The food preparation and food dispensing areas of the mobile food unit shall be completely enclosed.

- (E) Mobile food units may be required to provide an on board power source, such as a battery or generator, to assure maintenance of TCS foods at proper temperatures during transit, preparation and service.
 - (F) All equipment shall be NSF approved, ANSI approved or approved by the regulatory authority. All equipment shall be installed in such a manner as to ensure cleanability.
 - (G) Walls and ceilings shall be constructed of stainless steel, metal with baked-on enamel finish, FRP (fiberglass reinforced plastic) or other material approved by the regulatory authority. The installation of exposed utility lines and pipes on the floor is prohibited.
 - (H) Floor surfaces shall be constructed of stainless steel, metal with baked-on enamel finish, or other material approved by the regulatory authority.
 - (I) Outer openings shall be sealed to protect against the entrance of pests and dust.
- (7) Mobile water system materials, design, and operation. Mobile Food Unit water systems shall meet the requirements of §228.149(f) of this title (relating to Water, Plumbing, and Waste).
- (8) Mobile Food Unit tank inlet. A Mobile Food Unit's water tank inlet shall be:
- (A) 19.1 mm (3/4 inch) in inner diameter or less; and
 - (B) Provided with a hose connection of a size or type that will prevent its use for any other service.
 - (C) Fill hose and water holding tank shall be labeled as "Potable Water."
- (9) Sewage and other liquid waste.
- (A) Waste retention. If liquid waste results from operation of a Mobile Food Unit, the waste shall be stored in a permanently installed retention tank.
 - (B) Capacity and drainage. A leak-proof sewage holding tank in a Mobile Food Unit shall be:
 - (i) Sized at least 15% larger in capacity than the water supply tank; and
 - (ii) Sloped to a drain that is 25 millimeters (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. ^P
- (E) Flushing a waste retention tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner. ^P
- (F) Removing Mobile Food Unit wastes. Sewage and other liquid wastes shall be removed from a Mobile Food Unit at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created. ^P
- (G) Liquid waste holding tank shall be labeled as “waste water”

(10) Mobile Food Unit water and wastewater exemption.

- (A) A roadside vendor that sells only prepackaged food is exempt from these rules pertaining 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 these rules pertaining to water and wastewater if the required cleaning and sanitization equipment exist at its central preparation facility. Chemically treated towelettes for handwashing may be used as specified in §228.147(a)(3) of this title (pertaining to Water, Plumbing and Waste). ^P

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

Section 228.221. Mobile Food Units. Section 228.221 is amended by adding subsections (d) and (e) to read as follows:

(d) Required documentation, operation location, and signage.

- (1) The mobile food unit operator shall maintain servicing records on the mobile food unit for a period of one year from the date of servicing. The servicing records shall be immediately available to the regulatory authority upon request and shall include the commissary providing service, the date of service, times and which service was provided.
- (2) All invoices and receipts for food supplies stored in the mobile food unit shall be maintained on the vehicle for inspection by the regulatory authority.
- (3) Signage. The owner of the mobile food unit shall identify the name of the company in four (4) inch high lettering in a contrasting color on two (2) opposite exterior sides

of the vehicle and shall display a mobile food unit permit issued by the director in the location designated. A vehicle unit number must be provided if applicable.

(e) Prohibitions, enforcement, inspections.

- (1) Pushcarts are prohibited from selling any other foods except pre-packaged non TCS foods within the City. All foods shall be enclosed inside the pushcart to prevent potential contamination.
- (2) All unwrapped and TCS foods sold by pushcarts may be seized, condemned, and destroyed by the City. The owner, partnership, or corporation listed as owner on the original application may be subject to administrative action for any violations.
- (3) After one (1) customary follow-up inspection at a pre-permitted mobile food unit, a follow-up inspection fee may be assessed for each visit until the mobile food unit permit has been approved by the regulatory authority.
- (4) The regulatory authority shall perform follow-up inspections at a mobile food unit at a frequency necessary to confirm compliance with this chapter. After more than one (1) customary follow-up inspection, the regulatory authority may charge a follow-up inspection fee for each visit necessary to confirm compliance with this chapter.

Section 228.222. Temporary Food Establishments. Section 228.222(a) is amended to read as follows:

- (a) General. 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/temperature controlled for safety (TCS) foods, and when no health hazard will result, such as children's neighborhood beverage stands, may waive or modify requirements of these rules.
 - (1) Foods that require extensive preparation or cooking must be prepared at a licensed food establishment. ^P Foods may be prepared on site provided those foods require limited preparation as determined by the regulatory authority. All menu items must be approved by the regulatory authority prior to the permit being issued.
 - (2) Each temporary food establishment shall be required to have at least one person on-site who has a minimum of an accredited food handler certification if deemed necessary by the regulatory authority based on the type of foods being prepared. The proof of an accredited food handler certification shall be submitted to the regulatory authority prior to a permit being issued.
 - (3) All TCS foods prepared on site must be obtained the day of the event. Receipts must be available to the regulatory authority upon request. If receipts for TCS foods are not provided, the regulatory authority may prohibit the use of those TCS foods at the event.

Section 228.242. Additional Requirements. Preventing health hazards, provision for conditions not addressed. Section 228.242 is amended to read as follows:

- (1) Option to impose additional requirements. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in these rules that are authorized by law.
 - (A) If the food establishment has repeated or persistent violations of this chapter and effective corrective action has not been instituted over a period of time as instructed by the regulatory authority, the following may be required:
 - (i) An employee to be onsite at all hours of operations at the food establishment that has an active food protection manager certification in accordance with Section 228.2 (59); and
 - (ii) Labels with preparation start time for all TCS foods.
- (2) Required documentation. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment. The following may be required by the regulatory authority:
 - (A) Written documentation of cool down methods, cooling logs and reheating logs for TCS foods in accordance with Section 228.75; and
 - (B) Temperature logs of TCS foods held in equipment used for cooling and heating food, and holding cold and hot food to ensure all TCS foods are in accordance with Section 228.75.

Section 228.246. Construction Inspection and Approval, Preoperational Inspections. Section 228.246 is amended to read as follows:

The regulatory authority may conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under §228.244(b)(5) of this title, and is in compliance with this chapter. After one (1) customary follow-up inspection, a follow-up inspection fee may be assessed for each visit to any food establishment until the certificate of occupancy has been approved by the regulatory authority.

Section 228.247. Permit Requirement, Prerequisite for Operation. Section 228.247 is amended to read as follows:

Permit Requirement, Prerequisite for Operation, Applications, and Suspension of Permits.

- (a) A person may not operate a food establishment, mobile food unit or temporary food establishment without a valid permit or license to operate issued by the regulatory authority.

A permit is not valid if transferred from one person or place to another person or place. The regulations in existence at the time of the application shall be required prior to approval of the certificate of occupancy or permit by the regulatory authority.

- (1) Any person desiring to operate a permanent food establishment or mobile food unit may make written application for a permit issued by the regulatory authority and pay the required fee. The application shall include:
 - (A) The location and type of the proposed establishment;
 - (B) The number of full-and part-time employees at the establishment;
 - (C) The applicant's name, address and government-issued photo identification;
 - (D) The owner's name, address and government-issued photo identification or the names and addresses of partners, officers, and registered agents if the owner is a partnership or corporation;
 - (E) The signature of the applicant or applicants;
 - (F) Any other information deemed necessary by the director.
- (2) Any person desiring to operate a temporary food establishment may make written application for a permit issued by the regulatory authority and pay the required fee. The application must be received at least three (3) working days prior to the event. Applications received after these deadlines will be subject to a late fee. A temporary food establishment permit is not to exceed fourteen (14) days and must be in conjunction with a single event or celebration. The application shall include:
 - (A) The location, inclusive dates, and times of the proposed operation;
 - (B) A list of menu items and location of where food preparation will occur;
 - (C) A copy of the current local food establishment permit for out of town vendors with a copy of the most recent health inspection report conducted by their local regulatory authority;
 - (D) The applicant's name, address, government-issued photo identification, and signature;
 - (E) Any other information deemed necessary by the director.
- (b) Permit renewal. Permits for food establishments and mobile food units are valid for one calendar year from the date of issuance unless suspended or revoked during that period. Permits shall be renewed annually by paying the required fee to the regulatory authority.
- (c) On-site investigation.

- (1) Upon receipt of an application, the regulatory authority may make an inspection of the food establishment, temporary food establishment or mobile unit to determine compliance with the provisions of this chapter. When inspection reveals that applicable requirements of this chapter have been met, a permit may be issued to the applicant by the regulatory authority.
 - (2) When a temporary food establishment or mobile food unit commences operation without first obtaining a permit, an investigation of the food operations may be made on site by the regulatory authority. The owner shall pay a double permit fee to the city regardless of whether or not approval to operate is then or subsequently issued. If a permit is not obtained, the owner may be subject to further administrative action.
- (d) Suspension of permits. It is unlawful for any person to work in a food establishment, mobile food unit or temporary food establishment if its permit has been suspended or revoked. It is an affirmative defense to this subsection that the employee is working only to correct violations. Whenever the regulatory authority finds insanitary conditions or other conditions in the operation which are in violation of this chapter or that constitute a substantial hazard to public health, the regulatory authority may issue a written notice to the owner or operator citing such conditions, specifying the corrective action to be taken; and, if necessary due to a substantial hazard to public health, may immediately suspend the permit without warning or written notice until compliance is attained. The director may placard the structure to give notice to the public of the suspension of the permit. The owner or operator shall not remove the placard unless authorized by the director. When a permit is suspended, the owner or operator shall immediately cease all food operations. Regulatory authority approval shall be required prior to the establishment resuming operations and a reinspection fee may be assessed. Upon request of the owner or operator of a food establishment, mobile food unit or temporary food establishment cited, the regulatory authority may make a reinspection, and, if corrections have been made, the regulatory authority may permit the food establishment, mobile food unit or temporary food establishment to resume operations and reinstate the permit; however, a case may be filed through the city attorney's office, or a citation or citations issued for the violation(s) that occurred.
- (e) Revocation of permits. A permit may be permanently revoked for violations of this chapter. Prior to such action, the regulatory authority shall notify the owner in writing, stating the intent to revoke the permit with an explanation of the grounds for revocation. If the owner chooses to have a hearing, they shall notify the director in writing within five (5) days following receipt of notice of revocation. The permit may then be suspended, but not revoked, until such time as the director has reviewed the case and issued their decision. Appeal from the decision of the director shall be to the city manager. Appeal to the city manager shall be in writing and filed within fifteen (15) working days from the date of the decision being appealed. The applicant is not entitled to a refund of permit fees when a permit is revoked or suspended as provided in this chapter.

Section 228.249. Inspection Frequency, Performance-based and Risk Based. Section 228.249 is amended by adding subsections (d) and (e) to read as follows:

- (d) The regulatory authority has the right to inspect establishments that sell non-time/temperature controlled for safety pre-packaged foods on a complaint basis as determined by the director.
- (e) The regulatory authority has the right to perform follow-up inspections at a food establishment at a frequency necessary to confirm compliance with this chapter. After more than one (1) customary follow-up inspection, the regulatory authority may charge a follow-up inspection fee for each visit necessary to confirm compliance with this chapter.

Section 228.251. Report of Findings. Section 228.251(a) is amended to read as follows:

- (a) Documenting information and observations. The regulatory authority shall document on an inspection report form:
 - (1) Administrative information about the food establishment's legal identity, street and mailing addresses, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and
 - (2) Specific factual observations of violative conditions or other deviations from these rules that require correction by the permit holder including:
 - (A) Failure of the person in charge to demonstrate knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of these rules specified under §228.32 of this title;
 - (B) Failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under §228.35(b) and (d) of this title;
 - (C) Nonconformance with critical/priority items or priority foundation items of these rules.
 - (D) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under §228.243(c) of this title;
 - (E) Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under §228.244(d)(4)(F) of this title; and
 - (F) Nonconformance with critical limits of a HACCP plan; and
 - (3) A summary of the inspectional findings that totals weighted demerit values for the inspection items. A rating score may then be given based upon the total demerits, subtracted from 100, as indicated on the inspection report form.

Section 228.251. Report of Findings. Section 228.251(f) is amended to read as follows:

(f) Inspection reports. The regulatory authority may promulgate the inspection report form.

Section 228.251. Report of Findings. Section 228.251 is amended by adding subsection (g) to read as follows:

(g) Any food establishment that receives a routine inspection score which it believes is unsatisfactory, may voluntarily request a second routine inspection. A fee shall be required prior to an inspection being scheduled. The regulatory authority shall perform the requested routine inspection within seven (7) working days of the received fee payment. Only one second routine inspection may be requested within any twelve (12) month period and must be requested within thirty (30) days of the initial routine inspection completed by the regulatory authority.

Section 228.253. Priority Item/Priority Foundation Item, Time Frame for Correction. Section 228.253(b) is amended to read as follows:

(b) Verification and documentation of correction.

- (1) After observing at the time of inspection a correction of a priority item or priority foundation item or a HACCP plan deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.
- (2) As specified under subsection (a)(2) of this section, after receiving notification that the food establishment has corrected a priority item or priority foundation item or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.
- (3) When the total cumulative demerit value of an establishment exceeds 30 demerits, the establishment shall initiate immediate corrective action on all identified priority items or priority foundation items and shall initiate corrective action on all other violations within 48 hours. One or more reinspections shall be conducted at reasonable time intervals to assure correction.
 - (A) The reinspection shall be performed in the same manner, using the same form, as the previous routine inspection.
 - (B) The regulatory authority may charge a reinspection fee and shall determine the time of the reinspection. The regulatory authority may charge a fee for each reinspection until the total cumulative demerit value of the food establishment's reinspection is less than 30 demerits.
- (4) In the case of temporary food establishments, all priority items or priority foundation items must be corrected immediately and other violations must be corrected within 24 hours or sooner if required by the regulatory authority. If violations are not

corrected, the establishment shall immediately cease food operations until authorized to resume by the regulatory authority.

Section 228.255. Examination and Detention of Food. Section 228.255 is amended to read as follows:

§228.255. Examination, Condemnation and Detention of Food.

The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these rules. A receipt for samples shall be issued by the regulatory authority. The regulatory authority shall, upon written notice to the owner or person in charge specifying the reason therefore, place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

- (1) A detention order under this section takes effect immediately upon issuance. The director shall identify the food subject to a detention order under this section in a reasonable way (including, but not limited to, a note or tag attached to the food). It is unlawful for any employee of an establishment that possesses food subject to a detention order under this section to store the food in any way other than that directed by the director or to alter the food in any way without written permission from the director. The director may examine the food subject to a detention order as soon as reasonably possible to determine if the food is adulterated or misbranded. If the food is not adulterated or misbranded, the director may cancel the detention order.
- (2) Condemnation order. If the director determines that food is adulterated, he may order the food condemned and dispose of the food in a way that does not result in a health hazard. If the director determines that the food is misbranded, he may order the food condemned and may dispose of the food in a way that does not result in a health hazard, or order the food establishment in control of the food to put the food in compliance with applicable law.

SECTION 2. That Section 18-2 of Chapter 18 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended to read as follows:

Sec. 18-2. Fees.

- (a) A permit fee shall accompany each application for a food establishment, mobile food unit, certified food protection manager or temporary food establishment. Applicants are not, under any circumstances, entitled to a refund of permit fees after an application has been filed. The permit fee schedule for new and renewal permits is as follows:

- (1) Permit for permanent food establishments:

- (A) 0-10 employees three hundred and fifty dollars (\$350.00).

- (B) Over 10 employees five hundred dollars (\$500.00).

- (C) Operations that have multiple floors or departments such as deli, bakery, etc., shall obtain a separate permit for each floor or department as determined by the director, each based on the number of employees.
- (2) Permit for a mobile food unit (hot or cold truck) two hundred dollars (\$200.00).
 - (3) Permit for a pushcart one hundred dollars (\$100.00).
 - (4) Permit for a temporary food establishment fifty dollars (\$50.00) origination fee plus a five dollar (\$5.00) per day per booth operating fee.
 - (5) Late fee for a temporary food establishment fifty dollars (\$50.00).
 - (6) Permit for a registered certified food protection manager..... thirty dollars (\$30.00).
- (b) Delinquent permit renewal. When permit renewal fees are not tendered by the expiration date for a food establishment additional fees may be assessed as follows:
- (1) If the regulatory authority has not received the fee for a permit renewal within fourteen (14) days after the expiration date of the permit to be renewed, the owner shall be responsible for a fifty dollar (\$50.00) late payment.
 - (2) If the regulatory authority has not received the fee for a permit renewal within thirty (30) days after the expiration date of the permit to be renewed, the owner shall be responsible for an additional late fee payment of fifty dollars (\$50.00).
- (c) Review of plans for each new or remodeled food establishmentone hundred and twenty five dollars (\$125.00).
 - (d) Second routine inspections voluntarily requested by a food establishment shall pay a ninety dollar (\$90.00) fee.
 - (e) Reinspection fee ninety dollars (\$90.00).
 - (f) Follow-up inspection fee..... sixty dollars (\$60.00)
 - (g) If a follow-up or reinspection fee is assessed, then the owner, partnership, or corporation listed as owner on the original application shall make payment within seven (7) days to avoid further administrative action. Payment of a fee shall not void, or in any way affect the responsibility of the owner or operator for payment of any fines for any other violations of this chapter.

SECTION 3. That Section 18-3 of Chapter 18 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended to read as follows:

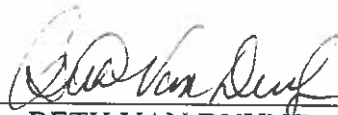
Sec. 18-3. Penalty; continuing violations.

- (a) It is unlawful for any owner, operator or manager of a food establishment to violate or to permit any employee to violate any provision of this chapter.
- (b) As the provisions of this chapter govern public health and sanitation, a violation of any of the provisions of this chapter is punishable by a fine not to exceed two thousand dollars (\$2,000.00).
- (c) Each day any violation of any provision of this chapter continues constitutes a separate offense.
- (d) The city council may authorize the city attorney's office to petition the appropriate court for civil penalties and/or for injunctive relief for a violation of this chapter as available under applicable state law.
- (e) The remedies and procedures in this section and in other laws are cumulative, and the use of any particular remedy or procedure does not prevent the enforcement of any other law.

SECTION 4. That the terms and provisions of this ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause or phrase of this ordinance should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause or phrase of this ordinance. Further, it is the intent of the Irving City Council that pending prosecutions, brought under the previous code which this ordinance replaces, should continue under the terms and penalties of said code and be saved from dismissal as if said prior ordinance had not been amended or repealed.

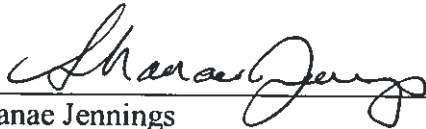
SECTION 5. That this ordinance shall become effective on January 3, 2017.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS, on December 8, 2016.



BETH VAN DUYNÉ
MAYOR

ATTEST:



Shanae Jennings
City Secretary



APPROVED AS TO FORM:



Kuruvilla Oommen
City Attorney