

Chapter 11 FOOD AND FOOD HANDLERS¹

ARTICLE I. IN GENERAL

Sec. 11-1. Adoption of state rules.

There is hereby adopted the "City of Pearland Food and Food Handlers Code," which shall consist of the most recent version of the Texas Administrative Code, Title 25, Part 1, Chapter 228, Texas Food Establishment Rules.

(Ord. No. 1559 , § 1, 5-14-18)

Sec. 11-2. Local amendments.

The food and food handlers code adopted in section 11-1 is hereby modified as follows:

- (a) The following provisions are added:
- a. *228.2(153)—Code Enforcement/Health Officer.* A City Code Enforcement Supervisor, or his/her designee, assigned to inspect food establishments, educate food establishments' employees and food employees on local and state statutory requirements for health and safety in food service, and enforce all local and state health and safety laws as permitted by law.
 - b. *228.2(154)—Reconstituted.* Food created or prepared by recombining dehydrated food products with water or other liquids.
 - c. *228.2(155)—Sanitation.* Effective bactericidal treatment process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on tableware, utensils, and equipment.
 - d. *228.186(o)(2)(F).* In areas that are not used for food preparation or storage, a food establishment may at the owner or manager's discretion allow patrons to bring dogs on the premises, after the food establishment has notified, in writing, the Code Enforcement/Health Officer that it intends to allow such action, and posts notice of same in all areas where dogs are to be allowed by the food establishment.
- (b) The following provisions are adopted in place of the identically numbered provisions in the Texas Administrative Code, Title 25, Part 1, Chapter 228:
- a. *228.2(57)—Food establishment.* Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

¹Editor's note(s)—Ord. No. 1559 , § 1, adopted May 14, 2018, repealed the former Ch. 11, Arts. I—V, §§ 11-1—11-4, 11-21—11-63, 11-81—11-89, 11-101—11-104, and 11-121—11-123, and enacted a new Ch. 11 as set out herein. The former Ch. 11 pertained to similar subject matter and derived from Ord. No. 681, §§ 1—20, 31—33, adopted Nov. 14, 1994 and Ord No. 681-1, § 1, adopted Aug. 13, 2012.

Cross reference(s)—Health and sanitation, Ch. 13.

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- i. A restaurant, retail food store, market, self-service food market, conveyance used to transport people, or institution, including any establishment where prepackaged food and food products are offered for sale to the ultimate consumer and intended for off-premises consumption;
 - ii. An establishment 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; and
 - iii. Includes 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 an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises.
 - iv. Food establishment does not include a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold, or offered for human consumption, a Bed and Breakfast Limited facility as defined in this chapter, a food bank, or a private home that receives catered or home-delivered food.
- b. *228.2(85)—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, trailers and 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. A Mobile Food Unit operating in the City must have on site at least one food employee who possesses a food manager certification.
 - c. *228.2(143)—Temporary food establishment.* A food establishment that operates a stand or booth for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(Ord. No. 1559 , § 1, 5-14-18)

Secs. 11-3—11-20. Reserved.

ARTICLE II. FOOD ESTABLISHMENTS

Sec. 11-21. Inspections.

- (1) The code enforcement/health officer, after proper identification, shall be permitted to enter any food establishment at any reasonable time, for the purpose of making inspections to determine compliance with this chapter. The code enforcement/health officer shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.
- (2) The code enforcement/health officer shall inspect each food establishment within the City of Pearland at least every six (6) months, and he/she shall make as many additional inspections as are necessary for the enforcement of this chapter. Any establishment scoring seventy-five (75) or below on an inspection will automatically receive a follow-up inspection within ten (10) days. A reinspection fee must be paid prior to follow up inspection. Failure to pay reinspection fee or a second score of seventy-five (75) or below on an inspection shall result in an order to immediately cease all food service operations. Any person, firm, or food

establishment proven to have failed to immediately cease all food service operations upon an order from the city shall be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.

- (3) If a food establishment is being inspected for the first time by a city code enforcement/health officer, the following additional requirements apply:
- (a) For a food establishment located at permanent premises, a code enforcement/health officer will only conduct an inspection to obtain a food service license after the food establishment has passed final inspections by the building official and the fire marshal, or their respective designees.
 - (b) For a food establishment operating as a mobile food unit (MFU), a code enforcement/health officer will only conduct an inspection to obtain a mobile food unit license after any other inspections required for the specific type of MFU being operated have been completed and approval has been given by those entities.
 - (c) A food establishment located at permanent premises may not store any food defined as time/temperature control for safety food (TCS) at the premises until after the code enforcement/health officer has completed his/her inspection and the food establishment has passed said inspection. If a food establishment is found to have TCS food on the premises at the time of an initial health inspection, the code enforcement/health officer may order the TCS food to be disposed of properly if it is found to have been kept in unsafe conditions.
- (4) Whenever an inspection of a food establishment is conducted, the findings shall be recorded in an inspection report, and a copy of each inspection report with number score and corresponding letter grade shall be provided to the food service manager or other person in charge of the establishment. It is the responsibility of the food service manager to post the letter grade corresponding to the food establishment's inspection report upon an inside wall or window near the main public entrance of the establishment in a location readily visible to consumers, and such letter grade shall not be defaced or removed by any person except the code enforcement/health officer. Any person, firm, or corporation who fails to properly post the inspection report or the corresponding letter grade as required shall be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.
- (5) In the case of temporary food service establishments, all violations shall be corrected immediately. If violations are not corrected, the code enforcement/health officer shall immediately suspend the license. Any person, firm, or establishment who is found to have failed to immediately cease operations upon suspension of temporary food service license shall be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.

(Ord. No. 1559 , § 1, 5-14-18)

Secs. 11-22—11-40. Reserved.

ARTICLE III. LICENSES

Sec. 11-41. Licenses required.

No person shall operate a food establishment who does not possess a valid license issued to him/her by the code enforcement/health officer. Such licenses shall be known as a "food service license", a "temporary food service license", or a "mobile food unit license", hereinafter referred to collectively as "license", "licenses", or "food licenses". Only a person who complies with the requirements of this chapter shall be entitled to receive or

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retain such a license. Licenses are not transferable from one (1) person or place to another person or place. A valid license shall be posted in view of the public in every food establishment and every temporary food establishment. All food licenses shall remain the property of the City of Pearland.

- (1) Any person desiring to obtain a food service license shall make written application for such license on forms provided at the city's permits department or on the city's website. Such application shall include the applicant's full name and mailing address; the location of proposed food establishment; and the signature of the applicant or applicants.
- (2) Any person desiring to obtain a temporary food service license shall make written application for such license on forms provided at the city's permits department or on the city's website. In addition to the information listed in subsection (1) above, such application shall include the inclusive dates of the proposed operations; the name, address and telephone number of the owner or owners of the property where the temporary food service establishment is to be located; and a statement signed by the owner(s) of the property or his/her authorized agent, stating that arrangements have been made for the proper disposal of all rubbish, trash, garbage, and for maintaining the property free from litter and nuisances during the total period of operation up to and including any cleanup time required to remove all rubbish, trash, garbage, and litter resulting from the food service. A description of such arrangements must be included. Licenses for temporary food establishments shall be issued for a period of time not to exceed fourteen (14) consecutive days.
- (3) Any person desiring to obtain a mobile food unit license shall make written application for such license on forms provided at the city's permits department or on the city's website. In addition to the information listed in subsection (1) above, such application shall include the physical address where the mobile food unit is stationed when not in use; the business name and address of the central preparation facility or other fixed food service establishment where the potentially hazardous food supplies are obtained; the address of the servicing area; a description of the mobile food unit which includes the manufacturer's make, model, serial or VIN number, and the vehicle's state registration number.
- (4) The code enforcement/health officer shall issue the appropriate license to the applicant if inspection reveals that the proposed food establishment complies with the requirements of this chapter.

(Ord. No. 1559 , § 1, 5-14-18)

Sec. 11-42. Mobile food units.

- (1) Any person desiring to operate one (1) or more mobile food units shall obtain an individual license for each operating mobile food unit from the code enforcement/health officer. Each license will be issued unit-by-unit only after an inspection reveals satisfactory compliance with state law and this chapter as applicable. Such license shall remain the property of the City of Pearland.
- (2) No person shall operate or cause to be operated any mobile food unit which does not possess a valid license issued by the code enforcement/health officer. Any person, firm, or establishment who is found to have operated or caused to be operated a mobile food unit without a valid mobile food unit license shall be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.
- (3) Such license shall be affixed by the code enforcement/health officer on the mobile food unit in a conspicuous place where it can be viewed by patrons. A license shall set forth the business name, license plate number, mobile food unit license number, and expiration date for said license.

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- (4) Every mobile food unit must be readily identifiable by its business name and phone number that are printed, permanently affixed, and prominently displayed on the back of the unit and on the side of the unit from which food is served, in letters not less than three (3) inches in height.

(Ord. No. 1559 , § 1, 5-14-18)

Sec. 11-43. Fees.

At the time of issuance of an original food service license or mobile food unit license, and each renewal thereof, the person requesting the license shall pay to the city a license fee. Except as otherwise provided, license fees shall be determined by the total number of persons employed full time or part time by the food establishment.

Fees shall be determined according to the schedule found in Ord. 1358 as it may be amended from time to time.

(Ord. No. 1559 , § 1, 5-14-18)

Sec. 11-44. License valid for one year.

All food service licenses and mobile food unit licenses shall be issued for a maximum of twelve (12) months.

- (1) Food service licenses are valid for the calendar year issued and expire on December 31 of the year issued. Submission of the proper application and any required fee(s) are required for issuance of new food service licenses. Establishments obtaining a new food service license after January 15th of a calendar year will be charged a license fee prorated on a daily basis.
- (2) Mobile food unit licenses shall be issued for a period of twelve (12) months beginning on the date of issuance. Submission of the proper application and any required fee(s) are required for issuance of new mobile food unit licenses.
- (3) Submission of the proper application and any required fee(s) are required to renew a license.
 - (a) Food establishments renewing food service licenses will be charged the standard license fee for the type of license being requested until January 15, or the first business day after January 15. If an establishment wishing to renew a food service license submits the application and/or fee(s) after that time, it will be charged one and one half times the original license fee.
 - (b) Mobile food units renewing mobile food unit licenses will be charged the standard license fee after the expiration of a mobile food unit license. The mobile food unit license may be renewed with payment of the standard license fee up to fourteen (14) days prior to the expiration date of the license. All inspection requirements for a new mobile food unit license must also be met upon renewal of a mobile food unit license.

(Ord. No. 1559 , § 1, 5-14-18)

Sec. 11-45. Suspension of license.

- (1) The city code enforcement/health officer may suspend any food service license or mobile food unit license with such notice as is reasonable under the circumstances, if the license holder does not comply with the requirements of this article, or if the operation of the food establishment or mobile food unit otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by subsection (2) below. Where a license is suspended, food service operations shall immediately cease.

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- (2) Whenever a license is suspended, notice shall be given to the license holder or the person in charge of any employee or agent of the food establishment or mobile food unit. Such notice shall set forth:
 - (a) The specific conditions in the food establishment or mobile food unit which are in violation of this chapter or the specific conditions which constitute a substantial hazard to public health, and
 - (b) That the license holder may file with the municipal court a request for a hearing within three (3) business days after the license is suspended, but that if the food establishment is allowed to reopen before the hearing is held, the hearing will be cancelled,
 - (c) That, if a hearing is held, the license holder must appear in person and/or may be represented by counsel, and his/her counsel may present testimony and may cross-examine all witnesses.
 - (3) Whenever a food service license is suspended, it may be physically removed from the premises by the code enforcement/health officer and retained at the office of the code enforcement/health officer until the suspension has been lifted or modified.
 - (4) Whenever a mobile food unit license is suspended, it shall be physically removed from the mobile food unit in violation by the code enforcement/health officer.
 - (5) All hearings shall be held in the municipal court and presided over by a municipal court judge. All hearings shall be, as much as practicable, conducted pursuant to the Texas Rules of Civil Procedure.

If the license holder fails to appear at the hearing at the time, place, and date specified, the city shall present sufficient evidence to establish a prima facie case showing violation of this chapter or conditions constituting a hazard to public health which formed the basis of the suspension of the license.

- (6) If the municipal court finds that the food establishment was, in fact, in violation of this chapter or that it constituted a hazard to public health, the court shall make written findings of fact and shall order the license suspended until all violations of this chapter are corrected and any conditions constituting a hazard to public health are eliminated. A copy of the findings and order of the court shall be either given to the responsible party upon conclusion of the hearing, or sent by certified mail, return receipt requested, to the license holder. If the municipal court finds that the public interest will be adequately protected by a warning or other penalties authorized under this chapter, it may reinstate the license.
- (7) Whenever the reasons for a suspension no longer exist, the license holder or the person in charge shall notify the code enforcement/health officer that the conditions under which the license was suspended have been corrected and that an inspection is requested. Upon receipt of request and payment of any required reinspection fee, such inspection shall be conducted as soon as possible and in no event, no later than three (3) regular working days after the receipt of the request for inspection.
- (8) When a mobile food unit license which has been suspended is reinstated, a new license shall be affixed to the unit. A reinstated license shall include all of the same information as that which appeared on the license which was suspended, and shall not be reinstated until a reinspection has been completed and any required reinspection fee(s) paid.

(Ord. No. 1559 , § 1, 5-14-18)

Sec. 11-46. Revocation of license.

- (1) A food service license or mobile food unit license may be revoked if:
 - (a) The license holder or his/her agents or employees interfere with an inspection of the food establishment by the code enforcement/health officer or his/her authorized agents; or
 - (b) There are repeated or serious violations of the applicable portions of this chapter; or

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- (c) There are repeated or serious violations of federal or state food laws or laws regulating food establishments as defined in this chapter; or
 - (d) In the case of mobile food units, the license holder or his/her agent has not reported an accident to the code enforcement/health officer within twenty-four (24) hours of the time the accident occurred, if such accident resulted in damage to the fire suppression system, water system, waste retention tank, food service equipment, or any facility or equipment which may result in the contamination of the food being carried.
- (2) Prior to revocation, written notice shall be given to the license holder or person in charge. Such notice shall set forth:
 - (a) The grounds upon which the city will seek revocation of the license, including any specific violations of this chapter or of federal or state law upon which the city will rely in seeking revocation of the license.
 - (b) That a hearing will be held before the municipal court.
 - (c) The date, time and place of such hearing.
 - (d) That the license holder may appear in person and/or be represented by counsel, may present testimony, and may cross-examine all witnesses.
 - (3) Such hearing shall be held in accordance with this chapter. If the license holder fails to appear at the hearing at the time, place, and date specified, the city shall present sufficient evidence to establish a prima facie case showing that an act or acts have been committed which constitute ground(s) for revocation of a license.
 - (4) After completion of the hearing, the court shall make written findings as to whether or not grounds exist for revocation of the license. If the court finds that grounds do exist for revocation of the license, he/she shall revoke such. If the license holder appears at the hearing, a copy of the court's findings shall be given to that person. If the license holder does not appear at the hearing, a copy of the court's findings shall be sent by certified mail, return receipt requested, to the license holder. If the address of the license holder is unknown, or if such findings are returned undelivered, such findings shall be served on the person in charge of the food establishment or mobile food unit. Upon service of a written notice that the license has been revoked as provided herein, all food operations permitted by the license shall cease immediately. Any person, firm, or food establishment proven to have failed to immediately cease all food service operations upon an order from the city shall be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.
 - (5) Whenever a license is revoked, it shall be physically removed from the premises or mobile food unit by the code enforcement/health officer.
 - (6) In the event a license is revoked, the city shall not be liable to the license holder for any refund of any part of the license fee. Reinstatement of a license which has been revoked shall require application and payment of a license fee as if it were an initial application.

(Ord. No. 1559 , § 1, 5-14-18)

Sec. 11-47. Penalties.

- (1) All provisions of this chapter shall be applicable to all food establishments unless otherwise required by law.
- (2) No food establishment shall be operated within the city unless it conforms with the provisions of this chapter.
- (3) Any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding two thousand dollars (\$2,000.00); provided, however, that no penalty shall be greater than the penalty provided for the same or a similar offense under the laws of

the State of Texas. However, nothing in this article shall be construed as requiring the code enforcement/health officer to report minor violations of this chapter for prosecution whenever the code enforcement/health officer believes the public interest will be adequately served in the circumstances by a warning.

A license holder shall ensure that the food establishment or mobile food unit is in full compliance with this chapter at all times.

The person in charge shall ensure that the food establishment is operated in full compliance with this chapter and that all food is stored, prepared, displayed and served in accordance with the provisions of this chapter.

(Ord. No. 1559 , § 1, 5-14-18)