

List of differences between City of Baytown and TFER/FDA Codes

City of Baytown Ordinance Reference	Verbiage	Texas Food Establishment Rules Reference	Verbiage	Food and Drug Administration 2017 Food Code Reference	Verbiage
Sec. 42-131	Department means the health department of the city.	§228.2.10	Department--The Texas Department of State Health Services.		
Sec. 42-131	Food establishment or food service establishment means an operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as a food service establishment; retail food store; daycare, satellite or catered feeding location; catering operation; market; remote catered operations; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders; restaurant take-out orders; or where consumption is on or off the premises; and regardless of whether there is a charge for the food. The term does not include a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; bed and breakfast limited facility; or a private home.	§228.2.14	<p>Food establishment—</p> <p>(A)A food establishment is an operation that:</p> <p>(i)stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and</p> <p>(ii)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.</p> <p>(B)Food establishment includes:</p> <p>(i)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</p> <p>(ii)an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.</p> <p>(C)Food establishment does not include:</p> <p>(i)an establishment that offers only prepackaged foods that are not TCS foods;</p> <p>(ii)produce stand that only offers whole, uncut fresh fruits and vegetables;</p> <p>(iii)a food processing plant, including one that is located on the premises of a food establishment;</p> <p>(iv)a cottage food production operation;</p> <p>(v)a bed and breakfast limited as defined in this section; or</p> <p>(vi)a private home that receives catered or home-delivered food.</p>		
Sec. 42-131	Livestock means cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, and domesticated birds or any such animals offered for human consumption. Livestock are amenable to inspection.	§228.2.18	Livestock--Cattle, bison, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, or domesticated game birds.		

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Sec. 42-131	Mobile food unit shall mean a food service establishment that is a vehicle-mounted, self-propelled unit or an enclosed trailer used for the preparation, sale, or donation of onsite prepared food and is capable of being readily moveable.	§228.2.19	Mobile food unit (MFU)--A vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. An MFU must completely retain its mobility at all times. An MFU does not include a stand or a booth. A roadside food vendor is classified as an MFU.		
Sec. 42-131	Plumbing code means the plumbing code adopted in section 18-461 and all amendments thereto contained in section 18-462.	§228.2.21	Plumbing Code--The International Plumbing Code, as amended, including appendices C, E, F, and G, published by the International Code Council as amended by 16 TAC §70.101 (relating to Amendments to Mandatory Building Code), the Uniform Plumbing Code, as amended, including appendices required by the regulatory authority, as published by the International Association of Plumbing and Mechanical Officials as referenced in Occupations Code, Title 8, Chapter 1301, §255 (relating to Adoption of Plumbing Codes), or a Plumbing Code adopted by a local regulatory authority, whichever is more stringent.		
Sec. 42-177(a)-(c)	<p>(a) The owner or operator of an establishment which handles open food and which has seven or more food handlers on duty at any time shall make certain that at least one certified food manager is on duty during all hours of operation. This manager shall have completed a food service manager's certification course from any accredited institution or firm of his choice as approved by the regulatory authority.</p> <p>(b) The owner or operator of an establishment which handles open food and which has six or less food handlers on duty at any time shall not be required to have a certified manager on duty during all hours of operation but are required to have at least one certified food manager employed per establishment. In the event when the certified food manager is not on duty all of the food handlers on duty shall have completed a food handlers course from any accredited institution or firm as approved by the regulatory authority.</p> <p>(c) Establishments that have fluctuations in employee staffing such as retail grocery stores and convenience stores with fewer than seven food handlers shall not be required to have a certified food manager on duty during all hours of operations but are required to have at least one certified food manager employed per establishment.</p>	§228.31(b)	Except as specified in subsection (c) of this section, a certified food protection manager shall be present at the food establishment during all hours of operation as required in Food Code, §2-101.11 and §2-102.12.		

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Sec. 42-141	<p>(a) All food service establishments, required to be permitted, pursuant to this article must have at least one approved restroom facility for employees. All food service establishments where both sexes are employed must have at least two approved restroom facilities, except where there are five or fewer employees on any one shift.</p> <p>(b) All food service establishments with a dining area must have at least two approved restroom facilities available for use by the public, one for each sex. Restrooms for public use shall not be located in the food preparation, food storage, or ware washing areas. The number of fixtures shall comply with the applicable provisions of the plumbing code.</p> <p>(c) It shall be an exception to subsections (a) and (b) of this section if the food service establishment is an approved mobile food service establishment that handles only prepackaged, non-potentially hazardous foods.</p>			6-402.11	Convenience and Accessibility. - Toilet rooms shall be conveniently located and accessible to EMPLOYEES during all hours of operation.
Sec. 42-147(b)	Lavatory supplies. Blow dryers are not allowed in food preparation areas.			6-301.12	Hand Drying Provision. Each HANDWASHING SINK or group of adjacent HANDWASHING SINKS shall be provided with: (C) A heated-air hand drying device; Pf or (D) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures. Pf
Sec 42-151(a)	<p>Cottage food means and includes the following foods if (i) the foods are produced out of the seller's individual home satisfying all state and local laws and regulations applicable to cottage food production operations and (ii) do not require refrigeration:</p> <p>(1) A baked good that is not a potentially hazardous food;</p> <p>...</p> <p>(13) Pickles;</p> <p>...</p> <p>(16) A dried herb or dried herb mix.</p>	§228.2.9	<p>(9) Cottage food production operation--An individual, operating out of the individual's home, who:</p> <p>(A) produces at the individual's home:</p> <p>(i) a baked good that is not a time and temperature control for safety food (TCS food), as defined in §229.661(b)(13) of this title (relating to Cottage Food Production Operations);</p> <p>...</p> <p>(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;</p> <p>...</p> <p>(xvi) a dried herb or dried-herb mix;</p> <p>(xvii) plant-based acidified canned goods;</p> <p>(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;</p> <p>(xix) frozen raw and uncut fruit or vegetables; or</p> <p>(xx) any other food that is not a TCS food, as defined in §229.661(b)(13) of this title.</p>		

## Chapter 42 HEALTH AND SANITATION<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 42-1. Donation collection bins.

- (a) *Definitions.* The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

*Director* means the city's director of health.

*Donation collection bin* means a box, bin, container, trailer, accessory structure or similar facility, which is:

- (1) located outside of an enclosed building;
- (2) used or intended to be used for the collection of donated materials, including household goods and clothing, and not used exclusively for the collection of recyclables such as paper or plastic; and

not manned with personnel to accept donations when delivered during business hours.

*Operator* means any person who owns, operates or is otherwise in control of a donation collection bin located in the city.

- (b) *Prohibition.*

- (1) No person shall place, operate or maintain a donation collection bin in the city on or after October 4, 2009.
- (2) No person shall allow the placement of a donation collection bin on property owned or leased by him after October 4, 2009.

- (c) *Notice.* If a donation collection bin is within the city limits on or after October 4, 2009, the director shall send notice by first class mail to the last known address of the owner of the property as recorded in the appraisal records of the appraisal district in which the property is located and, if conspicuously noted on the donation collection bin, to the operator to the address noted on the donation collection bin. A notice shall also be posted on the donation collection bin. A notice which the United States Postal Service returns as refused or unclaimed shall not affect the validity of the notice. Such notice shall be sufficient if it generally describes the location of the donation collection bin, gives notice that the donation collection bins are prohibited within the corporate limits of the city, advises that the donation collection bin must be removed within 30 days after the date of such notice, and specifies that failure to timely remove the donation collection bin will result in removal by the city and the assessment of a charge against the operator. Notwithstanding the above, if prompt abatement is a public necessity, this subsection and the notice procedures contained in this subsection shall not apply.

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<sup>1</sup>Charter reference(s)—Creation of health department, § 22.

Cross reference(s)—Animals, ch. 14; rabies control authority, § 14-2; rabies control, § 14-66 et seq.; buildings and building regulations, ch. 18; environment, ch. 34; manufactured homes, mobile homes and parks, ch. 58; solid waste, ch. 86; utilities, ch. 98; floods, ch. 110; sewer and water line extensions, ch. 114.

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- (d) *Abatement.* If after the 30 days specified in the notice elapses and a donation collection bin remains within the city limits, the director without further notice may remove or cause to have removed the donation collection bin and its contents and properly dispose of them as solid waste.
  - (e) *Costs.* If a donation collection bin is removed by the city, the operator will be charged the actual costs of such removal plus an administrative charge of \$100.00 per donation collection bin.
  - (f) *Penalties.* Any person who violates any section of this section shall, upon conviction, be punished as provided in section 1-14. Violations of this section are treated as strict liability offenses. There is no need to prove that the person had intent to violate the section.
  - (g) *Enforcement.* The director shall enforce the provisions of this chapter and is authorized to promulgate such rules and regulations necessary for the implementation and administration of this section.

(Ord. No. 11,192, § 2, 9-24-09)

**Secs. 42-2—42-25. Reserved.**

## **ARTICLE II. PUBLIC HEALTH HAZARDS**

### **DIVISION 1. GENERALLY**

#### **Sec. 42-26. Definitions.**

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

*Approved solid waste site* includes a solid waste site permitted by the state natural resources conservation commission or the state department of health or a solid waste site licensed by a county.

*Brush* includes all trees and shrubbery over four feet in height that are not cultivated or cared for by persons owning or controlling the premises.

*Private sewer line* means the segment of the sanitary sewer system located in whole or in part on private property that connects a structure to the city's main line.

*Rubbish* includes all refuse, rejected tin cans, old vessels of all sorts, useless articles, abandoned pipe, mounds of dirt, discarded clothing, concrete blocks, bricks, textiles of all sorts and in general all litter and all other things usually included within the meaning of the other terms used in this article that are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the premises within the general locality where such are situated and the term also includes any species of ragweed or other vegetable growth that might or may tend to be unhealthy to individuals residing within the general locality where such is situated.

*Weeds* includes all rank and uncultivated vegetable growth or matter that has grown more than nine inches in height or that, regardless of height, is liable to become an unwholesome or decaying mass or a breeding place for flies, mosquitoes or other vermin.

(Code 1967, § 15-1; Ord. No. 4378, § 1, 2-13-86; Ord. No. 6861, § 1, 11-16-93; Ord. No. 10,542, § 2, 2-8-07)

Cross reference(s)—Definitions generally, § 1-2.

#### **Sec. 42-27. Administration and enforcement.**

The fire chief, police chief and the directors of inspection, health and planning and community development are authorized to enforce this article and to make all necessary inspections, to issue citations, to give notice, to file applicable charges and to otherwise cooperate in the enforcement of this article.

(Code 1967, § 15-2; Ord. No. 4378, § 1, 2-13-86; Ord. No. 7717, § 3, 6-13-96)

Cross reference(s)—Administration, ch. 2.

#### **Sec. 42-28. Penalty for violation.**

Any person who shall violate this article shall, upon conviction, be punished as provided in section 1-14.

(Code 1967, § 15-3; Ord. No. 4378, § 1, 2-13-86; Ord. No. 4912, § 2, 1-28-88)

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**Sec. 42-29. Maintaining conditions for transmission of human diseases.**

An owner, occupant or the person in charge of a premises commits an offense if he intentionally or knowingly allows or permits an object, place or condition to remain or exist that constitutes a possible and probable medium of transmission of disease to or between human beings.

(Code 1967, § 15-10; Ord. No. 4378, § 1, 2-13-86)

**Sec. 42-30. Presumption of offense.**

In any prosecution authorized by this article, it shall be presumed that the object, place or condition constitutes a possible and probable medium of transmission of disease to or between human beings if:

- (1) It is a breeding place for or infested with flies, mosquitoes or other vermin;
- (2) Foul, decaying or putrescent substance or matter is present in an obviously offensive or objectionable manner;
- (3) Manure is present in an obviously offensive or objectionable manner;
- (4) Wastewater is present in an obviously offensive or objectionable manner; or
- (5) Weed growth, as defined in section 42-26, is present.

(Code 1967, § 15-11; Ord. No. 4378, § 1, 2-13-86)

**Sec. 42-31. Presumption of knowledge.**

In any prosecution authorized by this article, the actor's intent or knowledge shall be presumed if actual notice is shown or seven days have elapsed after notice was mailed by regular U.S. mail to the owner or occupant of the premises.

(Code 1967, § 15-12; Ord. No. 4378, § 1, 2-13-86; Ord. No. 8738, § 1, 10-28-99)

**Secs. 42-32—42-60. Reserved.**

## *DIVISION 2. PUBLIC HEALTH NUISANCES<sup>2</sup>*

### **Sec. 42-61. Conditions creating nuisance.**

- (a) *Applicability.* Nuisances as described in this division are prohibited within the corporate limits of the city and within 5,000 feet therefrom, regardless if the same pertain to residential or non-residential properties.
- (b) *Generally.* Whenever any condition described in this division or other weeds, brush, rubbish and all other objectionable and unsanitary matter of whatever nature shall exist, covering or partly covering the surface of any lot or parcel of real estate, or where there are holes in the ground that could fill with and hold stagnant water or if from any other cause such real estate shall be in a condition to cause disease or to produce, harbor or spread disease or to render the surrounding atmosphere unhealthy, unwholesome or obnoxious, such conditions on the real estate are declared public nuisances, and prompt abatement is declared to be public necessity. Any such nuisance shall be removed from such premises or otherwise disposed of.
- (c) *Certain minimum standards.*
  - (1) All property shall be kept free from organic and inorganic material that might become a health, accident or fire hazard. All improved and unimproved property, shall be kept reasonably clean at all times. Containers with covers shall be provided for the temporary storage of garbage and rubbish.
  - (2) Materials of an inflammable nature shall be safely stored as provided in the fire prevention code or removed from the premises.
  - (3) All property shall be kept cut or mowed to prevent weeds, brush or other plant growth from becoming a health or fire hazard. Weeds, brush and other plant growth shall be cut or mowed on all exterior property areas whenever such weeds, brush or other plant growth are allowed to grow to an extent determined to be a fire or health hazard. All sidewalks, driveways and entrances used for ingress and egress shall be free from weeds, brush, overhanging or protruding limbs of trees and other plant growth. Any limbs of trees that have become rotted or decayed to the point of being dangerous to persons shall be removed.
  - (4) Sewage must be discharged into a public sewer system, except as provided in section 98-90. Discharge of inadequately treated sewage shall not be permitted upon the surface of the ground or into natural or artificial surface drainageways.
  - (5) No privy or dry closet shall be constructed or maintained in the city without the written approval of the city's director of health.
  - (6) All properties shall be kept reasonably free from sources of insect, vermin and rodent breeding, harborage and infestation. Where insect, rodent or vermin breeding areas, harborage or infestation exist, such areas, harborage or infestation shall be eliminated.

(Code 1967, § 15-20; Ord. No. 4378, § 1, 2-13-86; Ord. No. 11,803, § 16, 11-21-11)

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<sup>2</sup>State law reference(s)—Nuisances, V.T.C.A., Health and Safety Code § 342.001 et seq.

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## Sec. 42-62. Maintenance of premises.

- (a) It shall be unlawful for any person owning, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits to permit or allow:
- (1) Any stagnant or unwholesome water, sinks, filth, carrion, weeds, rubbish, brush, refuse, smoke, impure or unwholesome matter of any kind or objectionable, unsightly or unsanitary matter of whatever nature; or
  - (2) Any condition which is declared to be a public nuisance in section 42-61;

to accumulate or remain thereon or to be carried by wind currents to nearby property.

- (b) It shall be unlawful for any business or other commercial venture within the city limits or within 5,000 feet therefrom to permit any condition to exist that would be detrimental to the health and safety of the citizens of the city, including but not limited to smoke, windborne contaminants or runoff.
- (c) It shall be unlawful for the owner or occupant of a structure or property to utilize the premises for the open storage of any icebox, refrigerator, stove, glass, building material, building rubbish or similar items. It shall be the duty and responsibility of every such owner or occupant to keep the premises of such residential property clean and to remove from the premises all such abandoned items.
- (d) It shall be unlawful for any person to sweep, throw, deposit, or dump any garbage, waste, bulky waste, construction debris, rubbish, stagnant water, or dead animals into, upon or along any public or private premises within the city.
- (e) It shall be unlawful for any person owning, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits to permit or allow the open storage of personal property that is visible from the public right-of-way, except for personal property that is placed for:
- (1) Collection in accordance with section 86-66 et seq. of this Code; or
  - (2) Use in construction of a structure for which a valid building permit has been issued.

Personal property covered by tarps or covers will be considered to be openly stored if visible from a public way.

- (f) The following words, terms and phrases, when used in subsection (e) shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Open storage* means the keeping or retaining of personal property for future use outside a structure.

*Personal property* means goods, appliances, equipment, and furnishings, not specifically designed and manufactured for outdoor use, including an icebox, refrigerator, stove, glass, mirror, chair, table, bookcase, clothing, building material, building rubbish, tire, auto part, container of oils, chemical, paint, box, or any item which is not made of material that is resistant to damage or deterioration from exposure to the outside environment.

*Structure* means a solid, complete enclosure that prohibits the introduction and collection of natural precipitation inside the enclosure and on the contents within.

(Code 1967, § 15-21; Ord. No. 4378, § 1, 2-13-86; Ord. No. 7084, § 1, 9-8-94; Ord. No. 7237, § 1, 2-23-95; Ord. No. 9966, § 2, 12-9-04; Ord. No. 11,803, § 17, 11-21-11; Ord. No. 13,315, § 2, 10-13-16; Ord. No. 13,335, § 1, 10-27-16)

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## Sec. 42-63. Maintenance of private sewer lines.

- (a) *Responsibility.* Each property owner shall be responsible for maintenance and repair of his private sewer line. Such maintenance includes, but is not limited to, the following:
- (1) Clearing obstructions from the private sewer line;
  - (2) Repairing a defect in the private sewer line that allows the introduction of extraneous flows or debris into the sanitary sewer system;
  - (3) Repairing a defect in the private sewer line that allows the discharge of sewage on the property; and
  - (4) Keeping a manhole cover in place or a clean out cap tight and in place.
- (b) *Prohibited materials.* From and after February 18, 2007, no concrete, clay, cast iron, asbestos cement, or orangeburg pipe may be used for private sewer lines within the incorporated limits of the city, as such limits may be hereinafter extended. However, concrete, clay, cast iron, asbestos cement, or orangeburg pipes meeting all of the applicable requirements of this Code on February 18, 2007, may continue to be used until such pipe becomes damaged, defective or deteriorated to the extent that it admits earth or surface or subsurface water or permits the escape of effluents. At such time, a private sewer line of such materials may not be repaired but must be entirely replaced with pipes made of PVC (poly-vinyl-chloride) or equivalent material as approved by the chief building official. This subsection supercedes and controls over any contrary provision contained in the plumbing code adopted in section 18-461 and as thereafter amended in section 18-462.
- (c) *Notice to repair.* If a private sewer line becomes damaged, defective or deteriorated to the extent that it admits earth or surface or subsurface water or permits the escape of effluents, the city, when it becomes aware of such condition, shall send notice by certified mail to the last known address of the owner of the property as recorded in the appraisal records of the appraisal district in which the property is located and, if known based upon a search of the city's utility records, to the tenant at the address listed on the city's utility records. A notice which the United States Postal Service returns as "refused" or "unclaimed" shall not affect the validity of the notice; and the notice shall be considered delivered seven days after mailing the same. Such notice shall be sufficient if it generally describes the private sewer line's condition, gives notice that the condition is in violation of this section, and advises that repairs must be made within 365 days after receipt of such notice. Notwithstanding the above, if a private sewer line becomes damaged, defective or deteriorated to the extent that it constitutes a public nuisance, as defined in section 42-61 and prompt abatement is a public necessity, this subsection and the notice procedures contained in this division shall not apply.
- (d) *Manner of repairs or replacements.* Private sewer line maintenance, repairs, and replacement must be made in compliance with all city codes, including but not limited to the city's plumbing code, adopted in section 18-461; and are subject to approval by the chief building official. Permits shall be required for the necessary work; however, permit fees for the plumbing work on the private sewer line shall be waived. Permit fees will be assessed for any work performed on a plumbing system inside a structure.
- (e) *Surcharge.* If repairs to the private sewer line are not completed and approved by the chief building official within the time period specified in subsection (c) of this section:
- (1) The city shall assess a monthly surcharge against the property, which charge shall appear on the utility bill for the address where such private sewer line is located. Such surcharge shall be \$25.00 per month; and
  - (2) A person may not establish utility services after the expiration of the 365-day period specified in subsection (c) of this section for property on which a surcharge is being assessed until the repairs to or

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replacement of the private sewer line required by this section has been made and approved by the chief building official.

- (f) *Priority of payment.* Any utility payment received after the surcharge has been assessed shall first be applied to the surcharge and then in the priority established in section 98-1 of this Code.
- (g) *Remedies.* For nonpayment of utility charges, the city may:
  - (1) Terminate utility services in accordance with sections 98-62 and 98-93 of this Code; and/or
  - (2) File a lien against the property in accordance with section 98-65 of this Code.
- (h) *Reconnection.* If utility service for property on which a surcharge is being assessed has been terminated and thereafter the city determines that:
  - (1) The private sewer line has been repaired satisfactorily; and
  - (2) Either:
    - a. All outstanding utility charges have been paid in full; or
    - b. The customer has agreed in writing to pay:
      - 1. The accrued utility charges, including all surcharges, in accordance with a payment schedule acceptable to the supervisor of the utility billing division; and
      - 2. All current and future utility charges as they become due;

Utility services may be established, subject to sections 98-56, 98-62(j) and 98-94 pertaining to deposits and cutoff and sewer tapping fees, respectively, and the city shall release any associated lien in accordance with subsection 98-65(h).
- (i) *Offense.*
  - (1) A person commits an offense if he intentionally or knowingly:
    - a. Fails or refuses to repair his private sewer line within the period of time prescribed herein; or
    - b. Rents, leases or otherwise allows a person, other than the tenant residing on the property at the expiration of the 365-day period specified in subsection (c) of this section to occupy the property on which a surcharge has been assessed.
  - (2) It shall be an exception to subsection (1)b. above if:
    - a. The required private sewer line repairs or replacement has been completed and approved by the chief building official; or
    - b. No new utility service is established after the expiration of the 365-day period specified in subsection (c) of this section.

(Code 1967, § 15-25; Ord. No. 4912, § 1, 1-28-88; Ord. No. 6948, § 1, 3-10-94; Ord. No. 9546, § 1, 4-10-03; Ord. No. 10,542, § 3, 2-8-07)

Cross reference(s)—Sewer service, § 98-91 et seq.

### **Sec. 42-64. Notice.**

- (a) Whenever conditions described in this division are found to exist, any person authorized to enforce this article pursuant to section 42-27 shall give actual notice to the owner, occupant or person in charge of the offending premises, shall send notice by first class mail to the last known address of the owner, occupant or

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person in charge of the offending premises as recorded in the appraisal district records of the appraisal district in which the property is located; or shall give notice if personal service cannot be obtained:

- (1) By publication at least once;
- (2) By posting the notice on or near the front door of each building on the property to which the violation relates; or
- (3) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates if the property contains no buildings.

A notice which the United States Postal Service returns as "refused" or "unclaimed" shall not affect the validity of the notice and the notice shall be considered delivered. Such notice shall be sufficient if it generally describes the offending premises, gives notice of the objectionable conditions and advises of the time allowed to cure the conditions and the consequences of failure to cure.

- (b) The city in the notice of a violation may inform the owner by regular mail and a posting on the property, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the city without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period and the city has not been informed in writing by the owner of an ownership change, the city without notice may take any action permitted by section 42-65 and assess its expenses as provided by section 42-66.

(Code 1967, § 15-22(a); Ord. No. 4378, § 1, 2-13-86; Ord. No. 6861, § 2, 11-16-93; Ord. No. 7717, § 4, 6-13-96; Ord. No. 8738, § 2, 10-28-99)

State law reference(s)—Notice and abatement of nuisance, V.T.C.A., Health and Safety Code § 342.006.

### **Sec. 42-65. Abatement.**

- (a) Under this division, the condition shall be deemed cured when within seven days after the mailing of the notice described in section 42-64:
  - (1) The offending premises is cleaned up, which clean up may include the filling and draining of areas that are unwholesome, contain stagnant water, or in a condition that may produce disease; and
  - (2) If required in the notice described in section 42-64, a receipt showing proof of proper disposal of waste at a state-approved waste disposal facility has been delivered to the person who sent the notice of the offending condition. The receipt must contain the date, time, amount disposed of, cost of disposal and the name of the approved solid waste site where the objectionable materials were taken.
- (b) An owner, occupant or person in charge of a premises commits an offense if he intentionally or knowingly fails to cure the offending condition in the manner described in subsection (a) of this section.
- (c) In any prosecution authorized by this article, the actor's intent or knowledge shall be presumed if actual notice is shown or seven days have elapsed after notice was mailed by regular U.S. mail to the owner, occupant or person in charge of the premises.

(Code 1967, § 15-22(b)—(d); Ord. No. 4378, § 1, 2-13-86; Ord. No. 6861, § 2, 11-16-93; Ord. No. 7717, § 4, 6-13-96; Ord. No. 8334, § 1, 7-9-98; Ord. No. 8738, § 3, 10-28-99)

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**Sec. 42-66. Removal by city.**

On failure to comply with the notice within seven days, as set out in section 42-64, the city may enter onto such premises to remove and eliminate such offending conditions, in addition to filing any applicable charges. The owner of such premises will be charged the actual costs of such removal and elimination, plus an administrative charge of \$100.00.

(Code 1967, § 15-23; Ord. No. 4378, § 1, 2-13-86; Ord. No. 6352, § 1, 9-24-92; Ord. No. 7717, § 5, 6-13-96; Ord. No. 8738, § 4, 10-28-99)

**Sec. 42-67. Lien on property until charges paid.**

Until all such charges as described in section 42-66 are paid, the property shall be subject to a lien in favor of the city. The lien shall be superior to all other levies except tax liens and liens for street improvement and shall accrue interest at the rate of ten percent per annum.

(Code 1967, § 15-24; Ord. No. 4378, § 1, 2-13-86)

**Secs. 42-68—42-95. Reserved.**

## **ARTICLE III. SMOKING<sup>3</sup>**

### **Sec. 42-96. Definitions.**

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

*Bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

*Business* means a sole proprietorship, partnership, joint venture, corporation, trust or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; governmental entities; and private clubs.

*Electronic cigarette or e-cigarette* means any electronically powered or battery-powered device that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user to simulate the smoking of tobacco, cigarettes, pipes or cigars. This term shall include every version and type of such device whether manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes or under any other product name or description.

*Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

*Employer* means a person, business, partnership, association, corporation, including a municipal corporation, or trust, that employs the services of one or more individual persons.

*Enclosed area* means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

*Health care facility* means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

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<sup>3</sup>Editor's note(s)—Ord. No. 10,485, §§ 1, 2, adopted Nov. 20, 2006, repealed the former Art. III, §§ 42-96—42-106, and enacted a new Art. III as set out herein. The former Art. III pertained to similar subject matter and derived from Code 1967, §§ 17-23(a)—(i); Ord. No. 5328, § 1, adopted Aug. 24, 1989; Ord. No. 5473, § 1, adopted Feb. 22, 1990; Ord. No. 6513, § 1, adopted Jan. 28, 1993; Ord. No. 8518, §§ 2—8, adopted Feb. 25, 1999; Ord. No. 9453, § 1, adopted Oct. 24, 2002; Ord. No. 9882, §§ 1—3, adopted Sept. 23, 2004.

Cross reference(s)—Fire prevention and protection, ch. 38.

State law reference(s)—Smoking, V.T.C.A., Health and Safety Code § 382.111 et seq.; smoking prohibited in certain places, V.T.C.A., Penal Code § 48.01.

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*Liquid nicotine* as used herein shall mean any liquid product composed either in whole or in part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with electronic cigarettes or e-cigarettes.

*Minor* as used herein means a person younger than 18 years of age.

*Open display unit* as used herein shall mean, in the context of the retail sale of electronic cigarettes, e-cigarettes or liquid nicotine, any device, furniture or furnishing within or upon which electronic cigarettes, e-cigarettes or liquid nicotine are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine and other surface.

*Place of employment* means an area under the control of a public or private employer that employees access during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, private offices, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. A private vehicle is not a place of employment unless it is being used in the course of employment.

*Place of worship* means an enclosed area under the operation and control of an organization that qualifies as a religious organization as provided by V.T.C.A., Tax Code § 11.20(c) and that is exempt from ad valorem taxation pursuant to V.T.C.A., Tax Code § 11.20.

*Possess, possessing or possession* means actual care, custody, control or management.

*Private club* means a non-profit association of persons that:

- (1) Is organized for the promotion of some common object;
- (2) Is comprised of members who are passed on and elected by a committee or board made up of members of the club;
- (3) Is composed of members of which at least 50 percent reside in the county in which the premises of the club is located;
- (4) Grants membership to an applicant only after a written application has been filed with the chairman of the membership committee or board and approved by the chairman;
- (5) Owns, leases, or rents a building, or space in a building of such extent and character as is suitable and adequate for the club's members and their guests;
- (6) Provides regular food service adequate for its members and their guests;
- (7) Collects annual membership fees, dues, or other income, excluding proceeds from the disposition of alcoholic beverages but including service charges, which income must be sufficient to defray the annual rental of its leased or rented premises or, if the premises are owned by the club, sufficient to meet the taxes, insurance, and repairs and the interest on any mortgage on the premises;
- (8) Is managed by a board of directors, executive committee, or similar body chosen by the members at their annual meeting; and
- (9) Does not compensate, directly or indirectly, any member or any officer, agent, or employee of the club, from the disposition of alcoholic beverages to members of the club and their guests, other than charges for the service of the beverages.

*Public place* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A

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private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility. A private vehicle is not a "public place."

*Restaurant* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. A store shall be deemed as utilized primarily for the sale of tobacco products and accessories if at least 75 percent of the gross revenue of the store derives from tobacco products and tobacco accessories.

*Self-service merchandising* means, in the context of the retail sale of electronic cigarettes, e-cigarettes or liquid nicotine, the open display, including, without limitation, the use of an open display unit of electronic cigarettes, e-cigarettes or liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention of assistance of the retailer or the retailer's owner, employee or agent.

*Service line* means a line in an enclosed area in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

*Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

*Smoking* means lighting, inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

*Sports arena* means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

(Ord. No. 10,485, § 2, 11-20-06, Ord. No. 10,550, § 1, 2-22-07; Ord. No. 12,519, § 2, 4-10-14)

Cross reference(s)—Definitions generally, § 1-2.

### **Sec. 42-97. Application of article to city-owned facilities.**

All enclosed areas in city owned facilities, including buildings and vehicles owned, leased, or operated by the City of Baytown, shall be subject to the provisions of this article.

(Ord. No. 10,485, § 2, 11-20-06)

Cross reference(s)—Administration, ch. 2.

### **Sec. 42-98. Prohibition of smoking in enclosed public places.**

Smoking shall be prohibited in all enclosed areas in public places within the city, including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums.
- (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.

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- (3) Bars.
  - (4) Bingo facilities.
  - (5) Convention facilities.
  - (6) Educational facilities, both public and private.
  - (7) Elevators.
  - (8) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
  - (9) Health care facilities.
  - (10) Hotel and motel lobbies.
  - (11) Licensed child care and adult day care facilities.
  - (12) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
  - (13) Polling places.
  - (14) Private clubs when being used for a function to which the general public is invited.
  - (15) Public transportation facilities, including buses and taxicabs, under the authority of the City of Baytown, and ticket, boarding, and waiting areas of public transit depots.
  - (16) Restaurants.
  - (17) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
  - (18) Retail stores.
  - (19) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.
  - (20) Service lines.
  - (21) Shopping malls.
  - (22) Sports arenas, including enclosed places in outdoor arenas.

(Ord. No. 10,485, § 2, 11-20-06)

### **Sec. 42-99. Prohibition of smoking in places of employment.**

- (a) Smoking shall be prohibited in all enclosed areas within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- (b) This prohibition on smoking shall be communicated within three weeks of adoption to all employees and posted conspicuously in all workplaces under the employer's jurisdiction.

(Ord. No. 10,485, § 2, 11-20-06)

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**Sec. 42-100. Prohibition of smoking in outdoor arenas and stadiums.**

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheatres.

(Ord. No. 10,485, § 2, 11-20-06)

**Sec. 42-101. Reasonable distance.**

Smoking is prohibited within a reasonable distance of 15 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

(Ord. No. 10,485, § 2, 11-20-06)

**Sec. 42-102. Where smoking not regulated.**

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 42-98 and 42-99:

- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility.
- (2) Private vehicles, except when being used in the course of employment.
- (3) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (4) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (5) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (6) Private clubs that have no employees, except when being used for a function to which the general public is invited.
- (7) Outdoor areas of places of employment except those covered by the provisions of sections 42-101, 42-102.
- (8) Areas designated within a hospital psychiatric unit.
- (9) Outdoor areas of places of employment except those covered by the provisions of sections 42-100, 42-101 and 42-103;

(Ord. No. 10,485, § 2, 11-20-06; Ord. No. 10,550, § 2, 2-22-07)

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### **Sec. 42-103. Declaration of establishment as nonsmoking.**

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking area. Smoking shall be prohibited in any place in which a sign conforming to the requirements of section 42-104 is posted.

(Ord. No. 10,485, § 2, 11-20-06)

### **Sec. 42-104. Posting of signs.**

- (a) Except as provided for in subsections (e) and (f) below, signs containing the words "No Smoking" and/or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this article, by the owner, operator, manager, or other person in control of that place.
- (b) Except as provided for in subsections (e) and (f), every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited inside and within 15 feet of the entrance.
- (c) All signs required under this section must be at least 8.5 inches × 11 inches and shall include the information required in this section and must be written in contrasting colors with block letters at least one inch in height.
- (d) All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area, except those which are being offered for sale, those that are included as part of original equipment on a motor vehicle or are being stored for use in places where smoking is permitted.
- (e) An organization that qualifies as a religious organization as provided by V.T.C.A., Tax Code § 11.20(c) is not required to post signs at its place of worship as required by this section if the organization has adopted a nonsmoking policy consistent with this article.
- (f) Signs shall not be required to be placed on vehicles; however, at least one sign as required in subsection (a) of this section must be posted conspicuously inside vehicles for hire and vehicles used for public transportation.

(Ord. No. 10,485, § 2, 11-20-06; Ord. No. 10,550, § 3, 2-22-07)

### **Sec. 42-105. Nonretaliation; nonwaiver of rights.**

- (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article.
- (b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(Ord. No. 10,485, § 2, 11-20-06)

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### **Sec. 42-106. Enforcement.**

- (a) This article shall be enforced by the director of health or an authorized designee.
- (b) Any citizen who desires to register a complaint under this article may initiate enforcement with the department of health.
- (c) The health department, fire department, or their designees may, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article, or they may inspect at such other times as they may determine at their discretion.
- (d) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.
- (e) Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to require the city to enforce this article.
- (f) In addition to the remedies provided by the provisions of this section, the city manager or the director of health may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.

(Ord. No. 10,485, § 2, 11-20-06)

### **Sec. 42-107. Violations and penalties.**

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of an infraction, punishable by a fine as provided in section 1-14 of this Code.
- (b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by:
  - (1) A fine not exceeding \$100.00 for a first violation.
  - (2) A fine not exceeding \$200.00 for a second violation within a period of 12 consecutive months.
  - (3) A fine not exceeding \$500.00 for each additional violation within a period of 12 consecutive months.
- (c) Violation of this article is hereby declared to be a public nuisance, which may be abated by the director of health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.

(Ord. No. 10,485, § 2, 11-20-06)

### **Sec. 42-108. Public education.**

The director of health shall engage in a continuing program to explain and clarify the purposes and requirements of this article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this article.

(Ord. No. 10,485, § 2, 11-20-06)

### **Sec. 42-109. Other applicable laws.**

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

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(Ord. No. 10,485, § 2, 11-20-06)

**Sec. 42-110. Liberal construction.**

This article shall be liberally construed so as to further its purposes.

(Ord. No. 10,485, § 2, 11-20-06; Ord. No. 10,550, § 1, 2-22-07)

**Sec. 42-111. Possession of electronic cigarettes, e-cigarettes or liquid nicotine by a minor.**

- (a) *Offenses.* A minor commits an offense if the minor:
- (1) Possesses, purchases, consumes or accepts an electronic cigarette, e-cigarette, or liquid nicotine; or
  - (2) Falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive an electronic cigarette, e-cigarette, or liquid nicotine.
- (b) *Defenses.*
- (1) It shall be a defense to prosecution of a violation of this section if the minor possessed the electronic cigarette, e-cigarette or liquid nicotine in the presence of:
    - a. An employer of the minor, if possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee's duties as an employee; or
    - b. An adult parent, a guardian, or a spouse of the minor.
  - (2) It shall be a defense to prosecution of a violation of this section if the minor was participating in an inspection or test of compliance in conjunction with local law enforcement.
- (c) *Penalties.* An offense under this section is punishable by a fine not to exceed \$250.00. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense.
- (d) *Enforcement.* This section shall be enforced by the chief of police.

(Ord. No. 12,519, § 3, 4-10-14)

**Sec. 42-112. Sale of electronic cigarettes, e-cigarettes, or liquid nicotine to a minor.**

- (a) *Offense.* A person commits an offense if the person, with criminal negligence:
- (1) Sells, gives, or causes to be sold or given an electronic cigarette, e-cigarette, or liquid nicotine to a minor; or
  - (2) Sells, gives, or causes to be sold or given an electronic cigarette, e-cigarette, or liquid nicotine to another person who intends to deliver it to someone who is a minor.
- (b) *Responsibility.* If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-cigarettes, or liquid nicotine are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.
- (c) *Defense.* It is a defense to prosecution under subsection (a)(1) that the person to whom the electronic cigarette, e-cigarette, or liquid nicotine was sold or given presented to the defendant apparently valid proof of identification.

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- (d) *Proof of identification.* A proof of identification satisfies the requirements of subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.
- (e) *Penalties.*
- (1) If an offense under this section occurs in connection with a sale of a tobacco product or e-cigarette to a minor by a person who owns, manages, operates, or otherwise controls a public place or place of employment in violation of this section, that person shall be guilty of an offense, punishable by:
- A fine not exceeding \$100.00 for a first violation;
  - A fine not exceeding \$200.00 for a second violation within a period of 12 consecutive months; or
  - A fine not exceeding \$500.00 for each additional violation within a period of 12 consecutive months.
- Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense.
- (2) A person who violates this section not in connection with ownership, management, operation, or other control of a public place or place of employment shall be guilty of an offense, punishable by a fine as provided in section 1-14 of this Code.
- (f) *Public nuisance.* Violation of this section is hereby declared to be a public nuisance, which may be abated by the director of health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.
- (g) *Enforcement.* This section shall be enforced by the chief of police.
- (Ord. No. 12,519, § 3, 4-10-14)

### **Sec. 42-113. Vendor assisted sales required; self-service merchandising prohibited.**

- (a) *Offenses.* Except as provided by subsection (b), a retailer or other person may not:
- Offer electronic cigarettes, e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the electronic cigarettes, e-cigarettes or liquid nicotine;
  - Offer for sale or display for sale electronic cigarettes, e-cigarettes or liquid nicotine by means of self-service merchandising; or
  - Install or maintain an open display unit containing electronic cigarettes, e-cigarettes or liquid nicotine.
- (b) *Defenses.* It is a defense to prosecution under subsection (a) if:
- A facility or business is not open to minors at any time;
  - A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
  - An open display unit is located in an area that is inaccessible to customers.
- (c) *Public nuisance.* Violation of this section is hereby declared to be a public nuisance, which may be abated by the director of health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.
- (d) *Enforcement.* This section shall be enforced by the chief of police.

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(Ord. No. 12,519, § 3, 4-10-14)

**Secs. 42-114—42-130. Reserved.**

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(Supp. No. 78, Update 1)

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## **ARTICLE IV. FOOD AND FOOD SERVICE ESTABLISHMENTS<sup>4</sup>**

### **DIVISION 1. GENERALLY<sup>5</sup>**

#### **Sec. 42-131. Definitions.**

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

*Abattoir or slaughterhouse* means any establishment within the city in which cattle, sheep, swine, goats or any such animals are slaughtered for meat for human consumption. The term includes stockyards and all other operations and facilities necessary, useful or incidental to such abattoir or slaughterhouse.

*Adulterated food* means a food containing any poisonous or deleterious substance as specified in V.T.C.A., Health and Safety Code § 431.081.

*Approved* means acceptable to the regulatory authority based on his determination of conformity with principles, practices, and generally recognized standards that protect public health.

*Base of operation* means an operating base location to which a mobile food establishment or transportation vehicle returns as needed for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

*Caterer establishment or operation* means a food service establishment where food is completely or partially prepared for delivery to a single customer where it is meant to be served and consumed.

*Commissary* means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored. It also includes a central preparation facility that mobile food units report to for supplies and for cleaning and servicing operations.

*Daycare or childcare* means any facility licensed by the Texas Department of Protective and Regulatory Services to receive 13 or more children for childcare that prepares or serves food for on-site consumption.

*Department* means the health department of the city.

*Failing score* means when an establishment receives an accumulation of violations resulting in 30 demerits or more or a score of 70 or less.

*Farmers market* means a designated location at which at least 60 percent of the farmers' market vendors are producers and distribute and sell produce directly to consumers of such produce.

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<sup>4</sup>Cross reference(s)—Businesses, ch. 20.

State law reference(s)—Food and food establishments, V.T.C.A., Health and Safety Code § 431.001 et seq.

<sup>5</sup>Editor's note(s)—Ord. No. 9380, §§ 1, 2, adopted July 11, 2002, repealed the former Div. 1, §§ 42-131—42-146, and enacted a new Div. 1 as set out herein. The former Div. 1 pertained to similar subject matter and derived from Code 1967, §§ 13-1—13-11, 13-11.1, 13-22—13-25; Ord. No. 4640, § 1, adopted Feb. 12, 1987; Ord. No. 5805, § 1, adopted March. 14, 1991; Ord. No. 6723, § 1, adopted Aug. 12, 1993; and Ord. No. 7990, § 1, adopted June 12, 1997.

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*Farmers' market vendor.* Any person who offers or sells produce, cottage foods, pure honey, or arts and crafts at a farmers' market.

*Food establishment or food service establishment* means an operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as a food service establishment; retail food store; daycare, satellite or catered feeding location; catering operation; market; remote catered operations; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders; restaurant take-out orders; or where consumption is on or off the premises; and regardless of whether there is a charge for the food. The term does not include a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; bed and breakfast limited facility; or a private home.

*Food processing plant* means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food establishment as previously defined.

*Fresh* means recently made, produced or harvested.

*Garbage* means every accumulation of animal, vegetable and other waste matter associated with the preparation, handling or consumption of food or food products and waste wrappers or containers.

*Health authority* means the legally appointed health officer or director of the health department.

*High-risk food establishment* means an operation that prepares and sells/serves potentially hazardous food, such as, but not limited to, restaurants, cafeterias, fast-food restaurants, hospitals, schools, daycares, and grocery stores that pre-package potentially hazardous food on site.

*Livestock* means cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, and domesticated birds or any such animals offered for human consumption. Livestock are amenable to inspection.

*Low-risk food establishment* means an operation that sells/serves only prepackaged non-potentially hazardous food or whole uncut produce, such as, but not limited to, convenience stores, bars, and establishments that serve only prepackaged non-potentially hazardous food.

*Meat* means the flesh of animals used as food, including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and exotic animals as specified in the TFER.

*Medium-risk food establishment* means an operation that sells/serves prepackaged potentially hazardous food and/or prepares limited types of food, such as, but not limited to, grocery stores, convenience stores that heat and serve deli type food (hot dogs, sausage, etc.) and/or package ice.

*Mobile food unit* shall mean a food service establishment that is a vehicle-mounted, self-propelled unit or an enclosed trailer used for the preparation, sale, or donation of onsite prepared food and is capable of being readily moveable.

*New establishment* means any food service establishment which is newly erected or constructed at a given location or it may be such an establishment newly organized or started at an old location, which will also include establishments remodeled from other construction. Any change in ownership will be considered a new establishment.

*Permit* means the document issued by the regulatory authority that authorizes a person to operate a food service establishment.

*Person in charge* means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.

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*Personal items* mean articles belonging to employees.

*Plumbing code* means the plumbing code adopted in section 18-461 and all amendments thereto contained in section 18-462.

*Potable water* means water that is fit for drinking.

*Poultry* means any domesticated bird whether live or dead as defined in V.T.C.A., Health and Safety Code § 433.003. The term also includes ratites, which are amenable to inspection as poultry.

*Refuse* means all putrescible and nonputrescible solid and semisolid wastes, including garbage, rubbish and ashes.

*Regulatory authority* means the director of health.

*Rendering plant* means any establishment at which any animal or part thereof or the proteins and fats from animals, poultry, fish or any other waste organic material, in whole or in part, is processed for commercial use. The term "rendering plant" includes related industry or other operations and facilities necessary, useful or incidental to such rendering plant.

*Restricted operations mobile food unit* shall mean a mobile food unit that serves no food other than:

- (1) Food that was prepared and packaged in individual servings at an approved commissary and transported and stored under conditions meeting the requirements of this article;
- (2) Beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment;
- (3) Potentially hazardous beverages such as individual servings of milk, milk products and coffee creams that have been packaged at a pasteurizing plant; and
- (4) Prepackaged individual serving frozen dessert items including, without limitation, frozen ice and ice cream novelty bars, cones and serving cups that have been packaged at a pasteurizing plant or other approved facility.

*Rubbish* means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, crockery, plastics and similar materials.

*Sound condition* means free from defect, decay or damage; healthy.

*Temporary event* means a single event or celebration, being of short duration lasting no more than 14 days.

*TFER* means the "Texas Food Establishments Rules," 25 Texas Administrative Code ch. 228.

*Wholesome* means in sound condition, clean, free from adulteration and otherwise suitable for use as human food.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 13,028, § 1, 11-16-15; Ord. No. 13,260, § 1, 8-25-16; Ord. No. 15,018, § 1, 1-27-22)

Cross reference(s)—Definitions generally, § 1-2.

## **Sec. 42-132. Purpose.**

The function and purpose of this article is to protect and safeguard public health, ensure that food is safe, unadulterated, and honestly presented when offered to the consumer.

(Ord. No. 9380, § 2, 7-11-02)

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**Sec. 42-133. Adoption of state rules.**

- (a) The following statutes, as they now exist and as hereinafter amended, are adopted and incorporated into this article as if they were set forth at length herein:
  - (1) Chapters 431—438 of V.T.C.A., Health and Safety Code, and
  - (2) Chapter 341, V.T.C.A., Health and Safety Code.
- (b) The following regulations adopted by the Texas Board of Health, as they now exist and as hereinafter amended, are adopted and incorporated into this article as if they were set forth at length herein:
  - (1) TFER.
  - (2) Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing, or Holding Human Food, 25 Texas Administrative Code §§ 229.211, et seq.
  - (3) Seafood Safety, 25 Texas Administrative Code §§ 229.121-129.
  - (4) Regulation of Food, Drug, Device, and Cosmetic Salvage Establishment and Brokers, 25 Texas Administrative Code §§ 229.191-208.
- (c) The regulatory authority will assure that a copy of the laws and rules adopted in this section are on file in the office of the city clerk.
- (d) A food establishment's owner, manager or operator commits an offense if an employee, owner, manager, or operator of the food establishment violates a rule adopted pursuant to subsections (a) and (b). An offense shall be punishable as provided in section 1-14.
- (e) If there is a conflict between a rule adopted in this section and any other section of this article, the more restrictive provision shall apply.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-134. Exceptions and affirmative defenses.**

The requirements for the operation of all food service establishments shall be the same, except as noted within this article. Within this article, the health authority may waive certain requirements at his discretion.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-135. Food from outside city.**

Food from food service establishments outside the jurisdiction of the regulatory authority may be sold within the city if such food service establishment conforms to the provisions of this article or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the regulatory authority may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-136. Plan approval.**

- (a) When a food service establishment is newly constructed, or extensively remodeled, or when a food service establishment has a change of ownership, or when an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, change of

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ownership, or conversion shall be submitted to the health department for review and approval before a food service establishment permit may be issued. These plans are in addition to any plans required to be submitted elsewhere in the code.

- (b) The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, types of construction material in work areas and the type and model of proposed fixed equipment to be installed. No food service establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the regulatory authority. Food service establishment owners/operators shall ensure during plans review, construction, and operation that their facilities comply with all applicable ordinances and regulations of the city, including, but not limited to, the city's adopted and amended plumbing, mechanical, electrical, building, fire prevention codes and its zoning and subdivision ordinances.
- (c) The regulatory authority shall inspect the food service establishment prior to the start of operations to determine compliance with the approved plans and specifications, and the requirements of this article.

(Ord. No. 9380, § 2, 7-11-02)

### **Sec. 42-137. Food preparation area.**

Food preparation will not be permitted in sinks used for hand washing.

(Ord. No. 9380, § 2, 7-11-02)

### **Sec. 42-138. Equipment and food tagging.**

- (a) Whenever the regulatory authority shall find any article or piece of equipment or food item to be detrimental to public health, such article shall be tagged or otherwise marked, giving notice that the article is not to be used until approved and warning all persons not to remove the tag or dispose of this article in violation of this section.
- (b) Equipment in new or extensively remodeled establishments shall meet National Sanitation Foundation standards or equivalent as approved by the regulatory authority.
- (c) Existing equipment and facilities.
  - (1) Refrigeration equipment shall meet the 41-degree Fahrenheit requirement or replaced as specified in the TFER.
  - (2) Equipment and facilities which were installed prior to July 21, 2002, and which do not meet fully all of the design and fabrication requirements of this article, shall be deemed acceptable in that establishment as long as there is no change of ownership of the food establishment, and the equipment is in good repair, of sufficient capacity to properly hold food, and capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after July 21, 2002, shall meet the requirements of this article.

(Ord. No. 9380, § 2, 7-11-02)

### **Sec. 42-139. Manual cleaning and sanitizing.**

- (a) In food service establishments, a three-compartment sink shall be used if washing and rinsing and sanitizing of utensils and equipment is done manually. Sinks shall be large enough to permit the complete immersion

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of the utensils and equipment, and each compartment of the sink shall be supplied with hot and cold potable running water. Equipment, as approved by the regulatory authority, shall be made available if washing, rinsing and sanitizing cannot be accomplished by immersion.

- (b) Two-compartment sinks are not acceptable unless:
- (1) It is approved by the regulatory authority per the TFER,
  - (2) The use of a cleanable approved receptacle to act as the third compartment for sanitizing, and
  - (3) Written standard operating procedures are posted at the two-compartment sink for effectively sanitizing utensils and equipment.

All such sinks shall be attached to an approved sanitary sewer collection system. This section shall apply to all food service establishments regulated by this article.

(Ord. No. 9380, § 2, 7-11-02)

### **Sec. 42-140. Garbage and refuse.**

Garbage containers stored outside the food service establishment shall be conveniently located and easily accessible to the establishment. All containers shall have lids and said lids shall be in place at all times unless containers are being filled or emptied.

(Ord. No. 9380, § 2, 7-11-02)

Cross reference(s)—Solid waste generally, ch. 86.

### **Sec. 42-141. Restroom facilities.**

- (a) All food service establishments, required to be permitted, pursuant to this article must have at least one approved restroom facility for employees. All food service establishments where both sexes are employed must have at least two approved restroom facilities, except where there are five or fewer employees on any one shift.
- (b) All food service establishments with a dining area must have at least two approved restroom facilities available for use by the public, one for each sex. Restrooms for public use shall not be located in the food preparation, food storage, or ware washing areas. The number of fixtures shall comply with the applicable provisions of the plumbing code.
- (c) It shall be an exception to subsections (a) and (b) of this section if the food service establishment is an approved mobile food service establishment that handles only prepackaged, non-potentially hazardous foods.

(Ord. No. 9380, § 2, 7-11-02)

### **Sec. 42-142. Notice of communicable disease.**

If any manager or person in charge of a food service establishment has reason to suspect that any employee has contracted any contagious or infectious disease, he shall notify the health authority immediately.

(Ord. No. 9380, § 2, 7-11-02)

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**Sec. 42-143. Inspected and approved products.**

No person shall sell, offer to sell or expose for sale within the city any meat, meat food product, poultry, poultry food product or domestic game birds unless state or federally inspected and passed.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-144. Uninspected foods.**

No establishment where food is prepared or sold for human consumption shall have any uninspected meat or wild game products on the premises at any time.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-145. Dairy products.**

Unpasteurized milk or milk products shall not be allowed for sale within the city.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-146. Plumbing, sewage, grease traps, garbage grinders, drains.**

(a) *Plumbing.*

(1) *General.* Plumbing shall be sized, installed and maintained in accordance with the plumbing code. There shall be no cross-connection between the potable water supply and any non-potable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

(2) *Non-potable water system.* A non-potable water system is permitted only for purposes such as air conditioning and fire protection and only if the system is installed according to law and the non-potable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any non-potable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(b) *Sewage.* Sewage, including liquid waste, shall be disposed of by a public sewage system. Non-water carried sewage disposal facilities are prohibited, except as permitted by TFER §229.170.(h) relating to temporary food service establishments or as permitted by the regulatory authority.

(c) *Grease traps.*

(1) *Effect of section.*

a. The maintenance requirements of this section shall apply to all commercial food preparation and food service establishments that are equipped with some type of grease trap.

b. Both the construction and maintenance requirements of this section shall apply to all new construction, changes in permit ownership or changes in occupancy.

(2) *Construction requirements.*

a. Every commercial food preparation and food service establishment, including, but not limited to, abattoirs, bakeries, boardinghouses, butcher shops, cafes, clubhouses, delicatessens, ice cream parlors, hospitals, hotels, restaurants, schools or similar places where meat, poultry, seafood,

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dairy products or fried foods are prepared or served shall discharge all wastes from sinks, dishwashers and drains into an approved and properly maintained and functioning grease trap before entering the sanitary sewer drain.

- b. No frying vats shall discharge into a grease trap.
- c. The grease-retaining capacity of each grease trap in pounds of grease shall be equal to twice the rate of flow capacity in gallons per minute of wastewater to remove and retain 90 percent of the grease discharged. Manufactured grease traps shall be selected to fit the flow rate requirements of the connected fixtures from the manufacturer's rating schedule, but not to exceed a total flow rating of 50 gallons per minute. In addition to the minimum retention rates above, the size, type and location of each grease trap shall be designed and installed in accordance with the manufacturer's instructions and the requirements of the plumbing code.
- d. When maximum efficiency grease removal is necessary, a dual chambered trap that separates then stores grease shall be utilized. The primary compartment shall hold seven times the maximum gallons-per-minute flow rate and the secondary shall hold five times this flow rate.
- e. The grease trap shall be easily accessible for cleaning and shall be installed as close as possible to the grease source and shall be equipped with a sample well for ease in sampling unless the construction of such trap makes the sample well unnecessary.
- f. Grease traps shall be located outside the food preparation area unless otherwise approved by the regulatory authority.

(3) *Maintenance requirements.*

- a. All commercial food preparation and food service establishment operators shall cause the grease trap to be completely cleaned when full. Every grease trap shall be completely cleaned not less than once every three months.
  - b. The operator shall post trip invoices with his food service establishment permit. The trip invoices shall contain the name and address of the food service establishment; the name and address of the licensed waste carrier; the name and address of the licensed disposal site; the signature of the operator of the establishment, the waste carrier and the disposal site; and the quantity and date of grease removal and disposal.
- (d) *Garbage grinders.* If used, garbage grinders shall be installed and maintained according to law.
- (e) *Drains.* Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. Floor drains must be properly covered with drain grates.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-147. Lavatory/hand sink facilities.**

- (a) *Hand sinks.* A separate sink assigned for hand washing provided with hot and cold running water tempered through a mixing valve shall be located to be accessible to each food preparation and utensil washing area. Floor pedals, knee pedals, electronic eye and metered faucets are allowable as long as they are convenient and effective.
- (b) *Lavatory supplies.* Blow dryers are not allowed in food preparation areas.
- (c) *Sign.* A sign or poster that notifies food employees to wash their hands shall be provided at hand-washing lavatories used by food employees and shall be clearly visible to food employees.

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(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-148. Food supplies.**

- (a) Food prepared in a private home may not be used or offered publicly for human consumption.
- (b) It is an exception to subsection (a) if a person:
  - (1) Sells or serves at temporary events non-potentially hazardous baked goods; and
  - (2) Maintains a master log with the providers name, address, and phone number, which must be presented to the regulatory authority upon demand; and
  - (3) Complies with all requirements of section 42-149.
- (c) Potentially hazardous foods can only be sold from a permitted fixed facility, an approved mobile vending unit, or an approved temporary food establishment.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-149. Temporary food service establishments, general.**

- (a) A temporary food service establishment shall comply with the requirements of this article and the TFER except as otherwise provided in this section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this chapter. The operation of a temporary food service establishment may not exceed 14 consecutive days per event and shall not be renewable within 30 days of expiration.
- (b) If the temporary food service establishment is outdoors, every food preparation and serving area must have a fire-resistant overhead covering that protects the interior of the facility from the weather. Floors must be constructed of concrete, asphalt, tight wood or other similar easily cleanable material, and kept in good repair.
- (c) All potentially hazardous food shall be prepared in a permitted food establishment or on the premises. No potentially hazardous food or beverage stored or prepared in a private home may be offered for sale, sold or given away from a temporary or seasonal food facility. Notwithstanding any provision of this article to the contrary, food prepared in a kitchen of a private home that is not licensed hereunder may be offered for sale or service for human consumption, subject to full compliance with the following requirements:
  - (1) The items offered for sale or given away shall be limited to baked food products that are not potentially hazardous;
  - (2) The items are offered for sale at a function conducted by or under the auspices of a sponsoring organization, which may be a school or religious or non-profit organization;
  - (3) The sale shall not be conducted in a food establishment except that if the sponsoring organization is a food establishment then the sale may be conducted on it's premises, provided that the sale is conducted separately and apart from the sponsoring organization's food sales or service;
  - (4) The consumer is informed by a clearly visible placard at the sales or service location that the food was prepared in a kitchen that is not subject to regulation and inspection by the city or any other health inspection agency. The person conducting the bake sale shall provide the placard, which shall be in a form approved by the regulatory authority; and

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- (5) A master list shall be maintained by the sponsoring organization with the name, address, and phone number of the person providing the baked food products.
  - (d) The regulatory authority may establish additional structural or operational requirements as necessary to ensure that food is of a safe and sanitary quality.
- (Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-150. Restricted operations.**

- (a) These provisions are applicable whenever a temporary food service establishment is permitted, under the provisions of section 42-149, to operate without complying with all the requirements of this article.
  - (b) Only those potentially hazardous foods requiring limited preparation, such as hamburgers, sausage, fajitas, and frankfurters that only require seasoning and cooking, shall be prepared or served unless otherwise approved by the health authority. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish are prohibited. This prohibition does not apply, however, to any potentially hazardous food that has been prepared or packaged under conditions meeting the requirements of this chapter, is obtained in individual servings, is stored at a temperature of 41 degrees Fahrenheit (five degrees Celsius) or below, or at a temperature of 140 degrees Fahrenheit (60 degrees Celsius) or above, in facilities that meet the requirements of this article, and is served directly in the unopened container in which it was packaged.
- (Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-151. Farmer's markets.**

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

*Baked good[s]* include cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven.

*Cottage food* means and includes the following foods if (i) the foods are produced out of the seller's individual home satisfying all state and local laws and regulations applicable to cottage food production operations and (ii) do not require refrigeration:

- (1) A baked good that is not a potentially hazardous food;
- (2) Candy;
- (3) Coated and uncoated nuts;
- (4) Unroasted nut butters;
- (5) Fruit butters;
- (6) A canned jam or jelly;
- (7) A fruit pie;
- (8) Dehydrated fruit or vegetables, including dried beans;
- (9) Popcorn and popcorn snacks;
- (10) Cereal, including granola;

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- (11) Dry mix;
  - (12) Vinegar;
  - (13) Pickles;
  - (14) Mustard;
  - (15) Roasted coffee or dry tea; or
  - (16) A dried herb or dried herb mix.

*Crafts* means handmade goods crafted by the seller out of the seller's individual home.

*Display* means a booth or space provided at the farmers' market for farmers' market vendors to exhibit produce, pure honey, cottage foods, or arts and crafts for sale.

*Home* means a primary residence that contains a kitchen and appliances designed for common residential usage.

*Imminent health hazard* means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

*Producer* means a person or entity that produces agricultural products by practice of the agricultural arts upon land that the person controls that is within 150 miles of the corporate limits of the city.

*Pure honey* means the nectar of plants that has been transformed by, and is the natural product of, bees and that is in the comb or has been taken from the comb and is packaged in a liquid, crystallized, or granular form, which honey is produced from a small honey production operation, as defined in V.T.C.A., Health and Safety Code § 437.001.

*Potentially hazardous food* means a food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A potentially hazardous food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products. The term does not include a food that uses potentially hazardous food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

*Produce* means fresh fruits or vegetables in their natural state.

*Sample* [means] a bite-sized portion of food or foods offered free of charge to demonstrate its characteristics and does not include a whole meal, an individual portion or a whole sandwich.

*Wholesale* means the sale of produce, cottage foods, pure honey, or arts and crafts to retail dealers or other persons for the purpose of resale.

- (b) *General*. All farmers' markets and farmers' market vendors shall comply with all requirements of this chapter, unless otherwise restricted by applicable federal, state or local law or otherwise provided in this section.
- (c) *Permit*.
  - (1) *Required*. No person shall operate a farmers' market at which farmers' market vendors vend produce, cottage foods, or pure honey without a valid farmers' market permit issued by the regulatory authority.

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- (2) *Denial.* The regulatory authority may refuse to issue a permit if the regulatory authority finds that the application is incomplete or that the proposed farmers' market is not in compliance with all applicable laws and regulations, including those specified in this section.
- (3) *Suspension of permits.* The regulatory authority may suspend a farmers' market permit in accordance with this subsection; however, the issuance of a suspension shall be a remedy in addition to, and not in lieu of, any penalty authorized under this Code, and shall not limit any other rights of the regulatory authority to pursue other actions or remedies to address any violation of the provisions of this article.
- a. *Emergency suspension.* If the regulatory authority finds a condition constituting an imminent health hazard, or that a public health nuisance (as that term is defined in V.T.C.A., Health and Safety Code § 341.011) that is an immediate and substantial hazard to the public health exists in the operation of a farmers' market permitted under this section, the regulatory authority may issue a summary suspension without prior warning, notice or hearing, if the notice:
1. States the reasons for the suspension;
  2. States the evidence that the permit holder shall provide in order to demonstrate that the reasons for suspension have been eliminated;
  3. States that the permit holder may request an appeal hearing by submitting a timely request to the regulatory authority; and
  4. Provides the name and the address of the regulatory authority representative to whom a request for appeal hearing may be made.
- b. *General suspension.* If the regulatory authority finds a condition constituting a public health nuisance (as that term is defined in V.T.C.A., Health and Safety Code § 341.011), but not constituting an immediate and substantial hazard to the public health exists in the operation of an establishment permitted under this section, the regulatory authority may issue a written notice ordering abatement of the nuisance to any person responsible for the nuisance. Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of this section, the permit holder or operator shall be notified in writing that the permit is, upon receipt of the suspension notice, immediately suspended, and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the permit holder within seven calendar days.
- (4) *Reinstatement of suspended permits.* Any person whose permit has been suspended may, not more than 60 days after the date of suspension, make application for a reinspection for the purpose of reinstating the permit. Within 14 calendar days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing the suspension of the permit has been corrected, the regulatory authority shall make a reinspection. If the applicant is complying with the requirements of this article, the permit shall be reinstated.
- (5) *Revocation.* If a permit holder has been issued more than three violation notices or citations pertaining to any of the requirements of this section during a 12-month period, the permit may be permanently revoked after an opportunity for a hearing has been provided by the regulatory authority. Prior to such action, the regulatory authority shall notify the permit holder in writing, stating the reasons that the permit should be permanently revoked. The permit shall be revoked at the end of seven calendar days following service of this notice, unless a request for a hearing is filed with the regulatory authority, by the permit holder within such five-day period.
- (6) *Term.* Permits issued under this section shall be valid for two consecutive days per month for 12 months.
- (7) *Restrictions.*

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- a. Only one farmers' market permit shall be issued for each location of a farmers' market per 12-month period.
  - b. Only one farmers' market permit shall be issued to a person per 12-month period.
- (8) *Nontransferable.* A permit issued under this article shall be nontransferable from one person or place to another person or place. Permits will remain the property of the health department.
- (d) *Responsibility.*
- (1) *Presence.* 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 farmers' market during all hours of operation.
  - (2) *List.* At least 72 hours before the commencement of the operation of the farmers' market, the person in charge of the farmers' market shall maintain a list of all farmers' market vendors, have it readily available at the farmers' market, and provide access and copies of the list to the regulatory authority upon request. The list shall be maintained for at least 90 calendar days from the date of the end of the market. This list shall include, at a minimum:
    - a. The name, address, and phone number of the farmers' market vendor;
    - b. The date(s) the farmers' market vendor is to operate at the farmers' market;
    - c. A list of the items offered by farmers' market vendor for each date operated at the farmers' market;
    - d. A copy of any applicable permits held by the farmers' market vendor;
    - e. The address or location of each food item's origin, including information on where the food items were grown, cultivated or otherwise obtained by the farmers' market vendor;
    - f. Proof of food origin, copy of manufacturer's license, copy of storage license or a description of approved source where food items will be obtained;
    - g. A copy of approved food label(s); and
    - h. Any other information required of the regulatory authority.
- (e) *Application.* A person desiring to operate a farmers' market shall make written application and pay a non-refundable fee of \$300.00. Such application shall include, but not be limited to, the following:
- (1) That information required in section 42-176;
  - (2) The number of farmers' market vendors selling:
    - a. Produce;
    - b. Pure honey;
    - c. Cottage food; and
    - d. Arts and crafts.
  - (3) A plan as described in subsection (f) of this section.
- (f) *Plans.* Each person desiring to operate a farmers' market shall submit the following to the regulatory authority at least 72 hours prior to the proposed start date of the farmers' market:
- (1) A farmers' market permit application or valid permit;
  - (2) A floor plan or diagram of the farmers' market location and layout, including storage and sales together with the location of the toilet facilities, lavatory, produce sink, and trash receptacles;

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- (3) An equipment list;
  - (4) A list of the farmers' market vendors and what they are selling; and
  - (5) A description of each method used to disposing of solid and liquid waste.
- (g) *Inspections.*
- (1) *Initial inspection.* Upon receipt of an application, the regulatory authority shall make an inspection of the location proposed for the farmers' market to determine compliance with the provisions of this Code.
  - (2) *Subsequent inspections.* The regulatory authority may enter the farmers' market at any time to determine compliance with this Code as well as rules and regulations of the state and local governmental entities.
- (h) *Location.* Farmers' markets shall be located only on properly zoned property. An active business other than the farmers' market shall be currently operating on any private property used as a farmers' market. The owner or operator of the farmers' market shall obtain a notarized letter from the business owner stating that the market has permission to vend produce, cottage food, pure honey, and crafts on the property. The notarized letter shall be submitted to the regulatory authority at the time of a food establishment permit application.
- (i) *Displays.* Produce displays shall not include beds of vehicles but shall be limited to tables that are at least six inches above the ground. Fresh produce shall not be cut or sliced unless cut or sliced in accordance with subsection (k) of this section. Displays shall be located on acceptable smooth, hard, paved surfaces such as concrete or machine laid asphalt. There shall be only one farmers' market vendor per display at the farmers' market.
- (j) *Hours of operation.* Farmers' markets may be operated between the hours of 8:00 a.m. and 5:00 p.m. It shall be unlawful at any other time for
- (1) A farmers' market vendor to sell or offer for sale at a farmers' market; or
  - (2) A farmers' market permit holder to allow the sale or offer for sale at the permitted farmers' market.
- (k) *Samples.*
- (1) Only produce may be sampled at a farmers' market;
  - (2) Samples must be distributed in a sanitary manner;
  - (3) A person preparing produce samples on-site must:
    - a. Wear clean, disposable plastic gloves when preparing samples; or
    - b. Observe proper hand washing techniques immediately before preparing samples;
  - (4) Produce intended for sampling must be washed in potable water to remove any soil or other visible material;
  - (5) Potable water must be available for washing;
  - (6) Except as provided by V.T.C.A., Health and Safety Code § 437.0202(b), potentially hazardous food must be maintained at or below 41 degrees Fahrenheit or disposed of within two hours after cutting or preparing; and
  - (7) Utensils and cutting surfaces used for sampling shall be smooth, nonabsorbent and easily cleaned and shall be disposable unless approved by the regulatory authority.
- (l) *Prohibited.*

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- (1) *Food.* No meat, poultry, raw milk or associated products or potentially hazardous food, with the exception of produce, may be sold, sampled or displayed for sale at a farmers' market.
  - (2) *Animals.* Animals may not be vended, sold, offered for adoption or given away at a farmers' market, except if vended, sold, offered for adoption or given away by an animal control facility operated by a governmental entity.
  - (3) *Cooking demonstration.* A farmers' market permitted pursuant to this section shall not include cooking demonstrations.
  - (4) *Wholesale.* The sale, offer for sale, or taking orders for sale of food processed or manufactured or that is supplied by a wholesale produce distributor is prohibited. No item which was previously wholesaled may be sold, offered for sale, ordered, sampled or displayed at the farmers' market.
- (m) *Facilities.*
- (1) *Toilet facilities.* Conveniently located toilet facilities with direct outdoor access for the farmers' market shall be available for market vendors. A notarized letter from the business owner granting the market vendors access to toilet facilities during all hours of the farmers' market operation shall be submitted with the food establishment permit application. A copy of the letter shall be made available to the regulatory authority upon request. All toilets shall conform to the City Code and shall have tight fitting, self-closing solid doors. Toilet rooms and fixtures shall be clean and in good repair. Toilet paper shall be available and easily accessible at all times. Toilets accessible to women shall have a trash receptacle that is covered with a lid.
  - (2) *Lavatory.* A hand wash lavatory with hot and cold water under pressure and tempered through a mixing valve shall be provided in or immediately adjacent to the toilet room. A soap dispenser and disposable paper towels shall be available at all times. All wastewater shall be captured and disposed of in an approved sewage disposal system.
  - (3) *Produce sink.* A produce sink with hot and cold water under pressure and tempered through a mixing valve shall be provided at the farmers' market for use for produce only. Disposable paper towels shall be available at all times. All wastewater shall be captured and disposed of in an approved sewage disposal system.
  - (4) *Tables.* Tables used within the vending area shall be made of non-porous material and be easily cleanable.
  - (5) *Vending areas.* Vending areas shall be covered, free of pests and capable of providing shelter for all produce displayed.
  - (6) *Trash receptacles.* Trash receptacles shall be available to each farmers' market vendor, and shall be non-porous and insect and rodent resistant. Trash shall be disposed of offsite as needed to prevent pests, but in no event will trash disposal be less frequent than once per day.
  - (7) *Floor construction.* Floors and floor coverings of all vending areas shall be located on a concrete or asphalt surface providing adequate drainage, excluding vending areas for arts and crafts.
- (n) *Cleanup.* The permit holder shall ensure that all trash, refuse and garbage are removed from the site at the end of each day or that trash, refuse and garbage is placed in appropriate containers for later disposal. The premises occupied by the farmers' market shall be kept clean and free of accumulated trash, refuse or garbage during and after the hours of operation. All discarded fresh fruits, vegetables or other produce that remains at the market site shall be sealed in plastic bags and discarded in waste containers. Sufficient durable, nonabsorbent and easily cleanable, leak-proof, rodent and insect-proof refuse and garbage containers shall be available on site.
- (o) *Exemptions.*

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- (1) The person who has obtained a permit pursuant to subsection (b) of this section is exempt from obtaining an open air vendor permit.
  - (2) Farmers' market vendors selling produce at a permitted farmers' market are exempt from obtaining a food establishment permit and an open air vendor permit.
  - (3) Farmers' markets operated governmental entity shall not be subject to the permit fee requirements of this section.
- (p) *Violation.* A violation of this section constitutes an offense punishable in accordance with section 1-14 of the Code.
- (Ord. No. 9380, § 2, 7-11-02; Ord. No. 13,260 , § 2, 8-25-16)

### **Sec. 42-152. Ventilation.**

- (a) *General.* All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed and operated according to the city's building code, kept clean, maintained in good repair, vented to the outside, and shall not create an unsightly, harmful or unlawful discharge.
- (b) *Special ventilation.*
  - (1) Intake and exhaust air-ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
  - (2) In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

(Ord. No. 9380, § 2, 7-11-02)

### **Sec. 42-153. Mobile food establishments.**

- (a) *Applicability of other sections.* All of the provisions of this article pertaining to food service establishments shall apply to the commissary or other fixed food service establishment from which the food supplies are obtained. Any suspension or revocation of the food service permit for a food service establishment will be cause for suspension or revocation of the permit of any mobile food unit that is supplied or serviced by the establishment.
- (b) *Permit.*
  - (1) *Required.* No person shall operate or cause to be operated any mobile food unit that does not possess a valid permit issued by the regulatory authority.
  - (2) *Unit-by-unit.* Any person desiring to operate one or more mobile food units in the city shall obtain an individual permit for each operating mobile food unit from the regulatory authority. Each permit will be issued unit-by-unit only after an inspection reveals satisfactory compliance with the provisions of section 42-153 of this Code. The permits shall remain the property of the department.
  - (3) *Display.* A permit shall be affixed by the regulatory authority or his authorized agents on the mobile food unit in a conspicuous place where it can be viewed by patrons.
- (c) *Application.*
  - (1) [*Application for permit.*] Application for a permit shall be made on forms provided by the regulatory authority. The application shall include, but not limited to, the applicant's full name and post office

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address and street address and email address; the address of the location at which the mobile food unit is stationed when not in use; the business name and address of the commissary or other fixed food service establishment from which potentially hazardous food supplies are obtained; the address of the servicing area; a description of the mobile food unit that includes the manufacturer's make, model, and serial number, the vehicle's state registration number, and the signature of the applicant. All other information deemed necessary by the regulatory authority.

- (2) *Submission of plans.* Prior to the issuance of a permit, the operator of a mobile food unit, other than a restricted operations mobile food unit, shall provide the following to the department:
- a. A written standard operating procedure for each mobile food unit that must include provisions for:
    1. Food unit's waste water disposal site and process; and
    2. Other servicing operations details; and
  - b. Two sets of drawings that must clearly specify and address the proposed layout, surface finish schedule, arrangement and construction material of the mobile food unit, and that must include, without limitation, the proposed layout, arrangement and sizes of plumbing fixtures and connections.

The provisions of this subsection (c)(2) shall not be applicable to permit renewal, provided that the applicant certifies in writing to the regulatory authority that the procedures and plans previously provided to the department pursuant to this subsection are still valid and have not changed.

- (3) *Locations of operation.* Prior to the issuance of any permit, the operator of a mobile food unit, other than a restricted operations mobile food unit, shall submit to the department a list of locations where the mobile food unit will be in operation. No mobile food unit may operate on public rights-of-way or public property without the prior written consent of the city unless operating on property within the ACE zoning district designated by the city for use by mobile food units. No mobile unit may operate for more than 12 hours at any location other than city-designated mobile food unit areas within the ACE zoning district of the city. The operator shall also give written notice at least two business days prior to beginning operations at or relocating operations to any location not currently included on the list of active locations submitted to the department.
- (4) *Operation on private property.* Prior to the issuance of a permit, the operator of a mobile food unit, other than a restricted operations mobile food unit, that will be operated on private property shall submit to the department proof of the applicant's ownership of the property or a signed and notarized written statement from the owner of the property granting permission for operation of the mobile food unit at the proposed location. Such written statement must include the following:
- a. The name, address, email and telephone number of the property owner or authorized agent; or
  - b. If the property owner is a partnership or corporation, the name, address, email and telephone number of one of the partners or officers.

A copy of the statement shall be displayed in the mobile food unit in a conspicuous place in plain view of the public at all times. The operator of a mobile food unit shall immediately cease operations and remove the mobile food unit from the property upon receipt of a notice of a violation of this subsection.

- (5) *Access to toilets.* Prior to the issuance of a permit, the operator of a mobile food unit, other than a restricted operations mobile food unit, to be operated on private property shall submit to the department proof of availability of restrooms with flushable toilets for the use of the mobile food unit employees. Such restrooms must be located in a business establishment within 300 feet of each location where the mobile food unit will be in operation. Proof of availability of adequate facilities shall

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be in the form of a written statement from the owner or authorized agent, which must include the following:

- a. The name, address, email and telephone number of:
  1. Property owner or authorized agent; or
  2. If the property owner is a partnership or corporation, one of the partners or officers.
- b. The type of business and hours of operation during which the restrooms will be available to the applicant.

A copy of the statement shall be displayed in the mobile food unit in a conspicuous place in plain view of the public at all times. The operator of a mobile food unit shall immediately cease operations and remove the mobile food unit from the property upon receipt of a notice of a violation of this subsection.

- (d) *General regulations.* All mobile food units and restricted operations mobile food units shall comply with all applicable laws, including the requirements of this article, except as otherwise provided in this section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of mobile food units and may prohibit the sale of potentially hazardous foods. The provisions of this section shall be enforceable by the regulatory authority and police chief.
- (1) *Registration.* Mobile food establishments must comply with all state and local laws pertaining to registration of the vehicle.
  - (2) *Pushcarts.* Pushcarts shall be limited to pre-packaged ice cream or pre-packaged non-potentially hazardous food as approved by the regulatory authority.
  - (3) *Foods prepared in home.* Food prepared in a private home may not be used or offered for human consumption from a mobile food establishment. Food must comply with all labeling laws.
  - (4) *Signage.* Every mobile food unit must be readily identifiable by business name, printed, permanently affixed, and prominently displayed upon at least two sides of the units, in letters not less than three inches in height.
  - (5) *Mobility.* A mobile food unit must demonstrate mobility at any reasonable time if requested by the regulatory authority or police chief.
  - (6) *Use of LP-gas.* The operator of a mobile food unit, with which LP-gas is used to cook or prepare food, shall obtain written approval from the fire department for the use of LP-gas and LP-gas equipment for each mobile food unit and shall make the written approval available for inspection and/or copying upon the request of the regulatory authority, police chief or fire chief.
  - (7) *Certified food manager certification.* The operator of a mobile food unit must have and post in a conspicuous place in plain view of the public at all times a current food manager certificate.
  - (8) *Sanitation.* In addition to complying with the requirements of this section, all mobile food units shall comply with the following items of sanitation:
    - a. *Single-service articles.* Mobile food units shall provide only single-service articles for use by the consumer.
    - b. *Manual warewashing.* A mobile food unit must have at least a three-compartment sink as required in the TFER.
    - c. *Handwash sink.* A mobile food unit shall have at least one hand washing sink and the sink shall be convenient for use by employees and properly provisioned as required in the TFER.

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- d. *Water systems.* A mobile food unit, other than a restricted operations mobile food unit, shall have a potable water system under pressure. All water used in connection with the mobile food unit shall be from sources approved by the health officer. The water system shall include a potable water tank of not less than 30 gallons capacity for conventional mobile food units. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand-washing, in accordance with the requirements of this article. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing and potable water tanks shall be constructed of materials meeting standards established by an American National Standards Institute (ANSI) or other approved accredited certification program and installed according to the requirements of this article. Connection to a water system at an operational location is prohibited. The water system shall comply with the following additional items:
1. *Tank design and construction.* A mobile food unit's water tank shall be enclosed from the filling inlet to the discharge outlet and sloped to an outlet that allows complete drainage of the tank.
  2. *Tank inspection and cleaning port, protected and secured.* If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:
    - A. Flanged upward at least 13 mm (one-half inch);
    - B. Equipped with a port cover assembly that is provided with a gasket and a device for securing the cover in place; and
    - C. Flanged to overlap the opening and sloped to drain.
  3. *"V" type threads, use limitation.* A fitting with "V" type threads on water tank inlets or outlets shall be allowed only when a hose is permanently attached.
  4. *Tank vent, protected.* If provided, a water tank vent shall terminate in a downward direction and shall be covered with:
    - A. A screen of 16 mesh to one inch or equivalent when the vent is in a protected area; or
    - B. A protective filter when the vent is in an area that is not protected from windblown dirt and debris.
  5. *Protective cover or device.* A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for each water inlet, outlet, and hose.
- e. *Mobile food establishment water tanks, when required.* Materials that are used in the construction of a mobile food unit water tank and appurtenances shall be safe, durable, corrosion-resistant, and nonabsorbent, and finished to have an easily cleanable surface.
1. *Tank hose, construction and identification.* A hose used for conveying drinking water from a water tank shall be safe; durable, corrosion-resistant, and nonabsorbent; resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition; finished with a smooth interior surface; and clearly and durably identified as to its use if not permanently attached.

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2. *Tank filter, compressed air.* A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and the drinking water system when compressed air is used to pressurize the water tank system.
  3. *Mobile food unit tank inlet.* A mobile food unit water tank inlet shall be 19.1 mm (three-fourths inch) in inner diameter or less and provided with a hose connection of the size or type that will prevent its use for any other service.
  4. *Operation and maintenance system flushing.* A water tank, pump, and hoses shall be flushed and sanitized at an approved commissary before being placed in service after construction, repair, modification, and periods of nonuse.
  5. *Using a pump and hoses; backflow prevention.* An individual shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.
  6. *Protecting inlets, outlets, and hose fittings.* If not in use, a water tank and hose inlet and outlet fittings shall be protected using a cover or device as specified in subsection g. below.
  7. *Tank, pump, and hoses; dedication.* A water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose. Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.
- f. *Waste retention.* If liquid waste results from operation of a mobile food unit, it shall be stored in permanently installed vented retention tanks that are at least 15 percent larger than the water supply tank. A mobile food unit waste retention tank shall be sloped to an outlet that allows complete drainage of the tank during servicing operations. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion or at an operational location. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system. Connection to a sewerage system at an operational location is prohibited.
  - g. *Garbage and refuse.* A mobile food unit shall have adequate and department-approved garbage and refuse storage facilities for the operator's use and shall have garbage and refuse storage facilities attached to the exterior of the mobile food unit that are insect and rodent-proof for customers' use.
- (9) *Damage report.* Any accident involving a mobile food unit shall be reported within 24 hours of the time the accident occurred if the accident results in damage to the water system, waste retention tank, food service equipment, or any facility that may result in the contamination of the food being carried or any damage that results in a violation of this section. Reports shall be made by the holder of the mobile food unit permit.
  - (10) *Operation capacity limited.* The operator of a mobile food unit shall prepare, serve, store and display food and beverages on or in the mobile food unit itself and shall not attach, set up or use any other device or equipment intended to increase selling, serving, storage, or display capacity of the mobile food unit. It shall be unlawful for the operator of a mobile food unit to:
    - a. Allow items, including, but not limited to, brooms, mops, hoses, equipment, containers and boxes or cartons, to remain adjacent to or beneath the mobile food unit;
    - b. Provide or allow any sign or banner to remain that is not attached to and solely supported by the mobile food unit;

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- c. Provide or allow any canopy, awning or other covering that is not attached to and solely supported by the mobile food unit to remain over any part of the mobile food unit or over any area within 100 feet of the mobile food unit, except that any awning or covering provided by others and primarily used for other purposes and only incidentally or coincidentally used by the mobile food unit shall not be considered a violation of this subsection;
  - d. Provide or allow any portable toilet facility within 100 feet of the mobile food unit; or
  - e. Provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters, within 100 feet of the mobile food unit. Dining areas or seating areas where the seating is provided by someone other than the mobile food unit operator and only incidentally or coincidentally used by the patrons of the mobile food unit are acceptable if approved by the regulatory authority.
- (11) *Utility connections.* Utility connections for electric, water, sewerage and gas are prohibited.
  - (12) *Exterior surfaces.* Exterior surfaces of mobile food units shall be of weather-resistant materials and shall comply with all applicable laws.
  - (13) *Overnight parking prohibited.* All mobile food establishments shall move and vacate the premises of the business location on a daily basis; overnight parking at the business location is prohibited. At the end of each business day, the mobile food establishment shall return to the commissary or other service location as approved by the regulatory authority.
  - (14) *Operation from a commissary required.* Mobile food establishments shall operate from a commissary or other fixed food service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations. A letter from the commissary is required at the time of permit application and at each renewal of the permit.
- (e) *Commissaries.*
- (1) *Servicing by commissaries.* Mobile food units, other than restricted service mobile food units, shall operate from a commissary approved by the regulatory authority and shall report to such location for supplies, cleaning, and servicing within the 24-hour period preceding operations.
  - (2) *Servicing records.*
    - a. *Required.* It shall be unlawful for an operator of a mobile food unit, other than a restricted service mobile food unit, to be in operation without a valid servicing record in their possession.
    - b. *Servicing records to be kept by mobile food unit operators.* The operator of a mobile food unit, other than a restricted operations mobile food unit, shall keep and maintain servicing records on the mobile food unit for a period of one year from the date of servicing. The servicing records must be immediately available to the regulatory authority or police chief for inspection and copy at the mobile food unit during the mobile food unit's hours of operation.
    - c. *Servicing records to be kept by commissaries.* The commissary from which a mobile food unit operates shall issue and maintain servicing records for each mobile food unit in a manner and form prescribed by the regulatory authority. The permit holder, person in charge, employee, or representative of any commissary shall keep and maintain servicing records at the commissary for a period of two years from the date of servicing or until retrieved by the regulatory authority, whichever comes first. Servicing records maintained at the commissary shall be immediately available to the regulatory authority or police chief for inspection and copying during normal business hours.
    - d. *Falsification of servicing records.* It shall be unlawful for an owner, permit holder, person in charge, employee, or representative of any commissary to issue a servicing record without first

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verifying that the mobile unit has complied with all servicing requirements. It shall be unlawful for any owner, permit holder, person in charge, employee, or representative of any commissary or mobile food unit to knowingly present or issue any false, fraudulent, or untruthful servicing record for the purpose of demonstrating compliance with subsection (e)(2).

- e. *Maintenance of servicing records.* The regulatory authority may promulgate rules and procedures regarding maintenance of the servicing records by the commissaries and mobile food units. The regulatory authority may require the use of electronic or other technology to facilitate or monitor compliance with the requirements of this article.
- (3) *Permitting of commissaries as food establishments.* A commissary servicing any mobile food unit, other than a restricted service mobile food unit shall be, an approved and permitted food establishment at which the mobile food unit is supplied with fresh water, emptied of waste water into a proper waste disposal system, and cleaned, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in the mobile food unit utensil-washing sink. A commissary shall acquire and maintain a valid food service permit and meet all requirements of this article including, but not limited to:
- a. Maintenance of proper structures.
    - 1. *General.*
      - A. Food establishments and all parts of the property used in connection with operations of the establishments shall be kept free of litter and items that are unnecessary to the operation or maintenance of the establishment, such as equipment that is nonfunctional or no longer in use.
      - B. The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be graded to prevent pooling and kept free of litter.
      - C. Equipment and utensils not in current use shall be stored in a clean and sanitary condition or removed from the premises.
      - D. The traffic of unnecessary persons through the food preparation and utensil-washing areas is prohibited.
      - E. Employees and other persons such as delivery and maintenance persons entering the food preparation, food storage, and ware washing areas shall comply with food safety rules.
      - F. Exterior surfaces of buildings and mobile food units shall be of weather-resistant materials and shall comply with applicable laws.
      - G. The physical facilities shall be maintained in good repair.
    - 2. *Living areas.* No operation of a food service establishment shall be conducted in a private home that does not meet all applicable requirements of this article, or in any room used as living or sleeping quarters. Food service operations shall be completely separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
    - 3. *Laundry facilities.*
      - A. Laundry facilities in a food service establishment shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation of the food service establishment. If the items are laundered on the premises, an electric, gas, or steam dryer shall be provided and used.

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- B. Separate rooms shall be provided for laundry facilities except that laundry operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.
  - C. If on-premises laundering is limited to wiping cloths intended to be used moist, or if wiping cloths are air dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, single-use articles, single-service articles, and wiping cloths, then a mechanical clothes washer and dryer need not be provided.
4. *Linens and clothes storage.*
- A. Clean linens shall be stored in a clean place and protected from contamination until used.
  - B. Soiled linens shall be stored in nonabsorbent containers or washable laundry bags until removed for laundering.
5. *Cleaning equipment storage.* Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, single-use articles, single-service articles or linens and shall be stored in an orderly manner to facilitate the cleaning of the storage location. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.
6. *Prohibiting animals.*
- A. Except as specified in subsection (e)(3)a.6.B., live animals may not be allowed on the premises of a food service establishment.
  - B. Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result:
    - i. Edible fish or decorative fish in aquariums, shell fish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
    - ii. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
    - iii. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the individual with a disability, or service animals in training when accompanied by an approved trainer, if a health or safety hazard will not result from the presence or activities of the service animal;
    - iv. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:
      - [a] Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
      - [b] Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and



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identified so that it is readily distinguishable from piping that carries potable water.

- C. *Backflow.* An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch). A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device. A backflow prevention device shall be located so that it can be serviced and maintained. A hose shall not be attached to a faucet unless a backflow prevention device is installed.
- i. *Backflow prevention device, when required.* A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bib if a hose is attached or on a hose bib if a hose is not attached and backflow prevention is required by law by:
- [a] Providing an air gap as specified in the introductory paragraph of this subsection; or
- [b] Installing an approved backflow prevention device as specified in the introductory paragraph of this subsection.
- ii. *Backflow prevention device, carbonator.*
- [a] If not provided with an air gap as specified in the introductory paragraph of this subsection, a double check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 25.4 mm (100 mesh to one inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.
- [b] A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified in the introductory paragraph of this subsection.
- D. *Grease traps.* Grease traps shall be located to be easily accessible for cleaning, operation, and maintenance. Grease traps shall be of a type and in a location approved by the regulatory authority and outside the establishment.
- E. *Garbage grinders.* If used, garbage grinders shall be installed and maintained according to all applicable laws.
- F. *Drains.* Except for existing properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed.
- G. *Other liquid wastes and rainwater.* Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

All cleaning areas shall be paved with a smooth surface of nonabsorbent material such as concrete or machine-laid asphalt, which is sloped to drain toward an

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approved catch basin or floor drain where the liquid waste can be disposed of in a sanitary sewage disposal system.

4. The use of liquid waste transport vehicles, otherwise known as vacuum trucks, for the removal and disposal of liquid waste resulting from mobile food unit operations is prohibited.
  5. Servicing operations may be performed by the commissary operator or by the mobile food unit operator. It shall be the commissary operator's responsibility to observe or perform servicing on each mobile food unit and properly complete a servicing record as prescribed by the regulatory authority. It is the responsibility of the mobile food unit operator to confirm that the requirements of this section are fulfilled prior to resuming operations.
- (f) *Compliance; approval of regulatory authority.* The commissary or other fixed food service establishment, used as a base of operation for mobile food establishments, shall be constructed and operated in compliance with the requirements of this article and the regulatory authority.
- (g) *Enforcement.* Failure by a mobile food unit or a commissary to comply with the requirements set forth in this article or rules promulgated by the regulatory authority shall be unlawful and may result in one or more of the following penalties:
- (1) Immediate cessation of operations;
  - (2) The suspension or revocation of the mobile food unit's permit or the food dealer's permit for that commissary pursuant to sections 42-185 and 42-186 of this Code;
  - (3) Criminal penalties punishable upon conviction as provided in section 1-14; and
  - (4) The filing of a suit in district court by the city attorney to enjoin a food service establishment from operating without a permit or a permit if a permit or permit is required.
- (h) *Additional offense.* It shall be unlawful for an owner, permit holder, person in charge, employee, or representative of any commissary or mobile food unit to remove, disable or otherwise tamper with any electronic technology installed to facilitate or monitor compliance with the requirements of this chapter.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 13,028, § 2, 11-16-15; Ord. No. 13,440 , § 1, 4-13-17; Ord. No. 15,018 , § 2, 1-27-22)

**Secs. 42-154—42-175. Reserved.**

***DIVISION 2. PERMIT<sup>6</sup>***

**Sec. 42-176. Application.**

- (a) Any person desiring to operate a food service or food processing establishment shall make written application and pay the non-refundable fee as provided in section 42-178 of this article. Such application shall include, but not be limited to, the following:
    - (1) The applicant's full name, post office address and street address;
    - (2) Whether such applicant is an individual, firm or corporation and, if a partnership, the name of each partner and his address;
    - (3) The location and type of the proposed food service establishment;
    - (4) The signature of the applicant; and
    - (5) All other information deemed necessary by the director of the department of health.
  - (b) If the application is for a temporary food service establishment, it shall also include the inclusive dates of the proposed operation. The application must be received at least 48 hours in advance of the event. If the application is received less than 48 hours in advance of the event, the required fee will be twice the normal fee as required in section 42-178 of this article.
  - (c) The regulatory authority may not issue a permit or conduct a plans review until all requisite fees have been paid.
- (Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-177. Food manager certification.**

- (a) The owner or operator of an establishment which handles open food and which has seven or more food handlers on duty at any time shall make certain that at least one certified food manager is on duty during all hours of operation. This manager shall have completed a food service manager's certification course from any accredited institution or firm of his choice as approved by the regulatory authority.
- (b) The owner or operator of an establishment which handles open food and which has six or less food handlers on duty at any time shall not be required to have a certified manager on duty during all hours of operation but are required to have at least one certified food manager employed per establishment. In the event when the certified food manager is not on duty all of the food handlers on duty shall have completed a food handlers course from any accredited institution or firm as approved by the regulatory authority.
- (c) Establishments that have fluctuations in employee staffing such as retail grocery stores and convenience stores with fewer than seven food handlers shall not be required to have a certified food manager on duty

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<sup>6</sup>Editor's note(s)—Ord. No. 9380, §§ 1, 2, adopted July 11, 2002, repealed the former Div. 2, §§ 42-176—42-185, and enacted a new Div. 2 as set out herein. The former Div. 2 pertained to similar subject matter and derived from Code 1967, §§ 13-12—13-21; Ord. No. 4640, § 1, adopted Feb. 12, 1987; Ord. No. 5640, § 1, adopted Sept. 27, 1990; and Ord. No. 7639, § 1, adopted Feb. 22, 1996.

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during all hours of operations but are required to have at least one certified food manager employed per establishment.

- (d) Temporary food establishments and establishments that serve, sell, or distribute only prepackaged non-potentially hazardous foods are exempt from this section.

(Ord. No. 9380, § 2, 7-11-02)

### **Sec. 42-178. Fees.**

- (a) The fee schedule shall be as follows:

- (1) Food or food service establishment permit application types and fees:

High-risk

1—9 employees: \$300.00

10+ employees: \$500.00

Medium-risk: \$300.00

Low-risk: \$150.00

Daycare facilities: \$100.00

Food Processing Plant: \$500.00

- (2) Temporary food establishment permit: \$15.00 application fee and \$30.00 per day of the event up to 14 days.

- (3) Permit renewal late fee: \$100.00 for renewal applications received after January 31.

- (4) Plans review: \$25.00

- (5) Mobile food units:

High-risk: \$300.00

Medium-risk: \$250.00

Low-risk: \$100.00

- (b) Except as provided in subsection (c) below, no fee shall be charged relating to any food establishment owned and operated by a governmental agency; an institution of purely public charity, or a church; however, such establishments shall comply with all other requirements of this article.

- (c) Subsection (b) shall not apply to any food establishment owned and operated by an independent school district or a parochial or private school, as such establishments shall comply with subsection (a) as well as all other requirements of this article.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 10,159, § 3, 9-27-05; Ord. No. 10,808, § 1, 1-24-08)

### **Sec. 42-179. Inspection of premises.**

Upon receipt of an application for a permit required under this division, the regulatory authority shall make an inspection of the food service establishment to determine compliance with the provisions of this article and article III of this chapter.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 10,167, § 1, 9-27-05)

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**Sec. 42-180. Issuance.**

When inspection reveals that the applicable requirements of this article and article III of this chapter have been met, a food service establishment permit shall be issued to the applicant by the health authority. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 10,167, § 2, 9-27-05)

**Sec. 42-181. Term.**

Permits for food service establishments shall be issued for a period not to exceed one year, expiring on December 31<sup>st</sup> of each year.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-182. Term for temporary establishment.**

A permit for a temporary food service establishment shall be issued for a period not to exceed 14 days and for a specific location. This permit shall not be renewable within 30 days of expiration.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-183. Posting.**

A valid permit issued under this division shall be conspicuously posted in every food service establishment. Every approved mobile food unit shall display a yearly mobile permit sticker on the rear of the vehicle. The latest inspection form shall also be conspicuously posted with or near the valid permit in every food service establishment.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-184. Transferability.**

A permit issued under this article shall be nontransferable from one person or place to another person or place. Permits will remain the property of the health department.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-185. Suspension.**

- (a) A permit issued under this division may be suspended by the health authority for failure of the holder to comply with the requirements of this article or article III of this chapter. Whenever a permit holder or operator has failed to comply with any notice issued under this article, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the health authority by the permit holder within ten days of receipt of notice of suspension.
- (b) Notwithstanding the other sections of this article, whenever the health authority finds unsanitary or other conditions in the operation of a food service establishment that in his judgment constitute a substantial hazard to the public health, he may, without warning, notice or hearing, issue a written notice to the permit

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holder or operator citing such condition, specifying the corrective action to be taken. If deemed necessary, such order shall state that the permit is immediately suspended, and all food service operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the health authority shall be afforded a hearing as soon as possible.

- (c) The permit may also be suspended when food service establishment receives a failing score. The establishment shall not reopen until approved by the health authority.
- (d) Any person whose permit has been suspended under this section may, at any time, make application for a re-inspection for the purpose of reinstatement. The application shall include a statement signed by the applicant that, in his opinion, the conditions causing suspension of the permit have been corrected. At that time the health authority shall make a re-inspection, during regular health department hours of operation. If the applicant is complying with all the requirements of this article, the permit shall be reinstated.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 10,167, § 3, 9-27-05)

### **Sec. 42-186. Revocation.**

- (a) For critical or repeated violations of any of the requirements of this article or article III of this chapter or for interference with the health authority in the performance of his duties, a permit issued under this division may be revoked with no right of reinstatement after an opportunity for a hearing has been provided by the health authority. Prior to such action, the health authority shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten days following service of such notice, unless a request for a hearing is filed with the health authority by the permit holder within such ten-day period. A permit may be suspended for cause, pending its revocation or a hearing relative thereof.
- (b) The hearing provided for in this section shall be conducted by the city council at a time and place designated by it.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 10,167, § 4, 9-27-05)

### **Secs. 42-187—42-215. Reserved**

PART II - CODE OF ORDINANCES  
Chapter 42 - HEALTH AND SANITATION  
ARTICLE IV. - FOOD AND FOOD SERVICE ESTABLISHMENTS  
DIVISION 3. INSPECTION AND ENFORCEMENT

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***DIVISION 3. INSPECTION AND ENFORCEMENT<sup>7</sup>***

**Sec. 42-216. Authority/enforcement.**

- (a) The provisions of this article and article III of this chapter shall be enforced by the regulatory authority. The regulatory authority has the authority to issue citations to persons violating the provisions of this article as well as article III of this chapter. It shall be unlawful for any person to interfere with the regulatory authority in the performance of his duties as prescribed in this article or article III of this chapter.
- (b) The regulatory authority, after proper identification, shall be permitted to enter any food service establishment at any reasonable time, for the purpose of making inspections to determine compliance with this article and article III of this chapter. The regulatory authority shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, and to persons employed and to obtain sales data for the location, which shall include sufficient breakdown of sales into categories of food, alcoholic beverages, and other major categories of sales at the location. If a person denies access to the regulatory authority, the regulatory authority shall inform the person that:
  - (1) The food establishment is required to allow access to the regulatory authority as specified under this subsection;
  - (2) Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under section 42-180; and
  - (3) If access is denied, the food establishment permit is automatically suspended and the business must immediately cease operations as specified under section 42-185.
- (c) The regulatory authority shall have the right and power to request and require any person to give his true name and residence address to such regulatory authority when acting in an official capacity in matters connected with the health department. It shall be unlawful for any person to intentionally refuse to report to give false report of his name or residence address to the regulatory authority who has requested the information when acting in an official capacity in a matter connected with the health department.

(Ord. No. 9380, § 2, 7-11-02; Ord. No. 10,167, § 5, 9-27-05)

**Sec. 42-217. Penalty.**

A violation of any of the provisions of this article shall constitute an offense affecting public health and sanitation and upon conviction is punishable as provided in section 1-14.

(Ord. No. 9380, § 2, 7-11-02)

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<sup>7</sup>Editor's note(s)—Ord. No. 9380, §§ 1, 2, adopted July 11, 2002, repealed the former Div. 3, §§ 42-216—42-220, and enacted a new Div. 3 as set out herein. The former Div. 3 pertained to similar subject matter and derived from Code 1967, §§ 13-33—13-37; Ord. No. 4640, § 1, adopted Feb. 12, 1987; and Ord. No. 5805, § 2, adopted March. 14, 1991.

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**Sec. 42-218. Inspections.**

The health authority shall inspect each food service establishment located within the city and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this article. Whenever an inspection is made of a food service establishment, the findings shall be recorded on the inspection report form provided by the regulatory authority. A copy of the inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of this article. The completed form is a public document that shall be posted for public view with the food establishment permit and made available for public disclosure to any person who requests it. It shall be unlawful to remove the inspection form.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-219. Inspection period.**

Under this article, inspection frequency shall be determined by the regulatory authority based on generally recognized standards that protect public health.

(Ord. No. 9380, § 2, 7-11-02)

**Sec. 42-220. Inspection report form.**

Under this article, inspection forms will be provided by the health department.

(Ord. No. 9380, § 2, 7-11-02)

**Secs. 42-221—42-250. Reserved.**

***DIVISION 4. ABATTOIRS AND RENDERING PLANTS<sup>8</sup>***

**Sec. 42-251. Permit application for abattoir.**

- (a) Any person desiring to operate an abattoir shall make written application for a permit on forms provided by the health authority. Such application shall include the following:
- (1) The applicant's full name, post office address, street address;
  - (2) Whether such applicant is an individual, firm, corporation and if a partnership the name of each partner and his address;
  - (3) The location and type of the proposed abattoir; and
  - (4) The signature of the applicant.
- (b) If the application is for a temporary abattoir, it shall also include the inclusive dates of the proposed operation.

(Code 1967, § 13-31; Ord. No. 4640, § 1, 2-12-87)

**Sec. 42-252. Fee and term of abattoir permit.**

The fee for an abattoir permit shall be \$500.00. Permits shall be issued for a period not to exceed one year, expiring on January 1 of each year.

(Code 1967, § 13-32; Ord. No. 4640, § 1, 2-12-87)

**Sec. 42-253. Prohibited locations of abattoirs.**

- (a) It shall be unlawful for any person to erect, establish, enlarge or expand an abattoir or slaughterhouse within the city limits within 3,000 feet of any:
- (1) Church;
  - (2) Public park;
  - (3) School;
  - (4) Hospital;
  - (5) College or university;
  - (6) Dwelling resided in by anyone other than the applicant or employees of such abattoir or slaughterhouse; or
  - (7) Food service establishment.

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<sup>8</sup>Cross reference(s)—Animals, ch. 14.

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- (b) The measurement of such distance of 3,000 feet shall be in a straight line from the nearest property line of such church, public park, school, hospital, college, university, dwelling or food service establishment to the nearest exterior portion of any building, outbuilding, structure or facility used or useful in connection with such abattoir or slaughterhouse to be erected. No building permit shall be issued by the chief building official or city engineer for the erection or construction of any such abattoir or slaughterhouse within such 3,000-foot distance set forth in this section.

(Code 1967, § 13-26; Ord. No. 4640, § 1, 2-12-87)

**Sec. 42-254. Prohibited locations for rendering plants.**

- (a) It shall be unlawful for any person to erect, establish, enlarge or expand a rendering plant within the city limits within 600 feet of any:
- (1) Church;
  - (2) Public park;
  - (3) School;
  - (4) Hospital;
  - (5) College or university;
  - (6) Established food service establishment; or
  - (7) Any dwelling resided in by anyone other than the applicant or employees of the rendering plant.
- (b) The measurement of such distance of 600 feet shall be a straight line from the nearest point on the nearest property line of the church, public park, school, hospital, college, university, eating establishment or dwelling to the nearest exterior portion of any building, outbuilding or structure or facility used or useful in connection with the rendering plant to be erected.

(Code 1967, § 13-27; Ord. No. 4640, § 1, 2-12-87)

**Sec. 42-255. Livestock handling.**

It shall be unlawful for any person to suffer any livestock, for the purpose of slaughter, to remain on or near any livestock slaughterhouse or slaughter pen or anywhere else within the city at night between the hours of sunset and sunrise. During the day livestock shall not remain loaded or otherwise near any slaughterhouse or slaughter pen longer than is reasonably necessary to place such livestock within the slaughterhouse or slaughter pen.

(Code 1967, § 13-28; Ord. No. 4640, § 1, 2-12-87)

**Sec. 42-256. Soundproofing required.**

Each slaughterhouse or slaughter pen shall have a soundproof room. All livestock shall be slaughtered in this room, and any and all openings into this room shall be firmly closed during slaughter.

(Code 1967, § 13-29; Ord. No. 4640, § 1, 2-12-87)

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**Sec. 42-257. Unnecessary noises prohibited.**

No person shall keep, care for or handle livestock in or near any slaughterhouse or slaughter pen in such a manner as to create unreasonably loud, disturbing and unnecessary noises.

(Code 1967, § 13-30; Ord. No. 4640, § 1, 2-12-87)

**Secs. 42-258—42-285. Reserved.**



## **ARTICLE V. LIVE OUTDOOR EXHIBITIONS**

### **Sec. 42-286. Permit required.**

- (a) *Generally.* It shall be unlawful for any person to set up or operate any live outdoor performance, exhibition, carnival or circus, of man, machine or animal within the city to which the public is invited unless and until such person has first obtained a permit issued by the director of health and paid a permit fee.
- (b) *Fees.* The permit fee shall be: \$100.00 application fee and \$100.00 for each day or part thereof that the live outdoor performance, exhibition, carnival or circus, of man, machine or animal is to be operated.
- (c) *Term.* The term of the permit shall not exceed 14 consecutive days and shall not be renewable within 30 days of its expiration.
- (d) *Application.* Each person desiring to conduct or operate a live outdoor performance, exhibition, carnival or circus within the city shall make application for a permit to the health department at least two business days prior to the date of the contemplated live outdoor performance, exhibition, carnival or circus and tender to the director of health the following:
  - (1) A completed application form;
    - a. A completed application form shall be submitted, specifying the name and permanent address of the owner of the live outdoor performance, exhibition, carnival or circus, and if the live outdoor performance, exhibition, carnival or circus is owned by a company or corporation, the application shall show such fact and shall also show the name of the manager or other officer in charge of the live outdoor performance, exhibition, carnival or circus. In any event, the application shall show the person in active charge and control of the live outdoor performance, exhibition, carnival or circus.
    - b. The application shall further state in detail the different component parts of the live outdoor performance, exhibition, carnival or circus including, but not limited to, all concessions, shows, amusements, businesses and proposed location of the live outdoor performance, exhibition, carnival or circus, the time it is to run and the number of persons regularly traveling therewith, if any, and the number of local persons connected therewith and shall give a full and complete plan of the proposed live outdoor performance, exhibition, carnival or circus.
  - (2) A cash bond;
    - a. A cash bond in a minimum amount of \$5,000.00 or such other amount as may be required by the city manager shall be submitted to ensure payment for the services of public safety and inspection personnel, reinspection fees, removal of all materials, equipment, trash, garbage and waste of every kind, damages and such other costs as the city may incur as a consequence of a live outdoor performance, exhibition, carnival or circus.
    - b. In the event the city determines that the city is required to repair or replace any damaged property, to remove equipment, trash or garbage or to perform or have performed any additional services as a result of the permit applicant's operations, the city shall make such repairs or replacements or perform such services and deduct the cost thereof from the cash bond amount without further notice to the permit applicant.

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- c. The city shall provide permit applicant a monthly accounting of all repairs and deductions made to the cash bond, which accounting shall be made only if a deduction has been made for which no prior accounting has been tendered.
  - d. Upon expiration of 90 days from the effective date of the permit, the city shall refund any balance of the cash bond to the permit applicant, upon written application for same. Should the costs to repair or replace damaged property or perform the services exceed the amount of the cash bond, the permit applicant shall reimburse the city for such costs within 30 days of the receipt of invoice. Costs not timely paid shall accrue interest at the rate of one percent per month;
- (3) Certificates of insurance showing a comprehensive general liability policy in an amount not less than \$1,000,000.00 for bodily injuries, including accidental death per occurrence and \$100,000.00 for property damage, and showing commercial automobile liability coverage with a combined single limit of \$1,000,000.00 if any automobile is used in connection with the live outdoor performance, exhibition, carnival or circus;
  - (4) Proof of an on-site inspection and approval of the proposed facilities by the city fire, plumbing, electrical and health inspectors;
  - (5) A copy of the agreement between the permit applicant and a state-permitted waste disposal company by which the waste disposal company will provide and service sanitary accommodations for employee use only and not less than two units for each 100 participants expected for public use;
  - (6) Proof of availability of a state-approved disposal site by the company providing and servicing the sanitary accommodations;
  - (7) A site plan consistent with the requirements of this section and the Code; and
  - (8) An agreement which authorizes the applicant to use the property to conduct or operate a live outdoor performance, exhibition, carnival or circus throughout the term of the permit.
- (e) *Distance requirements.*
- (1) Except as provided in subsection (e)(2), no person may not conduct or operate a live outdoor performance, exhibition, carnival or circus within:
    - a. Five hundred feet of a private residence that such person has no right to occupy; or
    - b. Five hundred feet of property used as a school, hospital or church.
  - (2) The distance requirements specified in subsection (e)(1) shall not apply to a live outdoor performance, exhibition, carnival or circus.
    - a. Held by a church, school, school organization, hospital, or governmental entity and operated on church, school, hospital, or governmental entity grounds; or
    - b. Held at Bicentennial Park.
- (f) *Parking.* Vehicles associated with any live outdoor performance, exhibition, carnival or circus not in operation or use during any such performance shall not be parked within 500 feet of property used as a residence, whether a single-family, multi-family or duplex use.
- (g) *Living quarters.* Trailers or other vehicles, including recreation vehicles, shall not be occupied as living quarters at the site of a live outdoor performance, exhibition, carnival or circus, unless:
- (1) The permit applicant has submitted to the director of health a copy of a valid agreement between the permit applicant and a state-permitted waste disposal company by which the waste disposal company

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- will provide and service sanitary accommodations at the site for the trailers or other vehicles to be used as a residence; and
- (2) The director of health has approved in writing the use of the trailers or other vehicles as living quarters.
- (h) *Fire safety.* All tents, awnings and similar canvas material must be flameproofed in accordance with the requirements of the fire marshal. Fire lanes for emergency equipment must be provided as may be required by the fire marshal. The site for any such show must be prepared in such a manner as not to be a fire hazard and must be approved in writing by the fire marshal.
- (i) *Food service.* Where food service is provided, such food service operation shall be provided in a self-contained unit or one that is approved in writing by the director of health.
- (j) *Toilet facilities.* A minimum of two portable toilet facilities for use for each 100 participants must be provided on the premises at all times during the live outdoor performance, exhibition, carnival or circus.
- (k) *Time.* Any live outdoor performance, exhibition, carnival or circus may be operated only between the hours of 9:00 a.m. and 12:00 a.m. daily except on Sunday, on which day such shows shall only operate between the hours of 1:00 p.m. and 12:00 a.m.
- (l) *Permit issuance.* A permit may be issued, by the director of health, upon confirmation of compliance with this section and a positive review of previous live outdoor performances, exhibitions, carnivals or circuses held by same owner, company or corporation. Such review shall be performed by the director of health, who shall consider the operation of each live outdoor performance, exhibition, carnival or circus, including the number and cause of any health and safety related incidents associated in any way therewith and any other relevant information.
- (m) *Permit revocation.* If any live outdoor performance, exhibition, carnival or circus is issued a permit required by this section and it conducts itself in an unlawful manner in whole or in part, its permit may be revoked by the director of health and fees paid shall be forfeited.
- (n) *Exceptions.* It is an exception to the application of this section if the live outdoor exhibition is:
- (1) A promotional event held by and for a commercial establishment within the city if the promotional event is:
- a. On the same property from which the commercial establishment conducts business within a structure for which a certificate of occupancy has been issued by the chief building official of the city; and
  - b. On no more than two calendar days a year.
- (2) Held at Town Square and certain contiguous areas if:
- a. Town Square has been specifically reserved for the live outdoor exhibition through the parks and recreation department; and
  - b. The predominate live outdoor exhibition is to be held at Town Square; and
  - c. Any secondary exhibition is held within the area that:
    1. Is contiguous to Town Square; and
    2. Bounded by N. Pruett Street on the west, W. Defee Avenue on the north, S. Commerce Street on the east and W. Pearce Avenue.
- (o) *Limited exemption.* Short-term outdoor performances, exhibitions, carnivals or circuses sponsored solely by a church, school, school organization, hospital, governmental entity, or a non-profit corporation organized under the Texas Non-Profit Corporation Act, V.T.C.S. art. 1396-1.01, et seq., shall not be subject to the

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insurance, bond or fee requirements set forth in this section. As used in this subsection, "short-term" shall mean for a period not exceeding two consecutive calendar days.

- (p) *Violation.* Violation of this section shall be punishable, upon conviction, by a fine as provided in section 1-14. However, any conduct prescribed under this article that also constitutes an offense under state law shall not be prosecuted under this section, but shall be prosecuted pursuant to and punishable as provided by the applicable state law. An offense under this section is not a lesser included offense under V.T.C.A., Health and Safety Code §§ 481.001, et seq., 483.001—485.001, et seq.

(Code 1967, § 15-5; Ord. No. 4378, § 1, 2-13-86; Ord. No. 5456, § 1, 2-8-90; Ord. No. 9491, § 1, 1-9-03; Ord. No. 11,916, § 1, 4-12-12; Ord. No. 12,279, §§ 1—3, 6-27-13; Ord. No. 13,029, § 1, 11-16-15; Ord. No. 13,497, §§ 1, 2, 7-6-17; Ord. No. 13,676, §§ 1, 2, 1-11-18; Ord. No. 13,740, § 1, 4-12-18)

### **Sec. 42-287. Bungee cord jumping.**

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

*Bungee cord jumping* means the sport, activity or practice of jumping, falling, stepping out of, dropping or otherwise being released into the air while attached or fastened to any type of cord or rope or other device, including cords made of rubber, latex or other elastic-type material, whether natural or synthetic, whereby the cord stops, lengthens or shortens the fall of any person, allowing the person to bounce up and down, ultimately intending to bring the person to a stop at a point above the ground surface.

*Enterprise* means any establishment that provides the services or facilities required for engaging in bungee cord jumping or reverse bungee cord jumping or the demonstration or exhibition thereof.

*Reverse bungee cord jumping* means the sport, activity or practice of attaching or fastening oneself to any type of cord or rope or other device, including cords specified in the definition of bungee cord jumping in this subsection, whereby a person is located below a device or structure or machine from which a cord or rope is suspended or attached and is released to cause the person to be propelled, catapulted or otherwise launched out of a fixed position into the air, allowing the person to bounce up and down, ultimately intending to bring the person to a stop at a point above the ground surface.

- (b) It shall be unlawful for any person to engage in bungee cord jumping or reverse cord jumping in any form whatsoever or for any person to own, operate or conduct any enterprise.
- (c) Any person who violates this section shall, upon conviction, be fined as provided in section 1-14.

(Code 1967, § 15-6; Ord. No. 6462, § 1, 12-10-92)