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VOLUME: 1

ARTICLE 4: HEALTH & SANITATION

CHAPTER 5: FOOD ESTABLISHMENT REGULATIONS

SECTION 1. ENACTMENT PROVISIONS

1.1. Popular Name

This Ordinance shall be commonly cited as the “Food Establishment Regulations.”

1.2. Purpose

This Chapter provides standards for food establishments in order to protect the public health, safety and welfare.

1.3. Scope

This Chapter applies to all property within the incorporated municipal boundaries (i.e., “city limits”).

SECTION 2. DEFINITIONS

2.1.General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

2.2.Specific

Authorized Agent or Employee: an employee of the City, a representative of the City designated by the City Council. This position may be that of a food establishment inspector.

City: the City of Dripping Springs, Texas. Any reference herein to the City shall mean the City Council of the City or a person designated by the City Council to perform the duties or exercise the authority provided for in this Chapter.

City Health Inspector: That individual or organization appointed by the City Council to provide Health Inspection Services on behalf of the City.

Food Establishment: a restaurant, cafe, cafeteria or similar establishment, the primary purpose of which is to sell food, beverages or meals to the public, operating either seasonally or year round. For purposes of this Chapter, the term also includes kitchens at child or adult care facilities operating pursuant to a license issued by the State of Texas. This term includes a Mobile Unit. The term excludes a bed and breakfast establishment with seven or fewer rooms for rent that serves only breakfast to its overnight guests.

Mobile Unit: A Food Establishment operated within or in conjunction with an automobile that is not sited in one location for more than twenty-four (24) hours.

Nonprofit: A not-for profit corporation organized pursuant to the laws of the State of Texas, and operating under current Articles of Incorporation on file with the Texas Secretary of State's Office, and in good standing.

Person: A human being, corporation, nonprofit corporation, unincorporated association, government agency, or other entity that is vending food and/or beverages to the public. The term does not include the owner of a vehicle or trailer loaned to a nonprofit corporation, school or government agency for purposes of fundraising or charitable activities.

State Rules: the Texas Food Establishment Regulations found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 175.

Temporary Food Establishment: a restaurant, cafe, cafeteria or similar establishment, the primary purpose of which is to sell food and meals to the public, and that operates in the City three (3) consecutive days or less.

SECTION 3. REGULATIONS

3.1. Adoption of Regulations

The City adopts by reference the provisions of the Texas Food Establishment Regulations of the Texas Board of Health which are found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 175 regarding the regulation of food establishments in this jurisdiction, as such rules currently exist, and as they are amended from time to time.

3.2. Permits & Exemptions

- 3.2.1. **Permits Required:** No person may not operate a food establishment without a permit issued by the City. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this chapter. A valid permit must be posted in or on every food establishment regulated by this Chapter. This section does not apply to food establishments that operate under a valid permit issued by Hays County.
- 3.2.2 **Nonprofits:** A food establishment operated solely by a nonprofit corporation, school or government agency is exempt from the permitting requirements of this Chapter, but is not exempt from compliance with state rules. The City may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption. City Health Inspector is authorized to inspect nonprofit food establishments for compliance with City and state rules. Such inspections are informational and educational purposes only, and shall not result in code enforcement actions.
- 3.2.3 **Founders' Day:** Vendors operating a temporary food establishment at the Founders Day festival are exempt from the permitting requirements of this Chapter, but are not exempt from compliance with state rules. All food vendors at Founders' Day must receive and abide by packets provided by the City containing health information and safe food preparation techniques. The City Health Inspector is authorized to inspect food establishments at Founders' Day for compliance with City and state rules. Such inspections are informational and for educational purposes only, and shall not result in code enforcement actions. This exemption does not apply to corporations (for-profit or nonprofit) operating traveling carnivals.

3.3. Application for Permit, Fees & Inspections

- 3.3.1. Any person operating under a valid permit issued by Hays County on September 13, 2005, may continue without a City permit.
- 3.3.2. Any person whose previously issued permit has expired, or who seeks to operate a food establishment must make a written application for a permit on forms provided by the City. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.
- 3.3.3. Except for a food establishment that was in existence and was in operation prior to the effective date of this Chapter, prior to the approval of an initial permit for a food establishment, an authorized agent or employee shall inspect the food establishment to determine compliance with state laws and rules. A food

establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.

3.3.4. The fee for a permit shall be set by the City Council, in accordance with the City's Fee Schedule Ordinance.

3.3.5. By acceptance of a permit, the permittee agrees to permit unannounced annual or periodic inspections for compliance with the State Rules by an authorized agent or employee.

3.4 Certified Food Manager & Certified Food Handler

3.4.1 Each commercial, permanently located food establishment in the City shall employ at least one Certified Food Manager certified pursuant to an accredited program under the State Rules.

3.4.2 A bed and breakfast establishment that serves food to its guests must employ at least one Certified Food Manager certified pursuant to an accredited program under the State Rules.

3.4.3 All individuals who work in or are employed by a Food Establishment shall take a Food Handlers Class and pass a written examination. All employees are required to carry their Food Handlers Certification Card and present it to the Health Inspector upon request.

3.5 Review of Plans

3.5.1. Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the City for review before work is begun. Extensive remodeling means that twenty percent (20%) or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the City if they meet the requirements of the state rules or other applicable ordinance of the City. The approved plans and specifications must be followed in construction, remodeling or conversion.

3.5.2. Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

3.6 Suspension of Permit

3.6.1. The City may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health or if an authorized agent or employee informs

the City that the food establishment is non-compliant with the State Rules and that its permit should be suspended. Suspension is effective upon service of the notice required by this section. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within twenty (20) days of receipt of a request for a hearing.

- 3.6.2. Whenever a permit is suspended, the holder of the permit or the person in charge 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 City by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten days, the suspension is sustained. The City may end the suspension at any time if reasons for suspension no longer exist.
- 3.6.3. The hearing, which shall be administrative in nature, shall be conducted before the Municipal Court Judge. The City may be represented at the hearing by the City Health Inspector, City Attorney, or Municipal Court Prosecutor. The hearing shall not be bound by Texas Rules of Evidence or Texas Code of Criminal Procedure.

3.7 Revocation of Permit

- 3.7.1. The City may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the authorized agent or employee conducting in inspection of the food establishment or otherwise performing his or her duties. Prior to revocation, the City shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten day period.
- 3.7.2. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final.

3.8 Administrative Process

- 3.8.1. A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the City.
- 3.8.2. The hearings provided for in these rules shall be conducted by the City at a time and place designated by it. Based upon the evidence presented at such hearing, the City shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the City.

3.9 Inspector

The City Council is hereby authorized to obtain the services of a trained food establishment inspector. Said inspector shall have those duties and authority established by this Chapter, and those other duties as may be assigned by the City Administrator.

3.10 The City Health Inspector shall have the authority to perform inspections in accordance with state law. Any inspection with a result of 30 or more demerits will require in a reinspection
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Inspections

- 3.10.1. The City Health Inspector shall have the authority to perform inspections in accordance with state law. Any inspection with a result of 30 or more demerits will require in a reinspection
- 3.10.2. As an express condition of receiving a permit from the City, the Applicant consents to inspections by the City.

3.11 Violation Notices

- 3.11.1. The City Health Inspector has the authority to issue Violation Notices.
- 3.11.2. Violation Notices issued under this Chapter may be prosecuted in Municipal Court.

SECTION 4. ENFORCEMENT

4.1. Civil & Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Chapter as may be required by governing law. Any person violating any provision of this Chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Chapter is hereby declared to be a nuisance.

4.2. Criminal Prosecution

Any person violating any provision of this Chapter shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Chapter is violated shall constitute a separate offense. An offense under this Chapter is a misdemeanor.

4.3. Civil Remedies

Nothing in this Chapter shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following:

- (a) injunctive relief to prevent specific conduct that violates the Chapter or to require specific conduct that is necessary for compliance with the Chapter; and
- (b) a civil penalty up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of the Chapter and after receiving notice committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter; and other available relief.