

ORDINANCE NO. 2019-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 46, "FOOD SERVICE REGULATIONS," OF THE CITY'S CODE OF ORDINANCES BY REPEALING SAID CHAPTER AND REPLACING IT WITH A NEW CHAPTER 46 TO BE TITLED "FOOD ESTABLISHMENT REGULATIONS"; PROVIDING FOR THE ADOPTION OF THE CURRENT TEXAS FOOD ESTABLISHMENT RULES; PROVIDING FOR THE REQUIREMENT OF CERTAIN PERMITS FOR FOOD ESTABLISHMENTS; PROVIDING FOR INSPECTIONS OF FOOD ESTABLISHMENTS; PROVIDING FOR COMPETENCY OF INSPECTORS; PROVIDING FOR CERTIFIED FOOD PROTECTION MANAGER AND FOOD HANDLER REQUIREMENTS; PROVIDING FOR EMPLOYEE HEALTH REQUIREMENTS; PROVIDING FOR TIME/TEMPERATURE CONTROL FOR SAFETY REQUIREMENTS; PROVIDING FOR HAIR RESTRAINTS REQUIREMENTS; PROVIDING FOR PHYSICAL FACILITIES REQUIREMENTS; PROVIDING FOR REQUIREMENTS OF OUTDOOR AREAS; PROVIDING FOR SUSPENSION OF A FOOD ESTABLISHMENT PERMIT; PROVIDING FOR THE REVOCATION OF A FOOD ESTABLISHMENT PERMIT; PROVIDING FOR THE EXAMINATION AND CONDEMNATION OF FOOD; PROVIDING FOR HEARINGS; PROVIDING FOR NOTICE OF HEARINGS; PROVIDING FOR A FEE SCHEDULE; AMENDING APPENDIX A, "SCHEDULE OF FEES"; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; ESTABLISHING GOVERNING LAW; PROVIDING FOR A PENALTY FOR THE VIOLATION HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Texas has adopted new rules and regulations relating to food service and food establishments; and

WHEREAS, the City Council of the City of McKinney seeks to adopt such food service regulations in the City's Code of Ordinances to reflect such new regulations and procedures; and

WHEREAS, the City Council of the City of McKinney believes that the adoption of such regulations will safeguard the public health and provide consumers food that is safe to eat.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. Chapter 46 of the City of McKinney Code of Ordinance, entitled “Food Service Regulations”, is hereby repealed in its entirety and replaced with a new Chapter 46, entitled “Food Establishment Regulations”, to read as follows:

“Sec.46-1. - Adoption of state rules on food service sanitation.

The City of McKinney hereby adopts by reference the provisions of the current Texas Food Establishment Rules (TFER) set forth in 25 Texas Administrative Code Chapter 228, as amended, which establish regulations regarding food, food establishments, mobile food units, food trucks and temporary food establishments, save and except the deletions and additions set forth below. The TFER are made part of this Ordinance as if fully set forth herein. Copies of the TFER are on file in the Office of the City Secretary, being marked and designated as the TFER, published by the Texas Department of State Health Services.

Sec.46-2. Definitions.

For the purpose of this Chapter, the following terms shall have the meaning given below:

- (a) **Approved.** Acceptable to the Regulatory Authority, as hereinafter defined, based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
- (b) **Authorized Representative.** The City of McKinney Executive Director of Development Services, or his/her authorized designee.
- (c) **Central Preparation Facility.** A facility used in conjunction with a Mobile Food Unit in which:
 - (1) food is prepared, stored, and/or wrapped;
 - (2) fresh water and ice are supplied;
 - (3) the Mobile Food Unit’s waste water is emptied into a proper waste disposal system; and/or
 - (4) the Mobile Food Unit is cleaned, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in a utensil-washing sink located in the Mobile Food Unit.
- (d) **Concession Stand.** A Food Establishment operated on a seasonal basis for the purpose of providing food at sporting events associated

with an Independent School District, City of McKinney, Privately Owned School, University, or Community College.

- (e) **Conditional Employee.** A potential Food Employee to whom a job offer is made, conditional upon responses to subsequent medical questions or examinations designed to identify potential Food Employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act (ADA) of 1990.
- (f) **Food.** A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, to also specifically include chewing gum.
- (g) **Food Employee.** An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- (h) **Food Establishment.** An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.
- (i) **Food Establishment – Grocery.** Any retail food establishment that sells fresh produce, fresh meats, or fresh seafood for either on-premise or off-premise consumption.
- (j) **Food Establishment – Restaurant.** A retail food establishment that prepares and/or sells food for either on-premise or off-premise consumption.
- (k) **Food Establishment – Convenience.** A retail food establishment that sells a limited selection of foods, not to include fresh produce, fresh meats, or fresh seafood, exclusively for off-premise consumption. Any food establishment with a seating area accessible to the general public that contains at least one table and/or one chair is presumed to prepare foods for on-premise consumption.
- (l) **Food Establishment – To-Go.** A retail food establishment that prepares and/or sells food exclusively for off-premise consumption. Any food establishment with a seating area accessible to the general public that contains at least one table and/or one chair is presumed to prepare foods for on-premise consumption.
- (m) **Imminent Health Hazard.** A significant threat or danger to health due to a practice, circumstance, or event which creates a situation that would likely lead to injury or a food borne illness, as determined by the Regulatory Authority, as hereinafter defined. Imminent Health Hazards include but are not limited to: lack of hot water, no electrical power, sewage back up, no water service, rodent or insect infestation

as determined by the Regulatory Authority, or a Food Establishment receives more than 30 demerits during an inspection.

- (n) **Inspector.** A person conducting inspections of Food Establishments as a representative of the Regulatory Authority, as defined herein.
- (o) **Mobile Food Unit.** A vehicle mounted, self-propelled, self-contained Food Establishment, designed to be readily moveable and used to store, prepare, display, serve or sell food. Mobile Food Units must completely maintain their mobility at all times. Unless otherwise provided, a Mobile Food Unit does not mean a stand, booth, push cart, or trailer. Notwithstanding, a Mobile Food Unit shall also refer to “Food Trucks”, as defined in Chapter 138, Article VIII of the Code of Ordinances, titled “Food Trucks, Operation Sites & Food Truck Courts”, as amended.
- (p) **Person in Charge (PIC).** The person present at a Food Establishment at the time of the inspection who is responsible for the Food Establishment’s operations.
- (q) **Private Event.** An event at which food and/or beverages are offered to participants and that is held on publicly or privately owned premises that is not available for use by the general public and where entry to the event is governed by regulations or invitation, or where food and/or beverages are offered, sampled, sold or given only to event volunteers or event staff.
- (r) **Regulatory Authority.** The City of McKinney or its authorized designee.
- (s) **Temporary Food Establishment.** A Food Establishment operated for a temporary event not to exceed fourteen consecutive (14) days.
- (t) **Time as a Public Health Control.** Using time only to monitor food instead of temperature.
- (u) **Time/Temperature Controlled for Safety (TCS) food.** A food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

Sec. 46-3. Regulations, permits, and preoperational inspections.

- (a) It shall be unlawful for any person to operate a Food Establishment within the City limits of McKinney without having been issued a valid food establishment permit, the fee for which is based on the type of Food Establishment being operated, as set forth in Appendix A of the Code of Ordinances. Only a person who complies with the requirements in this chapter shall be entitled to receive or retain a

permit, and notwithstanding the fact that all inspections necessary for obtaining a food establishment permit have been completed, such permit shall not be issued until after the building or suite in which the establishment is to be located has been issued a certificate of occupancy by the city. Permits are not transferable from one person, place or entity to another person, place, or entity. A valid permit shall be posted in or on a conspicuous place of every Food Establishment in public view. Permits shall remain in effect until the last day of the month of issuance unless sooner revoked for cause, or as otherwise provided herein.

- (b) A Temporary Food Establishment may apply for a temporary health permit, which shall be in effect for a period of time not to exceed fourteen (14) consecutive days in conjunction with a single event or celebration.
- (c) Mobile Food Units shall be considered Food Establishments and shall comply with all pertinent regulations contained herein, including obtaining a mobile food establishment permit; provided however, a mobile food establishment permit shall be issued for six month periods, twice a year, commencing on January 1 and remaining in effect until June 30 and July 1 remaining in effect until December 31. Any permit issued during the first six months of the year shall expire on June 30, irrespective of the date of issuance. Any permit issued during the second six months of the year shall expire on December 31, irrespective of date of issuance. There shall be no pro-ration of fees assessed after the first month of each period. Mobile Food Units shall operate from a Central Preparation Facility or other permitted Food Establishment and shall report to such location daily for supplies and for cleaning and servicing operations. Mobile Food Units that use a Central Preparation Facility must obtain a central preparation facility permit in addition to a mobile food establishment permit. Use of a private residence as a Central Preparation Facility is prohibited. Mobile Food Unit applications must provide a valid driver's license, proof of insurance for the Mobile Food Unit, route schedule for operations, notarized Central Preparation Facility letter, and the latest Central Preparation Facility inspection report from the Regulatory Authority.
- (d) Food vendors that participate in Third Monday Trade Days shall be considered Food Establishments and shall comply with all pertinent regulations herein, including the requirement of an annual permit. A Trades Permit shall remain valid until December 31st of each year.
- (e) Vendors that participate in Chestnut Square and Adriatica Farmers Market who provide time/temperature control for safety foods shall obtain a farmers market temporary permit. A farmers market

temporary permit shall remain valid until December 31st of each year. There shall be no proration of fees regardless of when the application is filed or when the permit is issued.

- (f) A Temporary Food Establishment operated by or solely for the benefit of a nonprofit organization is exempt from the permit fee requirement. However, such Food Establishment is not exempt from the remaining permit requirements of this chapter, or from compliance with the rules.
- (g) Any person desiring to operate a Food Establishment shall make application for a permit through the City of McKinney Citizen's Self-Service Portal. The application shall include the name and address of each applicant and the location and type of Food Establishment. An application for a Temporary Food Establishment shall include the inclusive dates of the proposed Temporary Food Establishment and the location of the event. Applications for a Temporary Food Establishment shall be submitted no later than 7 days prior to the event.
- (h) The application shall be accompanied by a nonrefundable permit fee, as set forth in Appendix A, on file and available for inspection in the office of the City Secretary.
- (i) The McKinney Independent School District, Prosper Independent School District, Frisco Independent School District, and Allen Independent School District shall be exempt from the permit fee.
- (j) Every permit holder or Person in Charge shall at all times have available on the premises for inspection the Certified Food Manager Certificate and Food Handler Cards for all employees of the Food Establishment.
- (k) A food establishment permit that lapses for non-payment of the annual food establishment permit fee, will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than one (1) month may not be reinstated without the appropriate plan review application, plan review fee, and food establishment permit fee.
- (l) Whenever a Food Establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a Food Establishment, or a change of ownership occurs, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the Regulatory Authority for review and approval before construction, remodeling or conversion is commenced. The plans and specifications shall include a

proposed menu, proposed layout, equipment arrangement, mechanical plans, and construction materials of work areas, finish schedules and the type and model of proposed fixed equipment and facilities. No Food Establishment shall be constructed, extensively remodeled, or converted except in accordance with said approved plans and specifications. Plans shall be submitted to using the City of McKinney Citizen Self-Service Portal. Deviation from the approved plans and specifications shall result in a food establishment permit denial, suspension, or revocation.

- (m) If a Food Establishment is required to install a grease trap or grease interceptor, the trap or interceptor shall be located outside. A variance to this requirement may be granted to a Food Establishment located in the Commercial Historic Overlay District. The Chief Building Official of the City of McKinney will be responsible for determining the size of the grease trap or interceptor to be installed to service a Food Establishment.
- (n) The provisions in 25 Tex. Admin Code §228.106(x) relative to food equipment acceptability, certification and classification is amended to read: “Food equipment that is certified or classified for sanitation by the National Sanitation Foundation (NSF) or the American National Standards Institute (ANSI) will be deemed to comply with §§228.101-228.106 of this Title.” Equipment labeled “For Household Use Only” shall not be used in a food service establishment.

SECTION 46-4. Inspections.

- (a) The Regulatory Authority shall inspect the Food Establishment prior to the issuance of the food establishment permit to determine compliance with any approved plans and specifications, compliance with other requirements of this Chapter and shall determine whether a Certificate of Occupancy has been issued for the building in which the establishment is to be located. Upon making such findings, the Regulatory Authority may issue a food establishment permit, subject to annual renewal, continued compliance with the provisions of this Chapter, and the existence of a valid Certificate of Occupancy for the building in which the establishment is located.
- (b) The Regulatory Authority shall inspect a Food Establishment at least twice annually and shall prioritize inspections based upon assessment of a Food Establishment’s compliance and potential of causing foodborne illness. Inspection frequency of a Food Establishment may be increased, at the Regulatory Authority’s discretion, based on the Food Establishment’s history of compliance with this Chapter and the potential for causing foodborne illness, including:

- (1) Prior nonconformance with this Chapter or with state or federal regulations, including priority items or priority foundation items, as defined in 25 Tex. Admin Code §228.2;
 - (2) Prior violations of this Chapter or with state or federal requirements, including core items as defined in 25 Tex. Admin Code §228.2;
 - (3) Prior complaints investigated and found to be valid by the Regulatory Authority;
 - (4) Hazards associated with the particular foods that are prepared, stored, or served at the Food Establishment;
 - (5) The type of operations, including the methods and extent of food storage, preparation, and service;
 - (6) If the primary population served is a highly susceptible population; and
 - (7) Any other risk factors deemed relevant to the operation by the Regulatory Authority.
- (c) Food Establishments shall receive three (3) demerits for each violation of a priority item, as defined in 25 Tex. Admin Code §228.2; two (2) demerits for each violation of a priority foundation item, as defined in 25 Tex. Admin Code §228.2; and one (1) demerit for each violation of a core item, as defined in 25 Tex. Admin Code §228.2 found by an Inspector during an inspection. Food Establishments that score between 21-29 demerits will be inspected quarterly until 3 consecutive inspections of 15 demerits or less are met. Food Establishments that score 30 demerits or more are inspected one time per month for 3 consecutive months. During these 3 consecutive months, a re-inspection fee will be paid for each inspection. The Food Establishment must attain a demerit score of 20 or less in each of consecutive inspections.
- (d) The Director of Code Services or his/her designee shall classify food establishments as high priority, medium priority, or low priority; according to the type of operations, particular foods that are prepared, numbers of people served, susceptibility of the population served, and any other risk factor deemed relevant to the operation.
- (e) Additional inspections of the Food Establishment shall be performed as often as necessary for the enforcement of this Chapter.
- (f) If during a routine inspection, immediate correction of a priority foundation item, as defined by 25 Tex. Admin Code §228.2, is not

achieved, the Regulatory Authority shall verify correction of the violation within ten (10) calendar days. If said priority foundation item is not corrected during the initial inspection, a re-inspection fee as set forth in the fee schedule attached hereto as Appendix A, as amended, shall be assessed prior to follow up inspection.

- (g) When an inspection of a Food Establishment results in 31 demerits or more, it shall constitute an Imminent Health Hazard and the Food Establishment shall immediately cease operations and remain closed until the Regulatory Authority conducts a re-inspection. The Environmental Health Specialist who documents the violation shall provide his/her cell phone and his/her cell supervisors cell phone to coordinate re-inspection over a weekend, but in no event shall the re-inspection occur later than the next business day. The Environmental Health Specialist shall endeavor to perform a re-inspection as soon as possible, including on a weekend, if possible. It shall be the responsibility of the permit holder to contact the Regulatory Authority at the provided phone numbers to schedule a re-inspection, and pay the re-inspection fee prior to the re-inspection being conducted. The Food Establishment shall remain closed until a re-inspection of the Food Establishment results in 20 total demerits or less.
- (h) Denial of access by a Food Establishment to the Regulatory Authority shall be cause for suspension or revocation of the Food Establishment's food establishment permit

Sec. 46-5. Competency of Inspectors

- (a) All Inspectors shall be a Registered Professional Sanitarian or a Sanitarian-in-Training in Texas.
- (b) Inspectors shall remain proficient and knowledgeable of current ordinances and professional standards.

Sec. 46-6. Certified Food Protection Manager and Food Handler Requirements.

- (a) There shall be a certified food manger on each shift and available for food service workers that may have questions about food service operations at each permitted Food Establishment. Certification must be obtained by passing an examination approved by the Texas Department of State Health Services and the Regulatory Authority. Temporary Food Establishments and Food Establishments that serve, sell, or distribute only prepackaged non-time and temperature controlled for safety foods and beverages rare exempt from this

section.

- (b) A certified food manager is required for each section of each Food Establishment. The Regulatory Authority may require additional certified food managers in sufficient number to ensure that all areas of food preparation and food service are under the direction of such certified personnel.
- (c) Upon termination or transfer of a certified food manager, the Food Establishment shall employ another certified food protection manager within fifteen (15) days of such termination or transfer.
- (d) All Food Employees shall be required to successfully complete a food handler class approved by the Texas Department of State Health Services within fifteen (15) days of hire.
- (e) Temporary Food Establishments and Concession Stands must have at least one certified food handler on duty during all hours of operation. A food handler certificate must be submitted to the Regulatory Authority upon submission of the temporary health permit application.
- (f) A permitted Food Establishment that handles only pre-packaged food and does not prepare or package food is only required to obtain a food handler certification. One certified food handler per establishment must be on duty at all times during business hours, to meet the intent of safe food practices of this Chapter.
- (g) In the event of a change of ownership of a Food Establishment, the new owner/operator of a Food Establishment shall provide proof to the Regulatory Authority that the appropriate number of certified food protection managers will be on duty within fifteen (15) days of the change of ownership.
- (h) A Food Establishment shall provide proof of food protection manager certification to the Regulatory Authority prior to being issued a food establishment permit.

Sec 46-7. Employee Health.

- (a) *Responsibility of Permit Holder, Person in Charge, and Conditional Employees.* The permit holder shall require food employees and conditional employees to report to the Person in Charge, information about their health and activities as they relate to diseases that are transmittable through food. A food employee or conditional employee shall report the information in a manner that allows the Person in Charge to reduce the risk of foodborne disease transmission, such

as the date of onset of symptoms and an illness, or diagnosis of a communicable disease by a medical professional.

Sec 46-8. Time as a Public Health Control

- (a) A Food Establishment that uses Time as a Public Health Control shall submit written procedures on a form provided by the Regulatory Authority before using such control.

Sec 46-9. Hair Restraints.

- (a) Except as provided in subsection (2) herein, all Food Employees regardless of title, position, or establishment's own policy, shall wear hair restraints such as hats, visors, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (b) This section does not apply to Food Employees such as counter staff who only serve wrapped or packaged foods or beverages, bartenders, hostesses and wait staff if they present minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (c) If during the process of conducting an inspection, an Inspector observes a Food Employee wear a hair restraint in an ineffective manner, the food employee will be asked to provide an effective means to restrain their hair from food and the violation will be noted on the inspection.

Sec. 46-10. Physical Facilities.

- (a) Floors and floor coverings of all food preparation, food service, food storage, warewashing areas, walk-in refrigeration units, dressing rooms, locker rooms, and toilet rooms shall be durable, smooth, non-absorbent, light colored, and easy to clean.
- (b) Terrazzo, ceramic, or quarry tile may be installed as an approved floor covering. Floors shall be coved at the juncture of the floor and wall, with a 3/8" inch minimum radius coving which shall extend up the wall at least four (4) inches in all areas.
- (c) Polished/sealed concrete used as flooring shall have a finished product thickness sufficient for the flooring to be smooth and easily

cleanable. Floors shall be covered at the juncture of the floor and wall with a 3/8" minimum radius coving which shall extend up the wall at least (4) inches in all areas.

- (d) Epoxy resin and other poured monolithic floors, and other durable seamless flooring systems shall be installed to a finished product thickness sufficient for the flooring to be smooth and easily cleanable. Floors shall be covered at the juncture of the floor and wall with a 3/8" minimum radius coving which shall extend up the wall at least (4) inches in all areas.
- (e) All Food Establishments, including food warehouses, with dry storage areas not exposed to excessive moisture may install sealed concrete, vinyl composition tile, or an equivalent material as approved by the Regulatory Authority. A more moisture-resistant flooring may be required if the dry storage area is subject to moisture.
- (f) *Prohibited floor covering.* The use of cardboard, sawdust, wood shavings, peanut hulls, or similar materials as a floor covering is prohibited.
- (g) Floors shall be smooth, durable, and nonabsorbent, and shall be maintained in a condition that facilitates thorough and rapid cleaning. Floors shall be free of cracks, chips, holes, and deterioration. The Regulatory Authority shall require repair or replacement of any floor which fails to meet the requirements of this section. Any flooring in an existing Food Establishment that prepares food as listed above and needs repairing shall meet the minimum requirements for flooring for their food service operations.
- (h) *Utility line installation.* Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines or pipes on the floor is prohibited.
- (i) *Walls and Ceilings.*
 - (1) *Maintenance.* Walls and ceilings, including doors, windows, skylights, and similar closures, shall be clean and maintained in good repair.
 - (2) *Construction.* The walls, including non-supporting partitions, wall coverings, and ceilings of walk-in refrigerating units, refrigeration storage areas, food preparation areas, dry storage areas, food storage areas, equipment-washing and utensil washing areas, toilet rooms, and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable such as fiberglass reinforced paneling (FRP), stainless steel

ceramic, quarry or terrazzo tile or equivalent approved by the Regulatory Authority.

- (3) The Regulatory Authority shall require durable and easily cleanable FRP in areas exposed to excessive splash in Food Establishments not involved in food preparation.
 - (4) Ceilings shall be light of color, smooth, nonabsorbent, durable and easily cleanable. Ceiling materials may be washable drop-in panels, vinyl-coated panels, taped and bedded sheetrock with light-colored epoxy or enamel paint, or an equivalent material as approved by the regulatory authority.
 - (5) Fibrous acoustical drop-in panels shall be prohibited in all food preparation, tableware and utensil warewashing areas, service areas, dry storage, toilet rooms, mop sink area, and any other area subject to moisture.
 - (6) *Exposed construction.* Studs, joists, and rafters shall not be exposed in those areas listed in food preparation areas. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.
- (j) Hand sinks shall be located within twenty-five (25) unobstructed linear feet of a food preparation, warewashing, or food dispensing area. A door or doorway is considered an obstruction and hand sinks must be installed on both sides of a door or doorway of these areas.

Sec. 46-11. Outdoor Areas, Surface Characteristics.

- (a) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions. These surfaces shall be leveled to prevent pooling of water, kept free of litter, and maintained in good repair.

Sec. 46-12. Suspension of a Food Establishment Permit.

- (a) The Regulatory Authority may, without warning, notice, or hearing suspend a food establishment permit if the holder of such permit does not comply with the requirements of this Chapter, or the operation of the Food Establishment does not comply with the requirements set forth herein, or, if the operation of the Food Establishment otherwise constitutes an Imminent Health Hazard. If a Food Establishment is experiencing an Imminent Health Hazard according to the Regulatory Authority, the Food Establishment may be closed for operations until the Imminent Health Hazard has been eliminated. Suspension is effective upon service of the notice in

accordance with Sec. 46-15, herein, as amended. When a permit is suspended, food service operations shall immediately cease. Whenever a permit is suspended, the holder thereof shall be afforded an opportunity for a hearing within twenty (20) days after receipt by the Regulatory Authority of a written request for hearing.

- (b) Whenever a permit is suspended, the holder thereof or the Person in Charge shall be notified in writing that an opportunity for a hearing shall be provided if a written request for hearing is filed with the Regulatory Authority within ten (10) days after receipt of notice. If no written request for hearing is filed within a ten (10) day period, the suspension is sustained. The Regulatory Authority may terminate the suspension at any time if reasons for suspension no longer exist.

Sec. 46-13. Revocation of a Food Establishment Permit.

- (a) The Regulatory Authority may, after providing opportunity for hearing, revoke a food establishment permit for serious or repeated violations of any of the requirements of this section or for interference with the Regulatory Authority in the performance of its duties.
- (b) Prior to revocation, the Regulatory Authority shall notify, in writing, the permit holder or the Person in Charge, of the specific reason(s) for which the food establishment permit is to be revoked and that the permit shall be revoked at the end of the ten (10) days after service of such notice unless a written request for hearing is filed within the ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final.
- (c) The holder of the revoked permit may make written application for a new permit.

Sec. 46-14. Examination and Condemnation of Food.

- (a) Any food subject to a hold order shall be tagged, labeled, or otherwise identified as such by an Inspector. Food Establishments are prohibited from using, serving, or moving any food subject to a hold order. An Inspector's hold order shall permit storage of the food under the conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.
- (b) A hold order shall state that a request for a hearing may be filed within ten (10) days after issuance thereof and that if no hearing is requested the food shall be destroyed. On the basis of evidence produced at that hearing, the hold order may be vacated, or the owner or Person in Charge of the food may be directed by written

order to denature or destroy such food or to bring it into compliance with the provisions of this Section.

Sec. 46-15. Hearings.

- (a) The Authorized Representative shall hear all appeals taken under this Chapter for denials, revocations and suspensions.
- (b) The Authorized Representative shall designate the time and the place for the hearings provided herein. Based upon the evidence presented at such hearing, the Authorized Representative shall make a final finding by sustaining, modifying, or rescinding any notice or order considered in the hearing. The Authorized Representative shall furnish a written report of the hearing decision to the permit, license, or certificate holder.

Sec. 46-16. Notice of Hearings.

- (a) A notice provided for in this section is properly served when it is delivered to the permit holder 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 permit holder.

Sec. 46-17. Fee Schedule.

- (a) All fees referenced herein shall be as established from time to time by the City Council and set forth in Appendix A to the McKinney Code.

Sec. 46-18. Dogs in Food Establishments.

- (a) In accordance with state law, a Food Establishment may permit a customer to be accompanied by a dog in an outdoor dining area if:
 - (1) the establishment posts a sign in a conspicuous location in the area stating that dogs are permitted;
 - (2) the customer and dog access the area directly from the exterior of the establishment;
 - (3) the dog does not enter the interior of the establishment;
 - (4) the customer keeps the dog on a leash and controls the dog;
 - (5) the customer does not allow the dog on a seat, table, countertop, or similar surface; and
 - (6) in the area, the establishment does not:

- (A) prepare food; or
- (B) permit open food other than food that is being served to a customer.”

Section 3. Chapter 46 of Appendix A of the City of McKinney Code of Ordinance, entitled “Food Service Regulations”, is hereby repealed in its entirety and replaced with a new Chapter 46, entitled “Food Establishment Regulations”, to read as follows:

“Chapter 46. Food Establishment Regulations.

Sec. 46-17 Fee Schedule.

Food establishment permit - Grocery\400.00

Food establishment permit - Restaurant\300.00

Food establishment permit - Convenience Store\250.00

Food establishment permit - To-Go\250.00

Plan review\200.00

Mobile food establishment permit\150.00

Central preparation facility permit\500.00

Concession stand\100.00

Temporary health permit\75.00

Farmers market temporary permit\100.00

Trades permit\200.00

Re-inspection\75.00”

Section 4. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

Section 5. All provisions of the Code of Ordinances of the City of McKinney, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effort.

Section 6. An offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

Section 7. Any person, firm, or corporation violating any of the provisions of this ordinance or of the Code of Ordinances, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of McKinney, Texas, shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense; and each and every day said violation is continued shall constitute a separate offense.

This ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS _____ DAY OF _____, 2019.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
MELISSA LEE
Deputy City Secretary

Date: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney