

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 46, "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 PLUMBING SYSTEM 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 Establishment Regulations", is hereby amended 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 latest edition of the current Texas Food Establishment Rules (TFER) set forth in 25 Texas Administrative Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 228 Retail Food Establishment, known as the Texas Food Establishment Rules (“TFER”), 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.

Commented [JRP1]: Does the City Secretary have the latest TFER? It was updated in 2021.

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) **City.** The City of McKinney, Texas.

(d) **Central Preparation Facility.** A facility used in conjunction with a mobile food unit in which:

Commented [JP2]: I have added back in multiple definitions that are still contained in this ordinance and are not otherwise defined under state law.

(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.

(e) **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.

- (f) **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.
- (g) **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.
- (e)(h) **Food employee.** An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- (e)(i) **Food Establishment.** An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.
- (e)(j) **Food Establishment Permit.** —The document issued by the regulatory authority that authorizes a person or business to operate a food establishment.
- (f)(k) **Food Preparation.** Packaging, processing, assembling, portioning, cooking or any other operation that changes the form, flavor, or consistency of food products.
- (e)(l) **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.
- (h)(m) **Inspector.** A person conducting inspections of Food Establishments as a representative of the Regulatory Authority, as defined herein.
- (n) **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 a “Food Truck,” as defined in Chapter 15038, Article 8V of the City’s Unified Development Code of Ordinances, and as regulated in

Chapter 150, Article 2, Section 205I.3, titled "Food Trucks, Operation Sites and Food Truck Courts," as amended. ~~A mobile food unit shall comply with all requirements of Section 46-3(e).~~

(o) **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.

~~(i) **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.~~

Commented [JP3]: A "private event" is not regulated in this ordinance, so no need to define it.

(p) **Regulatory Authority.** The City ~~of McKinney~~ or its authorized designee.

~~(j)~~(q) **TCS Food.** A time and temperature control for safety food, as that term is defined in 25 Texas Admin. Code §229.661(b)(13), as amended.

(r) **Temporary Event.** An event that does not exceed fourteen (14) consecutive days.

(s) **Temporary Food Establishment.** A Food Establishment operated at a single location ~~in conjunction with for a Temporary Event, not to exceed fourteen consecutive (14) days. A temporary food establishment shall be operated in conjunction with a special event or holiday.~~

Commented [JP4]: Special event has a specific definition under Section 87-2, and means an event with 75 or more people. I don't think that's what we mean here.

~~(k)~~(t) **Trade Days.** The Third Monday McKinney Trade Days event held the weekend before the third Monday of each month.

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 ~~F~~ood ~~E~~stablishment ~~P~~ermit, 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 ~~C~~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~~shall obtain 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 Temporary Events~~single event or celebration~~.
- (c) Mobile Food Units shall ~~be considered Food Establishments and obtain a mobile food establishment permit 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 ~~regardless of when the permit is issued~~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 obtain on an annual basis a Trades Permit and comply with all other pertinent regulations herein, ~~including the requirement of an annual permit~~. ~~A Trades Permit shall remain valid until December 31st of each year. A Trades Permit is valid for the operation of a Food Establishment at the Trades Days location only, and not any other locations within the City of McKinney.~~
- (e) Food preparation areas that involve ~~Time and Temperature Controlled for safety~~TCS Foods at Trades Days shall only be conducted in a trailer or Mobile Food Unit with a continuous overhead

covering that shall be made of materials that protect the interior of the establishment from weather, windblown dust, birds, pests, and debris. —Grills, smokers, or other cooking equipment separate and apart from a trailer or mobile food unit are not permitted~~will not be allowed to be set up outside the trailer or mobile food unit.~~

- (f) Vendors that operate at a properly permitted farmers' market~~participate in Chestnut Square Farmers Market who~~ and provide time/temperature control for safety foods~~TCS 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.
- (g) A Temporary Food Establishment operated by or solely for the benefit of a nonprofit organization registered with the State of Texas is exempt from paying the fee for a temporary health permit~~the permit fee requirement~~. —However, such Temporary Food Establishment is not exempt from the remaining permit requirements of this chapter, or from compliance with any other~~the~~ rules.
- (h) A permitted Food Establishment ~~that is permitted by the regulatory authority and~~ that has ~~at~~obtained tax-exempt status under a section 501(c)(3) of status from the Internal Revenue Service~~Code~~, may~~shall~~ be exempt from paying the annual food establishment permit fee, ~~if approved by the regulatory authority.~~
- (i) 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 first day of the event. If a permit application is submitted ~~in~~less than 7 days from prior to the first day of the event, the applicant shall pay an additional permit expedite fee in accordance with the fee schedule~~of \$75. No fees shall be refunded should there be insufficient time for City staff to review an application received less than 7 days from the date of the event.~~
- (j) The permit application shall be accompanied by a nonrefundable permit fee, as set forth in the fee schedule~~Appendix A~~, on file and available for inspection in the office of the City Secretary.

Commented [JP5]: Giving staff discretion to exempt some, but not all 501c3 charities from paying the permit fees is rife with danger. Either all 501c3 organization should be exempt, or none.

Commented [JP6]: This way, the City isn't guaranteeing that it can process an expedited permit request. For example, somebody can't come in 30 minutes before a temporary event and expect that their application be reviewed.

- (k) The McKinney Independent School District, Prosper Independent School District, Frisco Independent School District, Melissa Independent School District, and Allen Independent School District shall be exempt from the permit fees established in this chapter.
- (l) 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.
- (m) 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.
- (n) 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 food establishment shall then meet all requirements as provided in this ordinance. 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. Deviation from the approved plans and specifications shall result in a food establishment permit denial, suspension, or revocation. Any change of ownership in the Food Establishment shall require a plan review application, plan review fee, and food establishment permit fee.
- (o) 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 McKinney Town Center zoning 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.
- (p) 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 this

Commented [JRP7]: We previously didn't specify what was needed in case of a change in ownership. This is proposed language that is similar to what occurs when a permit lapses for greater than one month.

ordinance. Equipment labeled "For Household Use Only" shall not be used ~~by a permitted in a food service establishment~~. Food equipment used in a ~~permitted food establishment~~ shall bear an ANSI or NSF Certification.

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,
 - (2) Prior violations of this Chapter or with state or federal requirements,
 - (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 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 in accordance with the fee schedule of One Hundred Dollars (\$100.00) will be paid for each inspection. The Food Establishment must attain a demerit score of 20 or less in each of consecutive inspections.

Commented [JRP8]: Are demerits still a part of the TFER? If not, we will need to define what constitutes a demerit.

- (d) Risk Violation Fee. Should corrective action not be completed, observed, and documented on site by an inspector at the time of the inspection, one or more subsequent inspections will be required until compliance is observed and documented. Risk violation fees will incur when a repeat violation has incurred for three consecutive inspections of an item, in an amount set forth in the fee schedule. ~~The fee for each inspection of each noncompliant item or condition shall be Fifty Dollars (\$50.00).~~

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

~~(f)(a) If during a calendar year a food establishment scores 30 demerits or more, the initial re inspection fee shall be One Hundred Dollars (\$100.00). If during a calendar year a food establishment scores 30 demerits twice, the reinspection fee shall be One Hundred and Fifty Dollars (\$150.00). If during a calendar year a food establishment scores 30 demerits three times, the reinspection fee shall be Two Hundred Fifty Dollars (\$250.00).~~

- ~~(g)(f)~~ When an inspection of a Food Establishment results in 30 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. It shall be the responsibility of the permit holder to contact the Regulatory Authority at healthinfo@mckinneytexas.org, or at another address if directed to do so by the Regulatory Authority, to schedule a re-inspection, and pay the re-inspection fee prior to the re-inspection being conducted. The Regulatory Authority shall conduct a re-inspection within one business day of the permit holder requesting the re-inspection. The Food Establishment shall remain closed until a re-inspection of the Food Establishment results in 20 total demerits or less.

~~(h)~~(g) If a food establishment scores 30 demerits or more twice in a calendar year, the food establishment shall remain closed for a minimum of 24 hours to allow ample time for corrective actions to take place. In addition, the owner or person in charge of the food establishment shall be required to have an in-office consultation with the assigned inspector and the Health Compliance Manager to review the inspection report. The owner/operator of the food establishment shall provide a corrective action plan, in writing detailing how all violations were addressed and remedial actions to prevent violations from occurring in the future. Following the office consultation, the food establishment shall pay the re-inspection fee ~~of One Hundred and Fifty Dollars (\$150.00) and~~ as set forth in the fee schedule prior to the re-inspection taking place, and the food establishment re-opening for business.

(h) If a food establishment scores 30 demerits or more three times in a calendar year, the food establishment shall remain closed for a minimum of 48 hours to allow time for corrective actions to take place. In addition, the owner or person in charge of the food establishment shall be required to have an in-office consultation with the assigned inspector and the Health Compliance Manager to review the inspection report. The owner/operator of the food establishment shall provide a corrective action plan, in writing detailing how all violations were addressed and remedial actions to prevent violations from occurring in the future. Following the office consultation, the food establishment shall pay the re-inspection fee, as set forth in the fee schedule, of Two Hundred Fifty Dollars (\$250.00) prior to the re-inspection taking place, and the food establishment re-opening for business.

~~(i)~~ If during a calendar year a food establishment scores 30 demerits or more, the initial re-inspection fee shall be One Hundred Dollars (\$100.00). If during a calendar year a food establishment scores 30 demerits twice, the reinspection fee shall be One Hundred and Fifty Dollars (\$150.00). If during a calendar year a food establishment scores 30 demerits three times, the reinspection fee shall be Two Hundred Fifty Dollars (\$250.00).

~~(h)~~(i) 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 licensed by their Texas Department of Licensing and Regulation.

- (b) Inspectors shall remain proficient and knowledgeable of current ordinances and professional standards.
- (c) Interns, citizens conducting ride along inspections, and other city staff shall be exempt from this section of the ordinance if they are only part of the inspection for observation and learning purposes.

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

- (a) There shall be a certified food manager on duty at all times 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 food~~ TCS foods and beverages are exempt from this section.
- (b) 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.
- (i) *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 46-78. Plumbing System

- (a) Handwashing Sink, Installation.
 - (1) A handwashing sink shall be equipped to provide water at a temperature of at least 85°F through a mixing valve or combination faucet.
 - (2) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.
 - (3) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.
 - (4) Hand sinks shall be located within twenty-five (25) unobstructed 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.
- (b) Using a Handwashing Sink.

~~(1)~~—A handwashing sink shall be maintained so that it is always accessible for employee use. Examples of inaccessibility examples shall include storage of materials in front of or blocking access to a handwashing sink, or storage of equipment/utensils in a handwashing sinks.

Sec 46-89. Hair Restraints.

- (a) Except as provided in subsection ~~(b2)~~ 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. 46-910. 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) 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) Epoxy resin and other poured monolithic floors, and other durable seamless flooring systems shall be installed to a finished product thickness of a minimum of one-quarter inch thickness to be smooth and easily cleanable. Floors shall be coved 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. Prior to a food establishment permit being issued, the owner/operator shall submit a scope of work which states that the installed flooring meets the minimum requirements of this section.
- (d) Floors and floors coverings in food preparation areas and the required coving shall be matching and made of the same material.
- (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. Rubber cove base shall not be used as a cove in food preparation areas.
- (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.

Sec. 46-104. Outdoor Areas, Surface Characteristics.

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. 46-112. 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. 46-123. 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. 46-1~~3~~4. 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. 46-1~~4~~5. 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. 46-1~~5~~6. Notice of Hearings.

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. 46-167. Fee Schedule.

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."

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--\300.00

Plan review\200.00 (allows one revision)

Plan review re-submittal requirement\100.00

Mobile food establishment permit\150.00

Central preparation facility permit\500.00

Concession stand\100.00

Temporary health permit\75.00

Permit Expedite Fee\75.00

(if permit application is submitted less than 7 days before event or opening of food establishment)

Farmers market temporary permit\100.00

Trades permit\200.00

Vending Machine permit\100.00

Re-inspection Fee (21-29 demerits)\100.00 per inspection

Re-inspection Fee (30+ demerits)\100.00 (first offense), 150.00 (second offense); 250.00 (third offense)

Risk Violation Fee\50.00"

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 _____, 2023.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary

Date: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney