

ORDINANCE NO. 2011-3377

AN ORDINANCE AMENDING CHAPTER 7, "HEALTH AND SANITATION" SECTION 5 "FOOD ESTABLISHMENTS," TO THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1: That CHAPTER 7, "HEALTH AND SANITATION" SECTION 5 "FOOD ESTABLISHMENTS", of the Code of Ordinances of the City of College Station, Texas be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.
- PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than Twenty-Five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 27th day of October 2011.

APPROVED:

Tracy A. Berry  
Mayor

ATTEST:

Sherry Washburn  
City Secretary

APPROVED:

Carla A. Robinson  
City Attorney

**EXHIBIT "A"**

That **CHAPTER 7, "HEALTH AND SANITATION" SECTION "FOOD ESTABLISHMENTS"**, of the Code of Ordinances of the City of College Station, Texas be amended to read as follows:

**CHAPTER 7**

**HEALTH AND SANITATION**

Section 5. FOOD ESTABLISHMENTS

A. TEXAS DEPARTMENT OF STATE HEALTH SERVICES, "RULES ON TEXAS FOOD ESTABLISHMENTS 229.161 – 229.171 AND 229.173 – 229.175

INTRODUCTION

The City adopts by reference and incorporates into this section the regulations adopted by the Texas Department of State Health Services, Division of Food and Drugs as they now exist and as hereafter amended, found in 25 Texas Administrative Code Chapter 229, Sections 161-171 and 173-175: provided, that the word "municipality" in said regulations shall be understood to refer to the City of College Station and the words "regulatory authority" shall be understood to refer to the City of College Station or its authorized representative. The authorized representative for enforcement of this ordinance shall be the Brazos County Health District ("BCHD") and the City. Three certified copies of the regulations adopted in this ordinance shall be on file in the office of the City Secretary.

B. PERMIT

(1) General

- (a) No person shall operate a food establishment who does not have a valid permit issued to him or her by the regulatory authority. Only a person who complies with the requirements of this ordinance shall be entitled to receive or retain such a permit. It shall be unlawful to interfere with the regulatory authority in the performance of his duties as described in this ordinance.

(2) Issuance of Permit

- (a) Any person desiring to operate a food establishment shall make written application for a permit on the forms provided by the regulatory authority. Prior to approval of an application for a permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with the requirements of this ordinance. The regulatory authority shall issue a permit if its inspection reveals that the proposed food establishment complies with the requirements of this ordinance. A valid permit shall be posted in public view in every food establishment. The applicant shall pay to the regulatory authority a fee to be set by the Brazos County Board of Health at the time of renewal, prior to opening a new establishment and when a change of ownership occurs.
- (b) Permits shall be issued for a period not to exceed one year expiring on December 31<sup>st</sup> of each year. The application to renew a permit and the accompanying fee must be received by the regulatory authority on or before January 7<sup>th</sup> of the calendar year for which the permit renewal is sought. If such application and fee are not received by the date herein specified, the regulatory authority may charge the food establishment up to an additional twenty percent of the fee due and owing as a late penalty for failure to comply with the requirements of subsection (a) above. The charging of such late fee will have no effect on the regulatory authority's right to seek criminal penalties permitted by the enforcement provision of this ordinance. Any application and permit fee not received by January 15<sup>th</sup> may result in immediate closure of the food establishment.

(3) Transfer of Permit

- (a) A permit may not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application and the change in operation is not approved.

C. PLAN REVIEW

- (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 regulatory authority for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical

plans, and construction materials of work areas, and the type, model, location and size of proposed fixed equipment of facilities. The regulatory authority shall approve the plans and specifications, if they meet the requirements of this ordinance. No food establishment shall be constructed, extensively remodeled, or converted, except in accordance with the plans and specifications approved by the regulatory authority.

- (2) Preoperational Inspection Whenever plans and specifications are required by Paragraph (1) of Subsection C of this ordinance to be submitted to the regulatory authority, the regulatory authority shall inspect the food establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

D. INSPECTIONS

(1) Inspection Frequency

- (a) Inspections of food establishments shall be performed as often as are necessary for the enforcement of this ordinance based on public health risks posed by the establishment and the establishment's past compliance history. Inspections may also be made where consumer complaints and/or reports of foodborne illness outbreaks warrant a need to perform inspections.

(2) Access

- (a) Agents of the regulatory authority, after proper identification, shall be permitted to enter any food establishment during normal hours of operation or at any reasonable time, for the purpose of making inspections, to determine compliance with this ordinance. The agents shall be permitted to examine the records of the establishments to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed. If a person denies access to the regulatory authority, the regulatory authority shall:

- (i) Inform the person that:
- The permit holder is required to allow access to the regulatory authority as specified under subsection D(2) of this ordinance,
  - Access is a condition of the acceptance and retention of a food establishment permit to operate under subsection B(1), and

- If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and

(ii) Make a final request for access.

(3) Report of Inspections

- (a) Whenever an inspection of a food establishment is made, the findings shall be recorded in the inspection report form. The inspection report form shall summarize the requirements of this ordinance and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from one hundred. A copy of the inspection report form shall be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law. An inspection report form is based on the requirements of this ordinance and is on file in the regulatory authority's office.
- (b) The most current scored inspection report form must be displayed in a BCHD-supplied holder inside each permitted establishment. The establishment is responsible for duplicate replacement holders (available at BCHD). The encased scored inspection report form must be displayed within ten feet of the establishment's main public entrance or other location agreed upon by the inspector and representative of the establishment, and must be visible at eye level (48-66 inches) to patrons of the establishment. Patrons should be advised to direct questions about the report to BCHD. Failure to post the most current scored inspection report in the manner described or facilitating its removal may result in a re-inspection fee.

(4) Correction of Violations

- (a) The inspection report form shall specify a reasonable period of time for the correction of the violation found, and the correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:
- (i) If the regulatory authority determines an imminent health hazard exists, the establishment shall immediately cease food operations. Operations shall not be resumed until authorized

by the regulatory authority. An imminent health hazard exists under conditions including but not limited to:

- \* Lack of potable water
- \* Inadequate refrigeration
- \* Sewage backup
- \* Lack of sanitation; defined as a score of 69 or below
- \* Lack of hot water
- \* Extended interruption of electricity or water
- \* Misuse of poisonous/toxic chemicals
- \* Onset of an apparent food-borne disease outbreak
- \* Fire/Flood
- \* Failure to exclude an infectious employee
- \* Other conditions that affect public health

- (ii) All violations of four or five point weighted items shall be corrected immediately, or a plan of action agreed upon by the person in charge and inspector shall be developed and implemented.
  - (iii) All violations of three point weighted items shall be corrected immediately; provided however, in those circumstances where immediate action is not possible, the violation will be remedied prior to the expiration of ten days.
  - (iv) All other violations require corrective action, within ninety days of the inspection or before the next inspection, whichever comes first.
  - (v) In the case of temporary food establishments, all violations shall be corrected immediately. If violations are not corrected immediately, the establishment shall immediately cease food operations, until authorized to resume by the regulatory authority.
- (b) Any violation documented on three consecutive inspections will require a follow-up inspection within five business days and a re-inspection fee determined by the Brazos County Board of Health will be invoiced. If the invoice has not been paid after thirty days, there will a twenty percent additional fee collected, and after sixty days the permit may be suspended.

E. SUSPENSION OF PERMIT

- (1) The regulatory authority may without warning, notice, or hearing suspend any permit to operate a food establishment if the holder of the permit or person in charge or the operation of the food establishment: (a) does not comply with the requirements of this ordinance; and (b) the operation of the food establishment otherwise constitutes an immediate hazard to public health. Suspension is effective upon service of the notice required by subsection G of this ordinance. When a permit is suspended, food operations shall immediately cease. Unless otherwise provided in this ordinance, within one calendar year, the first permit suspension will result in a mandatory twenty four hour closure. The second permit suspension will result in a seventy two hour mandatory closure. After a third permit suspension in one calendar year the permit will be revoked, and the owner must reapply for a new permit, pay the yearly fee plus the re-inspection fee, and score a ninety or higher on the re-inspection.
- (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 notified of the right to appeal such suspension as provided in subsection H. If no written request for the hearing is filed within ten days of the service of notice, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.
- (3) Whenever a food establishment's permit is suspended, a re-inspection fee shall be invoiced. The establishment shall not resume operations until such time as a re-inspection determines that conditions responsible for the suspension no longer exist.

F. REVOCAION OF PERMIT

- (1) The regulatory authority may, after providing opportunity for a hearing as provided in subsection H, revoke a permit for serious or repeated violations of any of the requirements of this ordinance or for interference in the regulatory authority's performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or person in charge, in writing, of the reason for which 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 as provided in subsection H by the holder of the permit. If no request for hearing is filed within the ten day period, the revocation of the permit becomes final.

G. SERVICE OF NOTICES

- (1) A notice provided for in this ordinance is properly served when it is delivered to the holder of the permit, 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 regulatory authority.

H. HEARINGS

- (1) A person may request a hearing to contest the regulatory authority's denial of an application for a permit or a suspension or revocation of a permit or a hold order, except that a hearing request does not stay the regulatory authority's order for the suspension of a permit, revocation or hold order.
- (2) A person desiring a hearing in response to a denial of an application for permit, a suspension or revocation shall submit a request for a hearing to the municipality within ten calendar days of the date of the Notice.
- (3) A request for hearing shall be in writing and contain the following:
  - (a) A statement that a genuine and material issue of fact exists for which the hearing is requested;
  - (b) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact;
  - (c) A statement indicating whether the presence of witnesses for the regulatory authority is required; and
  - (d) The name and address of the respondent's or requester's legal counsel, if any.
- (4) The hearings provided for in this ordinance shall be conducted by the municipality's City Manager or his designee at a time and place designated by same. Based upon the recorded evidence of such hearing, the City Manager or his designee shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written decision shall be furnished to the holder of the permit by the municipality.

I. APPLICATION AFTER REVOCATION

- (1) Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

J. EXAMINATION AND CONDEMNATION OF FOOD

- (1) Food may be examined or samples may be taken for laboratory analysis by the regulatory authority as often as necessary for enforcement of this ordinance. The regulatory authority may, upon written notice to the owner or person in charge, place a hold order on any food which it believes is in violation of this ordinance. The regulatory authority shall tag, label, or otherwise identify any food subject to the hold order, stating the specific reasons for placing the food under the hold order with reference to the applicable provisions of the Texas Food Establishment Rules (TFER) and the hazard or adverse effect created by the observed condition. The regulatory authority shall completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, regulatory authority's tag or identification, and location. No food subject to a hold order shall be used, served, or moved from the establishment. The regulatory authority shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to public health, in which case immediate destruction shall be ordered and accomplished. If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the hold order is violated, the regulatory authority may remove the food that is subject to the order to a place of safe keeping. The hold order shall state that a request for hearing may be filed within ten days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested; and, 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 ordinance. The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of this ordinance if a person operating a food establishment or employee fails to comply with a hold order as specified in this section.

K. PROCEDURE WHEN INFECTION IS SUSPECTED

- (1) When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food establishment employee, it may secure morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:
- (a) The immediate exclusion of the employee from all food establishments.

- (b) The immediate closing of the food establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists.
- (c) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease.
- (d) Adequate medical and laboratory examination of the employee, of other employees, and of his or her body discharges.

L. FOOD HANDLER'S CARD

- (1) Each person working in a food establishment handling food or dishware shall obtain a valid food handler's card. It is an offense for an employee to begin work or for an employer to hire any person who does not have a food handler's card by the first day of employment. This card is to be issued by the BCHD or a food handler program licensed by the Texas Department of State Health Services. The card shall be valid for such a time as the issuer may designate, but not to exceed four years. The original or a copy of the food handler's card shall be posted or kept on-site by management and made available to the regulatory authority.

M. FOOD MANAGER CERTIFICATION

- (1) A food establishment shall employ at least one person who is a full-time, on-site supervisory employee who is responsible for food preparation and service and who has a valid and current food manager certification that is recognized by the Texas Department of State Health Services. Food establishments that serve, sell, or distribute only pre-packaged foods, non-potentially hazardous foods or beverages, or temporary food events are exempt from the provisions of this section.
- (2) If a food establishment cannot meet the requirements of subsection M(1) because of the termination, expiration, or permanent transfer of a certified food manager, the food establishment shall:
  - (a) Hire another employee with a current food manager certification; or
  - (b) Register a current employee for a food manager class within ten days of the termination, expiration, or permanent transfer. The approved course must be successfully completed within thirty days.
- (3) Non-compliance with this section will result in a follow-up fee to be determined by the Brazos County Board of Health.

- (4) If it is determined that lack of knowledge is a factor in a permit Suspension, the current food manager can be required by the BCHD to retake an approved food manager class.

N. PENALTIES; FEES; INJUNCTIONS

- (1) The Brazos County Board of Health shall adopt rules to charge fees and setting the fee amount necessary to the administration and enforcement of the provisions of this ordinance including, but not limited to; permit fees, class fees, inspection fees, and re-inspection fees. The Board of Health shall provide an updated fee schedule to the municipality within thirty days of any fee changes that have been approved.
- (2) Any person who violates any section of this ordinance is guilty of a misdemeanor and upon conviction is punishable in accordance with Chapter 1, Section 5, of the Code of Ordinances, city of College Station, Texas. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such a violation occurs shall constitute a separate violation.