

ORDINANCE NO. 1939

**AN ORDINANCE OF THE CITY OF BRYAN AMENDING CHAPTER 50 "HEALTH AND SANITATION" OF THE CITY CODE BY AMENDING CERTAIN SECTIONS OF ARTICLE II, "FOOD ESTABLISHMENTS"; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; PROVIDING FOR PUBLICATION IN THE NEWSPAPER; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Bryan City Council finds that the safety and protection of citizens in food establishments is an area of importance within the City.

WHEREAS, the City of Bryan City Council finds it necessary to maintain and enforce ordinances regulating such food establishments.

WHEREAS, the City of Bryan City Council finds that county-wide uniformity of such ordinances is in the best interest of citizens and food establishments.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:**

Section 1.

That Chapter 50, "Health and Sanitation" is hereby amended to read as follows:

ARTICLE II. - FOOD ESTABLISHMENTS

Sec. 50-21. - Food service sanitation ordinance adopted.

Sec. 50-22. - Permit, Generally.

Sec. 50-23. - Same—Issuance.

Sec. 50-24. - Same—Suspension.

Sec. 50-25. - Same—Revocation.

Sec. 50-26. - Service of notice.

Sec. 50-27. - Hearings.

Sec. 50-28. - Application after revocation.

Sec. 50-29. - Examination and condemnation of food.

Sec. 50-30. - Inspections—Frequency; agents' right of access.

Sec. 50-31. - Same—Report.

Sec. 50-32. - Same—Correction of violations.

Sec. 50-33. - Employees—Food handler's card.

Sec. 50-34. - Same—Procedure when infection is suspected.

Sec. 50-35. - Review of plans and specifications for newly constructed, remodeled or converted establishment.

Sec. 50-36. - Food manager certification.

Sec. 50-37. - Penalties; fees; injunctions.

Secs. 50-38—50-62. - Reserved.

Sec. 50-21. - Food service sanitation ordinance adopted.

There is hereby adopted by the city, for the purpose of establishing rules and regulations for food service sanitation, including permits and penalties, the Texas Department of State Health Services, "Rules On

Texas Food Establishments 229.161 - 229.171 and 229.173 - 229.175", current copies of which may be obtained on the Texas Department of State Health Services web site. Provided, that the words "municipality of" in such ordinance shall be understood to refer to the City of Bryan or its authorized representative. The authorized representative for enforcement of such ordinance shall be the Brazos County Health Department, also referred to in this article as the "regulatory authority." Such rules are hereby adopted and incorporated as fully as if set out at length herein, provided that all amendments to the rules adopted in this section shall take effect, and the provisions thereof shall be controlling with the corporate limits of the city.

Sec. 50-22. – Permit. Generally.

(a) Required; compliance. 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 these rules shall be entitled to receive or retain such a permit.

(b) Transferability. A permit may not be transferred from one person to another person or from one food establishment to another. A permit may not be transferred from one type of operation to another, unless approved by the regulatory authority.

(c) Application; fees. A permit shall only be issued after the appropriate application has been filed with the regulatory authority and the required fees have been paid. Fees shall be set by the Brazos County Health Department Board of Health. A valid permit shall be posted in public view in every food establishment. Permits shall be annually renewed on or before January 1 of each year.

(d) Renewal. The application for a renewal permit and the accompanying fee must be received by the regulatory authority on or before January 7th of the calendar year for which the permit is sought. If such application and fee are not received by the date herein specified, up to 20 percent of the fee due and owing as a late penalty for failure to comply with the requirements of subsection (a) above shall be paid by the applicant. Any application fee or permit renewal fee not received by January 15<sup>th</sup> may result in immediate closure of the food establishment. The charging of such late fee or the immediate closure of the food establishment will have no effect on the city's right to seek criminal penalties permitted by the enforcement provision of this article.

Sec. 50-23. - Same—Issuance.

(a) Any person desiring to operate a food establishment shall make written application for a permit on forms provided by the regulatory authority. Such application shall include the name and address of each applicant, the location and type of the proposed food establishment, and the signature of each applicant.

(b) 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 article.

(c) The regulatory authority shall issue a permit to the applicant, if its inspection reveals that the proposed food establishment complies with the requirements of this article.

Sec. 50-24. - Same—Suspension.

(a) 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 if the operation of the establishment does not comply with the requirements of this article, and if the operation of the Food establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by subsection (b) of this section. When a permit is suspended, food service operations shall immediately cease.

(b) 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 50-27. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time, if reasons for suspension no longer exist.

(c) 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 mandatory seventy two hour closure. Upon 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. All closures are subject to a re-inspection fee.

Sec. 50-25. - Same—Revocation.

The regulatory authority may, after providing opportunity for a hearing, revoke a permit, for serious or repeated violations of any of the requirements of this article or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing of the reason for which the permit is subject to revocation, and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

Sec. 50-26. - Service of notice.

A notice provided for in this article is properly served when it is delivered to the holder of the permit, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.

Sec. 50-27. - Hearings.

- (a) A person may request a hearing to contest the regulatory authority's denial of an application for permit or a suspension or revocation of a permit or a hold order. A hearing request does not stay the regulatory authority's order for the suspension of a permit, or revocation of a hold order.
- (b) 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.
- (c) A request for hearing shall be in writing and contain the following:
  - i. Statement of issue of fact for which hearing is requested and
  - ii. Statement of defense, mitigation, denial or explanation concerning each allegation of fact.
- (d) 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.

Sec. 50-28. - Application after revocation.

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

Sec. 50-29. - Examination and condemnation of food.

Food may be examined or samples may be taken for laboratory analysis by the regulatory authority as often as necessary for enforcement of this article. 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 Texas Department of State Health Services "Texas Food Establishment Rules," or any other provision of this article. 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 the 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 a 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 the 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 article. 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.

Sec. 50-30. - Inspections—Frequency; agents' right of access.

- (a) An inspection of a food establishment shall be performed as often as necessary for the enforcement of these rules 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 an inspection.
- (b) Agents of the regulatory authority, after proper identification, shall be permitted to enter any food establishment at any reasonable time, for the purpose of making inspections to determine compliance with these rules. 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.
- (c) If a person denies access to the regulatory authority, the regulatory authority shall:
  - (1) Inform the person that:
    - (i) The permit holder is required to allow access to the regulatory authority as specified under section 50-30 of this ordinance,
    - (ii) Access is a condition of the acceptance and retention of a food establishment permit to operate under 50-22 of this ordinance,
    - (iii) 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
  - (2) Make a final request for access.

Sec. 50-31. - Same—Report.

- (a) Contents; rating score. Whenever an inspection of a food establishment or commissary is made, the findings shall be recorded on the inspection report form referenced in subsection (b) of this section. The inspection report form shall summarize the requirements of these rules 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 100. 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.

(b) Inspection report form. An inspection report form is based on the requirements of these rules, is adopted by reference, and is on file in the regulatory authority's office, appended.

(c) The most current scored inspection report must be displayed in a BCHD-supplied holder inside each permitted establishment. The establishment is responsible for duplicate replacement holders. The encased scored inspection report 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.

Sec. 50-32. - Same—Correction of violations.

(a) Time period for inspections. The inspection report form shall specify a reasonable period of time for the correction of the violation found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

(1) If the regulatory authority determines an imminent health hazard exists, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority. An imminent health hazard exists under conditions including but not limited to:

- (i) Lack of potable water
- (ii) Inadequate refrigeration
- (iii) Sewage backup
- (iv) Lack of sanitation; defined as a score of 69 or below
- (v) Lack of hot water
- (vi) Extended interruption of electricity or water
- (vii) Misuse of poisonous/toxic chemicals
- (viii) Onset of an apparent food-borne disease outbreak
- (ix) Fire/Flood
- (x) Failure to exclude an infectious employee
- (xi) Other conditions that affect public health

(2) All violations of four- or five-demerit items shall be corrected immediately or a plan of action shall be developed and implemented as agreed upon by the person in charge and inspector.

(3) All three-demerit violations 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.

(4) Other violations require corrective action, not to exceed 90 days or the next inspection, whichever comes first.

(5) 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 service operation, until authorized to resume by the regulatory authority.

(b) Follow-up inspection.

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 be a twenty percent additional fee collected, and after sixty days the permit may be suspended.

(c) Failure to comply with time limits for corrections. The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of food service

operations. An opportunity for appeal from the inspection findings and time limitations will be provided if a written request for a hearing is filed with the regulatory authority within ten days following cessation of operations. If a request for a hearing is received, a hearing shall be held within 20 days of receipt of that request.

(d) Required to cease operations. Whenever a Food establishment is required under the provisions of this rule to cease operations, it shall not resume operations until such time as a re-inspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.

Sec. 50-33. - Employees—Food handler's card.

(a) Required. 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 to work or for an employer to hire any person who does not have a valid 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.

(b) Posting. Original or copy of the food handler's card shall be posted or kept on-site by management and made available to the regulatory authority.

Sec. 50-34. - Same—Procedure when infection is suspected.

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:

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

Sec. 50-35. - Review of plans and specifications for newly constructed, remodeled or converted establishment.

(a) Submission of plans. 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 and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications, if they meet the requirements of this article. No food establishment shall be constructed, extensively remodeled, or converted, except in accordance with plans and specifications approved by the regulatory authority.

(b) Preoperational inspection. Whenever plans and specifications are required by subsection (a) of this section 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 article.

Sec. 50-36. - Food manager certification.

(a) Employment of registered food manager. A Food establishment shall employ at least one person who is a fulltime, 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 service events are exempt from the provisions of this section.

(b) Termination or permanent transfer of registered food service manager. If a food establishment cannot meet the requirements of subsection (a) of this section because of the termination, expiration or permanent transfer of a certified food service manager, the food establishment shall:

(1) Hire another employee with a current food manager certification; or

(2) 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.

(c) Non-compliance with this section will result in a follow-up fee to be determined by the Brazos County Board of Health.

(d) 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.

Sec. 50-37. - Penalties; fees; injunctions.

(a) Penalties. Any person who shall violate any of the provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$25.00 nor more than \$2,000.00. In addition thereto, such persons may be enjoined from continuing such violations. Each day such violation shall continue or be permitted to continue, shall be deemed a separate violation.

(b) Fees. In addition to such fees as may be specifically set forth in this article, the Brazos County Health Department Board of Health, as the City of Bryan's authorized representative, may designate such other types of and amounts of fees that may be charged or assessed against Food establishments, persons or businesses within the city necessary to the administration and enforcement of the provisions of this article, including, but not limited to, permit fees, license fees, certificate fees, registration fees and inspection fees. The Brazos County Health Department Board of Health shall provide an updated fee schedule to the city secretary within 30 days of any fee changes approved by the board.

(c) Injunctions. The regulatory authority may seek to enjoin violations of this article.

Secs. 50-38—50-62. - Reserved.

2.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

3.

The Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

4.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

5.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given, pursuant to all applicable law.

6.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

7.

A person who violates any section of this ordinance is guilty of a misdemeanor and upon conviction is punishable in accordance with Section 1-14 of the City of Bryan Code.

8.

That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation thereof, and the effective date of the ordinance.

9.

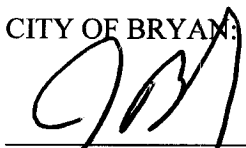
This ordinance shall take effect from and after its final passage and publication as required by law. The effective date of this Ordinance will be 17th day of November, 2011.

PRESENTED AND GIVEN first reading the 25<sup>th</sup> day of October, 2011, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 8<sup>th</sup> day of November, 2011, by a vote of 7 ayes and 0 noes at a regular meeting of the City Council of the City of Bryan, Texas.

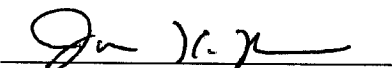
ATTEST:

  
Mary Lynne Stratta, City Secretary

CITY OF BRYAN:

  
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

  
Janis K. Hampton, City Attorney