

ORDINANCE NO. 3039

AN ORDINANCE AMENDING THE FOOD AND FOOD HANDLERS PROVISIONS, BY REPEALING AND REPLACING ORDINANCE NO. 2520 OF THE CODE OF ORDINANCES, CITY OF WAXAHACHIE, AND SETTING AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:

THAT ORDINANCE 2520 OF THE CODE OF ORDINANCES, CITY OF WAXAHACHIE, IS HEREBY REPEALED AND REPLACED TO READ AS FOLLOWS:

ARTICLE I - IN GENERAL

Sec. 1 - Adoption of regulations.

- (a) The following statutes, in their current form and as they may hereafter be amended, are adopted and incorporated into this article as if they were set forth at length herein:
 - (1) The "Texas Food, Drug and Cosmetic Act," Texas Health and Safety Code, Chapter 431.
 - (2) The "Minimum Standards of Sanitation and Health Protection Measures," Texas Health and Safety Code, Chapter 341.
- (b) The following regulations adopted by the Texas Board of Health, in their current form and as they may hereafter be amended, are adopted and incorporated into this article as if they were set forth at length herein. If there is a conflict between a rule and any section of this article, the more restrictive provision shall apply.
 - (1) The "Sanitary Rules for Food and Drug Establishments," 25 Texas Administrative Code, §229, et seq.
 - (2) The rules for "Texas Food Establishments Rules," 25 Texas Administrative Code, §228, et seq.
- (c) A food establishment's owner, manager, or operator commits an offense if an employee, owner, manager, or operator of the food establishment violates a rule adopted pursuant to subsection (b).

Sec. 2 - Definitions of terms.

The word "director" means the Director of Building and Community Services.

The words "authorized agent" means an employee of the Department of Building and Community Services.

Whenever the word "municipality" or the word "city" is used in the code adopted by this article, it shall be construed to mean the City of Waxahachie, Texas.

Whenever the words "corporate counsel" or "city attorney" is used in the code adopted by this article, it shall be construed to mean the city attorney of this city.

The words "food establishment" means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

Time/Temperature Controlled for Safety (TCS) food (TCS)--(formerly Potentially Hazardous Food (PHF) A food that requires time/temperature controlled for safety to limit pathogenic microorganism growth or toxin formation. An animal food that is raw or heat-treated. A plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixture of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation.

Sec. 3 - Conflicts.

In the event of any conflict between the provisions of the code adopted by this article, the provisions of this Code of Ordinances, state law or city ordinances, rules or regulations, the stricter provisions shall prevail and be controlling.

ARTICLE II - FOOD SERVICE ESTABLISHMENTS

Sec. 4 - Food establishment permits—General requirements.

- (a) No person shall operate a food establishment without a current, valid food establishment permit issued by the Department of Building and Community Services.
- (b) A separate permit shall be required for every food establishment with separate and distinct facilities and operations, whether situated in the same building or at separate locations.
- (c) Permits issued under the provisions of this article are not transferable. A permit shall be valid for the period of time shown on the face of the permit, unless earlier suspended or revoked by the director or his designees. All permits expire on December 31 of the permitting year and should be posted in the establishment consciously for customer view.
- (d) A letter of renewal will be sent to all current food establishments at the end of the calendar year to renew their permit. Any permit that lapses for nonpayment of the annual permit fee required in this section will be reinstated upon payment of an additional fee of twenty-five dollars (\$25.00) for each thirty-day period in which the permit has been allowed to lapse.
- (e) The application for a new permit shall be made on an application form prescribed by the director for each classification of permit.

Sec. 5 - Food manager certification and food handler safety certification.

- (a) The owner or operator of an establishment which handles open food and has food handlers on duty at any time shall make certain that at least one (1) certified food manager is on duty during all hours of operation.
- (e) All person(s) operating a food establishment of any type or working in a facility preparing or handling food items for consumption and handling clean utensils, pots, or service items are required to obtain a food handler safety certification. These requirements extend to busboys, hosts and hostesses, cleaning personnel, or any other person employed by the establishment or facility. All certificates must be available on site for authorized agent's review during inspections.

Sec. 6 - Classification of permits.

Food establishment permits shall be classified as one of the following:

(1) *Permanent food establishments.*

- a. Food service establishment: Restaurants, cafeterias, snack bars, bakeries, snow cone stands, caterer's commissaries, private school cafeterias, halfway house food services, hospital kitchens/cafeterias, institutional food services, etc., where food is prepared and served;
- b. Retail food stores handling prepackaged, potentially hazardous foods;
- c. Retail food stores handling, processing or selling open foods;
- d. Food warehouses/wholesalers;
- e. Bars/lounges; and
- f. Bed and breakfast establishments.

(2) *Mobile food establishments.*

- a. Retail food unit handling prepackaged food.
- b. Retail food unit (including trailers, mobile barbecues, snow cone units, etc.) handling, processing, or selling open food. A separate permit is required for each different type of mobile unit owned or operated by an individual or company.
- c. Mobile produce unit.
- d. All mobile food units handling open TCS foods shall operate from a central preparation facility or other fixed food service establishment that is regularly inspected by the local or state health department. All mobile food units handling TCS foods shall report at least once a day to their central preparation facility to clean and service the mobile unit. The following are exempt from these requirements: catering operations with their own central preparation facility, snow cone trailers, corn roasters, and pre-packaged ice cream units.

- e. Mobile food units are required to be continuously moving. A mobile food unit shall not sit for longer than one (1) hour at one location.
 - f. Mobile units delivering or selling meat, poultry, fish, seafood or shellfish (except retail grocery delivery trucks and units that are otherwise prohibited by this article). Except for wholesale fish truckers, any person who operates, sells, or engages in the distribution of any meat, poultry, fish, sea foods, or shellfish in the city shall operate from a fixed and permitted place of businesses. Roadside vending of meat, poultry, fish, seafood, or shellfish shall not be permitted in the city.
 - g. Pushcarts; and
 - h. Catering units.
- (3) *Temporary food establishments* - Can operate at a designated fixed location for a temporary period of time not to exceed fourteen (14) days, and only in conjunction with a special event recognized by the city. Temporary food vendors who prepare TCS food items must have a certified food manager on-site at all times during operation.
- a. Concession trailers, tents, and booths set up in association with an event;
 - b. Vendors set up in association with the Waxahachie Farmer's Market;
 - c. Catering services contracted to provide food service in association with an event; and
 - d. Food manufacturers serving samples of product in association with an event.

Sec. 7 – Waxahachie Farmer's Market.

- (a) No person shall vend fresh fruits, vegetables, or other produce or operate a farmer's market without a valid food establishment permit issued by the Building and Community Services Department.
- (b) Fresh fruits, vegetables, or other produce displays shall be confined to the area assigned by the director of the farmers market and be elevated at least twelve (12) inches above the ground.
- (c) Fresh produce shall not be cut or sliced.
- (d) Individual vendors selling produce at the farmer's market must obtain a food establishment permit from the Department of Building and Community Services. The permit will be valid for the farmer's market only, and cannot be used in conjunction with any other event.

Sec. 8 - Submission and review of plans.

- (a) When a food establishment is newly constructed or extensively remodeled, when a food establishment has a change of ownership, or when 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 Department of Building and Community Services for review and approval before construction, remodeling or conversion is begun.
- (b) An authorized agent shall inspect the food establishment prior to the start of operations to determine compliance with the approved plans and specifications, the requirements of this article and the regulations of the Texas Department of State Health Services.

Sec. 9 - Fees.

The city council shall adopt a schedule of fees for:

- (a) All food establishment permits; change of ownership; re-issuance of a permit after expiration; and additional printed permits. The Department of Building and Community Services will not issue a permit until all fees have been paid.
- (b) The following fee schedule applies to all permits issued under this chapter:
 - (1) *Permanent food establishment permits (annual fees):*
 - One hundred twenty-five dollars (\$125.00) facilities with one thousand (1,000) or less square feet.
 - One hundred seventy-five dollars (\$175.00) facilities with one thousand one (1,001) to five thousand (5,000) square feet.

Two hundred twenty-five dollars (\$225.00) facilities with five thousand one (5,001) to ten thousand (10,000) square feet.

Three hundred dollars (\$300.00) facilities with ten thousand one (10,001) or more square feet.

- (2) *Mobile food establishments.* Mobile food vendors that meet the specifications of a mobile food establishment will be charged a fee of one hundred fifty dollars (\$150.00) to operate from January 1 to December 31.
- (3) *Nonpermanent food establishments.* Caterers or vendors that operate from a state approved facility not within the city limits may operate throughout the year in conjunction with an event. The fee of one hundred twenty dollars (\$120.00) will apply to operate from January 1 to December 31.
- (4) *Temporary food establishments.* Food vendors who participate in temporary events within the city limits will be charged a fee for a temporary food establishment permit per each event. The fees for the permit will be as follows:
 - a. Vendors selling and preparing foods that require temperature control and extensive food preparation will be charged sixty dollars (\$60.00) per each event.
 - b. Vendors selling and preparing foods that do not require temperature control such as snow cone stands, prepackaged foods, and juices/beverages only will be charged twenty-five dollars (\$25.00) per each event.
- (5) *Seasonal food establishments.* Food vendors who operate as a seasonal food establishment will be charged a fee of sixty dollars (\$60.00) to operate their establishment more than fourteen (14) days but less than one hundred eighty (180) days.
- (6) *Farmers market permits.* Persons who participate in the Waxahachie Farmers Market will be charged a fee of thirty dollars (\$30.00) to operate only at the location of the market during the set days of the market. This fee will be charged in addition to the fees for space rental and space reservation.
- (7) *Change of ownership.* A fee of twenty-five dollars (\$25.00) will be applied to all food establishments that have a change of ownership in addition to the fee for renewal of permit. A new application will need to be completed. The fees are due upon submittal of the change of information.
- (8) *Reissuance of permit after expiration.* If a permitted food establishment allows their permit to expire past January 1 of the following year a fee of twenty-five dollars (\$25.00) per each thirty-day period will be assessed to reissue the permit in addition to the fee for renewal of permit.
- (9) *Additional printed permits.* Additional copies of a food establishment permit will cost five dollars (\$5.00) per copy. The initial permit will be sent to the permitted food establishment free of charge.
- (10) *Nonprofit organizations.* Nonprofit organizations, as designated by the Internal Revenue Service as a 501(c) organization or by approval of the city manager, may operate throughout the year in conjunction with an event. The fee of sixty dollars (\$60.00) will apply to operate from January 1 to December 31.

Sec. 10 - Permit denial, suspension, and revocation.

- (a) The director may deny a permit, or after notice of violation, suspend or revoke a permit for failure to comply with the requirements of this article or any state law adopted by this article.
- (b) Notice of a permit denial shall be served upon the owner or operator of the food establishment either in person or by certified mail, return receipt requested, at the mailing address specified in the permit application.

Sec. 11 - Emergency closure of a food establishment.

When an authorized agent finds any food establishment in a condition which poses an imminent risk to the health or safety of the public or the employees of the establishment, the director shall be authorized to close such food establishment and prevent its use as a food establishment until such unsanitary conditions have been removed or abated, and until it no longer endangers public health, and suspend summarily its food establishment permit.

Sec. 12 - Disposal of contaminated foods.

At any time that the authorized agent shall find any food, food products, drinks or beverages which are contaminated, spoiled or unfit for human consumption, it shall be the duty of the agent to immediately condemn such food or beverage. The owner of such contaminated food shall be required to dispose of the same in a manner approved by the authorized agent at the owner's expense.

Sec. 13 - Seizure, destruction of uninspected products.

If any meat, poultry, or fish products are found within the city which have not been properly labeled and inspected as provided by this article, they shall be seized and destroyed or excluded from the city by the authorized agent.

Sec. 14 - Appeal from condemnation.

When the action of the authorized agent in condemning any meat or poultry or product is questioned, appeal shall be made to the city manager whose decision shall be final.

ARTICLE III - PENALTIES FOR VIOLATIONS

Sec. 15 - Penalties for violation.

Any person who shall violate any provision of this ordinance and the provisions of these articles shall be deemed guilty of a misdemeanor punishable as provided in section 1-12 of this code, and may also be reprimanded as follows:

- (a) Verbal warning of violations;
- (b) Written notice of Improvement plan;
- (c) Closure of establishment;
- (d) Revocation of permit; and/or
- (e) Civil penalties filed through city attorney's office.

Each day such violation(s) continues, shall be deemed a separate offense and will be reprimanded as a separate offense.

PASS, APPROVED, AND ADOPTED on this 18th day of June, 2018.




MAYOR

ATTEST:


City Secretary