

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 6, "HEALTH AND SANITATION," OF THE TOWN'S CODE OF ORDINANCES BY REPEALING EXISTING ARTICLE 6.04, "FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND TEMPORARY FOOD ESTABLISHMENTS," AND REPLACING IT WITH A NEW ARTICLE 6.04, "FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND TEMPORARY FOOD ESTABLISHMENTS"; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING A PENALTY FOR VIOLATION; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

**WHEREAS**, the Town Council of the Town of Prosper, Texas ("Town Council"), has investigated and determined that Article 6.04, "Food, Food Establishments, Mobile Food Units, and Temporary Food Establishments," of Chapter 6, "Health and Sanitation," of the Town's Code of Ordinances should be revised; and

**WHEREAS**, the Town Council hereby finds and determines that the new rules addressed herein are in accordance with applicable state regulations, found in Chapter 228 of the Texas Administrative Code, as amended.

**WHEREAS**, these new rules are enacted for the protection of public health and food safety and will be in the best interests of the citizens of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:**

**SECTION 1**

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

**SECTION 2**

From and after the effective date of this Ordinance, existing Article 6.04, "Food, Food Establishments, Mobile Food Units, and Temporary Food Establishments," of Chapter 6, "Health and Sanitation," of the Town's Code of Ordinances is hereby repealed in its entirety and replaced with a new Article 6.04, "Food, Food Establishments, Mobile Food Units, and Temporary Food Establishments," to read as follows:

**"ARTICLE 6.04. FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND TEMPORARY FOOD ESTABLISHMENTS**

**Sec. 6.04.001 Purpose**

The purpose of this Article is to protect the public health by establishing uniform requirements for food, food establishments, mobile food units, and temporary food establishments.

**Sec. 6.04.002 Adoption and amendments of State Health Rules**

(a) The Texas Food Establishment Rules (“Rules”), contained in Chapter 228 of the Texas Administrative Code, Title 25, as adopted by the Texas Board of Health, and as they may be modified or amended by the Texas Board of Health from time to time, are hereby adopted, except as amended, modified, and deleted by this Article, as the minimum standards for food, food establishments, mobile food establishments, and temporary food establishments within the corporate town limits of the Town of Prosper, Texas; provided, however, that in said rules the words “municipality of “ shall be understood to refer to the Town of Prosper. A copy of the Texas Food Establishment Rules hereby adopted shall be on file in the office of the Town Secretary. The Town amends the rules as follows:

(b) Section 228.2, “Definitions,” of the Rules is amended to include the following:

Certified food manager is a supervisor of a food service establishment that has obtained a certified food manager certification through the Texas Department of State Health Services.

Conditional employee is 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, as amended.

Food means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or sale, in whole or in part, for human consumption.

Food employee is an individual working with unpackaged food, food equipment or utensils, or food contact surfaces.

Food establishment shall include the terms, “mobile food establishments” and “temporary food establishments” as a “food establishment.”

Foodborne illness is an incident in which two or more persons experience a similar illness, usually gastrointestinal in nature, after ingestion of a common food, and epidemiological analysis implicates the food as the source of illness.

Imminent Health hazard is 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.

Prosper, the Town. or the Town of Prosper means the Town of Prosper, Texas.

Regulatory authority means the registered Sanitarian of the Town of Prosper or other designee having jurisdiction over food establishments.

### **Sec. 6.04.003            Review of plans**

(a) 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 before work is begun. A plan review fee as established in appendix A to this code, as it exists or may be amended must be paid at time of application. Extensive remodeling means that twenty percent (20%) or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed

layout, equipment arrangement, mechanical, electrical and plumbing plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority will approve the plans and specifications if they meet the requirements of the rules adopted by this article as amended. The approved plans and specifications must be followed in construction, remodeling and/or conversion.

(b) Failure to follow the approved plans and specifications will result in a permit denial, suspension or revocation of a permit.

(c) Additional plan review required by changes, additions, or revisions to approved plans, will be assessed a plan review fee as established in appendix A to this code, as it exists or may be amended.

**Sec. 6.04.004 Catastrophe/Imminent health hazard**

In the event of any imminent health hazard, the owner of a food establishment must immediately notify the regulatory authority. It will be required that the food establishment cease operations. It shall not resume until such times as a reinspection determines that conditions responsible for the requirement to cease operations no longer exists.

**Sec. 6.04.005 Pests and Pesticides**

Only individuals licensed by the Texas Structural Pest Control Board may apply pest control products in a food establishment. A minimum of monthly pest control services is required.

**Sec. 6.04.006 Retention of certain records required**

The following records shall be retained on premises by food establishments, available for inspection, and copying by the regulatory authority:

(a) Grease trap pumping/manifest tickets shall be retained for a period of three years;

(b) Professional pest control records shall be retained for a period of one year; and

(c) When time is used as a public health control measure or the establishment has been required to establish a HACCP/risk control plan, the documentation must be retained for a period of one year.

**Sec. 6.04.007 Handwashing lavatory and water temperature**

(a) A hand sink shall be located within 25 unobstructed, linear feet to each food preparation and utensil washing areas.

(b) A hand sink must be equipped to provide water at a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) under pressure through a mixing valve or a combination faucet within 20 seconds.

(c) 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.

**Sec. 6.04.008 Physical Facilities**

(a) Only commercial grade equipment or utensils that meet or exceed National Sanitation Foundation (NSF) standards or the equivalent will be approved. The pre-opening checklist and

guidelines is a reference of approved materials for finishes in new food service facilities, extensively remodeled facilities, or facilities undergoing change of ownership.

(b) Outdoor refuse containers must remain closed at all times when not in continuous use. Containers must be emptied by an approved commercial service at a frequency to maintain the premises of the food establishment free of litter, garbage, odor, rodents, and insects. The Regulatory Authority may determine the frequency of garbage pickup if necessary.

(c) Outer openings must be protected. Openings to the outdoors must be protected against entry of insects and rodents by:

- 1) Closed, tightfitting windows and solid, self-closing, tightfitting doors;
- 2) Installation of air currents and at all rear doors used for the loading and unloading of food products, doors that open to the outside directly off food prep areas, ware wash areas, or food storage areas, and at all drive-through windows.
- 3) Installation of 16 mesh, 25.4 millimeters (16 mesh to one inch) screens on window and doors that are kept open for ventilation or other purposes.
- 4) Properly sealed perimeter walls and roofs of the establishment.

(d) A grease interceptor/trap is to be located outside of the building and must be readily and easily accessible for cleaning and inspection. The necessity and size of the grease interceptor/trap to be installed in a food establishment shall be a minimum of 1,000 gallons or determined by the Health Authority. All grease interceptors/traps must be pumped/cleaned by a licensed waste hauler. The grease interceptors/traps must be pumped empty at a frequency of not less than twice a year or as deemed necessary by the Regulatory Authority.

#### **Sec. 6.04.009 Dogs in Outdoor Dining Areas of a Food Establishment**

Pursuant to Section 437.025 of the Texas Health and Safety Code, as amended, dogs may be allowed in outdoor dining areas of a food establishment if:

- (a) The establishment posts a sign in a conspicuous location in the area stating that dogs are allowed;
- (b) The customer and dog access the area directly from the exterior of the establishment;
- (c) The dog does not enter the interior of the establishment;
- (d) The customer keeps the dog on a leash and controls the dog;
- (e) The customer does not allow the dog on a seat, table, countertop, or similar surface; and
- (f) In the area, the establishment does not:
  - (1) prepare food; or
  - (2) permit open food other than food that is being served to a customer; and
- (g) The requirements specified in this section do not apply to service animals or service animals in training.

#### **Sec. 6.04.010 Inspections-Score**

(a) All food establishments shall be inspected and scored uniformly using an official inspection form, as provided by the Texas Department of State Health Services. The sanitation score of the establishment shall be determined by the health authority using the scoring method

provided on the inspection form. Establishments with a sanitation score below 70 percent will be closed until such time that a reinspection is made and all corrective action on all identified critical violations are complete. Corrective action on all other violations must be initiated within 48 hours. The establishment shall remain closed until reopened by the health authority.

(b) Denial of access to the health authority shall be cause for suspension or revocation of the food establishment permit.

#### **Sec. 6.04.011 Certified food protection manager and food handler requirements**

(a) There shall be a certified food manager on site, present on the premises during operations and available for food service employees/personnel that may have questions about food service operations at each permitted establishment. Certification must be obtained by passing an examination approved by the Texas Department of State Health Services and the regulatory authority. Temporary food establishments and food establishments that serve, sell, or distribute only prepackaged non-time and temperature controlled for safety foods and beverages are exempt from this section.

(b) Upon termination or transfer of a certified food manager, the food establishment shall employ another certified food protection manager within 30 days of the date of termination or transfer. Certificates are not transferable from one person to another person.

(c) Every food service employee shall, within 30 days of the date of employment, be the holder of a current valid food handler card/certificate approved by the Texas Department of State Health Services.

#### **Sec. 6.04.012 Procedure when infection is suspected**

When the health authority has reasonable cause to suspect possible disease transmission by an employee of a local food establishment, it may secure a morbidity history of the suspected employee or make other investigation as indicated and shall take appropriate action. The health authority may require any or all of the following measures:

(a) The immediate exclusion of the employees from employment in local food establishments;

(b) The immediate closing of the local food establishment until, the health authority determines no further danger of disease outbreaks exists;

(c) Restriction of the employee's services to areas of the establishment where there would be no danger of transmitting disease; and/or

(d) Adequate medical and laboratory examination of the employee and other employees at owner's expense.

#### **Sec. 6.04.013 Employee health**

It is the responsibility of the permit holder, person in charge, 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 and an illness, or diagnosis of a communicable disease by a medical professional.

#### **Sec. 6.04.014 Fees**

The fees are established in appendix A to this code, as such fees exist or may be amended.

#### **Sec. 6.04.015 Suspension of Permit**

(a) The regulatory authority may, without warning, notice or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of notice. A food establishment inspection report may serve as notice. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten (10) days of suspension.

(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 that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten (10) days, the suspension is sustained until compliance with this article is met. A reinspection will be made by the regulatory authority to ensure compliance. The request for a reinspection must be made to the regulatory authority and a reinspection fee as established in appendix A to this code, as it exists or may be amended shall be paid to the town before the inspection is performed. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

#### **Sec. 6.04.016 Revocation of permit**

(a) The regulatory authority may, after providing an opportunity for a hearing, revoke a permit for serious and/or repeated violations of any of the requirements of this article and/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 (10) 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.

(b) If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

#### **Sec. 6.04.017 Administrative process**

(a) A notice, as required by 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.

(b) The regulatory authority shall conduct the hearings provided for in these rules at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. The regulatory authority shall furnish a written report of the hearing decision to the holder of the permit.

#### **Sec. 6.04.018 Appeal**

All appeals from final suspension or revocation of a health permit shall be made in writing to the town manager or his/her designee. The appeal shall be filed in writing within ten (10) days of the occurrence of the suspension or revocation. The town manager or his/her designee shall attempt to hear the appeal within (30) days after notice of the appeal. The town manager or his/her designee shall have the power to reverse a decision of the regulatory authority where he/she finds that such a reversal will not affect the health and/or welfare of the public. All decisions of the town manager or his/her designee shall be subject to review by the town council at one of its regularly scheduled meetings. The decision of the town manager or his/her designee will be final unless reversed by the town council. The town council's failure to take action upon any such appeal shall constitute approval of the decision by the town manager or his/her designee.

**Sec. 6.04.09     Penalty for violation**

Any person, firm, corporation or business entity violating this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined as provided in section 1.01.009 of this code. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the town from filing suit to enjoin the violation. The town retains all legal rights and remedies to it pursuant to local, state and federal law."

**SECTION 3**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portion of conflicting ordinances shall remain in full force and effect.

**SECTION 4**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

**SECTION 5**

This Ordinance shall become effective on January 1, 2022, after its adoption and publication as required by law.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 14<sup>th</sup> DAY OF DECEMBER, 2021.**

**APPROVED:**

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**Ray Smith, Mayor**

**ATTEST:**

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**Michelle Lewis Sirianni, Town Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

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**Terrance S. Welch, Town Attorney**