ORDINANCE NO. 2019-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, UPDATING AND REVISING CHAPTER 18, ARTICLE 3, FOOD ESTABLISHMENTS AND FOOD VENDING MACHINES, OF THE CITY CODE BY REPEALING THE CURRENT PROVISIONS AND REPLACING THEM WITH PROVISIONS CONSISTENT WITH STATE LAW GOVERNING FOOD ESTABLISHMENTS; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. City staff has recommended that the Food Establishments and Vending Machines Ordinance, Chapter 18, Article 3, be updated to reflect changes in state laws and be streamlined to provide those citizens and businesses impacted by the Ordinance with a clear understanding of the regulations intended to promote food safety.

2. The City Council wishes to implement the recommendations of City staff.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 18, Article 3, Food Establishments and Food Vending Machines is hereby repealed and replaced with the following:

ARTICLE 3. - FOOD ESTABLISHMENTS

DIVISION 1. GENERALLY

Secs. 18.061—18.085. - Reserved.

DIVISION 2. FOOD ESTABLISHMENTS

Sec. 18.086. Purpose.

The purpose of this division is to protect the public health by establishing uniform requirements for food establishments.

Sec. 18.087. Definitions.

In this division:

(A) Except as provided in Subsection (B), a term defined by the most current state rules has the same meaning in this chapter.

(B) In this chapter:

(1) AGRICULTURAL PRODUCT means produce, meat, fish, honey, dairy, seeds, live

plants intended for food production, and compost products produced by a farmer.

(2) ANNUAL TEMPORARY FOOD ESTABLISHMENT means a food establishment operated by a government entity, non-profit organization, or school district.

(3) BAKED GOODS means cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking in an oven. A baked good does not include a final baked food product that is considered a Time/Temperature Control for Safety (TCS) food item.

(4) BONA FIDE EDUCATIONAL PURPOSE means providing cooking demonstrations solely for the purpose of informing, training, or educating persons about how to prepare foods, or providing samples in order to inform persons of the quality and characteristics of the sample, and is not done in conjunction with the sale of food or food products.

(5) CERTIFIED FARMERS' MARKET means a farmers' market that has been certified by the Texas Department of Agriculture.

(6) CHILD CARE CENTER means an operation licensed as a child care center by the Texas Department of Family and Protective Services.

(7) CONCESSION STAND means a food establishment operated by a city or county, a non-profit organization, or public school district from which "limited foods" are served during athletic or entertainment events.

(8) DINING WITH DOGS means a variance granted by the health authority allowing dogs to be present at outside patios and outside dining areas of a food establishment.

(9) FARM PRODUCE means herbs and spices in their natural or dried state, vegetables, fruits, unshelled nuts, berries, grains, honey, watermelons and other melons, and cantaloupes in their natural state.

(10) FARMERS' MARKET means a designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers.

(11) FARMERS' MARKET VENDOR means a person or entity that produces agricultural products by practice of the agricultural arts upon land that the person or entity controls.

(12) FOOD ESTABLISHMENT means any location or entity that is fixed, mobile, seasonal, or temporary that is required to have a food permit.

(13) FOOD ESTABLISHMENT RULES mean the provisions of the most currently adopted State of Texas laws and, or, rules as amended by The Executive Commissioner of the Health and Human Services Commission regarding the regulation of food establishments, and the most current local amendments as adopted by the City of San Marcos.

(14) FOOD TRUCK PARK means a business venture on public or private property designated to accommodate two or more food trucks as a primary land use.

(15) FOOT PEDDLER means a restricted mobile food unit where only prepackaged food

items, from an approved source are acquired. All item storage and vending must occur from a single conveyance device and meets the same requirements for mobile food units. A foot peddler permit is a restricted unit limited to one portable ice chest, cooler, case or unit per permit, capable of being carried by one person.

(16) HEALTH AUTHORITY means the director of the department, or authorized representative, responsible for the regulation of food establishments in the City of San Marcos.

(17) LIMITED FOODS means foods requiring limited handling and preparation and that may be held at a minimum temperature of 135°F for hot holding and service or maintained at 41°F or below for cold holding and service.

(18) OWNER is a license holder/permit holder or an entity that is legally responsible for the operation of the food establishment such as the owner, or the owner's agent, or other designated person or the person reasonably in charge of the establishment.

(19) PUSHCART means a non-motorized unit that must be maneuverable by one or two persons maximum, when fully loaded and must adhere to the requirements outlined for a mobile food unit-pushcart.

(20) SAMPLING means the demonstration or promotion of a food via offering a small serving of the food product which may not consist of a whole meal, an individual portion, or a whole sandwich to the general public.

(21) SEASONAL FOOD ESTABLISHMENT means a food establishment that operates for a set number of events and conditions as defined by the Health Authority. A seasonal permit may not exceed 180 days and each event may not last longer than four days.

(22) SERVICING AREA means a base location at a permitted fixed food establishment to which a mobile food unit or transportation vehicle returns daily for such things as vehicle cleaning, discarding liquid or solid wastes, refilling water tanks and ice bins, and boarding food. No food preparation, service or utensil/ware washing is conducted at a Servicing Area.

(23) SINGLE CONVEYANCE DEVICE means a cooler, small ice chest or any other container or device light enough for an individual food peddler to carry when fully loaded.

(24) TEMPORARY FOOD ESTABLISHMENT shall mean a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single special event or celebration.

(25) UNSAFE FOOD means food that is adulterated or poisonous and harmful to health according to the state rules.

Sec. 18.088. Adoption of state health rules.

The City of San Marcos adopts by reference the provisions of the current laws and rules of the State of Texas regarding the regulation of food establishments. Any amendments or

changes in current state laws and rules of the State of Texas regarding the regulation of food establishments shall be adopted by reference unless deemed to be in conflict with local ordinances or this chapter and such conflict does not constitute a violation of state law.

Sec. 18.089. Compliance required.

(A) A person may not manufacture for supply, possess with intent to supply, display, sell, or supply, with or without charge, any food that is unsafe or misbranded.

(B) All food shall be prepared, packaged, transported, and supplied in compliance with this chapter.

(C) A person operating a food establishment, vending machine, bed and breakfast limited, mobile food establishment, food processing plant, seasonal food establishment, self-service food market, central preparation facility, temporary event, farmers' market, or farmers' market vendor booth shall comply with this chapter unless exempt pursuant to state law.

(D) Injunctions. In addition to subsection (A-E) of this section, the regulatory authority may seek to enjoin violations of this division with actions specified in Section 1.015 of the City of San Marcos Code of Ordinances.

(E) The health authority may adopt additional requirements not specified in this chapter as are reasonably required in the health authority's professional judgement, and authorized by law, to protect against health hazards or nuisances. When the health authority reasonably determines as a matter of professional judgement that no health hazard or nuisances will result from a particular activity or method of conduct, the health authority may waive or modify requirements of this chapter.

Sec. 18.090. Service of notice.

(A) The health authority may serve a notice required by this chapter by:

(1) Personal delivery to the permit holder, person in charge, or owner; or

(2) Registered or certified mail, return receipt requested, to the last known address of the permit holder responsible party, and property owner.

(B) The health authority shall retain in its records a copy of the notice.

Sec. 18.091. Hearings.

(A) The health authority shall conduct a hearing under this chapter at a time and place determined by the health authority.

(B) The health authority shall:

(1) Make and record findings based on the evidence presented at the hearing;

(2) Affirm, modify, or rescind the order considered at the hearing; and

(3) Provide a written decision to the permit holder.

Sec. 18.092. Permit Required.

(A) A person must hold a permit issued by the health authority to operate a food establishment.

(B) A person must hold a food establishment permit issued by the health authority to operate a group residence, boarding home, or congregate living facility with occupancy for 16 or more residents when food is provided, stored, or prepared onsite, or prepared by a third party operator or facilitator.

(C) A vending machine that only dispenses non-time/temperature control for safety food is not considered a food establishment and does not require a permit.

(D) A person must comply with the requirements of this chapter to receive or retain a permit.

(E) A permit issued under this chapter is not transferable.

(F) The health authority may cite, suspend operations, or suspend utilities against the person or business that is operating a food establishment that does not have a current or valid food permit.

Sec. 18.093. Permit Application.

(A) A person who seeks to operate a food establishment must submit to the health authority a written or electronic application for a permit on a form provided by the health authority. The application must include:

(1) The name and address of the applicant;

(2) The location and type of the proposed food establishment;

(3) The name of the person responsible for the proposed food establishment and the person's identification number as shown on a government-issued identification document;

(4) Proof of a current State of Texas Sales Tax Permit for the physical location for which the permit is being sought or documentation verifying that the applicant has applied for the permit with the State of Texas;

(5) Other information reasonably required by the health authority; and

(6) The electronic acknowledgment or signature of the applicant.

(B) An applicant for a food establishment permit must submit the application to the health authority not later than the 7th business day before the date for which the permit is sought. Processing of any application submitted less than 7 days for which the permit is sought may be charged an additional expedited processing fee.

(C) Before approving or disapproving an application for a permit, the health authority may inspect the proposed food establishment to determine whether it complies with this chapter.

(D) If the health authority determines that the proposed food establishment does not comply with this chapter, the health authority shall:

(1) Deny a permit to the applicant; or

(2) Issue a permit to the applicant that is subject to appropriate conditions.

(E) The health authority may modify or remove a condition to a permit issued under Subsection (D)(2) after a re-inspection.

(F) A permit is void if the applicant obtains the permit by providing false information on the application. Failure to provide all required information, fees, or falsifying information provided on the application may result in the denial of the application or revocation of a previously approved permit. The denial or revocation is in addition to other penalties provided for under section 18.089.

(G) Issuance. The regulatory authority will issue a permit to the applicant if its inspection reveals that the proposed food establishment meets all requirements of this division.

Sec. 18.094. Variances.

(A) The health authority may grant a variance by modifying or waiving a local requirement of this chapter if the health authority determines that a health hazard will not result from the issuance of a variance.

(B) A person requesting a variance must provide the following information to the health authority:

(1) A description of the requested variance from the local requirement;

(2) A citation to the relevant section of this chapter;

(3) A description of how potential health hazards will be prevented if the variance is granted; and

(4) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal.

(C) If the health authority grants a variance, the health authority shall retain in its records the information required by Subsection (B).

(D) Any variance request to modify or waive a state rule will follow the variance process outlined in the most current state rules.

Sec. 18.095. Permit expiration.

A permit issued under this chapter expires one year after the date it is issued, except that a permit for a temporary food establishment, seasonal food establishment, or a permit subject to conditions expires on the date indicated on the permit.

Sec. 18.096. Permit to be posted.

The permit holder or person in charge of a food establishment shall post a permit as required by the most current state rules, clearly visible to the general public and to patrons.

Sec. 18.097. Review of plans for food establishment permit.

(A) *Submission.* Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted for use as a food establishment, properly prepared plans and specifications for the construction, remodeling, or conversion shall be submitted to the health authority for review and approval before construction, remodeling, or conversion begins. 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 health authority will approve the plans and specifications if they meet the requirements of this division. No food establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the health authority.

(B) A person may not construct, remodel, or renovate a food establishment unless the health authority has approved the building plan.

(C) *Pre-operational Certificate of Occupancy (CO) inspection.* Whenever plans and specifications are required by subsection (A) of this section to be submitted to the health authority, the health authority shall inspect the food establishment prior to beginning operation to determine compliance with the approved plans and specifications and with the requirements of this division.

Sec. 18.098. Food manager certificate required.

(A) Food manager certificates must be assigned to one permit by the owner or responsible party and may not be shared between different permits or locations.

(B) A food manager certificate may not be required for:

(1) Certain types of food establishments deemed by the health authority to pose minimal risk of causing, or contributing to, foodborne illnesses based on the nature of the operation and extent of food preparation; or

(2) A food processing plant that is inspected at least once each week by a state or federal food sanitation inspector or that only stores prepackaged food that is not time/temperature control for safety; or

(3) A temporary food establishment.

(C) The person in charge shall have available all food manager certificate(s) on site and shall produce them upon request from the health authority.

(D) The health authority reserves the right to require food manager certificates for a food establishment in order to protect the health and safety of the public.

Sec. 18.099. Food handler training certification required.

(A) Upon request by the health authority, a person operating a food establishment shall provide a list of all food handlers employed by the food establishment along with the current, valid certification document verifying each listed person possesses a current food handler

certification.

(B) A person employed at a food establishment shall obtain a food handler certificate within 14 calendar days of employment.

Sec. 18.100. Permit fees.

(A) An applicant shall pay the associated permit fee, except the permit fee may be waived for a food establishment that is:

(1) An organization that is considered nonprofit by Internal Revenue Service regulations or otherwise determined to be nonprofit by the health authority that has applied for permits where all proceeds will be donated or given to the 501(c)(3) or a 501(c)(6). The health authority has the discretion to decide the applicability of this section;

(2) Operated by a public school system; or

(3) An event sponsored by the City of San Marcos and is determined to be a not for profit event by the health authority.

(B) If a permit application is not approved, the health authority may refund the permit fee to the applicant.

(C) Fees for permits, inspections, and other services under this division are established by the city council.

DIVISION 3. MOBILE FOOD UNITS

Sec. 18.101. Permit application.

(A) A person who seeks to operate a mobile food unit must submit to the health authority a written or electronic application for a permit on a form provided by the health authority. The application must include:

(1) A statement from the owner of a central preparation facility stating the mobile food unit uses the facility as its base of operation or proof that the applicant has its own central preparation facility;

(2) Name and address of the applicant and the applicant's identification number as shown on a current and valid government-issued identification document that includes a photograph of the applicant;

(3) Type of vehicle to be used for the proposed mobile food establishment;

(4) Proof of sales tax and use permit;

(5) An itinerary of locations where sales occur;

(6) Other information reasonably required by the health authority;

(7) The signature of each applicant;

If the central preparation facility is located outside the jurisdiction of the City, the applicant must provide a copy of the most current health inspection obtained from the

health authority having jurisdiction over the central preparation facility;

(8) A listing of all food items to be sold (menu); and

(9) A written or electronic acknowledgment signed by the owner of the mobile food unit stating that all the information provided on the application is true and accurate.

(B) For a mobile food unit permit, the health authority shall describe on the permit whether the unit is restricted or unrestricted.

(C) A person operating a mobile food unit shall promptly display the mobile food unit permit where it is readily visible as designated by the health authority.

(D) Electricity may be provided by:

(1) An onboard generator; or

(2) Other connection approved by the health authority and other regulating authorities having jurisdiction over the electrical connection.

(E) Except for the purpose of filling potable water or emptying tanks at approved locations, water or wastewater connection is prohibited.

Sec. 18.102. Items to be sold.

(A) A person operating a mobile food unit may only sell a food item described in the permit.

(B) A person operating a mobile food unit may not sell a non-food item.

Sec. 18.103. Sanitary and fire requirements.

(A) If a person who operates a mobile food unit maintains food at a hot holding temperature by mechanical means, the person shall comply with fire and explosion safety standards established by the manufacturer and applicable codes.

(B) If a person uses a pressurized fuel system or container in conjunction with the mobile food unit, that person shall comply with fire and explosion safety standards established by the manufacturer and applicable codes.

(C) A person operating a mobile food unit shall equip the interior of the mobile food unit with an attached trash receptacle approved by the health authority for the use of persons working in the mobile food unit. The operator must hold, store, and dispose of solid and liquid waste in a receptacle approved by the health authority and must comply with any other applicable city ordinances.

(D) An unrestricted mobile vending unit must be equipped with an attached potable water container of no less than 25 gallons unless approved by the health authority. A pushcart type unrestricted mobile food unit must be equipped with an attached potable water container of no less than 5 gallons; and

(E) A mobile food unit waste water container must be sized at least 15% higher capacity than the potable water tank size installed.

(F) A mobile food unit permit is non-transferrable to any new owner or vehicle; and

(G) A mobile food unit must be readily moveable at all times and all components and equipment may be subject to compliance with TXDOT regulations.

Sec. 18.104. Vending from a city property.

A person who operates a mobile food unit may not go into a city park to sell, offer for sale, or display a food item, unless the person's activity is authorized by:

(1) A park property rental agreement; or

(2) Written permission of the director of the parks and recreation department.

Sec. 18.105. Other requirements.

(A) All disturbed areas must be cleaned following each stop to a minimum of 25 feet from the sales location. Liquid spills near the unit shall be properly cleaned following each stop.

(B) The company name shall be displayed on at least three sides of the mobile food unit with a minimum of 4-inch letters.

(C) Mobile food units shall not be parked overnight in any area of the city zoned for or occupied by a one-family or two-family residence.

(D) Single service items must be recyclable or compostable material.

(E) Use of any Styrofoam material is strictly prohibited.

Sec. 18.106. Central preparation facility requirements.

(A) Application for Permit and Operational Requirements.

(1) A person who seeks to operate a central preparation facility must submit to the health authority a written or electronic application for a permit on a form provided by the health authority. The application must include:

(a) Name and address of the applicant and the applicant's identification number as shown on a current and valid government-issued identification document that includes a photograph of the applicant;

(b) Designated area to be used as a servicing area for any proposed mobile food unit operations;

(c) Size of grease trap;

(d) Number of mobile food units that will be utilizing the facility; and

(e) Any other documentation deemed necessary by the health authority to determine compliance with city ordinances and state law.

(2) Operation of the central preparation facility must be overseen by a certified food manager.

(3) The central preparation facility must maintain a current food establishment permit with the health authority in addition to the permit to operate as a central preparation facility.

(4) The health authority may deny a permit for a central preparation facility or restrict the number of mobile units that can utilize the facility. If denied, the applicant can appeal the decision to deny the permit to the health authority. Such appeal shall be in writing and submitted within 10 days of receiving a notice from the health authority that the permit has been denied.

(5) The central preparation facility may not exceed the maximum number of mobile food units authorized by the permit without receiving written permission from the health authority.

DIVISION 4. TEMPORARY, ANNUAL TEMPORARY, AND SEASONAL FOOD ESTABLISHMENTS

Sec. 18.107. Temporary, Annual Temporary, and Seasonal food establishments.

If necessary to protect against public health hazards or nuisances, the health authority may impose specific requirements in addition to those requirements contained in this code. All applications in the section submitted to the health authority less than seven business days before the date for which the permit is sought may be denied or assessed an expedited processing fee.

(A) Temporary food establishment requirements are reviewed on a case by case basis. A temporary food establishment may not operate for more than 14 consecutive days.

(B) Seasonal food establishment, as defined in this chapter, shall comply with all special conditions set forth by the health authority. The duration for a seasonal food establishment permit shall be determined by the health authority but may not exceed 180 days. The health authority shall establish the number of events to be allowed and each event may not last longer than four days.

(C) Annual temporary food establishment as defined in this chapter shall comply with all special conditions as set forth by the health authority. Annual temporary food establishment permits are only available for government entities, non-profits, and school districts.

DIVISION 5. CERTIFIED FARMERS' MARKET VENDORS

Sec. 18.108. Permit required.

(A) A permit is required for farmers' market vendors selling cut versions of watermelon, cantaloupe, tomatoes, spinach, and lettuce. A permit is also required for raw seed sprouts, raw eggs, and any other food determined to be a Time/Temperature Control for Safety (TCS) food by the health authority.

(B) A permit is not required for farmers' market vendors selling a food that is not considered a Time/Temperature Control for Safety (TCS) food by the health authority.

(C) A farmers' market vendor shall comply with all of the requirements as set forth in the Texas Health and Safety Code.

(D) Farmers' market vendors required to obtain a permit by this section may obtain a single permit if operating at multiple markets. Each location will need to be listed on the initial application or a written request must be submitted and written approval granted by the health authority to operate at additional farmers' market locations.

(E) An applicant for a certified farmers' market vendor's permit must submit a written or electronic application to the health authority. The application must include:

(1) The name and address of the applicant and the applicant's identification number as shown on a current and valid government-issued identification document that includes a photograph of the applicant;

(2) The signature of the applicant;

(3) If requested by the health authority, a statement from the owner of a central preparation facility stating the farmers' market vendor uses the facility as its base of operation or proof that the applicant has its own central preparation facility;

(4) Name and addresses of the certified farmers' market where the vendor will operate; and

(5) Any other information reasonably required by the health authority.

(F) Upon receiving the application with the fee set forth by council for a farmers' market vendor permit under this section, the health authority may approve the application for a farmers' market vendor. A farmers' market vendor permit is effective for one year from the date of issuance.

(G) An applicant for a certified farmers' market permit shall submit the application to the health authority not later than the 7th business day before the effective date for which the permit is sought and must display a current and valid permit issued by the State of Texas.

(H) A person operating under a farmers' market vendor permit shall promptly display the original farmers' market vendor permit where it is readily visible to consumers or as designated by the health authority.

(I) In the event the health authority determines an application does not comply with the

provisions of this section or other city ordinances, the health authority shall notify the applicant in writing of the denial for the issuance or renewal of a farmers' market vendor permit.

(J) An applicant who has been refused the issuance or the renewal of a farmers' market vendor permit may appeal the decision by submitting a written appeal within 10 business days to the health authority.

(K) A person may provide samples, or conduct a cooking demonstration, for a bona fide educational purpose, only in a defined physical location designated in writing by the market manager.

Sec. 18.109. Sanitary requirements.

(A) A person operating as a farmers' market vendor shall comply with the Texas Health and Safety Code and the requirements of this section.

(B) The health authority may inspect each farmers' market vendor booth offering food products as is necessary for the enforcement of this section.

(C) An employee or volunteer of a farmers' market vendor shall be a registered food handler if preparing, displaying, or serving a Time/Temperature Control for Safety (TCS) food to the public.

(D) The market manager of a certified farmers' market shall be responsible for ensuring that all booths are operating with a current and valid permit and for ensuring that all shared or common facilities and operations comply with this chapter. In the case of repeated violations of this section, the health authority may impose restrictions on the preparation of food products at a farmers' market vendor booth.

(E) A farmers' market vendor may not set up food sampling operations as unattended self-service displays for customers.

(F) A farmers' market vendor shall provide containers with covers to protect food products during storage and display and shall put sneeze guards, or other method or equipment, pre- approved by the health authority, into place to protect food products from consumer contamination.

(G) Farmers' market vendors shall correct all violations at the time of inspection unless an extension is allowed by the health authority. No extension shall be granted where the violation poses an imminent health hazard to the public.

(H) Farmers' market vendors operating at a certified farmers' market without a valid permit or with a suspended permit constitutes an offense under this chapter.

(I) The health authority may impose additional requirements to protect against health hazards related to the conduct of a farmers' market booth. The health authority may prohibit the sale of some or all Time/Temperature Control for Safety (TCS) foods.

DIVISION 6. RESTROOMS AND OTHER REQUIREMENTS

Sec. 18.110. Employee restroom requirements.

(A) An employee restroom shall be conveniently located and accessible during hours of operation.

(B) Restrooms required for mobile food units, temporary food establishments, and farmer's market vendors may be used as employee restrooms if the restrooms are located:

(1) Within 300 feet of the main food preparation area of a mobile food unit, temporary food establishment, or farmer's market vendor; or

(2) In a location determined by the health authority to be convenient and accessible to employees.

Sec. 18.111. Child care center food establishments.

(A) A child-care center must hold a food establishment permit issued by the health authority if food is provided, stored, or prepared onsite, or prepared by a third party operator or facilitator.

(B) A food establishment located in a child care center may not serve as a central preparation facility for catering or mobile food operations.

DIVISION 7. INSPECTIONS

Sec. 18.112. Inspection authority.

(A) The health authority may inspect a food establishment or bed and breakfast limited during regular business hours or at another reasonable time to determine compliance with this chapter. The health authority shall display identification upon request.

(B) The health authority may examine or collect samples of food that is stored, prepared, packaged, served, or otherwise provided for human consumption by a food establishment or bed and breakfast limited.

(C) A food establishment or bed and breakfast limited upon request, shall provide records to the health authority to determine compliance with local and state laws.

DIVISION 8. OFFENSES AND ENFORCEMENT

Sec. 18.113. Food establishment inspections and violations.

(A) After inspecting a food establishment, the health authority shall state on the inspection report:

(1) A weighted point value for each violation of a critical requirement;

(2) The rating score of the establishment determined by subtracting from 100 the total of the weighted point values for all violations; and

(3) Failure to correct the violations within the prescribed time period may result in the suspension of the permit in accordance with section 18.118 of this chapter.

(B) The person in charge of a food establishment shall correct a violation of a critical requirement as directed by the health authority in consideration of the risk to public health and safety;

(C) The person in charge of a food establishment shall correct non-critical violations:

(1) Within the time period prescribed by the inspection report or notice of violation; or

(2) If a time period is not prescribed, as soon as possible before the next routine inspection.

(D) If the rating score of a food establishment is less than 70 points, the person in charge shall immediately initiate corrective action on all critical violations and begin corrective actions on other violations no later than 48 hours after the inspection.

Sec. 18.114. Hold order and condemnation of food.

(A) The health authority may place a hold order on food or may detain equipment after:

(1) Determining that the food is stored, prepared, transported, or served in violation of applicable law;

(2) The detained equipment is not functioning properly or presents a health risk; and

(3) Giving written notice to the permit holder or the person in charge.

(B) The health authority shall tag or otherwise identify food or equipment that is subject to a hold order. Unless authorized by the health authority, a person may not use, serve, sell, or move food or equipment that is subject to a hold order, nor may the person remove a detained equipment sticker.

(C) The health authority shall permit storage of food that is subject to a hold order. The hold order may prescribe storage conditions for the food.

(D) The health authority may allow repair of equipment affixed with a detained sticker.

(E) The health authority may require re-inspection and payment of a re-inspection fee to approve repairs that are necessary to the detained equipment.

(F) The health authority shall state in a hold or detention order:

(1) The reasons for the hold order;

(2) That a person may file a written request for a hearing with the health authority not later than the 10th business day after the date the hold order is issued; and

(3) That if a hearing is not requested, the food will be destroyed or the equipment will be further detained.

(G) The permit holder or person in charge may file with the health authority a written request for a hearing on a hold order or detained equipment. The request must be filed not later

than the 10th business day after the date the hold order is issued.

(H) If a timely hearing request is filed, the health authority shall hold a hearing on the hold order.

(I) On the basis of evidence produced at the hearing, the health authority may:

(1) Vacate the hold order; or

(2) By written order require the permit holder or person in charge to denature or destroy the food, or to bring the food into compliance, or have the equipment repaired so that it operates in compliance with applicable laws.

(J) An order of the health authority to denature or destroy food or to repair detained equipment is stayed if the order is appealed to a court of competent jurisdiction not later than the third business day after the date the order is issued.

(K) The health authority shall immediately condemn food or render food unsalable as human food if the health authority determines that the food:

(1) Contains a filthy, decomposed, or putrid substance;

(2) May be poisonous or deleterious to health; or

(3) Is otherwise unsafe.

(L) The health authority may condemn equipment as unsafe for food storage or preparation if the health authority determines that the equipment:

(1) Contains filthy, decomposed, or putrid substance(s);

(2) May be or is deleterious to health; or

(3) Is otherwise unsafe.

Sec. 18.115. Temporary food establishment violations.

(A) The person or business in charge of a temporary food establishment shall immediately correct violations identified in an inspection report. If the violations are not corrected immediately, the person or business in charge shall stop food service operations until authorized to resume by the health authority.

(B) The health authority may immediately cite the person or business in charge or suspend food service operations of a temporary food establishment that does not correct violations identified as required in Subsection (A).

Sec. 18.116. Mobile food unit violations.

(A) A person or business who operates a mobile food unit shall immediately correct violations identified in an inspection report. If the violations are not corrected immediately, the person in charge shall stop food service operations at the mobile food unit until authorized to resume by the health authority.

(B) The health authority may immediately cite the person or business in charge or suspend

food service operations of a mobile food unit that does not correct violations identified as required in Subsection (A).

Sec. 18.117. Miscellaneous food establishment violations.

The person in charge of a food processing plant, food vending machine, or bed and breakfast limited shall correct violations identified in an inspection report or notice of violation before the expiration of the time period prescribed by the report.

Sec. 18.118. Permit suspension.

(A) The health authority may suspend a permit issued under this chapter without prior notice or hearing if:

(1) The permit holder or employee does not comply with this chapter;

(2) The food establishment does not comply with this chapter; or

(3) The food establishment constitutes a public health hazard.

(B) If the health authority suspends a permit:

(1) The health authority shall give written notice to the permit holder or person in charge that:

(a) The permit is immediately suspended on service of the notice; and

(b) The permit holder may file a written request for a hearing not later than the 10th business day after the date of service of notice of suspension; and

(2) The permit holder or person in charge shall immediately stop food operations.

(C) Suspension of a permit is effective on service of notice.

(D) If a timely hearing request is filed, the health authority shall hold a hearing on the permit suspension not later than the 10th business day after the date the hearing request is filed.

(E) If a timely hearing request is not filed, the suspension continues in effect.

(F) The health authority may reinstate a permit if the reason for suspension no longer exists.

Sec. 18.119. Permit denial or revocation.

(A) The health authority may deny or revoke a permit issued under this chapter or issue a conditional permit when a renewal is applied for by a food establishment if the permit holder or the permit holder's employee:

(1) Commits critical or repeated violations of applicable law;

(2) Provides false information on an application; or

(3) Interferes with the health authority in the performance of the health authority's duties; or

(4) If an operating food establishment changes ownership and there are violations or existing conditions that must be corrected to meet applicable health and safety standards.

(B) Before denying or revoking a permit, the health authority shall provide the permit holder or person in charge with written notice of the pending permit revocation or denial. The written notice shall include:

(1) The reason the permit is subject to denial or revocation; and

(2) For revocations the date on which the permit is scheduled to be revoked; and

(3) A statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a hearing with the health authority not later than the 10th business day after the date the notice is served.

(C) A conditional permit issued under Subsection (A) above for a food establishment shall be effective for up to 60 days, and shall be rescinded if the permit holder or person in charge of the food establishment does not comply with the terms of its issuance.

(1) This subsection (C) does not apply to mobile food units, seasonal food establishments, or temporary food establishments.

(D) A permit denial or revocation becomes final on expiration of the time period prescribed by the notice.

Sec. 18.120. Variance to allow dogs in outdoor eating areas.

(A) A food establishment may apply for a Dining With Dogs Variance waiving the prohibition against dogs at a food establishment as permitted by local and state law.

(1) The variance will be granted if the health authority determines a health hazard or nuisance will not result from the granting of the variance.

(2) The food establishment must submit an application for a variance on a form provided by the health authority and pay a nonrefundable application fee.

a. Upon request of the food establishment, before accepting an application for a variance and the accompanying application fee, the health authority may schedule one preliminary meeting with a representative of the food establishment to review the proposed variance request, and provide comments to or answer questions regarding the request.

(3) A variance granted under this section is nontransferable and shall be reviewed every 2 years.

(B) The health authority may grant a variance in accordance with the variance process as defined in state law to allow dogs on the premises of a food establishment's outdoor patio or outdoor dining area, only in accordance with the following standards and conditions intended to prevent a health hazard or nuisance:

(1) Except as allowed under state law, no dog may enter or be present inside the food establishment or on any playground area of the food establishment;

(2) A separate entrance must be provided from the outside of the food establishment to

the outdoor patio or outdoor dining area so that a dog will have direct access to the patio without entering the interior of the food establishment or any playground area of the food establishment.

(3) Signage provided by the health authority must be posted at the front entrance and at the separate entrance to the outdoor patio or outdoor dining area of the food establishment to be easily visible to the public. The signage at the front entrance must read: DOG FRIENDLY ACCESS (with an arrow showing the direction to the outdoor patio or dining entrance) NO DOGS THROUGH MAIN ENTRANCE. Signage to the outdoor patio or outdoor dining area must read: DOG ACCESS. In addition, one or more signs promulgated by the health authority outlining the dog dining rules shall be posted in conspicuous locations as determined by the health authority. Doors equipped with self-closing devices must be provided at all entrances to the outdoor patio or outdoor dining area from the interior of the food establishment;

(4) No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio or outdoor dining area, except that a beverage glass may be filled from a pitcher or other container that has been filled or otherwise prepared inside the food establishment;

(5) The food establishment shall have hand sanitizer available at or near all entrances and exits to the outdoor patio or outdoor dining area;

(6) The outdoor patio or outdoor dining area must be continuously maintained free of visible dog hair, dog dander, and other dog-related waste or debris. Any portion of the outdoor patio or outdoor dining area with impervious cover must be cleaned with animal friendly chemicals at the beginning of each shift during which food or beverages will be served (breakfast, lunch, dinner, or late-hours), or, if a food establishment has continuous food or beverage service without designated shifts, then every six-hours that the establishment is open for business. Waste created from a dog's bodily functions must be cleaned up with animal friendly chemicals within five minutes after each occurrence.

(7) All dog waste must be disposed of outside of the food establishment in an appropriate waste receptacle. Equipment used to clean the outdoor patio or outdoor dining area must be kept outside of the food establishment. Cleaning under this subsection isnot required if no dog has been present in the outdoor patio or outdoor dining area since the last cleaning;

(8) While on duty, wait staff or other food handlers at the food establishment, may not pet or have contact with any dog;

(9) A dog must be kept on a leash and remain in the control of the owner while in the outdoor patio or outdoor dining area. The dog must be currently vaccinated for rabies and wear a collar or harness with a current rabies tag attached to it;

(10) A dog is not allowed on a seat, table, countertop, or similar surface;

(11) A dog is not allowed to have contact with any dish, utensil, tableware, linen, paper product, or any other item used for food service;

(12) A dog may not be given any food (including, but not limited to, dog kibble, biscuits,

and edible treats) while in the outdoor patio or outdoor dining area, but may be given water in a disposable container or from a container provided by the owner;

(13) The food establishment must maintain written procedures to notify city animal services of any rabies control incidents, or any other incident involving any sort of altercation between two or more dogs where the dogs come into physical contact;

(14) The food establishment shall provide a training program to all employees related to dog dining that is completed once a year. Training for new employees must be completed within 14 days of hire. The training shall include a review of this section and the terms of the variance for the food establishment; and

(15) The food establishment shall require each employee to sign a form acknowledging that they have completed the training program and understand this section and the terms of the variance. The form shall, at a minimum, contain the employee's name, address, phone number, the person conducting the training and the date of the training. The forms shall be available upon request during inspections or investigations of complaints.

(C) An owner, manager, or other person in charge of a food establishment commits an offense if they, either personally or through an employee or agent, violate, allow a violation of, or fail to comply with a term or condition of a variance granted under this section.

(D) A food establishment granted a variance under this section shall comply with all other applicable Texas Food Establishment Rules and the provisions of this chapter.

(E) The city may deny or revoke a variance under this section if the food establishment is in violation of any term or condition of the variance as established by this section or state law. The process established in Section 18.119 for the revocation of a food establishment permit will be followed when it is determined a violation of this section has occurred.

Secs. 18.122—18.150. - Reserved.

SECTION 2. If any word, phrase, clause, sentence, provision or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This ordinance will take effect upon its adoption on second reading.

PASSED AND APPROVED on first reading on April 16, 2019.

PASSED, APPROVED AND ADOPTED on second reading on May 21, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk

Approved:

Michael J. Cosentino
City Attorney