

ORDINANCE #975

AN ORDINANCE AMENDING CHAPTER 6 "HEALTH AND SANITATION", ARTICLE 6.300 "FOOD SERVICE ESTABLISHMENTS" OF THE LAKE WORTH CODE OF ORDINANCES (2004), AS AMENDED, BY AMENDING THE REGULATIONS FOR FOOD SERVICE ESTABLISHMENTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lake Worth is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Chapter 6 of the Lake Worth Code of Ordinances provides for health and sanitation regulations that were adopted to protect the public health, safety, and welfare; and

WHEREAS, the City Council now desires to amend certain provisions of the health and sanitation regulations providing for the regulation of food service establishments, retail food stores, temporary food establishments, mobile food units, and roadside food vendors, and;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAKE WORTH, TEXAS:

Section 1.

Article 6.300 "Food Service Establishments" of Chapter 6 "Health and Sanitation," of the Lake Worth Code of Ordinances is hereby amended by revising and renumbering the article in its entirety to read as follows:

Article 6.300 FOOD ESTABLISHMENTS

Sec.6.301 Designation of Public Health Authority

The City designates the Tarrant County Health Department and its Public Health Authority for the purpose of insuring minimum standards of environmental health and sanitation within the scope of that department's function.

Sec.6.302 State Regulations and Guidelines Adopted

The City of Lake Worth, Texas adopts by reference the provisions of the current rules or rules as amended by The Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction.

Sec.6.303 Definitions

The following definitions shall apply in this article:

Authorized Agent or Employee. The employees of the regulatory authority.

Food Establishment. A food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

City. Refers to the City of Lake Worth, Texas.

Owner of Business. The owner or operator of the business. Each new owner or operator shall comply with the current code of the city.

Regulatory Authority. The director and representatives of the Tarrant County Public Health Department.

Service of Notice. A notice provided for in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent registered or certified mail, return receipt requested, to the last known address of the holder of the permit.

State Rules. The state rules found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175. These rules are also referred to as the Texas Food Establishment Rules.

Sec.6.304 Food Establishment Permits and Fees

(A) *Required.* It shall be unlawful for any person to operate a food establishment in the city unless he/she possesses a current and valid permit issued by the regulatory authority.

(B) *Posting.* A valid permit shall be posted in public view in a conspicuous

place in or on every food establishment regulated by this ordinance.

(C) *Nontransferable (change of ownership).* Permits issued under the provisions of this article are not transferable, from one person or entity to another or from one location to another, except as otherwise permitted by this ordinance.

(D) *Application for Permit.* Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name, address, and phone number of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

(E) *Inspection for Permits.* Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.

(F) *Fee Schedule.* Fees for permits/inspections issued under this ordinance shall be as listed below and are to be paid to the Tarrant County Public Health Department at 1101 South Main, Fort Worth, Texas 76104.

Food Store

Less than 5,000 sq. ft.	\$200.00
Greater than 5,000 sq. ft.	\$300.00

Food Service

Less than 500 sq. ft.	\$100.00
500 – 1,500 sq. ft.	\$150.00
1,500 – 3,000 sq. ft.	\$200.00
3,000 – 6,000 sq. ft.	\$250.00
Greater than 6,000 sq. ft.	\$300.00

Child Care Food Service \$150.00

Catering Operation \$250.00

Food Court \$200.00 per establishment

Adjunct Operation

Food Service	\$150.00 per independent operation
Food Store Less Than 5,000 sq. ft.	\$150.00 per independent operation
Food Store Greater Than 5,000 sq. ft.	\$200.00 per independent operation

Commissary

No food prep \$100.00

With food prep	\$200.00
Mobile Units	
Prepackaged food only	\$100.00
Open and/or food prep	\$200.00
Push Cart	\$200.00
Plan Review Fees	
Less than 500 sq. ft.	\$0.00
500 – 3,000 sq. ft.	\$50.00
Greater than 5,000 sq. ft	\$100.00
Late Fees	
From 1 – 30 days	10% of fee owed
From 31-60 days	20% of fee owed
The late fee increases 10% for each 30 day block until permit fee is paid. Permits that are more than 90 days overdue will be void and required to reapply.	
Reinspection Fees	
Required Reinspection	\$75.00

Sec.6.305 Review of Plans/Specifications

(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 conversions shall be submitted to the regulatory authority for review before work is begun. Extensive remodeling means that twenty percent (20%) or greater for the area of the food establishment is to be remodeled or when equipment required by the rules is to be relocated or removed. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities.

(B) *Approval.* The plan specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. The approved plans and specifications must be followed in construction, remodeling, or conversion. Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

(C) *Fees.* Fees for review of the plans shall be as listed above.

Sec.6.306 Inspections

(A) *Preoperational Inspections.* Before a permit is issued, the regulatory authority shall inspect and approve the food establishment.

(B) *Annual Inspections.* An inspection of a food establishment by the regulatory authority shall be performed at least once per year and shall be prioritized based upon assessment of a food establishment's compliance and potential of causing

food borne illness according to 25 TAC 229.171(h).

(C) *Classification.* The regulatory authority shall classify food establishments as special priority, high priority, medium priority, or low priority, according to the type of operations; particular foods that are prepared, number of people served; susceptibility of the population served; history of violations and any other risk factor deemed relevant to the operation.

(D) *Refusal of Inspection.* Refusal of an owner, manager, or employee to allow the authorized representative of the regulatory authority, upon presentation of credentials, to inspect any permitted business or operation therein during normal business hours will result in an immediate suspension of the permit, requiring all permitted activities to abate until after such time as a hearing may be held per Sec.6.308.

Sec.6.307 Food Manager/Food Handler Education and Certification

(A) *Requirement.* Each food service establishment shall have at least one (1) person employed in a managerial capacity possessing a current food manager certificate approved by the regulatory authority. The following requirements must be met regarding food manager/handler education and certification:

- (1) Proof of such certification must be provided to the regulatory authority prior to the opening of the food establishment;
- (2) Each food service establishment with six (6) or more employees that is required to have certificate food managers must have a least one (1) certified manager on site during all operations;
- (3) Every employee of a food service establishment other than a certified Food Manager must maintain a valid food handler certification registered with the regulatory authority;
- (4) Food Handler certification shall be valid for a period of up to three (3) years as determined by the regulatory authority;
- (5) Food Manager and Food Handler certification documentation must be maintained in the food service establishment and presented upon request by the regulatory authority; and
- (6) Existing food service establishments that are required to have certified Food Managers shall have sixty (60) days to meet the certified Food Manager requirements upon the transfer or termination of a certified Food Manager.

Sec.6.308 Suspension and Revocation of Permit

(A) *Notice of Suspension.* The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operations

of the food establishment constitute an imminent hazard to public health. Suspension is effective upon service of the notice required by Sec.6.308 (B) of this ordinance. 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 receipt of a request for a hearing.

(B) *Reinstatement of Permit After Suspension.* 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 the ten (10) days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

(C) *Revocation of Permit.* The regulatory authority may, after providing an opportunity for a hearing revoke a permit for serious or repeated violations of any of the requirements of these rules 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 of 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 city by the holder of the permit within such ten (10) day period, the revocation of the permit becomes final.

(D) *Service of Notices.* A notice as required in these rules 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 as shown on their permit application. A copy of the notice shall be filed in the records of the regulatory authority.

(E) *Hearings.* The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearings, the regulatory authority shall make a final finding, and shall sustain, modify, or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Revised Code of Ordinances of the City of Lake Worth, Texas (2004), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

All rights and remedies of the City of Lake Worth are expressly saved as to any and all violations of the Lake Worth Code of Ordinances, as amended, or any other ordinances affecting Food Service Establishments which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving (fire safety, zoning or public health and sanitation, including dumping of refuse), and shall be fined Five Hundred Dollars (\$500.00) for all other violations of this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 6.

The City Secretary of the City of Lake Worth is hereby directed to publish in the official newspaper of the City of Lake Worth, the caption, the penalty clause, publication clause, and effective date clause of this ordinance two (2) days as authorized by Section 52.013 of the Local Government Code.

SECTION 7.

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

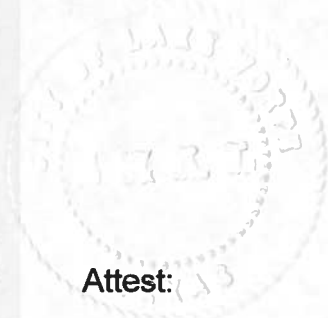

PASSED AND APPROVED THIS 8TH DAY OF NOVEMBER, 2011.

Approved:




Walter Bowen, Mayor

Attest:

Linda Rhodes, TRMC/CMC
City Secretary

APPROVED AS TO FORM AND LEGALITY:



City Attorney