



ORDINANCE NO. 3549

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE FARMERS BRANCH CODE OF ORDINANCES CHAPTER 26 “BUSINESSES,” ARTICLE V “FOOD ESTABLISHMENT RULES” BY AMENDING IN ITS ENTIRETY SECTION 26-152 “LOCAL RULES ADOPTED” PROVIDING LOCAL AMENDMENTS TO THE TEXAS FOOD ESTABLISHMENT RULES; BY AMENDING IN ITS ENTIRETY SECTION 26-154 “FEES” RELATING TO PERMIT AND OTHER FEES FOR FOOD SERVICE ESTABLISHMENTS; BY AMENDING IN ITS ENTIRETY SECTION 26-155 “SEASONAL SNOW CONE MOBILE FOOD ESTABLISHMENTS;” BY AMENDING IN ITS ENTIRETY SECTION 26-156 “SUMMER FOOD SERVICE PROGRAMS;” BY AMENDING IN ITS ENTIRETY SECTION 26-157 “FARMERS MARKET;” AND BY REPEALING IN ITS ENTIRETY DIVISION 2 “FOOD MANAGER CERTIFICATION;” PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Administration has performed a review of the provisions of the City’s ordinances applicable to food service establishments operating within the City and recommends certain substantive and non-substantive amendments to the Code of Ordinances be adopted; and

WHEREAS, having considered the recommendation of the City Administration and reviewed the ordinance prepared for consideration, the City Council finds it in the public interest and necessary for the protection of the health and safety of the public to enact the proposed amendments:

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 26, Article V, Sections 26-151 and 26-152 of the Code of Ordinances be amended in part to adopt the Texas Food Establishment Rules codified at Texas Administrative Code Title 25 Chapter 228 adopted by the Texas Department of State Health Services effective October 11, 2015, with amendments to read as follows:

Sec. 26-151. Adoption of Texas Food Establishment Rules

The Texas Food Establishment Rules codified at Texas Administrative Code Title 25 Chapter 228 adopted by the Texas Department of State Health Services effective October 11, 2015 with exception of such sections thereof as are hereinafter deleted, modified or amended pursuant to Section 26-152 are hereby adopted as the minimum standards for food service operations within the corporate limits of the

city, and shall constitute regulations governing the preparation, service, and sale of food within the City. For purposes of this Division, the phrase “Food Establishment Rules” means collectively (i) the Texas Food Establishment Rules as adopted by this Section and (ii) the local amendments adopted pursuant to Section 26-152. The City Manager, or authorized representative is hereby authorized and directed to enforce all provisions of the Food Establishment Rules.”

Sec. 26-152. Local Rules Adopted

For purposes of enforcement of the provisions of the Food Establishment Rules within the incorporated limits of the City, the following sections, paragraphs, and sentences of the Texas Food Establishment Rules are hereby amended as follows:

Section 228.2 “Definitions” is amended as follows:

A. The following definitions are added to read as follows:

Catering Operation - A food establishment that pursuant to a contract or agreement, prepares food in an approved facility and transports food in an approved manner to another location for final cooking or serving.

Certificate of Occupancy – A certificate of occupancy is a document issued by a local government agency indicating that a building complies with zoning and building laws.

Change of Ownership – A change of owner or operator of a food establishment business and does not refer to a change of the owner of the property or building in which the business is located or operated from.

Commissary Approval Letter - A written notarized statement provided by a central preparation facility, or commissary that displays the vehicle identification number of the mobile food establishment, and states that the mobile food establishment receives food, supplies, and/or cleaning and servicing from that facility.

Commissary – A licensed or permitted food establishment that provides the necessary support and required services to a mobile catering truck. A commissary can be a source for obtaining potable water, disposing of wastewater, storage for food and supplies as well as cooking facilities to prepare the food for sale and consumption.

Concession Stand – A food establishment operated on a seasonal basis for the purpose of providing food at sporting and special events associated with an independent school district, university, community college, non-profit organization, privately owned school, or the City of Farmers Branch.

Continental Breakfast- Shall mean a limited supply of food items offered to guests with no involved preparation and or cooking by lodging operators whose facilities and equipment do not meet the required current Texas Food Establishment Rules (TFER). Examples of acceptable food items that may be offered for a continental breakfast are fruits in their whole state, hard boiled eggs, pre-packaged food items such as cereals, pastries, yogurt, bagels, donuts, pre-packaged individual single use milk containers and pre-packaged single use condiments such as jams, jellies, or butter. Only single service tableware that does not need to be washed and sanitized can be offered to guests.

Cottage Food Production Operation – An individual, operating out of the individual’s home that is exempt from the requirements of a food service establishment who:

- i. Produces a baked good, candy, coated and uncoated nuts, unroasted butter nuts, fruit butters, a canned jam or jelly, a fruit pie, dehydrated fruit or vegetables, including dried beans, popcorn and popcorn snacks, cereal, including granola, dry mix, vinegar, pickles, mustard, roasted coffee or dry tea, or a dried herb or dried herb mix.
- ii. Has an annual gross income of \$50,000 or less from the sale of the described foods and;
- iii. Sells the foods produced directly to consumers at the individual’s home, a farmer’s market, a farm stand, or a municipal, county, or nonprofit fair, festival or event.
- iv. Delivers products to the consumer at point of sale or another location designated by the consumer.
- v. A cottage food production operation may not sell a time temperature control safety (TCS) food item to consumers.

Farmers Market – A designated location used primarily for the distribution and sale directly to consumers of locally grown or manufactured food by farmers and other producers. A farmer’s market is not a food establishment and operates on a seasonal basis.

Farmers Market Vendor – Any person or persons who operate, offers, or sells food typically known as “farm grown,” “farm originating,” or “farm obtained” from a location approved on private or public property. Foods included in “farm grown” are whole produce, plants, nuts, certain meats, honey, egg, and pasteurized dairy products.

Fixed Commercial Location – A building that can obtain a certificate of occupancy that is not mobile in nature.

FRP Wallboard – Fiber reinforced polyester wallboard with a thickness of 3/32 inches or greater.

Gourmet Mobile Food Truck- A mobile food establishment upon which food is cooked, and packaged for service, sale, or distribution from a truck, bus, or trailer that specializes in gourmet cuisine, specialty items, or ethnic menus.

Grease Trap – Also known as a grease interceptor, is a plumbing device designed to intercept most grease wastes and solids before they enter a wastewater disposal system.

Heavy Food Preparation – Any food establishment in which foods are prepared utilizing a grill, griddle, deep-fat fryer, commercial type oven; and/or any similar food preparation equipment, or any area which processes, or cuts time/temperature control for safety (TCS) food items and requires thorough cleaning and sanitizing. Examples of heavy preparation would be, but are not limited to, BBQ facilities with smokers, cafeterias, fast food restaurants, full service restaurants, meat and fish markets, pizza shops, and donut shops which prepare and serve kolaches, breakfast sandwiches, and or burritos.

Light Food Service Preparation – Any food establishment in which foods are prepared exclusive of the use of fryers, grills, grills, or other similar equipment. Light food preparation is usually limited to the preparation of hot dogs, cold cut sandwiches, salads, soups, fountain-type drinks and ice cream or other similar foods. Examples of light preparation would include yogurt, ice cream, sandwich shops, as well as limited concession stands.

Mobile Food Unit - Any self-contained motorized vehicle or push cart unit propelled by a human operator that is not operating at a permanent fixed location from which is served, sold, or distributed any food or beverage. A mobile food unit is vehicle-mounted or wheeled and capable of being readily moveable. An operator may offer from a Mobile Food Unit full service preparation time/temperature control (TCS) food items, non-time/temperature control for safety pre-packaged foods or any combination of these foods depending on capabilities and equipment.

Non-Time/Temperature Control for Safety Beverage – A non-alcoholic liquid intended for consumption, whether natural or synthetic, that does not require temperature control because it is not capable of supporting the rapid

and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*. The term includes.

- (i) Tea and coffee, excluding espresso, with powdered creamer or ultra-high, pasteurized half and half individual servings;
- (ii) Commercially made, high acid beverages with a pH level of 4.6 or below, such as apple juice, lemonade, limeade, and orange juice;
- (iii) Fresh squeezed, high acid beverages;
- (iv) Commercially filled carbonated beverages;
- (v) High acid beverages made from a commercial mix; and
- (vi) Mineral water sold in open, single-service cups with ice from an approved source.

No Food Preparation – Any food establishment area in which foods are provided pre-wrapped, from an approved source with only a microwave type heating device used to heat food items that may require reheating. Examples of no preparation would be convenience stores or other types of stores such as novelty or sundry shops which sell candy, bottled beverages, and pre-packaged food items only.

Seasonal Permit – A permit which is issued to a food establishment, or farmers market that operates in a fixed location for more than fourteen (14) consecutive days, up to six (6) months.

Smoker – Any unit, whether mobile or fixed in nature, which uses wood or wood products to provide smoke for the purpose of slow cooking meats intended for human consumption. Smokers must meet local zoning, building, and fire codes.

Snow Cones and Snow Cone Products – Any crushed or shaved ice product served in a single service container and topped with non-dairy flavored syrups.

Wholesome – In a sound condition, clean, free of adulteration, and suitable for human consumption. Pre-packaged food items shall be deemed wholesome if it meets the foregoing requirements and is used or sold prior to the “sell by” or expiration date on the package.

- B. The following definitions are amended to read as follows:

Plumbing Code – The most current edition of the International Plumbing Code (IPC) published by the International Code Council, inclusive of all local amendments as adopted by the City of Farmers Branch and as amended by 16 TAC § 70.101.

Regulatory or Health Authority – The City of Farmers Branch, the person or department to whom the City may delegate the enforcement responsibility of the food code.

Temporary Food Establishment - A food establishment that operates for a single event, or an event over a period of no more than fourteen (14) consecutive days (or for such other time as is authorized by the City Council). Written consent to operate must be obtained from the private or public property owner on which said temporary food establishment will operate. A temporary food permit must be filled out for each event with all the foods listed for sale or to be sampled and submitted to the regulatory authority for review and approval. Temporary food establishments may include food vendor pushcarts, concession stands, and mobile gourmet food trucks.

Section 228.33(b) and (c) are amended to read as follows:

(b) The certified food protection manager or managers of a food establishment will be required to register with the City of Farmers Branch as a food protection manager by providing to the regulatory authority a copy of the original food protection manager's training certificate from an Accredited Program in which the applicant has passed, filling out the required City registration form, and paying the required fee. The Farmers Branch food protection manager's certificate shall then be posted in a location in the establishment that is conspicuous to consumers and available for inspection by the regulatory authority.

(c) Except in a temporary food establishment, at least one certified food protection manager must be employed by each food establishment in which open food handling is conducted. There shall be one certified food protection manager available onsite to cover all hours that the food establishment is engaged in the preparation of food items for sale to the public.

Section 228.39(b) is amended to read as follows:

“b) A food employee may not wear fingernail polish, fingernail adornments, or embellishments such as sequins or artificial nails while working with exposed foods even if wearing food handling gloves.

Section 228.62 is amended by adding subsection (h) to read as follows:

(h) Foods Procured from Other Retail Food Establishments. Except for commercially pre-packaged manufactured foods that are purchased from an approved wholesale source and that only need reheating, all time/temperature control for safety foods (TCS) that require preparation from scratch and/or a cooking process must be made onsite at the licensed food establishment and may not be catered from, or purchased in a ready-to-eat or cooked state, from another retail food establishment for resale to consumers.

Section 228.65(a)(2) is amended to read as follows:

(2) Except when washing fruits and vegetables or as specified under subsection (4)(A) and(B) of this section, food employees may not contact exposed, ready-to-eat food items with their bare hands whether or not they are serving a highly susceptible population and shall use suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or other dispensing utensils.

Section 228.65(5) (A) - (G) is deleted.

Section 228.68(c) is amended to read as follows:

(c) Linens and napkins, use limitation. All materials that come in direct contact with exposed foods are required to be constructed of an approved food grade contact composition such as clear plastic wrap, aluminum foil, or other approved food grade material that is designed for single use or that can be washed and sanitized. Linen wiping cloths may not be used for continuous contact with foods that can stain, soil, or leave food debris upon the cloth. Colored cloth may impart color or dye into the food and cannot be in direct contact with exposed foods. Non-colored linens and cloth napkins may only be used to line a container for the service of foods such as bread or rolls, provided they are replaced each time the container is refilled for a new customer. In addition, woven mesh rice cooking bags may not be used as liners in rice cookers.

Section 228.68(g)(1) is amended to read as follows:

(1) A re-usable take-home food container may not be returned to a food establishment to be refilled with food. All take-home containers for food products must be single service, non-returnable. A take-home container for beverages only may be refilled with a beverage providing all the criteria is met in Section 228.68(3), (4) and (5).

Section 228.68(g)(2)(A)(D)(iii) is deleted.

Section 228.70 (c) is amended by adding subsection (4) to read as follows:

- (4) Food Display. Freshly prepared time/temperature control for safety (TCS) food items for the sole purpose of replenishment shall not be added to and/or mixed in with existing or remaining time/temperature control for safety food items that are displayed on buffets, steam tables, or salad chill units. Any remaining containers or pans of food items on display are to be removed and discarded in their entirety before replacing them with freshly prepared food items.

Section 228.70 is amended by adding subsections (f) and (g) to read as follows:

- (f) Ice. Ice shall be protected from contamination by consumers. Ice for consumer use shall be dispensed only by employees, unless the ice is in an enclosed self-dispensing ice machine with a protected dispenser where contact with the ice cannot occur such as a soda fountain dispensing machine. Ice shall not be placed in self-service style coolers or ice chests that are accessible by the public. Employees shall dispense ice using only ice scoops, tongs, or other appropriate ice dispensing utensils, or through the automatic ice dispensing device. Between uses, ice transfer receptacles shall be stored in a manner that protects them from potential contamination such as in a designated ice scoop holder provided inside the bin or stored inside a bucket of mild bleach sanitizing solution. At no time shall the ice dispensing utensil be stored laying on or buried in the ice. It is prohibited to store any items inside the ice storage bin due to potential contamination of the ice. Ice makers are required to be drained through an air gap which meets the current plumbing code. Ice storage bin interiors that includes the interior ceiling, ice chute, sides, and ice guard shall be cleaned and sanitized at least weekly to prevent the build-up of mold and slime.
- (g) Hot Dog Grills. Food establishments such as convenience stores that sell mainly pre-packaged food items but do grill hot dogs using a portable commercial hot dog grill are required to place the grill at the service counter within reach of the clerk so the clerk can dispense hot dogs to the consumer. Self-service of hot dogs by the consumer is prohibited.

Section 228.75 (i)(2) is amended by adding paragraph (E) to read as follows:

- (E) A food establishment that serves a highly susceptible population may not use time as specified under paragraphs (1) or (2) of this subsection as the public health control for raw eggs.

Section 228.75 (i) is amended by deleting paragraphs (3) and (4).

Section 228.81 is amended by adding subsection (5) to read as follows:

- (5) Whenever the regulatory authority observes or discovers any food or drink displayed for sampling or sale that is unwholesome or unsafe for human consumption the regulatory authority shall order that food or drink destroyed or removed. The owner or responsible person in charge shall immediately remove or destroy such unwholesome or unsafe food items at his or her own expense. Destruction may include placing the unwholesome or unsafe food item or items in a proper outside covered waste receptacle and pouring liquid bleach on the food item to render that food inedible.

Section 228.150(d) is amended to read as follows:

- (d) Grease traps, or grease interceptors shall be required for all heavy and some light food preparation establishments in which excessive food pulp and or grease is generated or as required by the regulatory authority. This includes, but is not limited to, facilities with foodservice equipment such as griddles, deep fat fryers, grills, and juicing appliances. Grease traps shall be sized and installed according to the currently adopted Plumbing Code. Grease traps must be located to be easily accessible for cleaning and shall be located outside of the building to prevent odor and potential contamination of the food service facility. Upon a change of ownership, any previously grandfathered grease traps which were located inside the food service establishment will have to be relocated to the exterior of the building. A sampling well and securing device on the sewer line shall be provided in accordance with the Plumbing Code and other applicable City ordinances and regulations. The securing device shall be installed not less than two feet (2.0') from the sampling well. The sampling well must be installed in a location that will not allow it to be obstructed by traffic. All food establishments requiring a grease trap shall enter into a contract with a waste hauler licensed by the state regulatory agency having authority over waste haulers, to provide for regularly scheduled service. All grease traps must be serviced effectively and frequently enough to maintain these traps in satisfactory working order and to protect the City sanitary sewer system from stoppage or from excessive contaminants. Service records of such grease traps shall be maintained on the premises and made available to the regulatory authority upon request for inspection. If the existing grease trap is not in good working condition, is grossly undersized by current standards, or plumbing fixtures are being added that would require a grease trap with a larger capacity to be installed, the existing grease trap must be replaced. Convenience stores that sell only pre-packaged food items and those food establishments that offer continental breakfasts in which there is no cooking are not required to have a grease trap.

Section 228.173 (a) is amended to read as follows:

- (a) Cleanability. The floors, floor coverings, walls, wall coverings and ceilings especially in the food preparation, dishwashing, bar and service areas shall be designed and constructed so they are smooth, durable, non-absorbent, and easily cleanable, except that anti-slip floorcoverings or applications may be used for safety reasons. Floors shall be free of cracks, chips holes, and deterioration. The regulatory authority shall require repair of any floor which fails to meet the requirements of this section. Food establishments involved in heavy or light food preparation shall incorporate quarry tile, cement-based terrazzo tile, or sealed concrete or equivalent floor covering as approved by the regulatory authority. Coated, sealed concrete must be durable with the coating or sealant remaining intact and not subject to peeling or wearing away in order to prevent the concrete from absorbing liquids and food spills and must be approved by the regulatory authority. Carpeting may be allowed in dining areas only and shall be replaced if it becomes excessively soiled or worn. Carpeting or any absorbable floor covering such as rugs are not allowed in rest rooms, food preparation and food storage areas. Non-absorbable cleanable rubber mats may be used to prevent slips or falls in the food preparation and dishwashing areas. All rubber mats must be cleaned in the utility or mop sink. At no time shall rubber mats be cleaned outside the building on the asphalt where the waste water can run into the storm drain.
 - (1) Toilets. Toilet room floors must meet the conditions set forth above.
 - (2) Walk-in coolers. Food establishments shall install in the cooler either stainless steel, sealed concrete, quarry tile flooring or an equivalent material as approved by the regulatory authority.
 - (3) Dry storage areas. All food establishments with a dry food storage must meet the conditions set forth above in this subsection (a).

Section 228.173 (f) is amended to read as follows:

- (f) Wall and ceiling coverings and coatings.
 - (1) Food preparation areas. Food establishments involved in heavy and light food preparation shall install wall surfaces of FRP, ceramic tile, certain types of bricks sealed with light-colored epoxy paint or equivalent materials as approved by the regulatory authority in all food preparation, dishwashing and utensil washing areas, and service areas. Wall surface must extend 8 feet in height or to the ceiling if the ceiling height is less than 8 feet. Stainless steel shall be required in heavy food preparation areas behind the stove or range, grills, and fryers from floor to ceiling. The regulatory authority shall

require durable and cleanable walls surfaces in areas exposed to excessive splash back of debris in establishments not involved in food preparation. Walls shall be smooth, durable, nonabsorbent and shall be maintained in a condition that facilitates thorough and rapid cleaning and shall be free of cracks, chips, holes and deterioration. The regulatory authority shall require repair or replacement of any wall which fails to meet the requirements of this section.

- (A) No open or exposed Heating/Ventilation or Air Conditioning (HVAC) components or air supply ducting may be located in or directly above the food service preparation, storage, or serving areas. All HVAC system components must be located in an enclosed area such as a crawlspace above the food service area with a proper barrier such as a ceiling between the HVAC system and the foodservice area.
 - (B) Surface mounted pipes shall not be installed tightly against the surface of the walls. There shall be a gap of at least 2 inches between the pipe and the finished surface of the wall.
 - (C) All holes cut into walls and ceilings for pipes and conduits shall be sealed, and the clearance between the floor surface and the bottom edge of a door shall be tight fitting.
 - (D) In addition, doors and walls on all sally ports or back bay exterior areas off the food preparation area shall be free of gaps, holes, or openings, and doors shall be flush against the floor to exclude access by insects or rodents. Weather stripping may be used to seal any openings between the doors and the floor.
- (2) Toilet rooms. Food establishments involved in heavy and light food preparation where the employee restroom is located in close proximity or off the food preparation area shall install FRP, ceramic tile, certain types of brick sealed with light-colored, enamel or epoxy paint, or equivalent materials as approved by the regulatory authority. Such wall finishes must extend 4 feet in height with the remainder of the wall surface consisting of any light-colored, smooth, washable material. Wall surfaces in any restrooms of establishments that are not involved in any food preparation shall be of any smooth, light colored, washable material as approved by the regulatory authority. Public access shall not be allowed through the food service preparation to the rest rooms; in such cases where the rest rooms are located off the food preparation area and are accessible to employees only signage shall be posted in a conspicuous location informing customers "Rest rooms are available for employees only". Solid self-closing doors are required on all food establishment rest rooms. A covered waste receptacle is required in the women's rest room and in the men's rest room if a diaper

changing area is available. One or more signs must be posted in all restrooms used by employees stating "Employees must wash hands".

- (3) Walk-in coolers. Wall surfaces shall be smooth, easily cleanable and capable of withstanding effects of low temperature and moisture without deteriorating. Shelving racks shall be stainless steel, epoxy-coated, corrosion-resistant metal, durable, cleanable, hard acrylic plastic, or equivalent as approved by the regulatory authority and shall be replaced if rust or corrosion cannot be removed.
- (4) Dry food storage area. Shelving shall be light-colored, epoxy or enamel sealed painted wood if the storage area is not subjected to moisture, or durable, cleanable, hard acrylic plastic shelving. If paint or sealant is used on wooden shelving where food or single service containers are stored the paint or sealant must be food grade approved and be free from flaking, chipping, or peeling. Bare wood or particle board racks or shelving is not allowed for the storage of food items that could spill or leak into the wood.
- (5) Ceilings. Ceilings shall be of light color, smooth, relatively non-absorbent, durable, and easily cleanable. Ceiling materials may be washable drop-in panels, vinyl coated gypsum panels, taped and bedded sheetrock with light-colored epoxy or enamel paint, or an equivalent material as approved by the regulatory authority. The regulatory authority shall require repair or replacement of any ceiling which fails to meet the requirements of this section.
- (6) Food preparation, bar, and service areas. Food contact surfaces shall be stainless steel with the exception of certain polymer cutting boards. Customer service counters, food packaging areas, take-out windows and similar areas shall be surfaced with a material that is smooth, non-absorbent, durable, and easily cleanable as approved by the regulatory authority. Soft drink syrup canisters or bags shall be situated on six-inch high corrosion-resistant racks or within corrosion-resistant pans with one-inch curbs. Cabinets, tables, or similar equipment shall not be made of wood, particle board, or covered in Formica if subject to moisture. Curtains used for privacy or to segregate bars, or food serving areas such as dining rooms cannot be made of absorbable non-cleanable woven fabric in order to prevent the accumulation of food debris on the material.
- (7) Foodservice equipment. All foodservice equipment shall be commercial grade and approved by the National Sanitation Foundation (NSF) for its intended use and shall be maintained in a condition that facilitates thorough and rapid cleaning. No foreign manufactured foodservice equipment such as hibachi grills, or rice cookers may be used unless it meets NSF requirements. Equipment must be mounted on a caster and wheel mechanism which can be pulled out away from the wall for ease of cleaning.

Residential use food service equipment is not allowed in commercial food preparation areas.

- (8) Specialized foodservice equipment. Specialized and portable foodservice equipment which is used to maintain hot and cold holding of time/temperature control for safety (TCS) foods, such as bain-maries, portable hot holding steam or electric tables, hot holding bins and warming cabinets, rice cookers, chiller buffet bars, coolers, and chiller plates must be able to sustain these foods at the required temperatures of 41°F or below, or 135°F. or above. The regulatory authority shall require repair or replacement of any food service equipment which fails to meet the requirements of this section.

Section 228.175 is amended by adding subsections (g) and (h) to read as follows:

- (g) Handwashing Sink Devices. No devices such as an eye wash apparatus or a hand operated spigot mounted from the faucet in order to activate the water will be attached to the handwashing sink. Hand sinks must be operated in accordance with the requirements under §228.146(a)(1) and (2). Foot operated pedals for hand sinks will be allowed providing all the requirements under §228.146(b)(1), (2), (3), and (4) are met and the foot operated pedals are operational at all times. An eye wash station and all eye wash plumbing fixtures, if required, may be mounted separately and independently from the hand wash sink.
- (h) Handwashing Sinks Prohibited Storage. No items shall be stored in the handwashing sink basin or on the ledge of the hand sink to prevent potential contamination of the sink. In addition, the sink is to be kept free from dirt, mold, and slime build-up.

Section 228.221 is amended to read in its entirety as follows:

Section §228.221 Mobile Food Units:

(a) General Requirements

(1) The regulatory authority may impose additional requirements, including permitting, to protect against health hazards related to the business and operation of the mobile food unit. This may include prohibiting the sale of time/temperature control for safety (TCS) food items. If the vendor is selling a pre-packaged time/temperature control for safety (TCS) food item that is not prepared by an approved licensed commissary, then the vendor shall provide a copy of that supplier's Texas food manufacturing license to the regulatory authority issued to them by the Texas Department of State Health Services (DSHS).

(2) There are three (3) classes of mobile food units:

(A) Class 1 - “Pre-packaged Food Cart” A self-contained mobile food unit that is usually propelled by human operator but can be bicycle mounted and serves only non-time/temperature controlled for safety food items or beverages such as bagged chips, nuts, candy, pre-packaged ice cream, or bottled beverages. No assembly or preparation of food items are allowed including the dispensing of ice. All beverages must be provided in covered urns or self-dispensing units. A Class 1 mobile food unit includes pre-packaged frozen dessert, prepackaged snack, or bottled beverage carts.

i. Handwashing: Not required.

ii. Dishwashing: Not required.

iii. Potable Water: Not required.

iv. Commissary: Required. All pre-packaged food items must come from an approved commissary, central preparation facility, or wholesale facility.

v. Restroom Access: Must have access to a restroom.

(B) Class 2 - “Unpackaged Mobile Food Unit” These mobile units may either be a cart propelled by a human operator or a motorized food unit such as a cold catering truck. Pre-packaged non-time/temperature control for safety food items as well as pre-packaged and open service food items that require hot or cold holding for temperature control may be served from a Class 2 mobile food unit. No cooking or open preparation of food items is allowed. All condiments should be bulk dispensed or be pre-packaged. A Class 2 mobile food unit includes corn, and hot dog carts, motorized cold catering trucks, and specialized beverage carts.

i. Handwashing: If required a sink, or minimum of five gallons of hot and cold potable water as well as soap and paper towels as necessary for proper handwashing.

ii. Dishwashing Sinks: Not necessary if using a commissary service with dishwashing capabilities, otherwise a triple compartment sink with approved dishwashing methods may be required depending on the operations involved.

iii. Potable Water: Dependent on hand and dishwashing needs. A waste tank may also be required.

iv. Commissary: An approved food source will be required such as a

central preparation kitchen, or wholesale facility.

- v. Restroom Access: Must be able to access a restroom as needed.

(C) Class 3 “Full Preparation and Service” These mobile food units are usually motorized food trucks or trailers that are fully outfitted with all the required equipment necessary for full foodservice operations including prepping, cooking, hot and cold holding of time/temperature control (TCS) for safety foods onboard. Class 3 mobile food units can offer a specialized or varied menu depending on the scope of their operations. Class 3 mobile food units include hot lunch trucks with a fixed daily service route and gourmet food trucks as approved by the regulatory authority.

- i. Handwashing: A proper handwashing sink with hot and cold water as well as paper towels is required.

- ii. Dishwashing Sinks: A triple compartment sink is required that will accommodate the biggest piece of dishware to be washed.

- iii. Potable Water: Required for hand and dish washing operations.

- iv. Commissary: A notarized commissary approval letter is required as an approved food source as well as for servicing and maintaining the vehicle.

- v. Restroom Access: Must have access to a restroom and may have to show written approval from the property owner.

(3) Special Requirements for Class 1 and 2 Mobile Food Units

(A) Push carts and bicycle mounted carts that carry pre-packaged food and unpackaged food items that may require hot or cold holding such as, but not limited to, corn, hot dogs, or ice cream are prohibited from routine operation within the City limits including residential and commercial areas, City right of way and City owned property;

(B) Under special circumstances as approved by the regulatory authority, push carts may be allowed to participate in certain temporary events pursuant to a temporary food permit;

(C) A motorized cold catering truck may service construction sites and industrial commercial properties provided they have been requested to be onsite by the property owner and have been approved and permitted by the regulatory authority;

(D) Motorized cold catering trucks shall not sell, distribute, or offer food for sale, goods, or services that have not been approved by the regulatory authority.

(4) Ice cream push carts are allowed to use the City right of way in order to traverse into other cities that allow them to operate; however, ice cream push carts cannot use audible sounds such as bells, verbalization, or any other means while on the City right of way to indicate they are in service. The regulatory authority is hereby authorized to impound such carts that are witnessed to be operating within the City. Ice cream, if not immediately removed by the vendor, is from an approved source, and in sound condition, may be stored at a City facility for a maximum time of seventy-two (72) hours, after which time the ice cream shall be destroyed. A \$50.00 transport and storage fee shall be paid to the City by vendors who reclaim pre-packaged ice cream from a City facility within the allotted time period.”

(b) Operational Requirements for Class 3 Full Preparation and Service Mobile Food Units

(1) Food Protection Manager. A current certified food protection manager who is registered with the City is required to be onboard all motorized full preparation and service food units at all the times the vehicle is in service. A copy of the City registration certificate must be kept onboard the vehicle at all times and must be made available to the regulatory authority upon request.

(2) Construction. All surfaces located in the food preparation area of the Class 3 mobile food unit shall be constructed of stainless steel or equivalent material. Construction joints and seams shall be sealed. The juncture between the floor and walls shall be sealed or have adequate enough space in which to clean. Space around pipes, conduits, or hoses that enter through cabinets, floors or outer walls shall be sealed. There shall be an unobstructed height over the aisle-way portion of the unit of at least seventy-six inches (76") from floor to ceiling, and a minimum of thirty-six inches (36") of unobstructed horizontal aisle space.

(3) Equipment. A three-compartment sink and hand washing sink shall be provided. Sink compartments shall be large enough to accommodate, fully submerged, the equipment and utensils being washed, but shall in any case be not less than twelve inches (12.0") long, twelve inches (12.0") wide, and ten inches (10.0") deep. Drain boards shall be not less than twelve inches (12.0") long by twelve inches (12.0") wide. Equipment for cooling and heating food, as well as for holding hot and cold food, shall be sufficient in number and capacity to provide food temperatures as specified under Subchapter C of this code. No re-usable dishware can be provided to customers, only single services articles.

(4) Service Openings. Service openings shall not exceed 216 square inches each. Service openings may be no closer than eighteen inches (18.0") apart. Service openings shall be constructed with screen doors that shall remain closed except when serving food to customers through the opening. Screens of not less than 16

mesh per inch shall be used. for all customer service openings to prevent the intrusion of insects. All food service operations shall be conducted inside the preparation area of the Class 3 mobile food unit.

(5) Power Supply. Whenever the Class 3 mobile food unit is in service, adequate electrical power shall be provided to operate the approved exhaust, lighting and refrigeration systems, and any other accessories and appliances that may be installed on a Class 3 mobile food unit. Electricity shall be from a generator or an electrical outlet via a portable cord that is in conformance with the current Electrical Code.

(6) Water Supply, Plumbing. All equipment used on the Class 3 mobile food unit for a potable water supply system shall be listed for such use by an organization acceptable to the regulatory authority. A water supply tank of sufficient capacity (but in no case less than thirty (30) gallons) to furnish an adequate quantity of potable water for food preparation, cleaning, and hand washing purposes must be provided. A water inlet tank shall be 19.1 mm (3/4inch) in the inner diameter or less. Hose-connection valves must be of a size or type that will prevent its use for any other service and shall be not less than five feet (5.0') above the ground and be covered at all times with a protective, screw-type cap which is attached to the mobile food preparation vehicle. The water system shall deliver not less than one (1.0) gallon per minute to each sink basin in the Class 3 mobile food unit. The fill hose and water holding tank shall be labeled as "Potable Water". A water heater with a minimum capacity of ten (10) gallons, or an instantaneous heater capable of producing water of 120° F. interconnected with the potable water supply, shall be provided and shall heat the water independently of the vehicle engine.

(7) Liquid Waste. A liquid waste tank having a capacity at least fifty percent (50%) greater than the fresh water tank shall be provided and labeled as "waste water". The tank shall be sized to receive and be adequate to hold melting ice water resulting from one day's operation. All waste lines shall be connected to the waste tank with watertight seals and all connections on the vehicle for servicing the Class 3 mobile food unit's waste facilities shall be of a different size or type than those used for supplying potable water. The water supply tank shall be filled and the waste storage tanks shall be emptied only at the commissary or other facility approved by the regulatory authority.

(8) Safety. An approved automatic fire extinguishing system shall be provided over cooking surfaces that require mechanical exhaust ventilation. A fire suppression system and fire extinguisher is required for all mechanical vent hood systems with grilling and deep fat frying operations and is to be inspected annually as mandated by the Farmers Branch Fire Marshall. Covers for deep fat fryers shall be provided and installed over fryer units while the Class 3 mobile food unit is in motion. Seats designated for the cook and each passenger shall be provided on each Class 3 mobile food unit and shall be located outside of the food preparation area. A physical separation shall be provided between the food preparation area and the cab area of the Class 3 mobile food unit. No food preparation shall be allowed while the Class 3 mobile food unit is in motion. All exposed food, single service items and utensils are to be kept secured in place and in covered containers or completely

wrapped and or packaged to protect from potential contamination while the Class 3 mobile food unit is in motion. Violation of any provision in paragraph (8) shall be grounds for the immediate suspension of the mobile food permit by the regulatory authority for a period not to exceed ninety (90) days.

(9) Time/temperature Control for Safety (TCS) Food Items. Packages containing time/temperature control for safety (TCS) foods shall be sealed, and properly labeled and dated with the date of preparation. All time/temperature control for safety (TCS) food items shall be disposed at the end of each day of operation.

(10) Approved Food Source. If food items other than commercially pre-packaged snacks, candy, or bottled beverages are purchased from a licensed restaurant, or grocery store, and not from an approved commissary or central preparation facility for the sole purpose of resale from the Class 3 mobile food unit, that food establishment must be licensed with the Texas Department of State Health Services (DSHS) Food Manufacturing Division as a food manufacturer. The Class 3 mobile food unit must maintain a copy of that license onboard the Class 3 mobile food unit in order to be able to sell food from that food establishment.

(11) Beverages. All beverages not provided in individual containers shall be dispensed from stainless steel covered urns or a similar type of beverage dispensing device from the Class 3 mobile food unit. Beverages shall only be added to the urns from a commissary or central preparation facility.

(12) Trash Receptacles. All Class 3 mobile food units shall be equipped with at least one self-closing lidded trash receptacle. The trash receptacle must be placed outside next to the Class 3 mobile food unit for use by patrons of the food unit. The area around the Class 3 mobile food unit shall be kept clean and free from litter, garbage and food debris.

(13) Auxiliary Storage. Class 3 mobile food units may use auxiliary storage if it is limited to impervious, nonabsorbent, covered containers stored in a manner as to preclude contamination or infestation from rodents and insects. Auxiliary storage shall be limited to items necessary for that day's operation. No self-service, assembly, or preparation activities may occur from auxiliary storage.

(14) Overhead Protection. Class mobile food units that operate outdoors shall have overhead protection where food is exposed. The overhead protection shall consist of, but not be limited to roofing, ceiling, awnings, or umbrellas. Overhead protection is not required for a barbecue unit that has a lid or covering that will protect foods from contamination. The overhead protection must be easily cleaned.

(15) Liquid Food Waste. Grease and liquid waste shall not be disposed of or leaked into tree pits, creeks, storm drains, the sanitary sewer system, public streets, or any other unapproved location. All liquid food waste must be collected in leak proof containers and properly recycled or disposed of.

(16) Barbecue Units. All operations and equipment shall be an integral part of the Class 3 mobile food unit, including the use of a barbecue unit. A separate barbecue unit can only be used under the following conditions:

- (A) It must be in close proximity to the mobile food unit;
- (B) Food shall only be cooked on the barbecue. Processing, portioning, preparation, or assembly of food must be conducted inside the mobile food unit; and
- (C) An approved handwashing system shall be provided adjacent to the barbecue.

(c) Base of Operations

(1) Mobile food units shall operate only from a licensed restaurant, central preparation facility, or warehouse in regards to supplies, cleaning, and servicing operations as follows:

(A) The interior of the mobile food unit shall be cleaned at least once daily and shall be stored at a commercial location not used as a residence when not in operation.

(B) The mobile unit shall acquire supplies from an approved commissary central preparation facility, or other approved vendor.

(C) An existing food establishment may serve as a central preparation facility or commissary for a mobile unit only if approved by the regulatory authority. The existing food establishment would be required to have an approved vehicle storage facility, approved potable water hook-ups, approved wastewater drainage facilities, approved grease interceptor hook-ups, and any other accommodations as determined by the regulatory authority.

(D) The mobile food unit shall be able to provide documentation of all visits to a central preparation facility, or commissary for service or repair and these documents shall be kept for a period of one year on the mobile food unit for review if requested by the regulatory authority. All servicing documentation shall be provided by the commissary providing the service and shall specify when and which service or repair was provided. A mobile food unit shall not be in operation without a valid servicing record in his/her possession.

(2) If only pre-packaged goods are sold or served from the mobile food unit, a warehouse or wholesale facility may be accepted in lieu of a central preparation facility, or commissary. Warehouses shall be required to meet only those rules necessary to prevent the contamination of stored foods, or single-service articles, utensils, and equipment. In general, warehouses shall be exempt from the rules relating to finished walls, ceilings, or storage bases, light colored surfaces, restrooms, lavatories and utility facilities, provided foods are protected from contamination from dust, insects, rodents, flooding, drainage, or other contaminants. Handling of unpackaged foods, dishwashing, and ice making are prohibited in a warehouse. The regulatory authority may impose additional requirements on warehouses utilized in lieu of commissaries as deemed necessary

to prevent the contamination of stored foods, single-service articles, utensils, and equipment.

(3) Upon approval of the regulatory authority, self-contained mobile food units may operate without a base of operation if the mobile food unit contains all the equipment and utensils necessary to assure the following:

- (A) Maintaining proper hot and cold food temperatures during storage and transit;
- (B) Providing adequate facilities for cooling and reheating of foods;
- (C) Providing adequate dishwashing facilities and assuring proper cleaning and sanitizing of the unit;
- (D) Providing adequate handwashing facilities;
- (E) Obtaining food and water from approved sources;
- (F) Sanitary removal of waste water and garbage at approved locations.

(4) Mobile food units must be parked at the base central preparation facility/commissary when not in actual operation. The ability to operate without a base of operation shall be determined by the regulatory authority.

(5) A mobile food unit may not serve as a central preparation facility or commissary for another mobile food unit or as a base of operation for a caterer.”

(d) Food Transportation by Mobile Food Units and Food Catering Vehicles

(1) During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged in a manner that protects the food and utensils from potential contamination. Foods in original individual packaging are not required to be wrapped or covered if the original packaging is intact.

(2) Time/temperature control for safety food items (TCS) shall be maintained at required temperatures at all times during transport. Mobile food units or catering units that are not equipped to maintain proper hot and cold holding temperatures may be required to provide an onboard power source, such as a battery or generator, to assure maintenance of food at proper temperatures during transit. Approved hot and cold holding equipment for food transportation includes bain-maries, cold plates, refrigerated units, and insulated food transportation containers.

(3) Catering vehicles used to transport food and all necessary equipment must be used for food service operations only. The vehicles used shall be clean and not used in activities or to transport items incompatible with safe and sanitary food service operations.”

(e) Additional Inspections and Licensing Procedures for Mobile Food Units

(1) Approved Routes for Full Preparation and Service Lunch Trucks. Full preparation and service lunch trucks that run a daily fixed route in the City may apply for a permit. The operation of full preparation and service lunch trucks shall be restricted to industrial and commercial properties and construction sites for the sole purpose of providing breakfast and/or lunch service to laborers at such

facilities or sites. Full preparation and service lunch trucks are prohibited from offering service in the public right of way, or to drive up customers. Permission must be obtained from the property owner for the full preparation and service lunch truck to operate on that property and the truck is only allowed to be on private property for no more than 15 minutes at a time during servicing operations.

(2) Permit Application. All full preparation and service lunch trucks with a daily route in the City are required to apply for an initial permit and pay the license fee established by the City Council. The permit is valid for one (1) year from the initial date of issuance and must be renewed annually if the vehicle is to continue to operate within the City after the expiration of the current permit.

(3) Itinerary. All permitted full preparation and service lunch trucks must provide to the regulatory authority a current itinerary of all daily service stops in the City. Any service changes on this itinerary must be provided to the regulatory authority. Failure to maintain and provide to the regulatory authority a current schedule of all stops may result in suspension of the permit to operate in the City.

(4) Notarized Approved Food Source. All permitted full preparation and service lunch trucks are required to have a copy of a notarized commissary approval letter which is to be given to the regulatory authority along with the application for a permit. All full preparation and service lunch trucks are required to be supplied, serviced, maintained and housed, when not in service at the commissary.

(5) Inspections. Before a permit is issued, the regulatory authority shall inspect and approve the full preparation and service lunch service truck for the required mobile food unit construction standards and sanitation compliance. An inspection will be done at least once annually and thereafter at the discretion of the regulatory authority based upon the full preparation and service lunch truck's compliance with applicable regulations and potential of causing a foodborne illness.

(6) Permit Decals. Upon issuance of a permit for the operation of a full preparation and service lunch truck, the regulatory authority shall affix a permit decal to the back of the said truck. Decals will have a permit number and are color coded for each year issued and will expire a year from the issuance date. All permit decals must be renewed annually if the truck is still operating in the City.

(7) Gourmet Food Trucks. Gourmet food trucks do not have fixed daily routes at commercial properties. These trucks operate under a temporary food permit for a special event, once they have passed an initial sanitation compliance inspection by the regulatory authority. Gourmet food trucks may also operate at closed private events on commercial properties as requested by the property owner or at a designated location as allowed and approved by the regulatory authority. In addition to passing a required sanitation compliance inspection, gourmet food trucks must provide to the regulatory authority a copy of a notarized commissary approval letter for all food supplies, a current copy of the truck operator's food protection manager's certification, a copy of a current health permit from a city in which they are permitted or licensed, and a copy of a recent sanitation compliance report from the regulatory authority that inspected the truck before being granted a temporary food permit to operate in the City.

(f) Violations, Closure, or Suspension of Mobile Food Units

(1) Refusal of an owner to allow the regulatory authority, upon presentation of credentials, to inspect any permitted mobile food unit during normal business hours will result in an immediate suspension of the mobile food permit, at which time all permitted operational activities in the City are to cease until after such time as a hearing may be held in accordance with §228.247 (Permit Requirement, Prerequisite for Operation) of this ordinance.

(2) Violations that are observed during any sanitation inspection by the regulatory authority shall be described on a sanitation compliance report by citing the rule/regulation violated, giving a brief statement of the specific problem and required corrections.

(3) Priority item or priority foundation item violations shall result in closure of a mobile food unit, if the regulatory authority determines that an imminent danger to public health exists, and if the violation cannot be corrected immediately or an approved alternative procedure has not been implemented. If the mobile unit is ordered closed, the reason for closure shall be stated on the inspection form. For priority item or priority foundation item violations not resulting in closure, the time limit by which the correction must be made shall be within but not to exceed 14 days. All other violations shall be corrected by the next inspection, or re-inspection.

Section 228.244 (a) is amended to read as follows:

(a) Review of plans.

(1) Whenever a food establishment is constructed or extensively remodeled or whenever an existing structure is converted for use as a food establishment, or the nature of the operation changes, or the menu is substantially changed, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work begins. Such plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical, and plumbing schematic, construction materials of work areas, and the type and model of proposed fixed equipment types including dimensions and installation specifications. The plans and specifications shall 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 the construction, remodeling or conversion of a food establishment without any alteration unless approved by the regulatory authority. Failure to do so may result in the denial of the of the food establishment being able to open.

(2) A Farmers Branch Food Establishment Plan Review document will be filled out and reviewed by the regulatory authority for each new food establishment facility or each extensively remodeled facility and shall include the following:

(A) Intended menu items

(B) Anticipated volume of food to be stored, prepared, and sold or served

(C) List of equipment and usage

(3) Any food establishment which closes for business operations for a period of 30 days or more and was grandfathered under a previously existing food code requirement that has since been repealed must be brought into compliance under the current Texas Food Establishment Rules (TFER) as adopted by the City. This includes layout, structure, and equipment before reopening as a food establishment and shall be approved by the regulatory authority.

(4) Failure to construct or remodel the food establishment in accordance with the approved plans and specifications shall result in a denial, suspension or revocation of a food establishment permit.

(5) Whenever plans and specifications are required by this section to be submitted to the regulatory authority, the regulatory authority shall inspect the food establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of the current Food Establishment Rules as adopted by the City.

(6) For purposes of this subsection, “extensive remodeling” means that 20% or greater of the area of the food establishment is to be remodeled.

(7) Whenever a food establishment undergoes partial remodeling of a non-food preparation area such as a lobby or dining room while remaining open for business from the drive thru window only, a proper containment barrier such as sheetrock must be erected to protect the foodservice area from aerosolized particulate matter during the construction process. A plastic curtain used as a temporary barricade is not allowed.

Section 228.244(b) is deleted.

Section 228.247 is amended to read as follows:

Section §228.247 Permit Requirement, Prerequisite for Operation

(a) Permit Required. A person shall not operate a food establishment without a valid permit to operate issued by the regulatory authority.

(b) Permit Application. Any person desiring to operate a permanent, temporary, seasonal or vehicle mounted food establishment within the City shall make written application for a permit on forms provided by the regulatory authority. The application shall include such information as the regulatory authority

determines is necessary for the enforcement of the current Texas Food Establishment Rules (TFER).

(c) Permit Fees. The various requirements for permits and such administrative functions of this division shall require the payment of fees to the City in an amount that is set by the Public Health Department and approved by resolution or ordinance of the City Council. Fees are not refundable. (See Appendix A of this Code).

(d) Multiple Locations. If an applicant operates at multiple locations, a separate permit application and the payment of a separate fee will be required at each location.

(e) Shared/Multi Use Kitchens. A single operating permit shall be issued to one food establishment owner or a food establishment company occupying space in a fixed brick and mortar commercial location and allows for food service operations by that applicant only. The operating permit cannot be used for the purposes of shared/multi use kitchens within that building, or for the purpose of subletting space in that building to other food production tenants, establishments, or companies.

(f) Catering. A food establishment, whether located in the City in another city, may cater to businesses located in the City that do not have a restaurant or cafeteria within that building provided:

(1) There is a designated space or area for the caterer to set up that is protected from potential customer contact or contamination with the foods being served to include appropriate sneeze guards, as well as a fully operable plumbed handwashing sink with available hot and cold water, paper towels, and soap. Caterers may not set up in a lobby area open to the public or use a temporary handwashing bucket system or sanitizer in place of a handwashing sink.

(2) Caterers must have the appropriate hot and cold holding equipment as required for maintaining temperatures of all time/temperature control for safety food items unless this equipment is provided by the business being catered.

(3) If not based in the City, caterers will be required to complete an operating permit application, pay the required operating permit fee, and be subject to routine inspections. Food establishments that currently operate a permanent food establishment within the City and possess a valid food permit issued by the regulatory authority may, at the discretion of the regulatory authority, be exempted from the requirement to obtain a food permit for catering operations at other locations within the City but will be subject to routine inspections.

(4) Caterers, whether located in the City or in another city, must comply with this Article when servicing businesses within the City.

(5) Caterers who supply food upon request for a private function or event to a company, business, or organization in the City are exempt from inspections by the regulatory authority and do not have to apply for an operating permit.

(g) An operating permit will be issued only to those food establishments located in a permanent brick and mortar building that meets design and structure requirements of the current Texas Food Establishment Rules (TFER) as adopted by the City. Temporary buildings, kiosks, or stands located on asphalt surfaces of shopping centers are not allowed to be in permanent operation as a food establishment and will not be issued an operating permit.

(h) The food establishment operating permit shall be posted in a conspicuous location that is visible to consumers.

(i) Additional responsibilities of the permit holder:

(1) If required to operate under a HACCP plan, the permit holder is to comply with the written plan as specified in §228.244(c)(1)-(3) and (d)(1)-(5) of this title which plan submittal includes the information specified in §228.244(a)(1)-(6) of this title.

(2) A variance may be granted to a facility that is required to have a HACCP plan that meets all the requirements in the above section and provides to the regulatory authority proper documentation of the proposed variance and justification as well as an analysis for how potential public health hazards and nuisances will be addressed by the variance proposal.

(3) Immediately contact the regulatory authority to report an illness of food employee as specified under §228.35(2) of this title relating to management and personnel.

(4) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard exists because of an emergency such as fire, flood, extended interruption of electrical or water service, back-up issue, misuse of a poisonous or toxic material, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.

(5) Allow the regulatory authority access to the food establishment under §228.250(b)-(c)(1)-(2)(e) of this title.

(6) Replace existing facilities and equipment specified in 228.241(2)(A)-(D) of this title with facilities and equipment that comply with these rules if the regulatory authority directs replacement because facilities and equipment constitute a health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted, or the facilities and equipment need replacing in the normal course of operation, or the regulatory authority directs the replacement of equipment and facilities because of change of ownership.

(7) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies.

(8) Accept notices issued and served by the regulatory authority according to law.

(9) Be subject to administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with these rules or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(10) Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the regulatory authority.

(11) Have on the premises at all times the most recent copy of the Texas Food Establishment Rules (TFER) as well as the local City food code ordinance that adopts these rules, be familiar with, and adhere to all required food code rules and regulations.

(j) Exemptions.

(1) Public schools accredited with the State of Texas shall be exempt from the payment of a permit fee to operate food establishments but must fill out an initial and annual permit application request.

(2) Church kitchens where food is prepared and served to members only and child care centers licensed by the State of Texas Department of Health Services (DSHS) shall be exempt from the permit requirements to operate food establishments.

(3) Food establishments who are licensed and inspected by the Texas Department of Health Services (DHS) as food manufacturers are exempt from the permit requirements and shall not be inspected by the City unless they also conduct retail business with the public, in which case only the retail portion of that business will be permitted and inspected by the regulatory authority.

(4) Permit Term. Permits for food establishments, excluding temporary and seasonal snow cone type food establishments, shall be valid for one (1) year from the date issued by the City unless suspended or revoked. Permits must be renewed on an annual basis by filing a permit renewal application and payment of the required fee with the regulatory authority.

(5) Permits for temporary food establishments shall be valid for no more than fourteen (14) consecutive days, except when the City Council authorizes the establishment to operate for a different period, in which case the permit shall be valid for the time authorized by the City Council. Permits for temporary food service establishments that are NOT operating in conjunction with a City of Farmers Branch sponsored special event or community-based event shall be limited to six (6) permits a year. There is no fee charged for a temporary food establishment permit.

(6) Seasonal snow cone type food establishments shall be valid for the lesser of the time approved by the City Council in a Specific Use Permit (SUP) - Interim Use; or six (6) to twelve (12) months from the date issued.

(7) Mobile Food Preparation Vehicle Permits. Upon issuance of a permit for operation of a Mobile Food Catering Vehicle, the regulatory authority shall affix to the vehicle a sticker bearing the expiration date of the permit. This sticker shall be prominently displayed at all times. The permit shall be renewed annually from the date in which it is issued.

(8) Certain Push Carts Prohibited. Ice cream, corn, and hot dog carts are prohibited from operating within the City.

(k) The regulatory authority shall issue a permit to the applicant after inspection reveals that the proposed food service establishment complies with the requirements of the Texas Food Establishment Rules (TFER).

(l) 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 the notice required in this subsection 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 twenty (20) days of receipt of a request for a hearing.

(m) The regulatory authority may, after providing 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 or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

(n) Notice. A notice as required in these Food Establishment 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. A copy of the notice shall be filed in the records of the regulatory authority. The hearings provided for in these Food Establishment Rules shall be conducted by the regulatory authority at a time and place designated by the regulatory authority. 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. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

SECTION 2. Chapter 26, Article V, Section 26-154 of the Code of Ordinances is amended to read as follows:

Sec. 26-154. - Fees

Fees established by resolution or ordinance of the City Council and set forth in Appendix A of this Code shall be paid for the following purposes:

- (a) A fee shall be paid for review of food service establishment plans as requested by an applicant.
- (b) A permit fee shall be paid by each applicant to operate a mobile food unit, which includes full preparation and service lunch trucks, cold catering vehicles, and other mobile food units as required by this Chapter unless otherwise exempted by this Chapter or by the regulatory authority when authorized. A permit fee shall not be required from any applicant to operate a temporary food service establishment or a food stand at the Farmers Market.

- (c) A permit fee, based on the number of employees employed at the food establishment, shall be paid by each applicant desiring to operate a fixed location brick and mortar food service establishment.
- (d) A fee shall be paid by each applicant for issuance of any duplicate permit.
- (e) A fee shall be paid by each applicant to register as a food protection manager.
- (f) A transport and storage fee of \$50.00 shall be paid to the City by push cart ice cream vendors who reclaim their confiscated product from a City facility within the maximum holding time period of up to seventy-two (72) hours.”

SECTION 3. Code of Ordinances Chapter 26, Article V, Section 26-155 “Seasonal Snow Cone Mobile Food Establishments” is amended to read as follows:

Sec. 26-155 - Seasonal Snow Cone Mobile Food Establishments.

- (a) *Operation.* A seasonal permit may be obtained for food establishments at which only snow cone related foods shall be prepared or offered for sale. The preparation or sale of any time/temperature control for safety (TCS) foods at such establishments is prohibited.
- (b) *Ice.* Ice to be used for snow cones shall be obtained in chipped, crushed, cubed or block form and in single-use safe plastic bags filled and sealed at the point of manufacture. Snow cone ice shall be held in its sealed bags until the ice is dispensed in a way that protects the ice from contamination.
- (c) *Equipment.* A three-compartment sink and hand washing sink shall be provided. Sink compartments shall be large enough to accommodate, fully submerged, of the equipment and utensils being washed, but shall in any case be not less than twelve inches (12.0”) long, twelve inches (12.0”) wide, and ten inches (10.0”) deep. Drain boards shall be not less than twelve inches (12.0”) long by twelve inches (12.0”) wide.
- (d) *Service Openings.* Service openings for a snow cone establishment shall be constructed with screen doors which shall remain closed except when serving customers through the opening. Screens of not less than 16 mesh per inch shall be used.
- (e) *Water Supply, Plumbing.* All equipment used for a potable water supply system shall be listed for such use by an organization acceptable to the regulatory authority and shall be installed and operated according to law. All potable water not provided directly by pipe to the establishment from an approved source shall:

- (1) Be transported in a bulk water transport system or individual containers and delivered by direct connection to a closed-water system or be delivered to a closed-water system by direct hose attachment from an approved water source.
- (2) All potable water containers or hoses shall be used only for water supply purposes.
- (3) A closed-water system of sufficient capacity to furnish an adequate quantity of potable water for cleaning and handwashing purposes, but in no case less than fifteen (15) gallon capacity tank, shall be provided and labeled "Potable water". An instantaneous water heater system capable of producing water with a temperature of 120 degrees Fahrenheit interconnected with the potable water supply shall be provided.
- (4) The water system shall be capable of delivering a water supply under pressure of at least fifteen (15) pounds per square inch (psi) at all times. If such water pressure cannot be provided by gravity flow, then a tank and a pump or other means, which will provide not less than fifteen (15) psi shall be installed.
- (5) If the snow cone type establishment is not connected to a public sanitary sewer system, all liquid waste from the operation shall be held in an approved permanently installed liquid waste retention tank which shall be labeled "waste water". The liquid waste tank shall have a capacity at least fifty percent (50%) greater than the potable water tank. All waste lines shall be properly installed and connected to the liquid waste tank with watertight seals. The liquid waste discharge pipe from the holding tank shall not be located inside the building. There shall be separate size fittings required between water supply and liquid waste connections. All liquid waste from the holding tank shall be transported and disposed of in an approved manner.
- (6) Snow cone type establishments shall have adequate, conveniently located, and accessible toilet and lavatory facilities for use by its employees at all times. If such facilities are not located within the establishment, they must be located within a 400-foot radius of the establishment to be considered convenient use. If restrooms are located off-site, a notarized letter must be submitted with the permit application giving written permission for the food establishment's personnel to use such restroom facilities and acknowledging that the restrooms will be available for use at all times during the food establishment's business hours.

- (7) An easily cleanable, covered trash container shall be provided on the outside of the building if outside seating is provided.”

SECTION 4. Code of Ordinances Chapter 26, Article V, Section 26-156 “Summer Food Service Programs” is amended by amended subsection (b) to read as follows:

(b) *Notification.* The Farmers Branch regulatory authority must be notified in writing prior to operations as is required by the Texas Department of Agriculture and United States Department of Agriculture (TDA/USDA). This notice shall include the name and address of the food establishment preparing the food, the name of the person in charge, the site and address where the food is to be distributed, the dates and times of the operation, and a list of the food and beverages to be served. A current Food Protection Manager must be in place during the time the food items are being prepared. If the food establishment preparing the food is not located in Farmers Branch, then a copy of that facility’s current health permit as well as a copy of the most current health inspection report conducted by the City, or County the facility is located in must be furnished to the regulatory authority upon giving notice they will be participating in the Summer Feeding program.

SECTION 5. Code of Ordinances Chapter 26, Article V, Section 26-157 “Farmers Markets” is amended read as follows:

Sec. 26-157 – Farmers Market.

- (a) *Permits.* Each food vendor wishing to sell or distribute food at the Farmer’s Market must complete an application for a permit to be approved by the regulatory authority. Permits are not transferable. The permit must be visibly displayed at each booth. Failure to comply with this subsection (a) may result in the revocation of the permit/and or municipal court citations.
- (b) *Foods.* All foods sold at the Farmer’s Market must be domestically produced, or locally grown or manufactured. No internationally produced or manufactured foods will be allowed, and all foods must fall under one of the following categories:
 - (1) Produce which must be sold in a whole state with no cutting or sampling allowed;
 - (2) Manufactured foods with a license from the Texas Department of State Health Services (DSHS);
 - (3) Commercially produced pre-packaged items from a licensed facility or commissary subject to the following:
 - (A) *Commercially Pre-Packaged Foods.* Only commercially prepared pre-packaged goods prepared in a certified

commercial kitchen and labeled according to the manufactured food requirements of the Texas Department State of Health Services (DSHS) will be allowed.

- (B) Labels must include the manufacturer, common name of the food item, ingredients if more than one, the name of the food source for each major food allergen contained in the food, unless the food source is already part of the common name of the respective ingredient and approximate net weight. In addition, a nutrition label must also be included on the packaging.
 - (C) Absolutely no unlabeled foods, or foods from any source other than the documented commissary may be sold to the public.
 - (D) All food must be sold retail only. Without proper wholesale licenses, sales to restaurants are prohibited.
 - (E) No foods may be re-packaged from a bulk state for sale or re-sale.
- (c) *Cottage Food Producers.* Cottage food producers can only sell the following:
- (1) Baked goods, breads, sweet baked goods, cakes such as birthday or wedding cakes without time/temperature control for safety food ingredients or icings, rolls, muffins, coated and uncoated candy, a canned jam or jelly, a fruit pie, dehydrated fruits or vegetables, including dried beans, popcorn, and popcorn snacks, cereal, including granola mix, vinegar, pickles made from cucumbers only, mustard, roasted coffee, or dried tea, or a dried herb mix.
 - (2) All cottage food produced items must be labeled legibly with the following information:
 - (A) The name and address of the cottage food production operation;
 - (B) The common or usual name of the product especially if the food is made with a major food allergen such as nuts, eggs, soy, milk, or wheat; and
 - (C) A statement that says: “This food is made in a home kitchen and is not inspected by the Department of State Health Services (DSHS) or a local health department.

- (d) *Manufactured Products.* All vendors selling time/temperature control for safety (TCS) food items such as meat, eggs, or milk will be required to have mechanical refrigeration to keep the product at the required cold holding temperatures. All meat will be frozen at 0 degrees F., whole shell eggs at 45 degrees F. or below and milk at 41 degrees F. or below.
- (1) *Egg products.* An egg producer that sells only ungraded eggs from their own flock may be exempt from licensing from the Texas Department of Agriculture but must be permitted by the Department of State Health Services (DSHS) or the local regulatory authority subject to the following:
- (A) The eggs must be stored under mechanical refrigeration at 45 degrees F. or less and meet specific labeling requirements. (Safe Food Handling Instructions; Name and Address of distributor or packer); and
 - (B) Eggs from fowl other than chickens such as quail and ducks are not graded in Texas and cannot be sold.
- (2) *Meat products.* Only frozen packaged meat will be allowed. All meat must come from an approved source United States Department of Agriculture (USDA) stamp or Department of State Health Services (DSHS) – Meat and Safety Assurance.
- (A) All meat items must be stored and displayed in a mechanical freezer approved by the City of Farmers Branch Environmental Health Division.
 - (B) All labeling requirements must comply with USDA and DSHS rules and regulations.
 - (C) The processing plant must be USDA inspected unless it has a small producer exemption. A small producer must provide proof of exemption and meet labeling requirements. The producer shall provide either a grant of inspection or exemption.
 - (D) The meat storage facility must provide proof that it is a licensed facility under the Department of State Health Services (DSHS); provided, however, if the meat is stored in a facility other than the processing plant, a copy of the latest health inspection must be provided to the local regulatory authority.

- (E) The following must be provided to the City of Farmer Farmer's Market:
 - (i) Completed Farmers Branch permit application
 - (ii) Equipment inspection;
 - (iii) Processing license (or proof of exemption);
 - (iv) Storage license; and
 - (v) Copy of product labels.
- (3) *Milk products.* Fluid milk and milk products complying with Grade A standards will be obtained pasteurized. Raw unpasteurized milk will not be allowed.
- (e) *Food Sampling.* Sampling may be allowed in compliance with the following:
 - (1) All food items are covered and protected from contamination, access by insects and served in a sanitary manner by the use of utensils. All samples must be served in single service sample cups with single service utensils if needed.
 - (2) All food items must be stored at least six (6) inches above the ground.
 - (3) All food items must be able to be served without cooking. Cooking of a raw food product is not allowed. Examples of approved samples include candy, granola, salsas on commercially bagged chips or bagel bits, baked goods, cookies, muffins, and jellies on bread, dehydrated fruit or vegetables, coated and uncoated nuts, brewed coffees, and teas.
 - (4) Commercially prepared products such as corn dogs, hot dogs, and tamales may be given as samples if the items are fully cooked and only need to be re-heated. Proper re-heating equipment such as grills must be provided.
 - (5) When food sampling is conducted. at least one person must have a State of Texas accredited basic food handler's certificate or card.
 - (6) Each person when distributing samples must wear proper hair restraints, have properly wash hands, and be wearing food handler gloves.

- (7) Each person distributing samples must refrain from chewing gum, eating, or drinking from open spill-able beverage containers while distributing samples.
- (8) All cutting surfaces must be smooth, easily cleaned and non-absorbent. Re-useable utensils must be sanitized in a household unscented bleach solution at 50 parts per million (ppm), or quaternary ammonium (QUAT) at 200 ppm. Sanitizer test strips must be provided for the sanitizer being used.
- (9) All solid and liquid waste must be properly disposed of as needed. All food waste shall be placed in trash receptacles with tight fitting lids. Liquid waste shall be placed into an approved sanitary sewer or holding tank.
- (10) A hand sink with hot and cold water, paper towels, and soap will be available on-site, but it is recommended that all vendors handing out samples also have one durable container with a spigot containing free flowing potable water, hand washing soap, paper towels, and a collection container for waste water. Hand sanitizers may not be used in lieu of hand washing but may be used in conjunction with proper hand washing, and if only handing out prepackaged food items.
- (11) A person 12 years of age or younger is not work a sampling booth. A person who is at least 13 years of age but younger than 18 years of age may work inside the sampling booths if accompanied and supervised by a person 18 years of age or older.
- (12) All animals other than service dogs must be kept away from the food sampling stands except when pet foods or pet treats are being sampled.

SECTION 6. Code of Ordinances Chapter 26 “Business,” Article V “Food Establishment Rules” is amended by repealing in its entirety Division 2 “Food Manager Certification.”

SECTION 7. All provisions of the ordinances of the City of Farmers Branch in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 8. Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so

decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 9. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 10. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 11. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THIS THE 8TH DAY OF JANUARY 2019.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Robert C. Dye, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:12/18/18:104990)