

ARTICLE IV
REGULATION OF FOOD ESTABLISHMENTS

Section 4.01 Texas Food Establishment Rules Adopted

- A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Food Establishment Rules (“TFER”) found in Title 25, Texas Administrative Code, Chapter 228, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article IV, Regulation of Food Establishments, of the “Health and Sanitation” Chapter of the Code of the City of Arlington, Texas, 1987.
- B. The intent and purpose of this Section is to provide for the inspecting of food establishments in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the handling of food in such establishments. The enforcement of this Article and the fixing of penalties shall be regulated in accordance with this Chapter. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of State Health Services. The Administrator may provide the current website addresses or adopted State regulations upon request.
- C. In the event of a conflict between any provision of the Texas Food Establishment Rules and any provision of this Article, this Article shall prevail.
- D. The adopting by reference of the Texas Food Establishment Rules, as provided in Section 4.01(A) above, as amended, is made subject to and is modified and amended as follows:
 - 1. Title 25, Texas Administrative Code Section 228.2, Definitions, shall be amended as follows:
 - a. The definition of the term “Mobile Food Unit” or “MFU” is amended to include the term “mobile food establishment.”
 - b. The definition of the term “Regulatory Authority” shall mean the department and officials designated by the City Manager to administer and enforce the provisions of this Article. The term also includes the term “Administrator” as defined in this Chapter.

HEALTH
4.01

2. Title 25, Texas Administrative Code Section 228.33 shall be amended to add the following provisions:
 - a. After October 11, 2015, compliance with the proficiency and testing requirements of Section 228.33(a), as amended, will be demonstrated by presenting the Certified Food Protection Manager Certificate to the Regulatory Authority and payment of a fee set by resolution of the Arlington City Council.
 - b. The permit holder of a new or existing Food Establishment that has changed ownership, or a Food Establishment whose Certified Food Protection Manager has transferred or resigned shall have thirty (30) days to comply with the requirements of this Section.
 - c. The Administrator has determined that the following Food Establishments pose minimal risk of causing, or contributing to, foodborne illnesses based on the nature of the operation and extent of food operation, and are accordingly exempt from the requirements of amended Section 228.33: Food Establishments that serve only fountain drinks, coffee, popcorn, beef jerky, and/or nuts.
 - d. In accordance with Title 25, Texas Administrative Code Section 228.243, as amended, if the Administrator determines that a health hazard or nuisance will not result, the Administrator may:
 1. Grant a variance from the general requirement that each food establishment have a separate Certified Food Protection Manager employed in a supervisory capacity; and
 2. Approve one Certified Food Protection Manager to be employed in a supervisory capacity for several Food Establishments located in the same building or venue and under the same ownership and management.
3. Title 25, Texas Administrative Code Section 228.66 shall be amended to add the following provision:

The Administrator may require a food establishment to install a single designated food preparation sink depending on the volume and type of

food prepared at the food establishment, including fruits and vegetables. This sink must be clearly identified as a food preparation sink and may not be equipped with chemical dispensing systems or handwashing materials, except for fruit and vegetable washes. The requirements of this Subsection only apply to food establishments that are opened, constructed, or extensively remodeled on or after August 1, 2017.

4. Title 25, Texas Administrative Code Section 228.175 shall be amended to add the following provision:

Handwashing sinks must be located a maximum of 20 feet from food preparation, food dispensing and warewashing areas, unless otherwise approved by the Administrator. The requirements of this Subsection shall only apply to food establishments that are opened, constructed, or extensively remodeled on or after August 1, 2017.

5. Title 25, Texas Administrative Code Section 228.221(a)(1) shall be amended to add the following provisions:

- a. A Central Preparation Facility from which a mobile food establishment operates shall issue service records for each mobile food establishment in a manner and form prescribed by the Administrator.
- b. The permit holder or person in control of a mobile food establishment shall keep and maintain Central Preparation Facility service records of the mobile establishment unit for a minimum of 30 days.
- c. The operator of a mobile food establishment must report to the Central Preparation Facility daily for service, disposal of wastewater and overnight parking. A person shall not park, stop, or stand a mobile food establishment on the premises of a residential property.
- d. Mobile food establishments shall operate from a Central Preparation Facility or other fixed food establishment and shall report to such location daily for supplies and for cleaning and servicing operations, in accordance with Title 25, Texas Administrative Code Section 228.221(b)(1), as amended.

HEALTH

4.01

6. Title 25, Texas Administrative Code Section 228.221(a)(6) shall be amended to add the following provision:

A mobile food establishment must be constructed of commercial grade (National Scientific Foundation, “NSF”) materials and equipment.

- E. In accordance with Title 25, Texas Administrative Code Section 228.243, as amended, the Administrator may grant a variance by modifying or waiving the requirements of this Article if the Administrator determines that a health hazard or nuisance will not result from the variance.

Section 4.02 Food Establishment - Permit Required

- A. No person or firm shall operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program in the City of Arlington without a valid permit issued by the Administrator.
- B. In cases where a person or firm conducts, in a single building or at the same address, more than one (1) operation, vocation or business, whether such operation, vocation or business constitutes a Food Establishment or Temporary Food Establishment, then a separate permit shall be required for each such operation, vocation or business.

Section 4.03 Food Handler - Permit Required

- A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handler Permit, issued upon completion of a Food Handler Education or Training Program accredited through the Texas Department of State Health Services or the American National Standards Institute.
- B. No person who owns, manages or otherwise controls any Food Establishment shall permit any Food Service Employee to be employed therein who does not after thirty (30) days of employment possess a current valid Food Handler Permit, issued upon completion of a Food Handler Education or Training Program accredited through the Texas Department of State Health Services or the American National Standards Institute.

- C. During all operating hours of a Temporary Food Establishment, there must be at least one Temporary Food Service Employee on site with a current Food Handler permit or a current Certified Food Protection Manager Certificate, pursuant to Title 25, Texas Administrative Code Section 228.222(a)(2), as amended.

Section 4.04 Permits - Authority to Issue

The Administrator is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Seasonal Food Establishment Permit, Central Preparation Facility Permit, or Feeding Program Permit, in the City of Arlington, provided that only a person or firm that complies with the requirements of this Article shall be entitled to receive and retain such permit and provided that a person or firm applying for a Temporary Food Establishment Permit has not been issued the maximum number of Temporary Food Establishment Permits that are allowed to be issued to any person or firm during any one year period. The maximum number of Temporary Food Establishment Permits that may be issued shall be set by policy of the Administrator.

Section 4.05 Permits - Application

- A. Application for such permit as required of this Article in Sections 4.02 and 4.03, as amended, shall be made in writing to the Administrator upon forms prescribed and furnished by the Administrator. If the application for permit is being made to operate in conjunction with a single event or is for a single event, a copy of all City of Arlington required event permits, if any, shall accompany the application.
- B. A Food Establishment permit Plan Review fee shall be required for each Food Establishment or Central Preparation Facility that requires plans to be submitted according to Section 4.17, as amended.
- C. A Food Establishment permit application fee shall be required for each Food Establishment or Central Preparation Facility that requires a new Food Establishment Permit or Central Preparation Facility Permit due to change of ownership, change in type of operation, or revocation, and a new application shall be made for a permit as required by Section 4.02, as amended. Whenever a new Food Establishment Permit or Central Preparation Facility Permit is required, the Regulatory Authority shall inspect the Food Establishment or Central Preparation

Facility prior to beginning operation to determine compliance with requirements of this Article.

- D. A Mobile Food Establishment must apply for and obtain a new Mobile Food Establishment Permit each year. Prior to the issuance of an annual Mobile Food Establishment Permit, the Mobile Food Establishment must pay all required fees and pass an inspection to verify compliance with the provisions of this Article.
- E. Failure to provide all required information, or falsifying information required on the application, may result in denial or revocation of the permit.
- F. Applicants for a Temporary Food Establishment Permit must submit with their application a current Food Handler Permit or Certified Food Protection Manager Certificate for the person in control of the Temporary Food Establishment.
- G. Applicants for a Mobile Food Establishment Permit must submit with their application a current Certified Food Protection Manager Certificate for the person in control of the Mobile Food Establishment.
- H. Applicants and holders of a Food Establishment Permit must demonstrate that the food establishment is in compliance with all applicable requirements under federal, state, and local law, including those established by this Code of Ordinances. Failure to demonstrate such compliance with applicable laws under this Section may result in denial or revocation of the permit.

Section 4.06 Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment or Central Preparation Facility Permits

Every permit holder or person in charge shall at all times have available on the premises for inspection the Food Handler Permit of its employees, and shall at all times display in public view the Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Seasonal Food Establishment, Central Preparation Facility Permit, or Feeding Program Permit.

Section 4.07 Permits - Duration

- A. Except as provided by Subsection (B), any Food Establishment Permit, Mobile Food Establishment Permit, or Central Preparation Facility Permit, granted under

- the provision of Section 4.02, as amended, shall remain in full force and effect twelve (12) months from the date of issuance as long as the annual food establishment permit fee is paid unless sooner suspended or revoked for cause.
- B. A Food Establishment Permit or Central Preparation Facility Permit that lapses for non-payment of the applicable annual permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.
- C. The following standards apply to permits for Temporary Food Establishments, Temporary Mobile Food Establishments, Seasonal Food Establishments, and Feeding Programs:
1. Temporary Food Establishment Permits and Temporary Mobile Food Establishment Permits shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause.
 2. Seasonal Food Establishment Permits shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed 180 days in conjunction with or as the single event attracting one or more food vendors at a single building or address. Upon expiration of a Seasonal Food Establishment Permit, a period of thirty (30) days must pass before a person may apply for a new Seasonal Food Establishment Permit.
 3. Feeding Program Permits for feeding programs approved by the Texas Department of Agriculture shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed ninety (90) days. Upon expiration of a Feeding Program Permit, a period of 180 days must pass before a person may apply for a new Feeding Program Permit.

Section 4.08 Permits - Non-transferable

- A. Every permit issued under the provisions of this Article shall be nontransferable and nonrefundable.

HEALTH

4.08

- B. A Food Establishment Permit, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility Permit, or Feeding Program Permit shall be valid for and permit the operation of the establishment only at the location, for the type of food service, and for the permit holder for which granted.
- C. A Mobile Food Establishment Permit shall be valid only for the mobile food establishment, the type of food service, and for the permit holder for which granted.

Section 4.09 Suspension or Revocation of Food Handler's Permit

The Administrator shall have the right to suspend or revoke a valid Food Handler Permit at any time the holder of such card becomes affected with any disease in a communicable form, becomes a carrier of any such disease or is suspected of being affected with or being a carrier of any such disease as stated in Title 25, Texas Administrative Code Section 228.256(b), as amended. Such suspension or revocation shall remain in effect until such person is released from restrictions or exclusions according to the Texas Health and Safety Code Section 438.033, as amended, and the conditions stated in Title 25, Texas Administrative Code Section 228.256(d), as amended.

Section 4.10 Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program

- A. The Administrator may, without prior notice or hearing, suspend any permit granted under Section 4.02, as amended, to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program if the permit holder or person in charge does not comply with the requirements of this Article, or if the operation of the Food Establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 4.14, as amended. When a permit is suspended, food service operations shall immediately cease.
- B. The Administrator may end the suspension at any time if reasons for suspension no longer exist.

- C. Whenever a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program is required under the provisions of this Section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The City of Arlington."

Section 4.11 Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program

The Administrator may, after providing notice of opportunity for a hearing according to Section 4.14, as amended, deny a permit to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility or Feeding Program, if the applicant for the permit does not comply with the requirements of this Article, or if the operation otherwise constitutes a substantial hazard to public health. Whenever a denial of a permit has become final, the applicant may make written application for a permit according to Section 4.05, as amended.

Section 4.12 Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program

The Administrator may, after providing opportunity for a hearing according to Section 4.14, as amended, revoke a permit granted under Section 4.02, as amended, for serious or repeated violations of any of the requirements of this Article, failure to maintain a Food Establishment permit or other permit due to failure to pay fees according to Section 4.07, as amended, or for interference with the Regulatory Authority in the performance of its duty. Prior to revocation, the Regulatory Authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice, unless a written request for a hearing is filed with the Administrator by the holder of the permit within such ten (10) day period. If no request

for hearing is filed within the ten (10) day period, the revocation of the permit becomes final. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit according to Section 4.05(C), as amended.

Section 4.13 Service of Notices

A notice provided for in this Article is properly served when it is delivered to the permit holder or 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 Administrator.

Section 4.14 Notice of Appeal; Hearing

- A. Upon denial, suspension, or revocation of a permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program, the Regulatory Authority shall notify the applicant, permit holder, or person in charge, in writing, of the reason for which the permit is subject of denial, suspension, or revocation. The applicant, permit holder, or person in charge shall file a written request for a hearing with the Administrator within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial, suspension, or revocation is sustained.
- B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.
- C. The hearings provided for in this Article shall be conducted by the Administrator or a designated hearing officer at a time and place designated by the Administrator or the hearing officer. Based upon the recorded evidence of such hearing, the Administrator or the designated hearing officer 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 permit holder of the permit by the Administrator or the designated hearing officer.
- D. After such hearing, an applicant that has had a permit denied, suspended, or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

- E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

Section 4.15 Inspection Frequency

- A. An inspection of a Food Establishment shall be prioritized based upon assessment of the Food Establishment's history of compliance and potential risk factors for causing foodborne illness according to Title 25, Texas Administrative Code Section 228.249, as amended, and evaluations by the Regulatory Authority.
- B. The Administrator shall classify Food Establishments as high priority, medium priority, or low priority, according to the risk factors deemed relevant to the operation by Title 25, Texas Administrative Code Section 228.249, as amended.
- C. Additional inspections of the Food Establishment shall be performed as often as necessary for the enforcement of this Article.
- D. Inspections.
 - 1. The Regulatory Authority may conduct inspections of a food establishment whenever necessary to enforce any of the provisions of this Article or if there is probable cause to believe that a violation of this Article exists at a food establishment.
 - 2. The Regulatory Authority shall have access to the food establishment and its premises as provided by Title 25, Texas Administrative Code Section 228.250, as amended, and through every remedy provided by law.
- E. Permit holders shall display in public view at all customer entrances a copy of the last routine inspection report.

Section 4.16 Disposition of Unsafe, Adulterated, or Contaminated Food

- A. In accordance with Title 25, Texas Administrative Code Section 228.81, as amended, food that is unsafe, adulterated, or contaminated shall be discarded.
- B. If the Regulatory Authority determines that any food is unsafe, adulterated, or contaminated, the Regulatory Authority may issue a written order that the food be discarded by immediately denaturing and rendering the food inedible. The

HEALTH

4.16

- Regulatory Authority shall provide a copy of the written order to the owner, manager or person in charge of the food establishment.
- C. If the owner, manager, or person in charge of the food establishment does not discard the food subject to an order to discard, the Regulatory Authority may seize and discard such food pursuant to a warrant or any other remedy provided by law.
 - D. Food that is subject to an order to discard shall not be used, served, or offered for public consumption.
 - E. The owner, manager, or person in control of any food that was ordered to be discarded may appeal the order to the Administrator. The Administrator may designate a hearing officer to conduct hearings under this Section. In order to appeal, the owner, manager, or person in control of such food must file a written request for a hearing with the Administrator within ten (10) days of the order being issued to discard the food.
 - F. If any food that is subject to an order to discard has not yet been discarded at the time that a hearing is requested, the Administrator may, upon request, permit the food to be stored at an approved location, pending the outcome of the hearing, unless the Administrator determines that storage of such food is not possible without risk to the public health, in which case the food may be seized and discarded pursuant to Subsection (C).
 - G. Upon a timely request for a hearing under Subsection (E), the Administrator shall schedule a hearing within twenty (20) days of the written request and provide notice to the person who requested the hearing. At the hearing, if the Administrator or designated hearing officer determines that the food subject to an order to discard was unsafe, adulterated or contaminated, the Administrator or designated hearing officer shall:
 - 1. Affirm the order of the Regulatory Authority; and
 - 2. Order that the food be discarded if the food is being stored pursuant to Subsection (F).
 - H. The Regulatory Authority may examine, collect samples, and detain food in order to enforce the provisions of this Article, as provided by Title 25, Texas Administrative Code Section 228.255, as amended.

Section 4.17 Review of Plans

- A. Whenever a Food Establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a Food Establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the Administrator for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Administrator shall approve the plans and specifications if they meet the requirements of this Article. No Food Establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the Administrator.
- B. Whenever plans and specifications are required to be submitted under this Section, the Regulatory Authority shall inspect the Food Establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this Article.
- C. Failure to follow the approved plans and specifications may result in a permit denial, suspension, or revocation.

Section 4.18 Operation of Mobile Food Establishment

- A. Any person or firm who operates a mobile food establishment as defined in this Article shall not operate such establishment within one block of any block containing an elementary school, junior high school, or middle school.
- B. No mobile food establishment may enter any City park containing a concession stand for the purpose of vending without first receiving written permission from the Director of the Parks and Recreation Department or the Director's designee.
- C. A mobile food establishment shall not stop to sell or serve food for a period of time exceeding thirty (30) minutes.
- D. A mobile food establishment may only operate in excess of thirty (30) minutes when it is operating:

HEALTH

4.18

1. in conjunction with a City-sponsored event or a permitted event authorized by the Construction Chapter, as amended, and only for the duration of that event; or
 2. as an accessory use to an existing business with a valid mobile food establishment certificate of occupancy, as authorized by the Unified Development Code, as amended.
- E. Food for public consumption must be prepared and stored at the central preparation facility or on the mobile food establishment. Food for public consumption may not be prepared or stored at any other location, including but not limited to an unpermitted or residential kitchen, pursuant to Title 25, Texas Administrative Code Section 228.62(a), as amended.
- F. Only food items previously approved by the Regulatory Authority may be sold on a mobile food establishment. Non-food items such as toys, fireworks, or any hazardous substances such as stink bombs are prohibited.

Section 4.19 Fees and Policies

- A. The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections and such administrative function of this Article shall require the payment of fees, submitted to the Administrator, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.
- B. The Administrator may establish policies and procedures consistent with this Article to implement the provisions of this Article.

Section 4.20 Responsibilities of the Owner, Manager, or Person-in-Charge

The permit holder, owner, manager, or person-in-charge of a food establishment shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Regulatory Authority. (Amend Ord 17-038, 6/27/17)