



Ordinance No. 140

AN ORDINANCE OF THE CITY OF PATTISON, TEXAS REPEALING ORDINANCE NO. 113, FOOD ESTABLISHMENT ORDINANCE AND REPLACING SAID ORDINANCE WITH A NEW FOOD ESTABLISHMENT ORDINANCE; PROVIDING FOR PERMITS; PROVIDING A PENALTY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Pattison finds that food services and food preparation which occurs in food establishments and mobile food vendors may affect the health, safety and welfare of individuals who purchase products from such establishments and vendors; and

WHEREAS, the City Council finds that food establishments and mobile food vendors that fail to follow basic sanitation and food preparation guidelines can pose a threat to the health, safety and welfare of the residents and visitors of Pattison; and

WHEREAS, the City Council adopts the Texas Food Establishment Rules (title 25, part 1, chapter 228 et seq. of the Texas Administrative Code (25 Tex. Admin. Code ch. 228 et seq.), effective October, 2015, as presently written and appendices thereto, and subsequent amendments and additions, except for the local amendments provided for below

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

Section 1. All of the above premises are hereby found to be true and correct factual findings of the City council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Ordinance No. 113, of the City of Pattison, Texas, adopted April 3, 2018, is hereby repealed and replaced with this new ordinance regulating Food Establishments and Mobile Food Vendors.

Section 3. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized agent or employee means the employees or contracted personnel of the regulatory authority or a designated local enforcement body having jurisdiction over food establishments.

Food establishment means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, or a roadside food vendor.

Mobile food unit means a food service establishment designed to be readily movable. The mobile food unit must remain movable at all times regardless of the size or condition of the unit.

Regulatory authority means the Texas Department of State Health Services, and or the City of Pattison or appointed designee.

State rules mean the state rules found at 25 Texas Administrative Code, Chapter 228. These rules are known as the Texas Food Establishment Rules.

A. Adoption of Texas Food Establishment Rules and regulations.

Section 1. The Texas Food Establishment Rules (title 25, part 1, chapter 228 et seq. of the Texas Administrative Code (25 Tex. Admin. Code ch. 228 et seq.), effective October, 2015, as presently written and appendices thereto, and subsequent amendments and additions, are hereby adopted by reference as though copied herein, word for word, except for the local amendments provided for below; provided that the term "Municipality of Pattison" for the purposes of this article shall be understood to refer to the city, and the term "regulatory authority" shall be understood to refer to the city health inspector, his designees and/or persons or entities designated by the city to perform health and sanitation services on behalf of the city. One copy of the Texas Food Establishment Rules and the local amendments shall be on file in the office of the city secretary.

Section 2. The Texas Food Establishment Rules, 2015 edition, as adopted herein and made a part of this chapter, are hereby amended as follows:

A. *Required.* It shall be unlawful for any person to operate a food establishment in the city unless he possesses a current and valid food establishment permit issued by the city's health inspector and complies with this article and the rules and regulations adopted hereunder. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit. A food establishment that does not comply with state laws and rules and any applicable city ordinance will be denied a permit or the renewal of a permit.

B. *Fees.* A non-refundable fee, in an amount determined by the city council, shall be paid for issuance of a food establishment permit.

C. *Posting.* A valid permit shall be posted in public view in a conspicuous place at the food establishment for which it is issued.

D. *Non-transferable.* Permits issued under this article are not transferable. Upon change of ownership of a food establishment, the new owner will be required to meet current standards as defined by city ordinances and state law before a permit will be issued. Upon change of location a new permit is required.

E. Nonprofit exemptions. A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this ordinance, so long as the food establishment is operating for an event for the nonprofit that does not exceed 72 hours; but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

F. Property owner permission. A food establishment shall obtain written permission from the property owner or lawful tenant for placement of the mobile food unit on said private property, mobile food units that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are non-time/temperature controlled for safety (NTCS) food and are dispensed from covered urns or other protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage system nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils of the required equipment for cleaning and sanitization exists at its central preparation facility.

Section 3. *Mobile food units.* By amending 25 Tex. Admin. Code § 228.221(a)(4) "mobile food units," "initial permitting inspection," by deleting subsection (a)(4) in its entirety and substituting a new subsection (a)(4) to state as follows:

A. Initial permitting requirements. The regulatory authority shall require a mobile food unit to provide the following documentation at least seven days prior to the being in service:

- a. Certified food manager certification.
- b. Central preparation facility authorization (if required). A signed letter of authorization is required, to verify facility use, if the central preparation facility is not owned by the mobile unit operator.
- c. Central preparation facility inspection report. A copy of the most current health inspection of the central preparation facility must be maintained on the mobile unit at all times.
- d. Servicing area authorization. A signed letter of authorization may be required by the regulatory authority to verify service area use, if the servicing area is not owned by the mobile unit operator.
- e. Menu of all food items to be sold.
- f. A floorplan of the mobile unit showing all of the internal and external equipment that has been added to the vehicle for the purpose of mobile vending submitted as a part of the temporary food permit submittal.

Section 4. *Temporary food establishments.* By amending 25 Tex. Admin. Code § 228.222(a), (b). By amending 25 Tex. Admin. Code § 228.222 "temporary food establishments," deleting subsections (a) and (b) in their entirety and, adding, in substitution therefore, the following new subsections (a) and (b) to state as follows:

A. *General.* The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all time/temperature controlled for safety (TCS) foods, and when no health hazard will result, such as children's neighborhood beverage stands, may waive or modify requirements of these rules.

- a. Foods that are not prepared on site or that require extensive preparation or cooking must be prepared at a licensed food establishment.
- b. Each temporary establishment is required to have at least one person on site that has a minimum of an accredited food handler certification.
- c. *Food temperatures.* All food temperature requirements shall be met as contained in subchapter C (relating to food).

Section 5. *Plan review required.* By amending 25 Tex. Admin. Code § 228.244, "facility and operating plans," to add new subsection (e) to state as follows:

A. *Plan review required.* Food establishments may not be constructed, remodeled, or altered except in accordance with plans and specifications approved by the city. 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 specification for such construction, remodeling or conversion shall be submitted to the city for review before work is begun. Extensive remodeling means that 20 percent or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the city if they meet the requirements of the rules adopted by this article. The approved plans and specifications must be followed in construction, remodeling or conversion. The plans and specifications for the construction, remodeling or alteration of the food establishment must include the following:

- a. Proposed menu (including seasonal, off-site and banquet menus).
- b. Proposed layout of the areas to be used for food preparation, storage, classroom (if applicable) and dining.
- c. Site plan showing the location of the food establishment in the building where it operates, and a street map showing the location of the food establishment to include designation of adjacent streets, alleys, buildings and outside equipment (such as dumpsters).
- d. Two sets of plans, drawn to scale, of the interior of the food establishment, showing the location of all stationary and non-stationary equipment, clean/dirty laundry storage, chemical storage, dry food storage, employee

lockers and break areas, facilities for plumbing, electrical services and mechanical ventilation.

Section 6. Permit suspension.

- (a) The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by subsection (b). 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 10 days of receipt of a request for a hearing.
- (b) Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

Section 7. Permit revocation.

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

Section 8. Administrative Process.

- (a) A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt

requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.

- (b) The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such 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 9. Penalties and other remedies.

Any person who is a permit holder of or otherwise operates a food service establishment that does not comply with the requirements of this ordinance and any agent, or officer of that permit holder who violates any provision of this ordinance shall be issued a citation for violation of this ordinance. Upon conviction thereof in the municipal court, a fine shall be assessed in an amount not to exceed **\$2000.00**. Each day a violation continues or is allowed to exist shall constitute a separate offense. In addition to the regulatory authority, city enforcement personnel and other officials, officers or employees of the City may take any authorized, lawful action to enforce this article. In addition, the City of Pattison or the regulatory authority may seek to enjoin violations of this article.

Section 10. Severability.

In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Pattison, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED and EFFECTIVE on the 6th day of April 2021.

ATTEST:



Lorene Hartfiel, City Secretary

APPROVED:



Joe Garcia, Mayor