

ORDINANCE NO. O-06192022-01 AMENDED

AN ORDINANCE PROVIDING REGULATIONS FOR FOOD ESTABLISHMENTS, FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, TEMPORARY FOOD ESTABLISHMENTS, AND ROADSIDE FOOD VENDORS AMENDING ORDINANCE BY ESTABLISHING AN ADDITIONAL PERMIT FEE FOR TEMPORARY FOOD ESTABLISHMENTS; PROVIDING A PENALTY CLAUSE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PUBLICATION CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

PREAMBLE

WHEREAS, the City of Elkhart, Texas, is a Type A general-law municipality located in Anderson County, created in accordance with the provisions of Chapter 6 of the Texas Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the ordinances of the City of Elkhart, Texas providing regulations regarding the operation of food establishments, including, but not limited to, retail food stores, mobile food units, temporary establishments, and roadside food vendors should be updated and/or established; and

WHEREAS, the City is authorized and empowered to adopt and enforce ordinances, not inconsistent with state law, that are necessary to protect the welfare and safety of its inhabitants, such as ordinances regulating the operation of food establishments, including, but not limited to, retail food stores, mobile food units, temporary establishments, and roadside food vendors; and

WHEREAS, the City Council ("Council") of the City serves as the elected governing body directly responsible for the promotion and protection of the public health and safety of the City's citizens and inhabitants; and

WHEREAS, the Council finds that regulations regarding the operation of food establishments, including, but not limited to, retail food stores, mobile food units, temporary establishments, and roadside food vendors are necessary to the health, safety, and general welfare of the inhabitants of the City.

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

SECTION 1. STATE REGULATIONS ADOPTED.

- (a) The City of Elkhart, Texas adopts by reference the provisions of the rules adopted by the Executive Commissioner of the Health and Human Services Commission, as amended, found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food

establishments in this jurisdiction.

- (b) The City of Elkhart will follow the current food establishment rules set by the Department of Health and Human Services.

SECTION 2. DEFINITIONS.

In addition to the definitions adopted in the rules listed in Sec. 1 above, the following definitions shall apply to this ordinance:

- (1) *Regulatory authority* means the Texas Department of Health Services.
- (2) *Food establishment* means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.
- (3) *State rules* means the state rules found in 25 Texas Administrative Code, Chapter 228. These rules are also known as the Texas Food Establishment Rules.

SECTION 3. PERMIT REQUIRED.

- (a) *Requirement.* It shall be unlawful for any person to operate a food establishment in the city unless they possess a current and valid health permit issued by the regulatory authority.
- (b) *Posting.* A valid permit shall be posted in public view in a conspicuous place at every food establishment regulated by this ordinance.
- (c) *Nontransferable (change of ownership).* Permits issued under the provisions of this ordinance are not transferable. Upon change of ownership of a business the new business owner will be required to meet current standards as defined in city ordinances, state laws and state rules before a permit will be issued.
- (d) *Application for permit.* Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name, address, and phone number of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.
- (e) *Temporary food location permit.* Applications and fees must be submitted no later than three complete working days (72 hours) prior to the event. Temporary permits are issued in conjunction with a special event or a celebration or a recognized holiday. Each individual booth owner/operator must submit their own application.

- (f) *Inspection for permits.* Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.
- (g) *Suspension of permit.* 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 paragraph (g) of this section. When a permit is suspended, the holder of the permit shall immediately cease all food operations. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten days of receipt of a request for a hearing.
- (h) *Notification of right to hearing.* 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.
- (i) *Revocation of permit.* The regulatory authority, after providing notice and an opportunity for a hearing, may revoke a permit for serious or repeated violations of any of the requirements of the state rules or for interference with 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, the revocation of the permit becomes final.
- (j) *Service of notice.* A notice provided for in the state rules is properly served when it is delivered to the holder of the permit or certificate, 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 or certificate. A copy of the notice shall be filed in the records of the regulatory authority.
- (k) *Hearings.* The hearings provided for in the state rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearings, the regulatory authority shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit or certificate by the regulatory authority.
- (l) *Right of appeal.* Any permit holder who wishes to dispute the decision of a hearing may appeal the decision to the director of the regulatory authority.

(m) *Application after revocation.* Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit to the regulatory authority.

(n) *Permit fees.* A fee, as set out below, adopted and defined in the annual budget of the City, shall be required to be paid for the preoperational inspection and, thereafter, on an annual basis. Fees shall be paid to City of Elkhart 110 W. Parker Street, Elkhart, TX 75839.

(1) **Retail Food Stores**

Less than 1,000 Square Feet	\$100.00/Year
1,001 to 5,000 Square Feet	\$125.00/Year
Over 5,000 Square Feet	\$150.00/Year

(2) **Permanent Brick & Mortar Food Establishments**

Up to 25 Seats	\$100.00/Year
26-50 Seats	\$125.00/Year
More than 50 Seats	\$150.00/Year

(3) **Temporary Food Establishments (Permit valid for 14 consecutive days upon approval)**

Festival	\$ 60.00
Carnival	\$100.00
All Mobile Food Units	\$100.00
Farmer's Market	\$ 10.00
Food Table Sales	\$15.00

(4) **Other Food Service Establishments**

Child Care Facility	\$100.00/Year
Public School	\$100.00/Year
Foster/Group Homes	\$ 25.00/Year

(o) *Exemption of nonprofit organization.* A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this ordinance but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is considered a nonprofit for purposes of this exemption.

(p) *Noncompliance with grease trap ordinance.* The food establishment must follow the rules and requirements found in Ordinance No. O-06192022-02 regarding grease traps for non-domestic users, and quarterly inspections will be performed following the approval of the food establishments permit.

- (q) *Mobile food location additional requirement.* A person applying for a permit to operate a mobile food location within City limits shall also submit a copy of the menu showing all food items to be sold to the City Secretary and the Code Enforcement Department.

SECTION 4. REVIEW OF PLANS.

- (a) *Submission of plans.* Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work is begun. Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. 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 plans and specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. No food establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority.
- (b) *Revocation of permit for failure to follow plans.* Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.
- (c) *Preoperational inspection.* The regulatory authority shall inspect any food establishment prior to its beginning operation to determine compliance with approved plans and specifications and with the requirements of the state rules.
- (d) *Fees for review of plans.* The fees for the review of plans shall be set out, adopted and defined in the annual budget of the city.

SECTION 5. INSPECTIONS.

- (a) Before a permit is issued, the regulatory authority shall inspect and approve the food establishment. An inspection of a food establishment shall be performed at least once annually and shall be prioritized based upon assessment of the food establishment's compliance and potential of causing foodborne illness according to 25 TAC 229.172.
- (b) The regulatory authority shall classify food establishments as special priority, high priority, medium priority, or low priority, according to the type of operation; particular foods that are prepared; number of people served; susceptibility of the population served; history of violations and any other risk factor deemed relevant to the operation.
- (c) Refusal of an owner, manager or employee to allow the authorized representative of the regulatory authority, upon presentation of credentials, to inspect any permitted business or operation therein during normal business hours will result in an immediate suspension of the permit, requiring all permitted activities to abate until after such time as a hearing may be held per Sec. 3(k).

SECTION 6. FOOD MANAGER/FOOD HANDLER CERTIFICATION.

(a) *Requirements.*

- (1) Each food establishment shall have at least one person employed in a managerial capacity possessing a current food manager certificate approved by the regulatory authority. The manager is responsible for providing this information prior to obtaining a permit.
- (2) Each food establishment with six or more employees must have at least one employee with a current food manager certificate on site during all operations.
- (3) Every employee of a food establishment who does not hold a current food manager certificate must maintain a valid food handler certification registered with the regulatory authority.
- (4) Food manager and food handler certificates must be maintained in the food establishment and presented upon request by the regulatory authority.

(b) *Expiration.*

- (1) Food manager certificates are valid for a period of up to five years as determined by the regulatory authority, unless revoked by the regulatory authority prior to the expiration date.
- (2) Food handler certification shall be valid for a period of up to two years, as determined by the regulatory authority.

(c) *Adoption of state regulations for food handling.* All employees and managers of the food establishments must follow the regulatory authority's guidelines on safe food handling practices. The City adopts by reference the provisions of the rules adopted by the Texas Health and Safety Code.

SECTION 7. MOBILE FOOD LOCATIONS.

(a) *Generally.* All mobile food units must comply with the following health and design regulations and provide any necessary documentation prior to obtaining a permit to operate.

(b) *Definitions.* In addition to the definitions adopted in the parts of the ordinance above, the following definition shall apply to this section of the ordinance:

- (1) *Mobile food unit* is a vehicle-mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to catering trucks, trailers, pushcarts, and roadside vendors) and used to store, prepare, display, serve or sell food. Mobile units must completely retain their

mobility at all times. A mobile food unit does not mean a stand or a booth. No permanent mobile food unit will be permitted.

- (c) *Servicing area authorization required.* 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.
- (d) *Cooling, heating and holding capacities.* Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified.
- (e) *Sink requirements.*
 - (1) *Manual ware-washing.* A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils as specified. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils.
 - (2) *Hand-washing.* At least one hand-washing sink shall be available for convenient use by employees and properly provisioned in accordance with state rules.
- (f) *Mobile water system.* Mobile food unit water systems shall meet the requirements of §228.149(f) of the state rules. A mobile food unit's water tank inlet shall be 19.1 mm (3/4 inch) in inner diameter or less; and provided with a hose connection of a size or type that will prevent its use for any other service. Fill hose and water holding tank shall be labeled as "potable water."
- (g) *Sewage and other liquid waste.*
 - (1) If liquid waste results from the operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank. Capacity and drainage. A leak-proof sewage holding tank in a mobile food unit shall be sized at least 15% larger in capacity than the water supply tank; and sloped to a drain that is 25 millimeters (1 inch) in inner diameter or greater, equipped with a shut-off valve.
 - (2) All connections on the vehicle for servicing the mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit.
 - (3) Discharge liquid waste shall not be discharged from the retention tank while the mobile food unit is in motion.
 - (4) A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner.

- (5) Sewage and other liquid wastes shall be removed from a mobile food unit at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.
 - (6) Liquid waste holding tank shall be labeled as “wastewater.” A roadside vendor that sells only prepackaged food is exempt from the state rules pertaining to water and wastewater.
 - (7) A mobile food unit that prepares food requiring no water for operations and no hand contact with food is exempt from the state rules pertaining to water and wastewater if the required cleaning and sanitization equipment exist at its central preparation facility. Chemically treated towelettes for handwashing may be used as specified in the state rules.
- (h) *Toilet rooms, convenience, and accessibility.* Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.
- (i) *Central preparation facility regulations.*
- (1) Mobile food units 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.
 - (2) The central preparation facility or other fixed food service establishment, used as a base of operation for mobile food units, shall be constructed and operated in compliance with the requirements of the state rules.
 - (3) A mobile food unit servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operation. Those areas used only for the loading of water and/or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection. Within the servicing area, the location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies.
 - (4) A servicing area will not be required where only packaged food is placed on the mobile food unit or where mobile food units do not contain waste retention tanks.
 - (5) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.
 - (6) Potable water servicing equipment shall be installed in the servicing area according to the Plumbing Code and shall be stored and handled in a way that protects the water and equipment from contamination.

- (7) *Construction exemption.* The construction of the walls and ceilings of the servicing area is exempted from the provisions of the state rules.

SECTION 8. TEMPORARY FOOD LOCATIONS.

(a) *Food and food preparation guidelines.*

- (1) Food is not to be prepared or stored in a home or in an unauthorized location.
- (2) Time/temperature control food safety must be maintained at an internal temperature of 41 F. or below when cold or 135 F or above when hot. Food items are to be prepared as close to the time of the event as possible. All food items must be from an approved source. Receipts will be checked.
- (3) Food with limited preparation (i.e., hot dogs, pre-packaged frozen hamburgers patties, nachos, bratwurst, frying of tortillas/ gordita shells/churros) and pre-washed ready-to-eat vegetables may be prepared in the booth.
- (4) Ice used for consumption must be obtained in chipped, crushed, or cubed form and stored in plastic bags filled and sealed at the point of manufacture. The ice shall be stored in these bags until properly dispensed.

(b) *Equipment.*

- (1) Equipment must be located and used in a manner that prevents food contamination.
- (2) *Acceptable cooking equipment.* Propane gas or electric units only, i.e. grills with lids, stoves and hot burners.
- (3) *Acceptable hot holding equipment.* Propane gas or electric units only, i.e. grills with lids, electric chafing dishes, burners, hot plates, and crockpots. Steno chafing dishes are allowed inside buildings.

SECTION 9. PENALTIES.

- (a) It is an offense for a person, company, or corporation to violate any provision of this ordinance.
- (b) It is an offense for the holder of a permit issued under this ordinance to allow a food establishment to be operated in violation of any provision of this ordinance.
- (c) Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense.

- (d) Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance may also be subjected to such civil penalties and such civil remedies as authorized by law.
- (e) Each day that a violation is committed, continued, or permitted shall constitute a separate offense.

SECTION 10. CUMULATION CLAUSE.

This ordinance shall be cumulative of all provisions of the City of Elkhart's ordinances, except when the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 11. SEVERABILITY CLAUSE.

Should any provision of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall remain in full force and effect.

SECTION 12. SAVINGS CLAUSE.

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

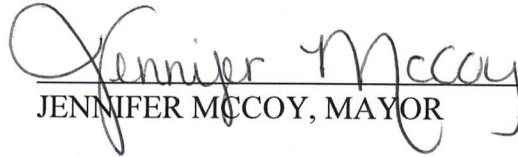
SECTION 13. PUBLICATION CLAUSE.

The City Secretary of the City of Elkhart is hereby directed to publish in the official newspaper of the City of Elkhart, the caption and penalty clause of this ordinance in accordance with Section 52.011 of the Local Government Code.

SECTION 14. EFFECTIVE DATE.

This ordinance shall become effective after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON this 6th day of February 2023.


JENNIFER MCCOY, MAYOR

ATTEST:


JAN STUTEVILLE, INTERIM CITY SECRETARY