

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REPEALING AND RESTATING CHAPTER 16 “HEALTH AND SANITATION,” ARTICLE IV “FOOD ESTABLISHMENTS,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, TO UPDATE REGULATIONS TO ALIGN WITH CHANGES IN STATE LAW AND TO CLARIFY REGULATIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES AND REPEAL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Fort Worth (“City Council”) seeks to protect the public health of the citizens and visitors of Fort Worth by establishing minimum standards of sanitation for food establishments and mobile food units; and

**WHEREAS**, the City Council seeks to enhance uniformity in regulating food service establishments, retail food stores, mobile food units, roadside vendors, and pushcart vendors by adopting state standards to protect the public health of the citizens and visitors of Fort Worth; and

**WHEREAS**, City Council finds it necessary to retain one existing regulatory standard exceeding minimum state law requirements which requires handwashing sinks with soap dispensers at specific distances from food preparation areas within food establishments; and

**WHEREAS**, the City Council finds it necessary to update regulations to align with changes in state law and to clarify regulations; and

**WHEREAS**, the City Council finds this Ordinance to be reasonable and necessary;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, THAT:**

**SECTION 1.**

Chapter 16, “Health and Sanitation,” Article IV “Food Establishments,” of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby repealed and restated in its entirety to be and read as follows:

**CHAPTER 16: HEALTH AND SANITATION**

**ARTICLE IV: FOOD ESTABLISHMENTS**

## DIVISION 1: GENERAL PROVISIONS

### § 16-101 DEFINITIONS

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated. If a word or term used in this Article is not contained in the following list, it shall have the definition provided for such word or term in Tex. Administrative Code Title 25.

**ABANDONED SLOT.** A slot for which the user has failed to meet the requirements for minimum operating hours under Section 16-186(c)(11).

**ANIMAL FOOD.** Meat, poultry, shell eggs and ratites intended for human consumption. Examples of meat may include the flesh of cattle, swine, sheep and game animals. Poultry may include the flesh of birds such as chicken, turkey, duck and game birds.

**ATTENTION-GETTING DEVICES.** Any mechanical or electronic sound producing device or lighting device employed to attract patrons to any pushcart.

**AVAILABLE SLOT.** One of the permissible slots available for use.

**BED AND BREAKFAST HOME.** A property with a structure(s) existing on December 21, 1993, designed for and occupied as a single-family residence providing overnight accommodations to transient guests. The structure(s) serves as the primary residence or homestead of its owner-operator, with the Bed and Breakfast Home considered to be an accessory use under the City's Zoning Ordinance, and not the primary use of the property. The person who owns the property must also be the operator of the establishment.

**BEVERAGE.** A liquid for drinking, including water.

**CERTIFIED FOOD MANAGER.** Any person who holds a valid food manager certificate issued under Chapter 438, Subchapter G of the Texas Health and Safety Code.

**CHANGE OF OWNERSHIP.** A change of owner or operator of a food establishment business, and does not refer to a change of owner of the building where the business is located.

**CITY MANAGER.** The City Manager for the City of Fort Worth or his or her designated representative.

**COMMERCIALLY MANUFACTURED VEHICLE.** A vehicle originally manufactured as, or converted or retrofitted to be, a mobile food vehicle by a person regularly in the business of

manufacturing, converting, or retrofitting mobile food vehicles to be used for the preparation of TCS food.

**CENTRAL PREPARATION FACILITY.** A fixed food service establishment permitted and regularly inspected by a regulatory health agency where food is prepared, stored, and packaged.

**DEPARTMENT.** The Environmental Services Department of the City of Fort Worth.

**DIRECTOR.** The Director of the Environmental Services Department or his or her designee.

**DOWNTOWN AREA.** The area lying within the boundaries of the Fort Worth Public Improvement District No. 1 as established by the findings of the Fort Worth City Council in Resolution 3756-06-2009 or by future resolution adopted in accordance with state law.

**EMPLOYEE.** An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces. The permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

**EXTENSIVELY REMODELED.** Any type of construction that results in remodeling of 20% or greater of the food preparation area or any remodeling that substantially alters the food storage or preparation area, including but not limited to enlarging the kitchen or reducing the size of the kitchen; adding or removing plumbing, including the wastewater lines; adding or removing plumbing fixtures, especially sinks; or adding or removing equipment that results in a layout modification.

**FARMERS MARKET.** An operation at a designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other food producers of agricultural products. A **FARMERS MARKET** for the purposes of Section 16-135 does not include a “flea market” or a retail grocery store.

**FARMERS MARKET FOOD VENDOR.** A farmer or other food producer that sells or distributes food at a farmers market.

**FARMERS MARKET FOOD VENDOR PERMIT.** An annual permit issued pursuant to the requirements of Section 16-135(b).

**FARMERS MARKET PERMIT.** A food service establishment permit to operate a farmers market.

**FOOD.** Any raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

**FOOD ESTABLISHMENT.** Any place where food is manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared, vended or otherwise handled. The term includes any such place regardless of the duration of the permit or whether there is a charge for the food. The term does not include private homes where food is prepared or served for guests and individual family consumption.

**FOOD HANDLER.** Any person who prepares, serves, packages or handles open food or drink, or who handles clean utensils, pots, pans or single-service articles.

**FOOD OPERATIONS.** Manufacturing, packaging, producing, processing, transporting, storing, selling, commercially preparing or otherwise handling food, ice or drinks, whether offered for sale, given in exchange or given away for use as food or offered for human consumption.

**FRUIT AND VEGETABLE PUSH CART.** Pushcarts with at least 75% of the inventory of the cart consisting of whole fruits and vegetables, with the remainder consisting of Non-TCS packaged foods.

**MOBILE FOOD UNIT.** A vehicle-mounted food service operation designed to be readily movable.

**NON-TIME/TEMPERATURE FOR SAFETY FOOD (Non-TCS).** All food that is not time/temperature for safety food. The following list is exemplary of such food and shall not be construed to be exclusive of any other Non-TCS:

- (1) Popcorn;
- (2) Shelled, unshelled, raw or roasted nuts; and
- (3) Pretzels.

**NONPROFIT FACILITY.**

- (1) All government entities and political subdivisions and public school districts;
- (2) Organizations chartered under the Texas non-profit corporation act; and
- (3) Operations recognized by the United States Internal Revenue Service as exempt under Section 501(c)(3) of the Internal Revenue Code.

**OPEN.** Not covered or sealed. Not so closed as to exclude the risk of contamination.

**PERSON.** Any individual, group of individuals, firm or corporation.

**TIME/TEMPERATURE FOR SAFETY FOOD (TCS).** A food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

**PUBLIC PROPERTY.**

- (1) Any building, grounds or place:
  - a. Owned by the City, a unit of county, state or federal government or any other political subdivision of the State of Texas; or
  - b. Used or occupied by or/on behalf of the City, a unit of county, state, or federal government, or any other political subdivision of the State of Texas.
- (2) The term **PUBLIC PROPERTY** includes, but is not limited to, public parks, public sidewalks and government buildings.

**PUSHCART.** A mobile food unit powered by human beings only. A pushcart may have a bicycle-type propulsion system, so long as there is no motorized component. It shall not include a fixed or mobile unit solely intended for use as a mobile bar, accessory drink stand, or part of a service area or buffet line, if it is part of or an extension of a fixed food or Beverage facility operating under a food service establishment permit and it is located on the permitted premises.

**REGULATORY HEALTH AGENCY.** A government entity having responsibility for enforcing public health laws and regulations in the jurisdiction where a food establishment is located. In the City of Fort Worth, this term includes the Environmental Services Department.

**RISK ANALYSIS.** An analysis using commonly known public health risks to determine the degree of hazard a food establishment poses to the public.

**SAMPLING.** A food product promotion where only a bite-sized portion of food is offered free of charge to demonstrate its characteristics and shall not consist of a whole meal, an individual portion or a whole sandwich.

**SANITIZE.** The process of applying cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of five logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

**SERVICING AREA.** A designated area provided for the supplying, cleaning or servicing of pushcarts or mobile units.

**SINGLE-SERVICE ARTICLES.** Tableware, carry-out utensils and other items such as bags, containers, placemats, stirrers, straws, toothpicks and wrappers that are designed and constructed for one time, one person use.

**SLOT.** A designated general location, as approved by the City Council, for the placement of a pushcart in the Downtown Area. Only the City Council may create or alter slot designations in the Downtown Area.

**TAC.** The Texas Administrative Code.

**TEMPORARY FOOD SERVICE ESTABLISHMENT.** A food establishment that operates at a fixed location for not more than 14 consecutive days in conjunction with a single event or celebration.

**TEXAS FOOD ESTABLISHMENT RULES.** The current food establishment rules promulgated by the Texas Department of State Health Services, abbreviated as the TFER.

**UTENSIL.** Any food-contact implement or container used in the storage, preparation, transportation, dispensing, sale or service of food, such as kitchenware or tableware that is multi-use, single-service or single-use; glove used in contact with food; and food temperature measuring devices.

**VARIANCE.** A written document issued by the Department that authorizes a modification or waiver of one or more requirements of this Chapter if, in the opinion of the Director, a health hazard or nuisance will not result from the modification or waiver.

**WHOLESALE FISH TRUCKER.** A person who, at other than a definite and fixed place of business, sells or offers to sell or exchange fish or seafood to dealers or retailers, and at the time of such sale or offer to sell, delivers or offers to deliver the fish or seafood to the buyer.

**YARD EGGS.** Ungraded shell eggs.

## **§ 16-102      PURPOSE**

The purpose of this Article is the protection of the public health of the citizens and visitors of Fort Worth by establishing minimum standards of sanitation for Food Establishments and Mobile Food Units.

## **§ 16-103      ADMINISTRATION**

- (a) The Director and the Director's authorized representatives are authorized to administer, implement and enforce the provisions of this Article and the provisions of the Texas Health and Safety Code and the rules of the Texas Department of State Health Services relating to Food, and to issue orders requiring compliance with same.

- (b) The Director may grant a Variance by modifying or waiving the requirements of the Chapter if, in the opinion of the Director, a health hazard, nuisance, or violation of state or federal law will not result from the Variance. If a Variance is granted, the Department shall retain the information specified in Subsection (1).
  - (1) Before a Variance is approved, the Person requesting the Variance must deliver the following information to the Department, which shall be retained in the Department's file on the Food Establishment:
    - a. A written statement requesting the proposed Variance that cites to the specific Section or Sections of this Chapter;
    - b. A written analysis of the rationale for how the potential public health hazard and nuisances addressed by the relevant Sections of this Chapter will be alternatively addressed by the proposal; and
    - c. A hazard analysis and critical control points (HACCP) plan, if required by the Department.

**§ 16-104      INSPECTIONS**

- (a) The Director may enter premises or vehicles regulated by this Article at all reasonable times, whenever it is necessary to make an inspection to enforce any of the provisions of this Article or other laws regulating Food, to inspect permits, certificates and other records required by this Article and state and federal laws regulating Food, to collect samples of Food and other substances as may be necessary for the detection of unwholesomeness or adulteration, or whenever probable cause exists to believe that a violation of this Article or other laws regulating Food exists thereon.
- (b) The Director shall first present credentials and demand entry if the premises are occupied. If the premises are unoccupied, the Director shall first make a reasonable attempt to locate the owner, operator or other Person in control of the premises and demand entry.
- (c) If entry is denied or if a Person in control cannot be located, the Director shall have every recourse provided by law to secure entry, including obtaining a search warrant under the guidelines of the Texas Code of Criminal Procedure.

**§ 16-105      RISK ANALYSIS**

The Director may, through Risk Analysis, determine the risk of every Food Establishment not exempt from this Article. Based on the results of the Risk Analysis, the Director may:

- (a) Determine the minimum inspection frequency of an establishment; and

- (b) Require high risk establishments to provide the Department with a hazard analysis critical control point (HACCP) plan. The Director may conduct a HACCP inspection of any high-risk establishment.

**§§ 16-106 – 16-110 Reserved.**

## **DIVISION 2: PERMITS AND PLANS REVIEW**

### **§ 16-111 FOOD ESTABLISHMENT PERMITS—GENERAL REQUIREMENTS**

- (a) No Person shall operate a Food Establishment without a current, valid Food Establishment permit issued by the Department.
- (b) A separate permit shall be required for every Food Establishment with separate and distinct facilities and operations, whether situated in the same building or at separate locations. Separate and distinct lounge operations within a Food Establishment that are in addition to Food Operations require a separate permit. Multiple lounges on the same floor in the same building and under the same liquor license will not require a separate permit.
- (c) Permits issued under the provisions of this Article are not transferable. A permit shall be valid for the period of time shown on the face of the permit, unless earlier suspended or revoked by the Director.
- (d) The application for a new or a renewed permit shall be made on an application form prescribed by the Director.
  - (1) At a minimum the application shall require the applicant's name, type of business organization, the name and address of the owner or principal officer of the business, the nature of the business, the location of the business, and such other information as the Director deems necessary.
  - (2) Applications for permits for Mobile Food Units or temporary event establishments which operate from a fixed Food facility located outside of the City shall include a copy of the facility's current, valid, permit (state or local) and the most recent facility inspection report (state or local).
- (e) The Department may not renew an expired or expiring permit until the owner or operator of the Food Establishment provides proof of compliance with current minimum Department requirements.
- (f) The owner or operator of a Food Establishment shall post and maintain the current permit in a conspicuous public place in the establishment for which the permit was issued.



- (g) Upon Change of Ownership of a business, the new owner shall be required to meet current Food Establishment standards as defined in this code and state law before a permit will be issued by the Department.
- (h) The following types of establishments are exempt from the requirements of this Article:
  - (1) Group homes;
  - (2) Establishments selling only commercially packaged, Non-TCS Foods;
  - (3) Vending machines selling Non-TCS Food items;
  - (4) Nonprofit Facilities, except that Nonprofit Facilities are not exempt when Food service is provided in conjunction with a childcare facility, retirement center, hospital, school, indigent feeding program or public fundraising events; and
  - (5) Private schools that do not have a kitchen.
- (i) Criminal offenses.
  - (1) A Person commits an offense if the Person knowingly owns, operates or is in control of a Food Establishment that is operating without a valid Food Establishment permit.
  - (2) A Person commits an offense if the Person owns or operates a Food Establishment and knowingly fails to post and maintain a permit in accordance with Subsection (f) above.

**§16-112 CLASSIFICATION OF PERMITS**

Food Establishment permits shall be classified according to the duration of operation and location of such operation.

- (a) The duration of a permit shall fall within one of three categories, either annual, temporary or seasonal, as follows:
  - (1) Annual. An establishment that operates throughout the year;
  - (2) Temporary. An establishment that operates 14 consecutive days or fewer, in conjunction with a special event; and
  - (3) Seasonal. An establishment that operates more than 14 consecutive days but less than 180 days each year, and not associated with a special event.

(b) The location classification of a permit shall fall within one of two categories, either fixed or mobile, as follows.

(1) Fixed Food Establishments.

- a. Food Service Establishment: restaurants, cafeterias, snack bars, bakeries, snow cone stands, caterer's Central Preparation Facilities, private school cafeterias, halfway house Food services, hospital kitchens/cafeterias, institutional Food services, etc., where Food is prepared and served;
- b. Retail Food stores handling prepackaged, TCS Foods;
- c. Retail Food stores handling, processing or selling Open Foods;
- d. Food warehouses/wholesalers;
- e. Farmer's Markets/produce stands;
- f. Bars/lounges; and
- g. Bed and breakfast establishments.

(2) Mobile Food Units.

- a. Retail Food unit handling prepackaged Food;
- b. Retail Food unit (including trailers, mobile barbecues, snow cone units, etc.) handling, processing or selling Open Food. A separate permit is required for each different type of mobile unit owned or operated by an individual or company;
- c. Mobile produce unit;
- d. Mobile units delivering or selling meat, poultry, fish, sea Foods or shellfish (except retail grocery delivery trucks and units that are otherwise prohibited by this Article). Except for Wholesale Fish Truckers, any Person who operates, sells or engages in the distribution of any meat, poultry, fish, sea Foods or shellfish in the City shall operate from a fixed and permitted place of businesses. Roadside vending of meat, poultry, fish, sea foods or shellfish shall not be permitted in the City;
- e. Pushcarts; and
- f. Catering units.

**§16-113 PERMIT DENIAL, SUSPENSION AND REVOCATION**

- (a) The Director may deny a permit, or after notice and hearing suspend or revoke a permit for failure to comply with the requirements of this Article or any state law adopted by this Article.
- (b) Notice of a permit denial shall be served upon the owner or operator of the Food Establishment either in person or by certified mail, return receipt requested, at the mailing address specified in the permit application. Notice of a hearing to suspend or revoke a license shall be sent in accordance with Section 16-150 of this Article.
- (c) When the Director revokes or suspends a Food Establishment permit, the Director may require:
  - (1) All Food Handlers employed by the establishment to satisfy the training requirements for initial certification as a Food Handler; and
  - (2) All managerial and supervisory personnel employed at such location to satisfy the training requirements for initial certification as a Food manager.

**§16-114 SUBMISSION AND REVIEW OF PLANS**

- (a) When a Food Establishment is newly constructed or Extensively Remodeled, or when 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 Development Services Department for review and approval before construction, remodeling or conversion is begun.
- (b) If a Food Establishment is not required to obtain a building permit from the Development Services Department under (a), then the Director may conduct an onsite plan review in lieu of the Food Establishment submitting plans and specifications to the Development Services Department.
- (c) The plans and specifications under (a) shall indicate the proposed layout, arrangement, mechanical plans, types of construction materials in work areas and the type and model of proposed fixed equipment to be installed. The Director of the Development Services Department shall give the Department the opportunity to review and approve the plans and specifications to determine 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 Department. Food facility owners/operators shall ensure during plans review, construction and operation that their facilities comply with all applicable city plumbing, mechanical, electrical, building, zoning and fire prevention and protection codes.
- (d) The Director shall inspect the Food Establishment prior to the start of operations to determine compliance with the approved plans and specifications, the requirements of this Article and the regulations of the Texas Department of State Health Services.

**§16-115 FEES**

- (a) The City Council shall adopt a schedule of fees for:
  - (1) Food Establishment permits, including an additional fee for the reissuance of a permit after its expiration;
  - (2) Re-inspection;
  - (3) Plans review;
  - (4) Change of Ownership; and
  - (5) Pre-permit requests for services.
- (b) The Department may not issue a permit until all requisite fees have been paid.

**§16-116 PREPERMIT REQUESTS FOR SERVICES**

Department staff members may respond to requests to determine whether a property is suitable for development as a Food service facility. The requestor shall pay the Department a pre-permit site evaluation fee, at a rate established by the City Council.

**§§16-117 – 16-120 Reserved.**

**DIVISION 3: REGULATION OF SANITATION**

**§16-121 STATE LAWS AND REGULATIONS ADOPTED**

- (a) The following statutes, in their current form and as they may hereafter be amended, are adopted and incorporated into this Article as if they were set forth at length herein:
  - (1) The “Texas Food, Drug and Cosmetic Act,” Tex. Health and Safety Code Chapter 431; and
  - (2) The “Minimum Standards of Sanitation and Health Protection Measures,” Tex. Health and Safety Code Chapter 341.
- (b) The following regulations adopted by the Texas Department of State Health Services, in their current form and as they may hereafter be amended, are adopted and incorporated into this Article as if they were set forth at length herein. If there is a conflict between a rule and any Section of this Article, the more restrictive provision shall apply:

- (1) The “Sanitary Rules for Food and Drug Establishments,” Tex. Administrative Code Title 25, Section 229.41 et seq.; and
  - (2) The rules for “Texas Food Establishments Rules,” Tex. Administrative Code Title 25, Chapter 228.
- (c) The Director will ensure that a current copy of each rules manual will be kept on file in the office of the City Secretary.
- (d) A Food Establishment’s owner, manager or operator commits an offense if an Employee, owner, manager or operator of the Food Establishment violates a rule adopted pursuant to Subsection (b) above.

**§16-122            EQUIPMENT AND SANITARY FACILITIES**

- (a) Generally. Only commercial quality equipment or Utensils that meet or exceed National Sanitation Foundation (NSF) standards or their equivalent will be approved. Auxiliary equipment such as water heaters, remote connected refrigerator compressors and air conditioners shall be located outside Food preparation areas.
- (b) Plumbing; grease traps. Grease traps should be located outdoors. If they are located indoors, the top of the trap shall be flush with the floor, except when located above another floor. When installed above floor level, grease traps shall be sealed to the floor. Grease traps shall be easily accessible for cleaning and shall comply with the City’s plumbing code and environment code.
- (c) Lavatory installation. Lavatories shall be located every 15 feet or as determined necessary by the Department in Food preparation and Utensil washing areas to permit convenient use by all Employees.
- (d) Lavatory facilities and supplies. Hand cleansing soap or detergent in a sanitary dispenser shall be available at each lavatory.
- (e) Cleaning facilities. Establishments that are required to undergo plans review or which have a Change of Ownership shall have at least one utility sink or curbed cleaning facility equipped with a floor drain and supplied with hot and cold water by means of a mixing valve. The cleaning facility shall be used for cleaning mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid wastes. The use of lavatories, Utensil or equipment washing sinks, or Food preparation sinks for this purpose is prohibited.
- (f) Offense. A Person commits an offense if the Person owns or operates a Food Establishment that is in violation of any provision of this Section.

**§16-123 MEAT, POULTRY AND FISH**

- (a) The processing and packaging of meat or poultry shall be conducted in a refrigerated room:
  - (1) Where the temperature is kept at 50°F or less; or
  - (2) Which, along with processing equipment, undergoes a midshift cleanup after four hours of operation.
- (b) A Person commits an offense if the Person owns or operates a Food Establishment that is in violation of Subsection (a) of this Section.

**§16-124 MISCELLANEOUS FOOD PROTECTION REQUIREMENTS**

- (a) The Director is authorized to detain suspected contaminated, adulterated, or otherwise unwholesome Food.

**§16-125 ROADSIDE VENDING**

- (a) Roadside vending of unprocessed TCS Food is prohibited.
- (b) A Person commits an offense if the Person violates Subsection (a) above.

**§§ 16-126 – 16-130 Reserved.**

**DIVISION 4: REQUIREMENTS FOR CERTAIN ESTABLISHMENTS**

**§16-131 MOBILE FOOD UNITS**

- (a) Sticker. The Mobile Food Unit permit sticker for a Mobile Food Unit shall be displayed on the upper left rear area of the vehicle in a conspicuous location. If such location is not practicable, the permit shall be located in a location approved by the Director.
- (b) Mobile barbecue trailers. Mobile barbecue trailer cooking surfaces shall be tightly enclosed and constructed in such a way as to protect all Food contact surfaces from possible contamination both in transit and during use. Mobile barbecue trailers shall be used in conjunction with an approved and permitted Central Preparation Facility and Mobile Food Unit.
- (c) Central Preparation Facility.
  - (1) All Mobile Food Units (except catering units) and Pushcarts handling TCS Foods shall operate from a Central Preparation Facility or other fixed Food service establishments

that are regularly inspected by a Regulatory Health Agency. All Mobile Food Units handling TCS Food shall report at least once a day to their Central Preparation Facility to clean and service the mobile unit.

- (2) The following are exempt from these requirements:
  - a. Catering operations with their own Central Preparation Facility;
  - b. Snow cone trailers;
  - c. Corn roasters; and
  - d. Pre-packaged ice cream units.
- (d) Commercially Manufactured Vehicle. All Mobile Food Units handling TCS Foods shall be commercially manufactured. This requirement shall not apply to snow cone vendors, pre-packaged ice cream, corn roasters or other Foods as determined by the Director.
- (e) Mobile unit log. Each mobile unit operator must maintain a log that contains the date of servicing and the signature of the Central Preparation Facility operator. This log will be made available to the Director upon request.
- (f) Central Preparation Facility log. Each approved Central Preparation Facility must maintain a log that contains the date of servicing for each Mobile Food Unit operator and the signature of the Mobile Food Unit operator after each servicing. This log will be made available to the Director upon request.
- (g) Servicing Area. All Mobile Food Units and Pushcarts handling Open Foods shall have a Servicing Area which shall have overhead protection, a location(s) for draining and flushing liquid wastes, and a location(s) for the loading and unloading of Food and related supplies.
- (h) Servicing Area operation.
  - (1) All liquid waste containers shall be thoroughly flushed and drained daily during servicing operations.
  - (2) Flushing and draining activities shall be conducted in the Servicing Area. No flushing or draining of liquid waste shall be permitted on public streets or in any area other than the Servicing Area.
- (i) Waste retention.

- (1) Solid waste shall be contained in an easily cleanable, self-closing, lidded trash receptacle which shall be kept on or near the mobile unit at all times. The area around the mobile vending unit shall be kept clean and free from litter, garbage and debris.
  
- (j) Water system. All Mobile Food Units handling open TCS Foods shall provide not less than 15 gallons, and be of sufficient capacity to meet the peak water demands of the Food Establishment, of hot/cold potable water under pressure at all times for use in Utensil cleaning, sanitizing and hand washing. A single water inlet shall be located so as not to be contaminated by waste discharge. Such inlet shall be capped at all times except when being filled, and shall contain only potable water. Connection or direct hook-up to water sources other than those on the mobile unit is prohibited unless approved by the Director.
  
- (k) Temporary events. Mobile Food Units and caterers may operate at temporary events by possessing a valid Mobile Food Unit permit or by obtaining a temporary Food Establishment permit and meeting the requirements of a Temporary Food Service Establishment as described in this Article.
  
- (l) Seasonally or annually permitted mobile units. All seasonally or annually permitted mobile units that operate at the same location throughout the day shall either:
  - (1) Provide a sanitary restroom facility built in the mobile unit; or
  - (2) Have access to the primary business owner's commercially plumbed restroom that is accessible during all hours of Food preparation and vending, provides hot and cold running water through a mixing valve or combination faucet and is within 300 feet of the unit.
  
- (m) Operating location. All mobile units that will operate at the same location throughout operating hours will provide the Director with the address of the operating location. If the operating location changes during the period of the permit, the operator will provide the Director with the new operating address seven days prior to moving to the new location. A notarized letter from the primary business granting bathroom access must also be provided to the Director.
  
- (n) Violation. The owner or operator of a Mobile Food Unit commits an offense if the Mobile Food Unit is operated in violation of any provision of this Section.
  
- (o) Offense. The owner or operator of the primary business, as defined by the Director of Development Services, on which the unit is located commits an offense if the Mobile Food Unit is operated during preparation and vending without access to the restroom as required by this Section.

**§16-132 Reserved.**



**§16-133 CATERING SERVICES**

- (a) A Person operating a catering service shall be affiliated with a fixed Food Establishment that is permitted by the Department having jurisdiction over the area where the facility is located.
- (b) A catering service shall serve only Food that requires limited additional preparation at the service site unless approved by the Director.
- (c) The owner or operator of a catering service commits an offense if the catering service is operated in violation of this Section.

**§16-134 BED AND BREAKFAST HOMES**

The Texas Department of State Health Services “Texas Food Establishment Rules” shall apply to Bed and Breakfast Homes with the following exceptions.

- (a) Pets may be present on the premises, but shall be excluded from Food preparation and indoor dining areas at all times.
- (b) Laundry facilities installed in accordance with manufacturer’s instructions may be present in the residential kitchen.
- (c) TCS Foods shall be cooked and served only for immediate consumption and only for registered, overnight houseguests or guests at private breakfasts, luncheons, dinners or receptions.
- (d) A three compartment sink shall be provided and used for manual cleaning and sanitizing of cooking equipment, Utensils and tableware. The Director may allow the use of a portable dish tub in lieu of a third compartment if no health hazards will result.
- (e) A domestic or homestyle dishwasher may be used if the following criteria are met.
  - (1) The dishwasher must effectively remove physical soil from all surfaces of dishes.
  - (2) The dishwasher must Sanitize dishes by the application of sufficient accumulative heat.
  - (3) The operator shall provide and use daily a maximum registering thermometer or a thermal label to determine that the final rinse or drying cycle raises the surface temperature to a minimum of 160°F.

- (4) The dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing residential kitchen Utensils and tableware; a copy of the instructions must be available on the premises at all times.
- (f) The owner or operator of a Bed and Breakfast Home commits an offense if the Bed and Breakfast Home is operated in violation of any provision of this Section.

## **§16-135 FARMERS MARKETS**

### **(a) General provisions.**

- (1) No Person shall operate a Farmers Market without a valid Farmers Market Permit issued by the Department. A copy shall be conspicuously posted at the site of the Farmers Market.
- (2) Farmers Markets shall be located only on appropriately zoned property. The owner or operator of the Farmers Market shall obtain a notarized letter from the property owner stating that the market has permission to vend Food on the property. The notarized letter shall be submitted to the Director along with the Farmers Market Permit application.
- (3) Conveniently located, commercial, fixed-plumbed toilet facilities shall be available for market vendors. A notarized letter from the business owner granting the market vendors access to toilet facilities during all hours of the Farmers Market operation shall be submitted with the Farmers Market Permit application. A copy of the letter shall be made available to the Director upon request. All toilets shall conform to the City Code and shall have tight fitting, self-closing solid doors. Toilet rooms and fixtures shall be clean and in good repair. Toilet paper shall be available and easily accessible at all times. Toilets accessible to women shall have a trash receptacle that is covered with a lid.
- (4) A handwash lavatory with hot and cold water under pressure and tempered through a mixing valve shall be provided in or immediately adjacent to the toilet room. A soap dispenser and disposable paper towels shall be available at all times. All wastewater shall be captured and disposed of in an approved sewage disposal system.
- (5) A Farmers Market that is operated at any one specific location for fewer than three hours per month may provide portable toilets and portable handwashing facilities instead of the permanent facilities required by Section 16-135(a)(3) and 16-135(a)(4). A copy of the rental receipt or other appropriate proof of the availability of the portable facilities shall be submitted with the Farmers Market Permit application. All portable toilets shall be maintained in good working condition without any broken surfaces or leaks, in a clean and sanitary manner, and be adequately supplied with toilet paper. All portable handwashing facilities shall be maintained in good working condition

without any broken surfaces or leaks, in a clean and sanitary manner, and be adequately supplied with hand soap and paper towels.

- (6) The permit holder shall ensure that all trash, refuse and garbage is removed from the site at the end of each day or that trash, refuse and garbage is placed in appropriate containers for later disposal. The premises occupied by the Farmers Market shall be kept clean and free of accumulated trash, refuse or garbage during and after the hours of operation. All trash, refuse and garbage that remains at the market site shall be sealed in plastic bags and discarded in waste containers. Sufficient durable, nonabsorbent and easily cleanable, leak proof, rodent and insect proof refuse and garbage containers shall be available on site.
  - (7) It shall be unlawful for any Farmers Market Food Vendor to engage in Food preparation other than that involved in Sampling.
- (b) Sale and distribution of Food at Farmers Markets.
- (1) Farmers Market Food Vendor Permit required:
    - a. A Farmers Market Food Vendor that sells or distributes Food, other than packaged Food that is Non-TCS Food, whole uncut fresh produce, or Food from a cottage Food production operation, as defined by Tex. Health and Safety Code Section 437.001 (2-b), must obtain a Farmers Market Food Vendor Permit;
    - b. A Farmers Market Food Vendor that sells only whole uncut fresh produce or packaged Non-TCS Food will not be required to obtain a Farmers Market Food Vendor Permit.
  - (2) No Person shall sell or distribute Food, other than packaged Food that is Non-TCS or, whole uncut fresh fruits and vegetables, or Food from a cottage Food production operation, as defined by Tex. Health and Safety Code Section 437.001 (2-b), unless a Farmers Market Food Vendor Permit is obtained from the Department.
  - (3) A Farmers Market Food Vendor Permit holder must comply with the requirements for temporary Food Establishments specified in Texas Food Establishment Rules and this Chapter.
  - (4) Food shall be safe, unadulterated and honestly presented to the consumer.
  - (5) Food sold at a Farmers Market must comply with applicable state and federal laws.
  - (6) Individuals distributing or offering TCS Foods for sale at Farmers Markets must have a valid Food Handler certificate.
  - (7) Foods not from an approved source, as defined in Texas Food Establishment Rules, shall not be offered for sale at a Farmers Market.

- (8) Packaged Food sold or distributed at Farmers Markets shall be labeled in accordance with the requirements of applicable state and federal laws.
  - (9) All products distributed, offered for sale, or sold at a Farmers Market must have been raised, grown, made, crafted, processed or produced by the Farmers Market Food Vendor.
  - (10) Food products obtained from Food retailers or wholesalers may not be offered for resale at Farmers Markets.
  - (11) Food displays shall be confined to tables or to the bed of a vehicle. Food must be at least six inches above the ground.
  - (12) Food displays shall be situated above smooth, hard, paved surfaces such as concrete or machine laid asphalt, and not above grass or dirt surfaces.
  - (13) Farmers Market Food Vendors selling or distributing only whole produce, packaged Food from an approved source that is Non-TCS, or Food from a cottage Food production operation, as defined by Tex. Health and Safety Code Section 437.001 (2-b), are exempt from obtaining additional health permits.
- (c) Sale and distribution of TCS Foods at Farmers Markets. Farmers Market Food Vendors must meet the following public health and sanitation requirements for TCS foods, whether in the raw (uncooked) or ready-to-eat form.
- (1) Source. TCS Foods must be from a source in compliance with all applicable laws and which is licensed by the regulatory authority having jurisdiction over the processing and distribution of the Food.
    - a. Meat and poultry products must have either the State of Texas or the federal USDA mark of inspection if required by state or federal law.
    - b. Yard Eggs from an individual vendor's own flock may be sold at a Farmers Market. The labeling and temperature requirements for TCS Foods must be met.
    - c. Graded shell eggs may be sold at Farmers Markets. The requirements of the Texas Egg Law (Tex. Administrative Code Title 4, Section 15.1 through 15.13) must be met.
  - (2) Packaging. Animal Foods shall be packaged to meet the requirements of state and federal laws including but not limited to those in the Texas Food Establishment Rules.
    - a. Animal meat products must be in the package in which it was placed at the Food processing plant from which it originated.

- b. Unpackaged raw Animal Food products shall not be offered for sale or distribution to the consumer at a Farmers Market.
  - c. Yard and graded shell eggs must be sold in cartons or other containers and labeled.
  - d. TCS Foods sold at Farmers Markets must be packaged and labeled in accordance with state and federal law.
- (3) Labeling. Animal Food sold or distributed at Farmers Markets shall be labeled to meet the requirements of state and federal laws and:
- a. Animal Foods that are not ready-to-eat in a packaged form and shell eggs that have not been specifically heat treated to destroy all viable Salmonella shall be labeled to include safe handling instructions as specified in the Texas Food Establishment Rules;
  - b. Yard Eggs cartons shall be labeled with the word "ungraded" and the name and address of the producer (Tex. Administrative Code Title 4, Section 15.2); and
  - c. Graded shell eggs must meet the labeling requirements of the Texas Egg Law (Tex. Administrative Code Title 4, Section 15.1 through 15.13).
- (4) Time and temperature controls.
- a. Raw animal meats, poultry, and fish/seafood must be sold frozen at a Farmers Market.
  - b. Shell eggs must be stored at 45°F or less while offered for sale or in distribution at a Farmers Market.
  - c. Time and temperature requirements for all other TCS Foods not specified herein must meet the requirements specified under the Texas Food Establishment Rules where applicable.
- (5) Prohibited Food items.
- a. The sale and distribution of unpasteurized fluid milk and milk products as defined by Tex. Administrative Code Title 25, Section 217.1 is prohibited at a Farmers Market.
  - b. The sale and distribution of game animal and exotic animal meats, as defined in the Texas Food Establishment Rules are prohibited at a Farmers Market, unless such game animal and exotic animal meat can be demonstrated to meet the requirements of the Texas Food Establishment Rules.

c. The sale or distribution of live animals is prohibited at a Farmers Market.

(d) Offense. A Person commits an offense if that Person violates any provision of this Section, or fails to perform an act required by this Section.

**§§16-136 – 16-139 Reserved.**

**DIVISION 5: FOOD MANAGERS AND FOOD HANDLERS**

**§16-140 FOOD MANAGER CERTIFICATION**

(a) A Certified Food Manager shall present his or her certificate to the Director for inspection immediately upon request. The owner or operator of a Food Establishment shall make Food manager certificates available for immediate inspection upon request by the Director.

(b) Criminal offenses.

(1) A Person commits an offense if the Person is the owner or operator of a Food Establishment and violates a provision of this Section.

(2) A Person commits an offense if the Person is the Food manager of a Food Establishment and fails to obtain a Food manager certificate.

(3) A Person commits an offense if the Person is the Food manager of a Food Establishment and fails or refused to present his or her Food manager's certificate to the Director for inspection immediately upon the Director's request.

**§16-141 FOOD HANDLER CERTIFICATION**

(a) Within seven days of beginning work as a Food Handler (except for temporary event Food Handlers), an individual shall attend a Food Handler class approved by the Texas Department of State Health Services. All temporary event Food workers shall attend an approved Food Handler class and obtain a Food Handler's certificate before working at the temporary event.

(b) The owner or operator of a Food Establishment shall ensure that all Food Handlers obtain the certificate within seven days of starting to work at the Food Establishment.

(c) A Food Handler shall present his or her certificate to the Director for inspection immediately upon request.

(d) The following Persons are exempt from the requirements of this Section:

(1) Certified Food Managers;

- (2) Cashiers, hosts and hostesses, grocery sackers, delivery Persons, Food stockers who handle only prepackaged items, and bus help who handle only soiled cooking and serving Utensils and dishware;
  - (3) Persons participating as volunteer Food Handlers performing charitable activities for periods of four days or less; and
- (e) Criminal offenses.
- (1) A Person working in a Food Establishment as a Food Handler commits an offense if the Person does not have a Food Handler’s certificate as required by this Section.
  - (2) A Person working in a Food Establishment as a Food Handler commits an offense if the Person fails or refuses to present his or her Food Handler’s certificate to the Director for inspection upon the Director’s request.
  - (3) The owner or operator of a Food Establishment commits an offense if a Person works as a Food Handler in the establishment in violation of this Section.

**§§16-142 – 16-145 Reserved.**

## **DIVISION 6: ENFORCEMENT**

### **§16-146 ENFORCEMENT OPTIONS**

When the Director determines that a violation of this Article has occurred or is occurring, the following remedies are available to the Director. The remedies provided for in this Section or elsewhere in this Article are not exclusive. The Director may take any, all, or any combination of these actions against a violator, consecutively or concurrently:

- (a) Issuance of a warning notice;
- (b) Issuance of one or more citations;
- (c) Emergency closure order;
- (d) Nuisance abatement, if applicable;
- (e) Permit suspension or revocation proceedings, if applicable;
- (f) Request the City Attorney to institute suit for civil remedies as provided by this Article, or state law; or
- (g) Any other remedy provided by law.

**§16-147 CRIMINAL CITATION**

The Director is authorized to issue citations for violations of this Article and is also authorized to issue citations for violations of state health laws which are punishable only by a fine not to exceed the jurisdictional limits of the Fort Worth municipal court, unless such authority is denied under state law.

**§16-148 EMERGENCY CLOSURE OF A FOOD ESTABLISHMENT**

- (a) When the Director finds any Food Establishment in a condition which poses an imminent risk to the health or safety of the public or the Employees of the establishment, the Director shall be authorized:
  - (1) To close summarily such Food Establishment and prevent its use as a Food Establishment until such unsanitary conditions have been removed or abated and the Food Establishment no longer endangers public health; and
  - (2) To post and maintain at the entrance of the Food Establishment, notice of the conditions therein, or to require the owner, operator or Person in charge of the establishment to post and maintain at the entrance of the establishment notice that the establishment is closed.
- (b) Conditions which warrant the actions authorized under Subsection (a) above include but are not limited to loss of electrical power, interruption of water service, sewage backing up into the establishment, serious lack of sanitation or catastrophic occurrence.
- (c) The owner, operator or other Person in charge of the establishment will be given written notice of the reason for the closure.
- (d) Upon receipt of the notice, the Food Establishment shall immediately cease Food Operations.
- (e) A Person commits an offense if the Person engages in Food Operations in an establishment which has been closed pursuant to this Section.
- (f) A Person commits an offense if the Person removes or tampers with any notice posted pursuant to Subsection (a) above.

**§16-149 RECONSIDERATION**

- (a) A Person who has been denied a permit; the owner or operator of a Food Establishment which has received an emergency closure issued by the Director; and the owner or operator of a Food Establishment which has received an order issued by the Director to come into compliance with this Article or the laws adopted by this Article, may petition the Director to reconsider the basis for the action.



- (b) In order for the petition to be considered, it shall be filed with such Director within ten days of the Person being served with notice of the action.
- (c) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or reviews of the action.
- (d) In its petition, the petitioner shall indicate the provisions of the action objected to, and the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, and whether the petitioner requests a hearing on its petition.
- (e) The effect of a permit or certificate denial or of an order shall not be stayed pending the Director's reconsideration or any hearing, unless the Director expressly and in writing stays the denial or order.
- (f) Within a reasonable time of the submittal of a petition for reconsideration, the Director shall either grant the petition and withdraw or modify the order or grant the permit or certificate; deny the petition if no material issue of fact is raised; or if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.

**§16-150 HEARINGS**

- (a) The Director may set a hearing after determining that grounds exist to close a Food Establishment or if a hearing is deemed necessary pursuant to a petition for reconsideration.
- (b) Written notice of the hearing shall be served on the petitioner/violator at least ten days prior to the hearing. Notice shall be served in Person or by certified mail, return receipt requested.
- (c) Notice shall specify the date, time and place of the hearing.
- (d) Notice shall be deemed received five days after it is placed in a mail receptacle of the United States Postal Service.
- (e) For purposes of this Section, the Director shall be empowered to administer oaths and to promulgate procedural rules for the conduct of the hearing.
- (f) Whenever any deadline specified in this Section falls upon a Saturday, Sunday or a City-recognized holiday, the deadline shall be the next regular City business day.
- (g) The date of an order or ruling required to be made under this Section shall be deemed to be the date it is signed.
- (h) Decisions shall be based on a preponderance of the evidence. The City shall have the burden of proof in all hearings except permit and certificate denial hearings. In permit or certificate denial hearings, the burden of proof shall be on the petitioner.

- (i) The Director shall act as the hearings officer.
- (j) After the conclusion of the hearing, the Director shall make written findings of fact and conclusions of law and shall issue a written decision without undue delay.
- (k) A hearing shall exhaust all administrative remedies of the petitioner/violator.

**§16-151 NUISANCE**

- (a) Misbranded, spoiled, diseased, or adulterated Food intended for human consumption is hereby declared to be a public health nuisance.
- (b) TCS Food which is stored, displayed, prepared or served in a Food Establishment at a temperature that is not in compliance with this Article is hereby declared to be a public health nuisance.
- (c) A Food Establishment that is not maintained in a sanitary condition is hereby declared to be a public health nuisance.

**§16-152 NUISANCE ABATEMENT**

- (a) The Director may give notice to the owner of the property upon which a nuisance under this Article is located, to cease, abate, remove or otherwise remedy such nuisance immediately. If the Person creating, maintaining or allowing the nuisance is not the owner of the property, notice shall also be given to such Person.
- (b) The notice must be given:
  - (1) Personally to the owner/Person in writing; or
  - (2) By letter addressed to the owner/Person at the owner's/Person's post office address and sent certified mail, return receipt requested. However, if personal or certified mail service cannot be obtained or the owner's/Person's post office address is unknown, notice may be given:
    - a. By publication in the official newspaper of the City at least twice within ten consecutive days;
    - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
    - c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

- (c) If the property owner/Person does not comply with the notice within ten days of service, the Director may enter the property containing the nuisance and do any work necessary to abate the nuisance, except the demolition of buildings.
- (d) If the immediate abatement of the nuisance is deemed necessary by the Director to protect the public health, safety or welfare from an imminent and substantial endangerment, the Director may, without complying with the notice provisions of this Section or without waiting the ten-day period, enter the property containing the nuisance and do or cause to be done any work the Director deems necessary to abate the nuisance.
- (e) After abating the nuisance, the Director may inform the owner/Person in a notice sent certified mail, return receipt requested, that if the owner/Person commits another violation of the same kind or nature that poses a danger to the public health, safety or welfare on or before the first anniversary date of the original notice, the City may without further notice correct the violation at the owner's expense and assess the expense against the property.
- (f) All costs incurred by the City to abate a nuisance, including the cost of giving notice as required, shall be initially paid by the City and charged to the owner of the property.
- (g) To obtain a lien against the property, the Director shall file a statement of expenses with the county clerk for the county in which the property is located. The lien statement shall state the name of the owner, if known, and the legal description of the property. The lien shall be security for the costs incurred and interest accruing at the rate of 10% on the amount due from the date of payment by the City.
- (h) The lien is inferior only to:
  - (1) Tax liens; and
  - (2) Liens for street improvements.

**§16-153 JUDICIAL REMEDIES AND PENALTIES**

- (a) Criminal remedies.
  - (1) An offense as defined under this Article is a misdemeanor punishable by a fine not to exceed \$2,000 in accordance with Section 1-6(c). Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.
  - (2) If an offense defined under this Article does not include a culpable mental state, then intent, knowledge, or recklessness suffices to establish criminal responsibility.
- (b) Civil remedies.

- (1) The City may invoke Tex. Local Government Code Section 54.012 through 54.017 and petition the state district court or the applicable county court at law, through the City Attorney, for either injunctive relief, civil penalties or both injunctive relief and civil penalties, whenever it appears that a Person has violated, or continues to violate, any provision of this Article that relates to:
  - a. The preservation of public health; or
  - b. Conditions caused by accumulations of refuse, vegetation or other matter that creates breeding and living places for insects and rodents.
  
- (2) Pursuant to Tex. Local Government Code Section 54.016, the City may obtain against the owner or the operator of a facility, a temporary or permanent injunction, as appropriate, that:
  - a. Prohibits any conduct that violates any provision of this Article that relates to any matter specified in Subsection (b)(1) above; or
  - b. Compels the specific performance of any action that is necessary for compliance with any provision of this Article that relates to any matter specified in Subsection (b)(1) above.
  
- (3) Pursuant to Tex. Local Government Code Section 54.017, the City may recover a civil penalty of not more than \$1,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Subsection (b)(1) above if the City proves that:
  - a. The defendant was actually notified of the provisions of the Article; and
  - b. After the defendant received notice of the Article provisions, the defendant committed acts in violation of the Article or failed to take action necessary for compliance with the Article.

**§§16-154 – 16-170 Reserved.**

## **DIVISION 7: PUSHCARTS**

### **SUBDIVISION I: GENERAL REQUIREMENTS FOR ALL PUSHCARTS**

#### **§16-171        GENERALLY**

All Pushcarts operating within the corporate city limits of the City of Fort Worth shall comply with the applicable requirements of this division. The Regulatory Health Agency may impose additional requirements to protect against health hazards related to the Pushcart operation, may

prohibit the sale of some or all TCS Food, and when no health hazard will result, may waive or modify requirements of this division relating to physical facilities or operations. Non-Food items shall not be sold from Pushcarts selling Food.

**§16-172 PERMIT REQUIREMENTS FOR ALL PUSHCARTS**

- (a) The owner or operator of any Pushcart vending Food within the corporate city limits of the City of Fort Worth shall obtain a valid Food Establishment permit, except that Pushcarts from which only whole, raw, uncut produce or individually packaged, Non-TCS Foods are vended is not a Food Establishment and does not require a Food Establishment permit, however, the owner or operator must comply with the other applicable provisions of this Article.
- (b) All Food Establishment Pushcarts and their Central Preparation Facilities shall be inspected by the Regulatory Health Agency prior to the issuance of a permit.
- (c) Acceptance of a Pushcart permit is an express acknowledgment and consent to the terms and restrictions of the permit.
- (d) To fulfill the important public purpose of ensuring that nutritious Foods are available to all people in the City, if a Food Establishment permit is otherwise required for a Fruit and Vegetable Pushcart (such as one offering cut produce) a reduced fee of 50% off the regular Food Establishment permit fee in accordance with the City fee schedule shall be charged if at least 75% of the inventory of the cart consists of fruits and vegetables, with the remainder consisting of Non-TCS packaged Foods.

**§16-173 PUSH CART SANITATION REQUIREMENTS**

All Pushcarts shall comply with the following requirements:

- (a) Configuration.
  - (1) Pushcarts shall be constructed of a smooth and cleanable material and be constructed in a manner in which cleaning can be easily accomplished. A cleanable canopy shall extend over the Pushcart and cover the top surface of the Pushcart if unpackaged Foods are offered.
  - (2) Separate space shall be set aside from areas where Food is served or prepared, for Nonfood related items which are displayed on Pushcarts.
  - (3) A Pushcart body shall not exceed four feet in height, three feet in width, or six feet in length.
- (b) Operation.

- (1) All Food and condiments shall be dispensed in a sanitary manner.
- (2) Food shall be stored, displayed and served in a fly- and rodent-proof manner. Unpackaged Foods shall be protected by a properly installed sneeze guard shield.
- (3) Bulk Food items shall be properly labeled and dispensed through sanitary devices or Utensils.
- (4) Pushcart operators and their staff shall not cook on or adjacent to a Pushcart unless such activity is in conjunction with another facility permitted and inspected by the Regulatory Health Agency.

(c) Sink requirements.

- (1) A Pushcart that sells only packaged Food that does not require the use of Utensils and carts selling only whole, raw fruit or produce, will not be required to have a ware wash sink or a hand washing sink.
- (2) A Pushcart that sells Open Foods that do not require the use of Utensils, such as a cart that sells roasted corn, will not be required to have a ware wash sink but will be required to have a hand washing sink.
- (3) A Pushcart that sells Open Foods that require Utensils such as a hot dog cart, will be required to have a ware washing sink and a hand washing sink.
- (4) Scooped ice cream sellers shall have a running water dipper well.
- (5) A Pushcart shall have a supply of paper towels, soap and detergent which shall be conveniently accessible if sinks are provided.
- (6) Each Pushcart having sinks shall have an adequate amount of hot and cold water under pressure to operate all sinks.
- (7) Each Pushcart having sinks shall also have adequate drain board space.

(d) Fire safety.

- (1) Each Pushcart employing butane or propane tanks shall comply with any and all applicable Fire Department regulations. Ground fault interrupters may be required by the Fire Department as a safety feature to prevent electrical shock. Each Pushcart shall be equipped with an approved fire extinguisher with a 2A 10BC rating.
- (2) Pushcarts using flammable substances, including, but not limited to, liquefied petroleum gas shall not be permitted inside of buildings.

- (e) Trash container. All Pushcarts shall have a trash container, such as a trash bag or bin, available to customers for the disposal of Food wrappers and other waste. The trash container may be attached to the Pushcart or standalone within ten feet of the Pushcart.
- (f) Generally.
  - (1) In addition to these requirements, a Person owning or operating a Pushcart shall comply with any applicable provisions of the Texas Food Establishment Rules.

**§16-174 ATTENTION-GETTING DEVICES**

- (a) No mechanical or electronic sound producing device shall be employed by a Pushcart.
- (b) Hawking and solicitation are strictly forbidden.
- (c) Lights of sufficient illumination for vendors to operate during nighttime or darkness shall be permissible in addition to safety reflectors and lights required by traffic ordinances. Lights shall not be used as Attention-Getting Devices.
- (d) No text shall be displayed on Pushcart canopies.

**§16-175 SINGLE-SERVICE ARTICLES**

Pushcarts shall provide only Single-Service Articles for use to the consumers.

**§16-176 CENTRAL PREPARATION FACILITY**

- (a) All Pushcarts shall operate from an authorized storage facility, Central Preparation Facility or other fixed Food service establishment permitted and regularly inspected by a Regulatory Health Agency.
- (b) The Central Preparation Facility or base of operations shall be constructed and operated in compliance with the requirements of the Texas Food Establishment Rules and regulations of pertinent regulatory agencies.

**§16-177 SERVICING AREA**

- (a) All Pushcarts shall have a Servicing Area which shall have a location(s) for draining and flushing liquid wastes and location(s) for loading and unloading of Food and related supplies.
- (b) The surface of the service area shall be constructed of a smooth nonabsorbent material graded to drain, and shall be kept in good repair.

**§16-178 SERVICING OPERATION**

- (a) Potable water servicing equipment shall be installed and maintained in a manner that protects the water and equipment from contamination.
- (b) Pushcart liquid waste containers shall be thoroughly flushed and drained during servicing operations.
- (c) Flushing and draining activities shall be conducted in the required Servicing Areas. No flushing or draining of liquid waste shall be permitted on public streets or in any area other than the required Servicing Area.

**§16-179 WATER SYSTEM**

All Pushcarts requiring sinks shall provide not less than five gallons of water under pressure at all times for use in Utensil cleaning, sterilization and hand-washing. One water inlet shall be located so as not to be contaminated by waste discharge. Such inlet shall be capped at all times except when being filled, and shall contain only potable water. Connection or direct hookup to water sources other than those on the Pushcart shall be approved by the Regulatory Health Agency.

**§16-180 WASTE RETENTION**

- (a) All liquid waste shall be stored in a retention tank that shall have a minimum capacity of seven and a half gallons or that is at least 15% larger in capacity than the fresh water supply tank, whichever is greater. Liquid waste shall only be discharged into a sanitary sewer disposal system. Waste connections shall be located lower than the water inlet connection in a manner to preclude contamination of the potable water system.
- (b) Solid waste generated by permittees and Employees shall be contained in an easily cleanable, self-closing, lidded trash receptacle. All Pushcarts that remain stationary for longer than one hour shall provide and have available for the public, a fly-proof, lidded trash container for the disposal of refuse. Such trash container may be either on the Pushcart or located conveniently nearby.

**§16-181 ENFORCEMENT**

- (a) The owner or operator of a Pushcart unit commits an offense if the Pushcart is operated in violation of any provision of this division. An offense as defined under this division is a misdemeanor punishable by a fine not to exceed \$2,000 in accordance with Section 1-6(c). Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense. If an offense defined under this division does not include a culpable mental state, then intent, knowledge, or recklessness suffices to establish criminal responsibility.
- (b) The Department shall have the authority to enforce any and all provisions of this division.



- (c) It shall be within the power and discretion of the Department to suspend or revoke any permit issued hereunder for continued or repeated violation or infraction of any provision of this division or any rule, direction or regulation of the Department.

**§16-182 APPEAL**

Any Person or entity aggrieved by a finding, determination, notice or action taken under the provisions of the division, other than for an offense or violation, may file an appeal in writing with the City Manager or that individual's authorized representative. An appeal must be filed within five days after receipt of notice of any protested decision or action by filing with the office of the City Manager a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than 15 days after receipt of the letter of appeal unless extended by mutual agreement of the parties. Appellant shall be given at least five days' notice of the time and place of the hearing. The City Manager or authorized representative shall give the appellant, and any other affected party, a reasonable opportunity to be heard, in order to show cause why the determination of the Regulatory Health Agency should not be upheld. In all such cases the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the action taken by the Regulatory Health Agency. The City Manager or authorized representative shall make his or her determination and shall notify the appellant in writing of his or her determination. The decision of the City Manager or authorized representative shall be final.

**SUBDIVISION II. REQUIREMENTS FOR PUSHCARTS THAT OPERATE ELSEWHERE THAN IN THE DOWNTOWN AREA**

**§16-183 PUSHCART SPECIFICATIONS**

- (a) With the exception in Subsection (b) below, a Pushcart body shall not exceed four feet in height, three feet in width, or six feet in length.
- (b) A Pushcart for selling frozen ice cream and popsicles in a residential zone shall not exceed these Pushcart body dimensions: two feet in height, two feet in width and three feet in length. It may have one attached nonabsorbent container that does not exceed 16 gallons in size, if maintained in good condition and clean, to display and store additional approved Foods.
- (c) Pushcarts operating outside the Downtown Area which are on commercial or industrial private property, within 20 feet of the public entrance or exit to an operating commercial or industrial business, and not within 100 feet of the public right-of-way may also have the following allowed accessories which shall be limited to:
  - (1) Coolers;
  - (2) Attached counters;
  - (3) Canopies;
  - (4) Up to two stools for use by Employees; and

- (5) Trash cans for use by Pushcart operators and customers.
- (6) Allowed accessories must be kept in close proximity to the Pushcart body.

(d) When placed for operation, the Pushcart body, allowed attachments and allowed accessories shall be limited to a total combined area not to exceed ten feet in height, six feet in width, or ten feet in length.

#### **§16-184            PUSHCART LOCATIONS, HOURS, AND PRODUCTS**

(a) Pushcarts which operate in residentially zoned areas shall be governed by the following requirements:

- (1) Pushcarts shall operate only between the hours of 7:00 a.m. through sunset and shall operate from and on sidewalk areas, except as otherwise provided in this division.
- (2) Products sold from Pushcarts shall be limited to fresh produce, packaged Non-TCS Foods, packaged frozen ice cream and popsicles. All Foods other than produce shall be labeled according to the requirements of the Texas Food Establishment Rules.
- (3) A Pushcart may have attached one nonabsorbent container that does not exceed 16 gallons in size to display and store approved Foods as long as size does not exceed dimensions in Section 16-183(a).
- (4) No Pushcart may be located on a vacant lot. However, a Pushcart may be permitted to operate on a vacant lot in a nonresidential district with written permission from the property owner and the Director. In a residential area or district, a Pushcart shall not be permitted to operate on a residentially used lot or vacant lot, but shall be permitted to operate on a lot with an existing nonresidential use such as a church or school with permission from the property owner and the Director.

(b) Pushcarts may operate from commercially or industrially zoned private property, not in the public right-of-way, and which is located outside of the Downtown Area with the advance approval of the owner or duly authorized representative of said property. Pushcarts shall not, however, be permitted on private property in the Downtown Area.

(c) No sale or offering to sell shall be made from any Pushcart of any edible or potable substance on any property which is used or zoned for residential purposes, or within 500 feet of any school property, nor on any municipal recreation facility, except as specifically provided herein or with the written approval of the Director based upon special circumstances. No sale or offering to sell shall be made from any Pushcart within a city park, except that sales may be made from the sidewalks on the perimeter of City parks.

- (d) During special events, Pushcarts that are in accordance with the special event permit may operate during the prescribed location and hours of the special event, notwithstanding any provision of this Section to the contrary.
- (e) On lots or properties where Pushcarts are allowed under this Section, no more than one Pushcart shall be permitted at one time. Schools, however, shall not be subject to this limitation so long as the school has provided permission to the Pushcart operators.

**§16-185 FLOWER PUSHCARTS**

Flower Pushcarts. Pushcarts which stock and sell flowers shall be governed by the following requirements.

- (a) A cleanable canopy shall extend over the cart and cover the top surface of the cart.
- (b) Food and/or Beverages shall not be sold from carts selling flowers nor shall flowers be sold from carts selling Food and/or Beverages.
- (c) Flower carts shall have a holding facility to retain water or fluids used to keep flowers fresh.
- (d) Flower carts shall be subject to the same operation, permitting, spacing and location requirements as other Pushcarts, except that flower carts shall be exempt from those provisions with reference to equipment and facilities which by their very nature have no application.

**SUBDIVISION III. SPECIAL REQUIREMENTS FOR DOWNTOWN AREA  
PUSHCARTS**

**§16-186 PERMITS**

- (a) Generally. It shall be unlawful to sell, offer for sale, vend, operate, maintain or serve any item from a Pushcart in the Downtown Area without a valid Slot permit and a Food Establishment permit issued in accordance with this division. This Slot permit shall be required in addition to any other license, permit or certification that may be required by law, including, but not limited to, Food Handler certification required under Chapter 16 of this code.
  - (1) Application for a Slot permit shall be made in written form to the Director.
  - (2) Slot permits for Pushcarts shall only be available under the terms of this division. No encroachment agreement shall be granted for any Pushcart unless such Pushcart complies with all applicable requirements of this division and Chapter 16 in addition to requirements relating to encroachment.
  - (3) All Pushcarts and required attendant facilities shall be inspected by the Regulatory Health Agency prior to the issuance of a vending permit.

- (4) In the interest of public health and safety, all Slot permits shall be issued for a specific location. Vendors shall locate in compliance with the noted location so that the Regulatory Health Agency may conduct inspections in compliance with City ordinances and investigate reports of unsanitary conditions or Food borne illnesses.
- (5) Acceptance of a vending permit is an express acknowledgment and consent to the terms and restrictions set by the Regulatory Health Agency. The use of a permit is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the Regulatory Health Agency.
- (6) As an express condition of the acceptance of a Slot permit hereunder for an Available Slot on Public Property in the Downtown Area, recipient agrees to police for trash and debris, an area within a 25-foot radius of the Pushcart location.
- (7) In connection with issuing a Slot permit, the Director shall, following consultation with the Director of the Park and Recreation Department, assign an exact location within the designated Slot and shall indicate such location on the Slot permit documentation. The Director may periodically adjust the exact location within the council-designated Slot to allow for construction or other changed circumstances; any such adjustment shall be documented in writing and attached as an addendum to the Slot permit documentation.

(b) Insurance and indemnification.

- (1) No permit shall be issued to an applicant vending on Public Property in the Downtown Area unless verification of insurance is confirmed by a representative from the Risk Management Division of the Human Resources Department. The applicant shall have filed with the City's Risk manager a certificate showing that the applicant has secured and agrees to keep in force during the term of the permit a policy providing for bodily injury and property damage in the amounts as follow:

Property damage, per accident	\$100,000
Personal injury or death, per Person	\$100,000
Personal injury or death, per accident	\$300,000
Product liability	\$300,000

Such insurance policy shall provide that it cannot be cancelled or amended without at least 30 days' notice in writing to the Director and the City's Risk Manager.

- (2) As an express condition of the acceptance of such permit, the permit holder thereby agrees to indemnify and save harmless the City, its officers, agents, servants and Employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any Person as a result of the operation, use or maintenance of a Pushcart, within the City of Fort Worth.

- (3) As a further condition, permit holder by acceptance of the permit expressly agrees to indemnify and hold harmless and defend the City, its officers, agents, servants and Employees, from and against any and all claims or suits for personal injury, including death, of whatsoever kind or character, whether real or asserted, arising out of or in connection with the consumption of Food products sold on any Public Property herein described.
- (c) Pushcart standards on Public Property in Downtown Area. Any Pushcart which rests in whole or in part upon any Public Property in the Downtown Area shall comply with all of the following standards.
- (1) Pushcarts must be originally manufactured for use as a non-self-propelled mobile Food vending vehicle by a Person regularly in the business of manufacturing Food preparation vehicles for sale and does not include any vehicle that is converted or retrofitted as a non-self-propelled mobile Food vending vehicle.
  - (2) Pushcart body shall not exceed four feet in height, three feet in width or six feet in length, exclusive of allowed attachments and allowed accessories.
  - (3) Allowed attachments shall be limited to coolers and counters.
  - (4) To provide a uniform appearance, allowed attachments must be constructed of or surrounded by the same type of material as the Pushcart body.
  - (5) Allowed attachments must fold out from or be clipped on to the Pushcart body. Allowed attachments must be readily removable or retractable so as not to cause Pushcart body to exceed the size limitations of Subsection (c)(2) above.
  - (6) Allowed accessories shall be limited to:
    - a. Canopies;
    - b. Umbrellas;
    - c. Up to two stools for use by Employees; and
    - d. A trash can for use by Pushcart customers.
  - (7) Allowed accessories must be kept in close proximity to the Pushcart body.
  - (8) When placed for operation, the Pushcart body, allowed attachments and allowed accessories shall be limited to a total combined area not to exceed ten feet in height, six feet in width, or ten feet in length.
  - (9) [Reserved.]

- (10) No Pushcart shall be used to display information other than a valid permit, list of items served, the prices thereof and the name of the vendor, all of which must be contained on the body of the Pushcart. No Pushcart, allowed attachment or allowed accessory shall be used to display or depict artwork or advertising materials of any kind, including, but not limited to, the name, logo or mascot of any product or service.
  - (11) During the months of March through October, Pushcarts must be open to the public for a minimum of two hours per day on at least eight days of each month, provided however, that the Director may reduce or waive this requirement due to inclement weather, demonstrated viability issues related to a particular Slot or other extenuating circumstance.
  - (12) Each vendor operating in a Slot in the Downtown Area shall maintain an operations log in a form prescribed by the Director to show the days and times on which the vendor operated and/or document the specific reason that a vendor was unable to operate on a particular date. The operations log shall be made available to the code compliance Department on request. Failure to maintain or produce an operations log shall give rise to a presumption that the permittee has failed to comply with the minimum operating hours requirement and that the Slot has been abandoned.
- (d) Number of Slot permits. The number of Slot permits available for vending on Public Property in the Downtown Area shall be determined by the City Council after receiving comments and recommendations by the City Manager, the Director and the Director of Park and Recreation Department. Only the City Council may create or alter Slot designations in the Downtown Area.
- (e) Permit conditions, limitations and restrictions. Permits on Public Property in the Downtown Area shall be subject to the following conditions, limitations and restrictions.
- (1) Slot permits shall be issued for a period not to exceed 24 months.
  - (2) On or about February 1 of every odd numbered year, all Slots in the Downtown Area shall be put out for bid by the City. Slots shall be awarded to the highest bidder that is in compliance with all requirements of this Subsection (e).
  - (3) If a Slot becomes available outside of the typical bid cycle, it shall be put out for bid by the City for the remainder of the unexpired term and awarded to the highest bidder that is in compliance with all requirements of this Subsection (e).
  - (4) No Slot shall be awarded and no Slot permit shall be issued unless the permit applicant can demonstrate that: He or she has a Pushcart available for dedicated and exclusive use in that Slot; and that such Pushcart complies with all of the requirements of this division, including but not limited to, size and construction requirements outlined in Subsection (c) of this Section.

- (5) No more than two permits to operate Pushcarts on Public Property in the Downtown Area shall be issued to an individual, a single business entity or to two or more affiliated entities. For purposes of this provision AFFILIATED ENTITIES shall include:
  - a. Individuals related within the third degree by consanguinity or within the second degree by affinity as defined by Tex. Government Code Chapter 573;
  - b. Business entities with at least 10% common ownership; and
  - c. An individual and a business entity that the individual controls or in which the individual has at least a 2% ownership interest.
- (f) Slot permits nontransferable.
  - (1) Use of a Slot as approved by City Council on Public Property in the Downtown Area is a privilege, not a property right. Such a designated Slot shall not be transferable; it shall be available only to the Person designated by Slot permit.
  - (2) It shall be unlawful to attempt to sell, lease or otherwise transfer the use of such a designated Slot from the original permittee to any other Person natural or unnatural. Such action shall result in automatic revocation of the permits of the parties involved, and those parties shall be banned from operating within the City limits for one year from the date of revocation. Such revocation shall not preclude any other legal action.

**§16-187 DOWNTOWN AREA HOURS OF OPERATION AND LOCATIONS**

- (a) No sale or offering to sell shall be made from any Downtown Pushcart at any time between 9:00 p.m. and 7:00 a.m.
- (b) During special events, Pushcarts with special event permits may operate during the prescribed hours of the special event.
- (c) It shall be permissible for Pushcarts to operate within the following designated areas:
  - (1) Designated Slots on Public Property in the Downtown Area in accordance with the terms of a valid Slot permit issued by the Director;
  - (2) At temporary special events with a special event permit.

**§16-188 SLOT PERMIT FEES**

- (a) After inspection and approval by the code compliance Department of each Pushcart, each Pushcart shall be assessed a Slot permit fee in the amount of the permittee's bid under Section 16-186(e).

- (b) Permits shall be issued in accordance with the application procedures and upon payment of the permit fees per Pushcart in the amount established by City Council.

**§16-189            REVOCATION OF SLOT PERMIT**

- (a) The Director may revoke a Slot permit issued under this division if the holder or an Employee:
  - (1) Has abandoned the assigned Slot;
  - (2) Fails to comply with any requirement of this division;
  - (3) Violates or fails to comply with any provision of City Code or other applicable law;
  - (4) Is discovered to have provided false or inaccurate information on or in connection with the original permit application; or
  - (5) Is discovered to have provided false or inaccurate information on or in connection with the operations log or any other documentation required under this division.
- (b) The Director shall notify the permittee in writing of the revocation.
- (c) The revocation of a Slot permit may be appealed in accordance with the process outlined in Section 16-182.

**SECTION 2.**

This ordinance shall be cumulative of all provisions of ordinances of the Code of the City of Fort Worth, Texas, (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 3.**

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

**SECTION 4.**

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of the City of Fort Worth, or any other ordinances of



the City, that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance, but may be prosecuted until final disposition by the courts.

**SECTION 5.**

All violations of Chapter 16, Article IV, of the Fort Worth City Code shall be punishable by a fine not to exceed two thousand dollars (\$2,000.00) for each violation. Each day a violation occurs or continues to occur is a separate violation.

**SECTION 6.**

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

**SECTION 7.**

This ordinance shall take effect upon adoption and publication as required by law, and it is so ordained.

**APPROVED AS TO FORM AND LEGALITY:**

**ATTEST:**

\_\_\_\_\_  
Amarna Muhammad  
Assistant City Attorney

\_\_\_\_\_  
Jannette Goodall  
City Secretary

Date: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_