

Office of the City Manager

City of Richland Hills, Texas

Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council
From: Eric Strong, Assistant City Manager
Date: May 21, 2013
Subject: Update to Food Inspection Ordinance

Council Action Requested:

Consider Ordinance # 1246-13 regarding regulation of food establishments including food service establishments, retail food stores, temporary food establishments, mobile food units, and roadside food vendors.

Background Information:

The permitting in Richland Hills for permits for food establishments is handled through Tarrant County. Tarrant County follows the State of Texas regulations, and has asked the City to adopt those rules by reference. The attached ordinance accomplishes this objective.

Tarrant County has also requested that we update our fees associated with the inspections and permitting of food establishments. The proposed fee schedule is also attached for your review. They have been providing this service to us for over 15 years and this is the first time that they have updated their fees.

Board/Citizen Input: N/A

Financial Impact: None

Staff Contacts:

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Attachments: Ordinance # 1246-13

ORDINANCE NO. 1246-13

AN ORDINANCE REGARDING THE REGULATION OF FOOD ESTABLISHMENTS
INCLUDING FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD
STORES, TEMPORARY FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND
ROADSIDE FOOD VENDORS

Section 1. Adoption of Texas Food Establishment Rules

A. The City of Richland Hills adopts by reference the provisions of the current rules or rules as amended by The Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction.

B. Definitions

The words "authorized agent or employee" mean the employees of the regulatory authority.

The words "food establishment" mean a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

The words "municipality of Richland Hills" in this ordinance shall be understood to refer to the City of Richland Hills.

The words "state rules" mean the state rules found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

The words "regulatory authority" mean the Tarrant County Public Health Department

Section 2. Permits and Exemptions

A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferrable from one person or entity to another or from one location to another location, except as otherwise permitted by this ordinance. A valid permit must be visibly posted in or on every food establishment regulated by this ordinance.

Section 3. Application for Permit and Fees

A. 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

and address 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.

B. 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.

C. Fees for permits issued under this ordinance shall be as listed in the attached fee schedule

Section 4. Review of Plans

A. Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the 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 or when equipment required by the rules is to be relocated or removed. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. The approved plans and specifications must be followed in construction, remodeling or conversion.

B. Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

C. Fees for the review of plans shall be as listed in the attached fee schedule

Section 5. Inspections

A. Before a permit is issued, the city or its authorized representative 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 a food establishment's compliance and potential of causing food borne illness according to 25 TAC 229.171(h).

B. The regulatory authority shall classify food establishments as special priority, high priority, medium priority or low priority, according to the type of operations; 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 Section 7.

Section 6. Food Manager / Food Handler Education

A. Requirement:

- (1) Each food service establishment shall have at least one person employed in a managerial capacity possessing a current food manager certificate approved by the regulatory authority.
- (2) Each food service establishment with six or more employees that is required to have certified food managers must have at least one certified manager on site during all operations.
- (3) Every employee of a food service establishment other than a certified Food Manager must maintain a valid food handler certification registered with the regulatory authority.
- (4) Food Handler certification shall be valid for a period of up to three years as determined by the regulatory authority
- (5) Food Manager and Food Handler certification documentation must be maintained in the food service establishment and presented upon request by the regulatory authority

Section 7. Suspension of Permit

- A. The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by Paragraph (7)(B) of this ordinance. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten days of receipt of a request for a hearing.
- B. Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

Section 8. Revocation of Permit

- A. The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be

revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten day period.

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

Section 9. Administrative Process

- A. A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit as shown on their permit application. A copy of the notice shall be filed in the records of the regulatory authority.
- B. The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

Section 10. Remedies

- A. Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than \$2000 dollars.
- B. The regulatory authority may seek to enjoin violations of these rules.

Section 11. Severability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 12. Effective Date

The provisions of this ordinance shall take effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 21ST DAY OF MAY, 2013.

THE HONORABLE BILL AGAN, MAYOR

ATTEST:

LINDA CANTU, TMRC, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

BETSY ELAM, CITY ATTORNEY

FOOD PROGRAM FEE SCHEDULE

Food Store

| | |
|----------------|-------|
| ≤ 5000 sq. ft. | \$200 |
| > 5000 sq. ft. | \$300 |

Food Service

| | |
|-----------------------|-------|
| ≤ 500 sq. ft. | \$100 |
| > 500 ≤ 1500 sq. ft. | \$150 |
| > 1500 ≤ 3000 sq. ft. | \$200 |
| > 3000 ≤ 6000 sq. ft. | \$250 |
| > 6000 sq. ft. | \$300 |

Child Care Food Service

\$150

Catering Operation

\$250

Food Court

\$200 per establishment

Adjunct Operation

| | |
|---------------------------|---------------------------------|
| Food Service | \$150 per independent operation |
| Food Store ≤ 5000 sq. ft. | \$150 per independent operation |
| Food Store > 5000 sq. ft. | \$200 per independent operation |

Commissary

| | |
|----------------|-------|
| No food prep | \$100 |
| With food prep | \$200 |

Mobile Units

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|-----------------------|-------|
| Prepackaged food only | \$100 |
| Open and/or food prep | \$200 |
| Push Carts | \$200 |

Plan Review

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|----------------------|-------|
| ≤ 500 sq. ft. | \$0 |
| > 500 ≤ 3000 sq. ft. | \$50 |
| > 3000 sq. ft. | \$100 |

Late Fee

| | |
|-----------------|-----------------|
| From 1-30 days | 10% of fee owed |
| From 31-60 days | 20% of fee owed |

The late fee increases 10% for each 30 day block until permit fee and late fee is paid.
Permits that are more than 90 days overdue will be void and required to reapply.

Reinspection Fee

| | |
|-----------------------|------|
| Required reinspection | \$75 |
|-----------------------|------|