

WHEREAS, the Abilene-Taylor County Board of Health has recommended that certain amendments to the ordinance regulating food and food products establishments and food handlers be made; and,

WHEREAS, the City Council is of the opinion that said amendments are in the best interest of the public health and welfare of the City of Abilene; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE,  
TEXAS:

Section 1: That Chapter 21, "Food and Food Handlers," of the Code of the City of Abilene, Texas, 1957, as amended, be amended to read as follows:

#### CHAPTER 21: FOOD AND FOOD HANDLERS

##### ARTICLE I - DEFINITIONS

"For the purposes of this Chapter, the following words and phrases shall be defined as follows:

"Sec. 21-1. ADULTERATED shall mean the condition of a food, (a) if it bears or contains any substance which may render it injurious to health; (b) if it bears or contains any added substance, in any amount, for which a safe tolerance has not been established by regulation, or in excess of such tolerance, if one has been established; (c) if it consists in whole or in part of any filthy, putrid, or de-

"Sec. 21-8. EQUIPMENT shall mean all stoves, ranges, hoods, meat-blocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and all like items, other than utensils, used in the operation of a food products establishment.

"Sec. 21-9. FOOD shall mean any substance used, intended to be used, sold, offered for sale, or intended to be sold, for human consumption, either in whole or in part.

"Sec. 21-10. FOOD CONTACT SURFACES shall mean those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

"Sec. 21-11. FOOD HANDLER shall mean any person who in the storage, manufacture, preparation, handling, sale of, or serving of food, handles food in such a manner that some portion of his clothing or body might come in contact with such food or with utensils used in connection therewith.

"Sec. 21-12. FOOD PRODUCTS ESTABLISHMENT shall mean any commercial establishment where food is kept, stored, manufactured, prepared, packaged, handled or served for purposes of sale, or resale, or is sold, or offered for sale, either at wholesale or retail, and either to the public or to another person for resale; provided that abattoirs and slaughterhouses are specifically excluded therefrom.

"Sec. 21-13. HEALTH AUTHORITY shall mean the health officer of the City of Abilene, Texas, or his authorized representatives.

"Sec. 21-14. IMMEDIATE CONTAINER shall not include package liners.

"Sec. 21-15. LABEL shall mean a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of the Texas Food, Drug and Cosmetic Act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

"Sec. 21-16. MISBRANDED shall mean the presence of any written, printed, or graphic matter upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable State or local labeling requirements.

"Sec. 21-17. PERISHABLE FOOD shall mean any food of such type or in such condition as may spoil.

"Sec. 21-18. PERSON shall mean an individual, or a firm, partnership, company, corporation, trustee, association, school, church, hospital, municipality, or any other public or private agency, entity, or institution.

"Sec. 21-19. POTENTIALLY HAZARDOUS FOOD shall mean any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and/progressive growth of infectious toxigenic microorganisms.

"Sec. 21-20. SAFE TEMPERATURES as applied to potentially hazardous food shall mean temperatures of 45 degrees Fahrenheit or below, and 140 degrees Fahrenheit or above.

"Sec. 21-21. SANITARY shall mean the effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the health authority as being effective in destroying microorganisms, including pathogens.

"Sec. 21-22. SEALED shall mean free of cracks or other openings which permit the entry or passage of moisture.

"Sec. 21-23. SINGLE SERVICE ARTICLES shall mean cups, containers, lids, or closures, plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping material, and all similar articles which are constructed wholly or in part from paper, paper board, molded pulp, foil, wood, plastic, synthetic or other readily destructible materials, and which are intended by the manufacturers and generally recognized by the public as for one usage only, then to be discarded.

"Sec. 21-24. UTENSIL shall mean any tableware and kitchenware used in the storage, preparation, conveying, serving, or consumption of food.

"Sec. 21-25. WHOLESOME shall mean in sound condition, clean, free from adulteration and otherwise suitable for use as food.

#### ARTICLE II - FOOD PRODUCTS ESTABLISHMENT LICENSES

"Sec. 21-26. No person shall conduct, operate, or maintain a food products establishment in the City of Abilene, Texas, who does not possess a valid, current permit from the health authority as herein provided. Said permit shall at all times be kept posted and displayed within the food products establishment as the health authority may direct.

"Sec. 21-27. Each applicant for such a permit shall make written application to the health authority, stating thereon the name and address of the food products establishment, the nature or type of business, and the name and address of the owner of said establishment, and such other information as may be reasonably required by the health authority.

"Sec. 21-28. Upon receipt of said application the health authority shall notify the Fire Marshall and the Building Inspector of the City of Abilene, who shall inspect the building in which said food products establishment is to be conducted to determine if said building is in compliance with applicable ordinances of the City of Abilene. The findings of such inspection shall be reported to the health authority. Said health authority shall also inspect the premises, equipment, and appliances to be used in connection with said food products establishment and, if based upon said inspection and the reports of the Fire Marshall and Building Inspector, said building in his opinion conforms with the requirements of the laws of the State of Texas and of this code and of other ordinances of the City in force at the time of inspection, he shall grant said permit. The applicant shall pay an annual fee of Fifteen Dollars (\$15.00) per establishment; provided that itinerant restaurant permits may be issued for any three (3) month period of operation upon the payment of a fee of Five Dollars (\$5.00).

"Sec. 21-29. Annual permits shall be valid only for the calendar year ending December 31st, unless sooner revoked. Said permit shall not be transferred or assigned, and shall be considered revoked should the location of the food products establishment be changed or should same be sold or otherwise disposed of by the owner thereof, or should the character of such food products establishment be

materially changed. Said permit shall be renewed annually in like manner as originally applied for.

"Sec. 21-30. Any permit granted herein shall be subject to revocation or suspension at the direction of the health authority for failure of the grantee named therein or any of his employees, agents, or representatives to operate said food products establishment in accordance with this code, all food and sanitary laws of the State of Texas, and the rules and regulations of the State Health Department and all official orders pursuant thereto. Upon notice of such revocation or suspension, the operation of such food products establishment shall be immediately discontinued until the terms and provisions of this chapter are complied with. An application for reinstatement of such permit shall be made under the same terms and conditions as the original applications therefor.

"Sec. 21-31. It shall be the duty of the health authority to enforce the provisions of this code, and said authority shall have full power at all times to enter any building, room, basement, or cellar occupied, used, operated, or maintained as a food products establishment, for the purposes of inspecting such premises and all utensils, equipment, and fixtures to determine that the provisions of this code are complied with. No person shall hinder in any manner the health authority in making such inspections as may be deemed necessary.

#### ARTICLE III

#### FOOD PRODUCTS ESTABLISHMENT SANITARY REGULATIONS

"All food products establishments shall comply with the following sanitary regulations:

"Sec. 21-32. No person shall permit or conduct any occupation or business likely to expose food or food products to pollution or any unsanitary condition in the same room as a food products establishment.

"Sec. 21-33. All living and sleeping quarters shall be entirely separated by means of tight partitions from any room in which food or food products are contained, or in which a food products establishment is conducted. Any door in such partitions shall be either solid or well screened with screening of not less than fourteen (14) meshes to the inch, and each shall be provided with a self-closing device, and said doors shall be kept closed except when in actual use.

"Sec. 21-34. No live animal or fowl shall be allowed in any food products establishment.

"Sec. 21-35. No person may sell or offer for sale; distribute; deliver; receive; manufacture; use in food, food products, or food processing; stamp, mark, label, or otherwise identify as food; pack or repack; or give away any article of food which is adulterated, misbranded, or falsely labeled, or which has been produced, prepared, manufactured, stored, packed, packaged, or distributed under unsanitary conditions or on premises which are maintained in an unsanitary condition, or which does not conform to the standards and requirements of this code, or those adopted by the Texas State Department of Health and approved by the Texas State Board of Health under the Texas Food and Drug Laws.

"Sec. 21-36. No meat or meat products shall be sold, kept, transported, or offered for sale in the City of Abilene unless said items, or the can or package in which they are contained, bears the "Inspected and Passed" stamp or other

recognized identification of the U. S. Department of Agriculture or the Texas State Department of Health or other agency approved by the health authority.

"Sec. 21-37. Samples of food, or any substance connected with the preparation of food may be taken from food products establishments and examined by the health authority as often as may be necessary to detect adulteration or misbranding. The health authority may suspend the sale or use of any substance from which a sample is taken for such reasonable period of time as is needed to complete necessary tests and examinations where any such substance is suspected of being adulterated or misbranded. Where any food, or substance is used in connection with the preparation of such food, is found to be adulterated, the health authority may condemn and forbid the sale of such food or substances, or cause same to be removed or destroyed.

"Sec. 21-38. All floors, walls, and ceilings in food products establishments shall be kept in good repair and in a clean and sanitary condition at all times. Floors shall be constructed of a smooth material and shall be constructed so as to be easily cleaned. The use of sawdust upon the floor is prohibited. All walls and ceilings of rooms in which food or food products are stored or prepared shall consist of any easily cleanable, smooth, non-absorbent material with a light colored surface, and shall be kept free of dirt, soap, grease, food particles and all other foreign matter. The walls of all food preparation and utensil cleansing rooms shall be sealed from floor to ceiling and shall have a smooth, washable, impervious surface.

"Sec. 21-39. All openings into the outer air shall be properly protected against the entrance of insects by means of which, in the opinion of the health



authority, are effective in excluding insects. Each outer door must be equipped with a self-closing device.

"Sec. 21-40. All rooms in which food is stored, prepared, or served, except cold storage rooms, shall be adequately ventilated so as to prevent the condensation and accumulation of grease. If the ventilation provided by doors and windows is inadequate to prevent such condensation and accumulation of grease, the health authority may require the installation of supplementary ventilation equipment.

"Sec. 21-41. No person shall dress, undress, leave, or store any personal garments in any room in which food is stored, prepared, or served.

"Sec. 21-42. Each food products establishment shall provide rest-rooms for the use of employees. Each such rest-room shall be constructed of individual, fly-tight, solid housing and shall be equipped with self-closing solid doors. Each rest-room and all fixtures therein shall be kept in a clean and sanitary condition. Said fixtures shall, at all times, be in a good operating condition. Rest-rooms shall not be used for the storage of food, food packages, wrappings, or any other device used to enclose food, nor for linens, napkins, clean uniforms, or aprons.

"Sec. 21-43. Each food products establishment shall provide hand washing facilities, consisting of a suitable lavatory conveniently located and containing a reasonable supply of soap and individual towels provided for the use of employees. Durable and legible signs instructing employees to wash their hands before returning to work shall be posted conspicuously in every rest-room or dressing room as provided herein.

"Sec. 21-44. All rooms in which food is prepared or in which utensils are washed shall be provided with an ample and convenient supply of running hot and cold water supplied through an adequate number of outlets. The water supply source shall be approved by the health authority.

"Sec. 21-45. The surface of all equipment and all utensils with which food comes in contact shall be of smooth, seamless, corrosion resistant material, and shall be kept in good repair, free of breaks, corrosion, open seams, cracks, or chipped places. All equipment and utensils with which food comes in contact shall be kept clean and sterilized in accordance with Article 700b, Vernon's Annotated Penal Code of Texas.

"Sec. 21-46. All utensils shall be stored at a sufficient height above the floor to prevent contamination from any source. Utensils shall not be handled by the surface which comes into contact with food or food products. All single service containers or utensils shall be purchased only in sanitary containers, shall be stored therein in a clean dry place until used and shall be used only once.

"Sec. 21-47. Each food products establishment shall provide a sufficient number of garbage and trash cans to provide for the peak garbage and trash outputs of that establishment; provided that those establishments using the City Container Collection Service shall be deemed to have complied with said requirements. All garbage, trash, or other waste matter shall be immediately deposited and kept in said garbage or trash containers. All such containers shall be kept covered with tight fitting metal lids. All such containers on the premises of said establishments shall be removed therefrom when necessary for sanitary reasons. All

tainted or decayed meat, vegetable, poultry, cheese, or other organic matter shall be removed from the room immediately. All garbage and trash receptacles shall be kept in a clean and sanitary condition satisfactory to the health authority. The owner or manager of any food products establishment shall keep the premises of such place of business free from all garbage, trash, or litter of whatever nature accumulating on account of such business.

"Sec. 21-48. All potentially hazardous food or food products shall be kept at a safe temperature except when being prepared or served. All refrigerators, ice boxes, or cold storage rooms in which food products are kept shall be kept reasonably dry on the inside, and free from foul odors, mold, or slime, and shall be thoroughly cleaned as often as necessary to keep same in a sanitary condition. Said cleaning shall be by a method approved by the health authority. No refuse, garbage, trash, tainted or decayed product shall be kept in such refrigerator, ice box, or cold storage room. Food products stored in a refrigerator shall be so stored as to not contaminate each other. Each such ice box, refrigerator, or cold storage room must be maintained at a temperature of 45 degrees Fahrenheit or less, must have proper circulation provided by fans or other suitable means approved by the health authority, and shall drain into a properly constructed basin or hopper properly trapped in accordance with the City of Abilene Plumbing Ordinance.

"Sec. 21-49. No owner, manager, or employee of any food products establishment, shall knowingly sell, offer for sale, distribute, deliver, use, receive, or manufacture any food product which is adulterated or misbranded, and before

selling or offering for sale, distributing, receiving, delivering, manufacturing, or using any food or food product, said owner, manager, or employee of any food products establishment shall examine said food or food product to insure that same is not adulterated; provided that food or food products enclosed in any original package and sold or delivered unopened need not be examined unless the exterior of the package indicate spoilage.

"Sec. 21-50. No food or food product shall be sold or offered for sale, distributed, delivered, received, manufactured, or used that is not reasonably protected from exposure to or contact with any contaminating matter. All food or food products not securely wrapped or packaged shall be stored in such manner as to prevent the handling thereof by any person other than the persons selling or offering same for sale. Food or food products not so wrapped or packaged (except fresh fruit, vegetables, or melons) must be stored in tightly fitted impervious cases or in a manner as may be approved by the health authority.

"Sec. 21-51. Cracked ice and sliced butter shall not be served by direct contact with hands. A scoop shall be used to transfer ice used in cooling drinks from its place of storage to the container used for serving such drinks. A fork or other approved utensil shall be used for the transfer of butter or margarine from its place of storage to a dish or other receptacle used for the purpose of serving. Ice for cooling drinks shall be stored in such a manner as not to come in contact with any substance of any kind or nature other than the kind used for such storage, and shall be protected from drainage of any liquid of any nature. Nothing shall be stored in the same container in which ice for cooling drinks is stored.

"Sec. 21-52. Drinks bottled in non-leakproof containers shall not be submerged in water for the purpose of cooling. Drinks packaged in paper or paste-board cartons shall be stored only in a dry box.

"Sec. 21-53. Bulk ice cream shall be stored in a separate cabinet from any other matter, or shall be separated in the same cabinet from any other matter by a solid partition.

"Sec. 21-54. Dustless methods of floor cleaning shall be used by all food products establishments and, except in emergency, all floor cleaning shall be done during those periods when the least amount of food is exposed, such as after closing or between the main meal hours.

"Sec. 21-55. A sidewalk or street display of any food or food product is hereby prohibited.

"Sec. 21-56. All employees of food products establishments shall wear clean outer garments. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose. All such employees shall keep their hands clean at all times while engaging in the handling, preparation, or serving of food or food products.

"Sec. 21-57. All vehicles used for transporting food or food products within the City of Abilene shall at all times be kept in a clean, healthful, and sanitary condition. All food and food products shall at all times be carried in closed containers. In the case of meat, in large pieces or wholesale quantities, it shall be sufficient if same is enclosed or completely and securely wrapped. The interior of the bed or box of each such vehicle used for delivering meat or vegetables shall

have a substantial lining or surface of impervious material, constructed so that same shall have no cracks, recesses, or projections, and same shall be constantly kept free of all foul and decaying substances.

"Sec. 21-58. All itinerant restaurants shall comply with all provisions of this section provided that the construction requirements of a building may be deviated from with the prior approval of the health authority.

#### ARTICLE IV - FOOD HANDLERS LICENSE AND DISEASE CONTROL

"Sec. 21-59. No person who is infected with or is a carrier of any infectious or contagious disease shall work in any food products establishment.

"Sec. 21-60. No owner or manager of any food products establishment shall employ any person suspected of being infected with or a carrier of any infectious or contagious disease. Any person working in any food products establishment who is found to be infected with or a carrier of any infectious or contagious disease shall be immediately excluded from the premises and the health authority is authorized to require any or all of the following measures:

- (a) The immediate exclusion of said person from all food products establishments;
- (b) The immediate closing of the food products establishment concerned until no further danger of disease outbreak exists;
- (c) An adequate medical examination of said person and his or her associates with such laboratory examinations as may be indicated, the expense of which shall be borne by the examinee.

"Sec. 21-61. It shall be unlawful for any person to work in a food products establishment and for any owner or manager of a food products establishment to employ any person to work in such establishment who, at the time of such employment, does not have in his possession a current, valid food handler's license issued by the health authority. Prior to the issuance of such food handler's license, the applicant therefor shall submit to such examinations, laboratory tests, and X-rays as the health authority shall deem necessary to determine that said applicant is free from and is not a carrier of any infectious or contagious disease. When any applicant for such food handler's license is found to be free of and not a carrier of any infectious or contagious disease, upon the payment of a fee of Three Dollars (\$3.00) to the health authority, a food handler's license shall be issued to such applicant. Such license shall be valid for one year from the date of issuance thereof, and must be renewed annually upon the same terms and conditions as the original application. Said license shall not be transferable or assignable from person to person.

#### ARTICLE V - APPEAL PROCEDURES

"Sec. 21-62. Any person dissatisfied with an order or ruling of the health authority in the enforcement of this ordinance may appeal to the Abilene-Taylor County Board of Health. A person desiring to so appeal shall file in the office of the health authority, within fifteen (15) days of the ruling or order appealed from, a written appeal which shall include a brief statement of the reasons therefor and a detailed statement of the facts supporting said appeal. Upon the expiration of said fifteen (15) day period without a written appeal being filed with the health

authority, as herein provided, the order or ruling of said health authority shall become final and non-appealable.

"Sec. 21-63. Upon receipt of said appeal, the health authority shall notify the Chairman of the Abilene-Taylor County Board of Health. Said appeal shall be heard no later than the next regular meeting of said Board. Upon the filing of said appeal, the appellant shall be notified as to the time and place of said next regular meeting. Prior to said hearing, the health authority shall furnish each member of the Board with a copy of the written appeal; with a copy of the order or ruling appealed from; with a copy of the section of this code involved in said appeal; and with any other facts pertinent to said appeal.

"Sec. 21-64. Upon the filing of an appeal pursuant to the provisions of the preceding sections, the health authority, if he has not already done so, shall personally investigate the facts upon which said order or ruling and subsequent appeal is based. If, in his opinion, based upon such personal investigation, the facts warrant a stay of the effect of the order or ruling appealed from, pending a determination of the appeal by the Abilene-Taylor County Board of Health, the health authority may so order.

"Sec. 21-65. The Abilene-Taylor County Board of Health shall try said appeal "de novo." All such hearings shall be public and the appellant, his representatives, the health authority, and any other person whose interest may be affected, shall be granted the opportunity to be heard. Such evidence as is pertinent may be introduced by either party. Said Board may adopt such rules of procedure as it may deem appropriate for the conduct of said hearing. The Chairman of said



Board may administer oaths and compel the attendance of witnesses for the purposes of said hearing.

"Sec. 21-66. A concurring vote of a majority of the members of the Board present shall be necessary to reverse or modify rulings or orders of the health authority appealed from. All decisions of the Board shall be in writing. The Board shall keep clear and detailed minutes of all appeal proceedings, including its decisions and the reasons therefor, and the vote of each member participating therein. Such record, immediately following the Board's decision, shall be filed in the office of the health authority and shall be a public record. Notice of the Board's decision shall be properly furnished to the appellant, his representatives, or to any other person who has filed a written entry of appearance, and to the health authority.

"Sec. 21-67. Any person desiring to appeal from a decision of the Abilene-Taylor County Board of Health shall, within fifteen (15) days, appeal to any District Court of Taylor County, Texas, which Court shall determine constitutional issues, questions of law, and whether or not the decision of the Abilene-Taylor County Board of Health was supported by substantial evidence. Said appeal shall not stay the effect of the decision appealed from, unless the Court to which the appeal is taken shall so order. Upon the expiration of said fifteen (15) day period, without an appeal having been perfected as herein provided, the ruling of the Abilene-Taylor County Board of Health shall become final.

#### ARTICLE VI - MISCELLANEOUS

"Sec. 21-68. It shall be the duty of every person holding a permit to operate and maintain a food products establishment and of every employee of such

permit holder to furnish such records and information as the health authority may deem necessary to ascertain that all provisions of this code are being complied with. "

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Section 2: That if any provision of this ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the ordinance are declared to be severable.

Section 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred Dollars (\$200.00).

Each such violation which shall continue or be permitted to continue shall be deemed a separate offense.

Section 4: That upon passage of this ordinance on first reading, the City Secretary be, and she is hereby authorized and directed to cause to have published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, Texas, a notice that a public hearing will be held in the Council Chamber at the City Hall in Abilene, Taylor County, Texas, at 8:30 a.m., on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 196\_\_\_\_, to permit the public to be heard, prior to consideration of this ordinance for second and final reading, said publication to be made more than one week prior to the time designated for the public hearing.

PASSED ON FIRST READING this 9 day of July,  
A. D. 196 4.

After passage a notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 196 \_\_, the same being more than one week prior to the time designated for said hearing. After such opportunity for the public to be heard, said ordinance was passed on its second and final reading.

PASSED ON SECOND AND FINAL READING this 23 day of  
July, A. D. 196 4.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

APPROVED:  
JOHN W. DAVIDSON, City Attorney