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ORDINANCE NO. 437

Copy to:
Health
Dept.

AN ORDINANCE AMENDING CHAPTER 13 OF THE ABILENE CITY CODE OF 1965 BY ADDING A NEW ARTICLE VI THERETO REGULATING THE MANUFACTURE AND SALE OF ICE CREAM AND OTHER FROZEN DESSERTS IN THE CITY OF ABILENE, CALLING A PUBLIC HEARING, AND PROVIDING A PENALTY.

WHEREAS, the Abilene - Taylor County Board of Health has recommended the adoption of an ordinance regulating the sale and manufacture of frozen desserts within the City of Abilene, in accordance with the provisions hereinafter contained, and the City Council is of the opinion that same should be adopted; now, therefore,

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

TEXAS:

PART 1: That the Abilene City Code of 1965 be, and the same is hereby, amended by enacting the following as Article VI of Chapter 13:

FROZEN DESSERTS

SECTION 13-40. DEFINITIONS

A. The terms used in this article, unless specified otherwise, shall have the same meaning as those found in the Frozen Desserts Regulations - Definitions and Standards of Identity - of the Texas State Department of Health, Division of Milk and Dairy Products, as adopted by the State Board of Health, effective November 1, 1966, under authority of provisions in Senate Bill No. 43 of the 57th Legislature (Article 4476-5 V. C. S.) A certified copy of these regulations is filed with the City Secretary's office of the City of Abilene and is made a part of this article by reference.

B. The term "frozen desserts" shall include the terms "ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, fruit sherbets, water ices, mellorine, lorine and fruit sherbines" as such terms are defined in the above mentioned Frozen Desserts Regulations - definitions and standards of identity - of the Texas Department of Health, Division of Milk and Dairy Products.

C. Mix: Mix is the unfrozen combination of all ingredients of a frozen dessert with or without fruits, fruit juices, candy, nut meats, flavor or harmless color.

D. Pasteurization: The term "pasteurization", "pasteurized" and similar terms shall be taken to refer to the process of heating every particle of mix to at least 155 degrees Fahrenheit, and holding at such temperature for at least thirty minutes in approved and properly operated equipment. Provided, that nothing contained in this definition shall be construed as prohibiting any other process which has been demonstrated to be equally efficient and is approved by the Texas State Department of Health.

E. Frozen Desserts Manufacturer. A frozen desserts manufacturer is any person who manufactures, processes, or freezes any mix or frozen desserts for distribution or sale. This does not include restaurants, grocery stores, etc.

F. Frozen Desserts Plant. A frozen desserts plant is hereby defined as any place or premises where frozen desserts or mix are manufactured, processed, or frozen for distribution or sale. This does not include restaurants, grocery stores, etc.

G. Milk Products Plant. A milk products plant shall mean any place or premises where milk or milk products are skimmed, condensed, evaporated, powdered, manufactured into butter, or otherwise processed for subsequent manufacture of mix or frozen desserts.

H. Receiving Station. A receiving station shall mean any place or premises where milk or milk products are received for subsequent delivery to milk products plants or frozen desserts plants.

I. Dairy Farm. Dairy farm is any place or premises where one or more cows are kept, a part of or all of the milk or milk products from which is sold or offered for sale.

J. Health Officer. The term "health officer" shall mean the City Health Officer of the City of Abilene, or his authorized representative.

K. Adulterated or Misbranded Frozen Desserts or Mix. Any frozen dessert or mix which contains any unwholesome substance, or which if defined in this article, or which if defined in the Texas Food and Drug laws does not conform with its definition, shall be deemed adulterated and/or misbranded.

L. And/Or. Where the term "and/or" is used, "and" shall apply where possible, otherwise "or" shall apply.

SECTION 13-41. EXAMINATION OF MILK AND MILK PRODUCTS USED IN THE MANUFACTURE OF MIX AND FROZEN DESSERTS

Within every six (6) month period at least four (4) samples of milk, cream, and milk products intended for use in the manufacture of mix, and four (4) samples of pasteurized mix and/or frozen desserts as offered for sale, shall be taken and examined by the health authority. The examination of samples of milk, cream and milk products intended for use in the manufacture of mix shall be performed as directed by the health authority. The examination of samples of pasteurized mix and/or frozen desserts shall be performed in an official laboratory.

Bacterial counts, coliform determinations, phosphatase tests, and other laboratory and screening tests shall conform to the procedures in the latest edition of STANDARD METHODS FOR THE EXAMINATION OF DAIRY PRODUCTS, of the American Public Health Association, current at the time of adoption of this article. Examinations and tests shall include such other biological, chemical and physical determinations as the health authority shall deem necessary for the detection of adulteration.

Three (3) out of the last five (5) bacterial counts, coliform determinations, or cooling temperatures of samples of milk, cream, and milk products, mix or frozen desserts shall be within the limit specified by this article.

Whenever more than one (1) of the last five (5) consecutive bacterial counts, coliform counts, or cooling temperature of samples of milk, cream, milk products, mix or frozen desserts taken on separate days are beyond the limit specified in this article, the health authority shall send written notice thereof to the person concerned. He shall then take an additional sample, within a reasonable period of time, but not before the lapse of three (3) days. Immediate suspension of the permit shall be called for when three (3) of the last five (5) bacterial counts, coliform determinations or cooling temperatures are beyond the limits specified in this article.

The health authority shall examine at least four (4) samples of pasteurized mix or frozen desserts during each six (6) month period for adequate pasteurization

as determined by a phosphatase test. In the case of a positive result, the probable cause shall be determined and corrected to the satisfaction of the health authority before the mix is frozen or the frozen dessert is sold.

SECTION 13-42. ADULTERATION

The sale of mix or frozen dessert which is adulterated or misbranded is prohibited. No person shall, within the City of Abilene, manufacture, freeze, sell, or offer or expose for sale, or have in possession with intent to sell, any mix or frozen dessert which is adulterated or misbranded.

SECTION 13-43. PERMITS

It shall be unlawful for any person to deliver directly or indirectly into or receive into the City of Abilene for sale, or to produce, sell or offer for sale therein, or to have in storage where mix or frozen desserts are sold or served to the public, any mix or frozen dessert, which was not manufactured in accordance with the terms of this article at a plant and by a manufacturer holding a permit under the terms of this article. Provided, mix or frozen desserts manufactured outside the City of Abilene may be sold, offered for sale, stored, and served to the public if such mix and/or frozen desserts have been manufactured under regulatory provisions equivalent to the requirements of this article, as provided in Section 13-51 hereof, and the manufacturer has a permit, issued by the City of Abilene, under this article.

Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit.

Every frozen desserts manufacturer, situated either inside or outside the City, who desires to sell his products within the city limits of the City of Abilene shall, within sixty (60) days from the effective date of this article, make application to the Health Officer for a Permit to manufacture frozen desserts or frozen desserts mix and/or to sell such products in the City of Abilene.

Any new manufacturer of such products shall make application prior to beginning the production or selling of such products. These permits will be good for a period of one (1) year, beginning January 1 and ending on December 31. At the time of making such application, applicant shall pay to the City of Abilene the sum of Two Hundred (\$200.00) Dollars for a Frozen Dessert Permit. Those frozen dessert plants manufacturing and/or selling only mix shall pay a permit fee of Fifty (\$50.00) Dollars,

which shall be for one complete calendar year from January 1st to December 31st.

Such permits may be revoked by the Health Officer of the City of Abilene upon violation by the holder of any of the terms of this article, or, in any emergency, when in the judgment of the Health Officer, the frozen desserts or frozen desserts mix supply for the holders has become a public menace; provided that the holder of said Permit shall, after complying with such revocation, have the right to appeal to the Abilene-Taylor County Board of Health, such appeal to be perfected by filing written notice with the Chairman of the Board within ten (10) days from such revocation. Said permit shall be non-transferrable and shall only be good for business transacted from the place for which it was issued.

SECTION 13-44. LABELING

All cans, packages, and other containers enclosing mix or frozen desserts or their ingredients derived from milk, except those filled from labeled bulk containers in retail dispensing, shall be plainly labeled or marked with: (1) the name of the contents; (2) in the case of mix the word "Pasteurized" if the contents have been pasteurized, and the word "raw" if the contents have not been pasteurized; and (3) the name and the street address, or the permit number, of the plant at which the contents were placed in the container. A descriptive word or phrase indicating in more detail the composition or flavoring of the mix or frozen dessert, such as strawberry, chocolate, custard, etc., may be used on the label. The label or mark shall be in letters of a size, kind, and color approved by the Health Officer. Trade names and trademarks may be permitted. The label shall contain no marks or words which are misleading.

SECTION 13-45. INSPECTION OF FROZEN DESSERTS PLANTS

At least once during each six (6) months period the Health Officer shall inspect all frozen desserts plants, the products of which are intended for consumption within the City of Abilene. In case the Health Officer discovers the violation of any item of sanitation, he shall make a second inspection after a lapse of such time as he deems necessary for the defect to be remedied, but not before the lapse of three (3) days, and the second inspection shall be used in determining compliance with the requirements of this article. Any violation of the same item of this article on two (2) consecutive inspections shall require immediate suspension of permit.

One copy of the inspection report shall be delivered to the owner of the premises inspected, or his agent, and shall be readily available at any time for a period of twelve (12) months. Another copy of the inspection report shall be filed with the records of the Health Department.

SECTION 13-46. STANDARDS

Milk, cream, milk products, pasteurized mix and frozen desserts shall not exceed the following standards:

BACTERIAL, COLIFORM, AND TEMPERATURE STANDARDS FOR MILK, CREAM, MILK PRODUCTS, PASTEURIZED MIX AND FROZEN DESSERTS.

Raw for Pasteurization		Pasteurized		
Bacteria Count per ml.	Temperature	Bacteria Count per ml.	Coliform Determination per ml.	Temperature
400,000	45° F.	50,000	10 per ml.	45° F.
600,000	45° F.	50,000	10 per ml.	45° F.
400,000	45° F.	50,000	10 per ml.	45° F.
--	--	50,000	10 per ml.	45° F.
Frozen Dessert	--	50,000	10 per ml.	

*milliliter

SECTION 13-47. SANITATION REQUIREMENTS FOR FROZEN DESSERTS

PLANTS

All frozen desserts plants shall comply with the following items of sanitation:

Item 1. Floors. The floors of all rooms in which mix, frozen desserts, or their ingredients are manufactured, frozen or stored, or in which containers and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material, and shall be smooth, properly drained, provided with trapped drains, and kept clean; provided, that cold storage rooms need not be provided with drains; provided further, that the construction requirements of this item shall be waived, in frozen desserts plants which freeze and sell only at retail on the premises, if the portion of the room in which the freezer is installed, and the room in which containers or utensils are washed have impervious floors or solid floors covered with tight linoleum or other approved, washable material.

Item 2. Walls and Ceilings. Walls and ceilings of rooms in

which mix, frozen desserts, or their ingredients are manufactured or frozen, or in which containers or the utensils are washed, shall have a smooth, washable, light-colored surface, and shall be kept clean.

Item 3. Doors and Windows. Unless other effective means are

provided to prevent the access of flies, all openings to the outer air shall be effectively screened and doors shall be self-closing.

Item 4. Lighting and Ventilation. All rooms shall be well lighted and ventilated.

Item 5. Miscellaneous Protection from Contamination. The var-

ious plant operations shall be so located and conducted as to prevent any contamination of the mix, frozen desserts, their ingredients, cleaned equipment or containers. All means necessary for the elimination of flies shall be used. Separate rooms shall be provided for (a) pasteurizing, processing, cooling and freezing, and (b) the washing and bactericidal treatment of containers; provided, that requirement (a) shall be satisfied, in frozen desserts plants which freeze and sell only at retail on the premises, if all mixing, freezing, and packaging processes, but not necessarily the hardening and storage compartments, are enclosed in a tight glass or other sanitary enclosure which is open only on the side farthest from the public, which has a dust-tight top extending over the entire freezer, and which is protected by a fan so installed and of such power as to prevent the entrance of flies. Containers of frozen desserts ingredients shall not be unloaded directly into the room or rooms used for pasteurization, or subsequent processes. Pasteurized mix or frozen desserts shall not be permitted to come in contact with equipment with which unpasteurized mix, frozen desserts, milk, or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. None of the operations connected with a frozen desserts plant shall be conducted in a room used for domestic purposes.

Item 6. Toilet Facilities. There shall be provided toilet facilities conforming with the Ordinances of the City of Abilene, and which are kept clean, well ventilated, and in good repair. Toilet rooms shall not open directly into any room in which frozen desserts, their ingredients, equipment or containers are handled or

stored. The doors of all toilet rooms shall be self-closing.

Item 7. Water Supply. The water supply shall be easily accessible, adequate, and of a safe, sanitary quality.

Item 8. Hand-Washing Facilities. Convenient hand-washing facilities shall be provided, including warm running water, soap, and approved sanitary towels. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands.

Item 9. Sanitary Piping. All piping used to conduct ingredients, mix, or frozen desserts shall be sanitary milk piping of a type which can be easily cleaned.

Item 10. Construction and Repair of Containers and Equipment. All multiuse containers and equipment with which mix, frozen desserts, or their ingredients come in contact shall be constructed in such manner as to be easily cleaned, and shall be kept in good repair.

Item 11. Disposal of Wastes. All wastes shall be properly disposed of.

Item 12. Cleaning and Bactericidal Treatment of Containers and Equipment. All multi-service containers and equipment for mix, frozen desserts, or their ingredients shall be thoroughly cleaned after each usage. When empty and before being returned by a frozen desserts plant, each milk and milk products container shall be effectively cleaned and subjected to bactericidal treatment.

Item 13. Storage of Containers. After bactericidal treatment, all multiuse containers for mix, frozen desserts, and their ingredients shall be stored in such manner as to be protected from contamination.

Item 14. Handling of Containers and Equipment. Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled or operated in such manner as to permit contamination of the frozen desserts, mix or their ingredients.

Item 15: Storage and Handling of Single Service Containers and Utensils. Caps, parchment papers, wrappers, can liners, and single-serve sticks, spoons and containers for frozen desserts, mix or their ingredients shall be purchased

only in sanitary containers; shall be kept therein in a clean, dry place and shall be handled in a sanitary manner.

Item 16. Pasteurization of Mix. All mix shall be pasteurized as described in Section 13-40 (D) of this article.

Item 17. Cooling and Handling. All milk and fluid milk products received at the frozen desserts plant for use in frozen desserts or mix shall immediately be cooled in approved equipment to 45 degrees Fahrenheit or less, and maintained at that temperature until pasteurized, unless they are to be pasteurized within two (2) hours after receipt; and all pasteurized mix shall immediately be cooled in approved equipment to an average temperature of 45 degrees Fahrenheit or less, and maintained thereat until frozen. All mix which is not frozen at the plant at which it was pasteurized shall be transported to the place of manufacturing or freezing in sealed containers, and the mix shall be handled in a sanitary manner. Dipping from containers of pasteurized mix is prohibited.

Item 18. Packaging. Cutting, molding, dipping, freezing, handling and other preparation of mix or frozen desserts or their ingredients shall be done in an approved manner. Containers shall be adequately covered immediately after filling. Caps or covers shall be handled in such manner as to prevent contamination of the package contents.

Item 19. Overflow or Spillage. Product drip, or overflow or spilled mix or frozen desserts or their ingredients, shall not be sold for human consumption.

Item 20. Returns. Mix or frozen desserts in open or broken containers may after delivery be returned to the plant for inspection, but shall not be used for making mix or frozen desserts.

Item 21. Personnel, Health. All employees of Frozen Desserts Plants situated within the City of Abilene shall comply with Section 13-10 of this Chapter. All employees of Frozen Desserts Plants situated outside the City of Abilene shall, prior to such Frozen Desserts Plant obtaining a permit under this article and thereafter so long as such permit is in effect, comply with applicable ordinances of the City where situated governing same.

Item 22. Personnel, Cleanliness. All persons coming in contact with mix, frozen desserts, their ingredients, containers, or equipment, shall wear clean outer garments and shall keep their hands clean at all times while thus engaged.

Item 23. Miscellaneous. All vehicles used for the transportation of mix or frozen desserts or their ingredients shall be so constructed and operated as to protect their contents from the sun, and from contamination. Such vehicles shall be kept clean, and no substance capable of contaminating mix or frozen desserts or their ingredients shall be transported therewith in such manner as to permit contamination. All vehicles used for the distribution of mix or frozen desserts shall have the name of the distributor prominently displayed.

The immediate surroundings of all frozen desserts plants shall be kept in a neat, clean condition.

Item 24. Bacterial Plate Count of Pasteurized Mix or Frozen Desserts. Not to exceed 50,000 per milliliter.

Item 25. Ingredients. All mix and frozen desserts ingredients shall be clean, have a fresh wholesome flavor and odor and a normal appearance, be of satisfactory quality, and shall be handled or processed in an approved manner.

SECTION 13-48. FROZEN DESSERTS PLANTS WHICH MAY SELL THEIR PRODUCTS

From and after sixty (60) days from the date on which this Ordinance takes effect, no mix or frozen desserts shall be sold for ultimate consumption within the City of Abilene unless it has been manufactured and frozen in a plant conforming with the requirements of this article; provided, that when any frozen desserts plant fails to qualify the Health Officer is authorized to revoke the Permit.

SECTION 13-49. SUSPENSION AND REISSUING OF PERMIT

If at any time a suspension of the Permit shall become justified in any case, the Health Officer shall, subject to the provisions of Sections 13-42, 13-44, 13-45 and 13-46 of this article, immediately suspend the Permit of said frozen desserts plant.

Any frozen desserts plant, the Permit of which has been suspended by the

Health Officer may at any time make application for the reissuing of the permit.

In case the suspension of Permit is due to the violation of any item or items of the specifications prescribed in Section 13-46, other than bacterial conditions or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violation item or items of the specifications have been conformed with. Within one week of the receipt of such an application and statement, the Health Officer shall make a re-inspection, and thereafter as many additional re-inspections as he may deem necessary to assure himself that the applicant is again complying with the requirements, and in case the findings indicate compliance, shall reissue the Permit.

SECTION 13-50. TRANSFERRING AND DISPENSING FROZEN DESSERTS

No person, selling to the public, shall transfer frozen desserts from one container to another, or package the same on the street or in any vehicle or in any place except a sanitary room under approved conditions.

SECTION 13-51. MIX AND FROZEN DESSERTS FROM POINTS BEYOND THE LIMITS OF ROUTINE INSPECTION

Mix and frozen desserts from points beyond the City limits of the City of Abilene may not be sold in the City of Abilene, unless controlled under provisions equivalent to the requirements of this article; provided, that the Health Officer shall satisfy himself that the Health Officer having jurisdiction over the manufacture is properly enforcing such provisions.

SECTION 13-52. FUTURE FROZEN DESSERTS PLANTS

All frozen desserts plants from which mix or frozen desserts are supplied to the City of Abilene, which are hereafter constructed, reconstructed, or extensively altered, shall conform in their construction to the requirements of this article.

Properly prepared plans for all frozen desserts plants which are hereafter constructed, reconstructed, or extensively altered shall be submitted for approval before work is begun, and signed approval shall be obtained from the Health Officer and/or the State Health Department.

SECTION 13-53. NOTIFICATION OF DISEASE

Notice shall be sent to the Health Officer immediately by any frozen desserts

manufacturer or distributor among whose employees any infection, contagious, or communicable disease occurs.

SECTION 13-54. PROCEDURE WHEN INFECTION SUSPECTED

When suspicion arises as to the possibility of transmission of infection from any person concerned with the handling of mix, frozen desserts, or their ingredients, the Health Officer is authorized to require any or all of the following measures:

(1) the immediate exclusion of that person handling mix, frozen desserts, or their ingredients; (2) the immediate exclusion of the supply concerned from distribution and use; (3) adequate medical and bacteriological examination of the person and his associates, and of his and their bodily discharges.

PART 2: Upon passage of this Ordinance on first reading the City Secretary shall 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, a notice that a public hearing will be held in the Council Chamber of the City Hall in Abilene, Taylor County, Texas at 9:00 A.M. on the 26th day of June, A. D., 1969, to permit the public to be heard prior to consideration of this Ordinance for second and final reading, said publication to be at least twenty-four (24) hours prior to the time of such public hearing.

PART 3: That any person, firm or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Two Hundred and No/100 (\$200.00) Dollars. Each such violation which shall continue or be permitted to continue shall be deemed a separate offense.

PART 4: This Ordinance shall become effective the 26th day of June, A.D., 1969.

PASSED ON FIRST READING this 12th day of June, A. D., 1969.

PASSED ON SECOND AND FINAL READING this 26th day of June, A. D., 1969.

ATTEST:

Carolyn L. Berman
CITY SECRETARY

J. C. Huntley
MAYOR

APPROVED:

D. R. Ball
CITY ATTORNEY