

ORDINANCE NO. 01-2016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 11, ARTICLE I, SECTION 11-1, "PURPOSE; SCOPE," SECTION 11-3, "ADOPTED", SECTION 11-4 "APPEALS, CITY MANAGER; TEXAS DEPARTMENT OF HEALTH; GENERALLY", ARTICLE II, SECTION 11-6, "ISSUANCE", SECTION 11-8, "TERM; TRANSFER; RENEWAL", SECTION 11-9, "REVOCATION OR SUSPENSION; REINSTATEMENT", ARTICLE III SECTION 11-12, "PERMIT REQUIRED", SECTION 11-13, "REQUIREMENTS", AND SECTION 11-14, "ISSUANCE" OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.**

**WHEREAS**, there is a need to protect the health, safety, and welfare of the citizens of the City of Abilene; and

**WHEREAS**, rules to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented are a mechanism to protect the health, safety, and welfare of the citizens of the City of Abilene; and

**WHEREAS**, the Texas Food Establishment Rules, previously found in 25 Texas Administrative Code, Chapter 229.161 et al, have changed and are now provided at 25 Texas Administrative Code Chapter 228;

**WHEREAS**, the designation of health authority should be replaced with the designation of City Manager or his or her designee; and

**WHEREAS**, adoption by ordinance of the new Texas Food Establishment Rules is necessary to allow enforcement of the Texas Food Establishment Rules in compliance with State law.

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

**PART 1:** That Chapter 11, Article I, Sections 11-1, 11-3, 11-4, Article II, Sections 11-6, 11-8, 11-9, and Article III, Sections 11-12, 11-13, and 11-14 of the Code of Ordinances, City of Abilene, Texas, is hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

**PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

**PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON FIRST READING this 17<sup>th</sup> day of December, 2015.**

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 10th day of January, 2016, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 14th day of January, 2016, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON SECOND AND FINAL READING this 14<sup>th</sup> day of January, 2016.**

ATTEST:

  
CITY SECRETARY

  
MAYOR

APPROVED:

  
CITY ATTORNEY

## EXHIBIT A

### **Sec. 11-1. Purpose; scope.**

- (a) Purpose. The purpose of this chapter is to provide rules to safeguard public health and to provide consumers food that is safe, unadulterated, and honestly presented.
- (b) Scope. The rules in these sections shall cover food establishments and food processing plants operating and conducting business within the City of Abilene. It shall be the duty of the City Manager or his designee (the "Administrator") to enforce the provisions of this chapter.

### **Sec. 11-3. Adopted.**

The City of Abilene adopts by reference the provisions of the current rules, and as amended by the Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments in this jurisdiction, and the rules found at 25 Texas Administrative Code, Chapter 229, subchapter K, regarding the regulation of accreditation and certification of food managers and food handlers, and as amended. Copies of these rules are on file with the Administrator.

### **Sec. 11-4. Appeals; Administrator; Texas Department of Health; generally.**

- (a) Administrator. Any person dissatisfied with an order or ruling of the environmental health inspector in the enforcement of the provisions of this chapter may appeal for an administrative review by the Administrator.
- (b) Texas Department of State Health Services. Any person dissatisfied with an order or ruling of the Administrator in the enforcement of this chapter, and all amendments thereto, may appeal to the Texas Department of State Health Services, Bureau of Food and Drugs, Retail Food Division, 1100 West 49th Street, Austin, Texas 78756. Pending a decision of this appeal, the director of the Administrator may issue a provisional permit to operate. The provisional permit to operate shall be good for a period of sixty (60) days from date of issuance and may be extended for an additional sixty (60) days from date of issuance and may be extended for an additional sixty (60) days.
- (c) Generally. A person desiring to so appeal shall file in the office of the Administrator, within fifteen (15) days of the ruling or order appealed from, a copy of the written appeal which shall include a brief statement of the reasons and a detailed statement of the facts supporting the appeal. Upon the expiration of the fifteen-day period without a written appeal being filed with the Administrator, as herein provided, the order or ruling of the environmental health inspector shall become final and nonappealable.

### **Sec. 11-6. Issuance.**

Prior to beginning operation as a food establishment or food processing plant, a person shall contact the Administrator and request an inspection for permit. This inspection for permit shall

only be made if a current certificate of occupancy has been issued by the city building official to the building or structure where the food establishment or food processing plant is located. At the time of the inspection for permit the Administrator shall determine that the facility meets all of the rules and regulations of this chapter. Upon such determination, the person shall submit the completed application for permit and the required permit fee to the Administrator for a permit to be issued.

**Sec. 11-8. Term; transfer; renewal.**

A permit for a food establishment or a food processing plant shall be valid only for the calendar year in which it is issued ending December thirty-first, unless sooner revoked. The permit shall not be transferred or assigned, and shall be considered revoked should the location of the food establishment be changed or should same be sold or otherwise disposed of by the owner thereof. The permit shall be renewed annually by submission of a completed application and the required permit fee to the Administrator.

**Sec. 11-9. Revocation or suspension; reinstatement.**

Any permit granted herein, at the direction of the Administrator, shall be subject to revocation or suspension for failure of the grantee named therein or any of his employees, agents or representatives to operate the food products establishment in accordance with this chapter and all food and sanitary laws of the state. The permit shall be considered revoked if the city building inspections department revokes the certificate of occupancy for the building or structure in which the food establishment or food processing plant is located. Upon notice of revocation or suspension, the operation of the food establishment or food processing plant shall be immediately discontinued until there is compliance with the terms and provisions of this chapter. An application for reinstatement of this permit shall be made under the same terms and conditions as the original application.

**Sec. 11-12. Permit required.**

No person shall conduct, operate or maintain a temporary food establishment in the city who does not possess a valid permit from the Administrator as herein provided. Such permit is valid for up to fourteen (14) days and must be kept posted in the temporary food establishment.

**Sec. 11-13. Requirements.**

Requirements for a temporary food establishment shall be developed and provided by the Administrator in accordance with the requirements of state law.

**Sec. 11-14. Issuance.**

Prior to beginning operation as a temporary food establishment, a person shall contact the Administrator and request an inspection for permit. At the time of the inspection for permit, the Administrator shall determine whether the facility meets all of the rules and regulations pertaining to temporary food service, as required by the Administrator. Upon such determination,

the person shall submit the completed application for permit and the required permit fee to the Administrator for a permit to be issued.