

ORDINANCE NO. 2021-19

AN ORDINANCE OF THE CITY OF IOWA COLONY, TEXAS, FOR THE PURPOSE OF **REGULATING FOOD SERVICE ESTABLISHMENTS**; REQUIRING PERMITS; PROVIDING A PENALTY OF UP TO \$2,000 PER DAY FOR A VIOLATION OF THIS ORDINANCE; WITH RELATED PROVISIONS.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA COLONY, TEXAS:**

**ARTICLE I. GENERAL**

**Sec. I-1. State Regulations Adopted.**

The City of Iowa Colony adopts the Texas Food Establishment Rules promulgated by the Texas Department of State Health Services and set forth in 25 Texas Administrative Code Chapter 228 ("the TFER"). The Texas Food Establishment Rules are incorporated herein by reference for all purposes and shall govern the food establishments in the City, together with all other provisions of this ordinance and any other applicable law. A copy of the Texas Food Establishment Rules shall be on file in the office of the city secretary.

**Sec. I-2. Definitions.**

The definitions in the Texas Food Establishment Rules shall apply to the terms used in this ordinance. Additionally, the following words, terms, and phrases shall have the meanings set forth below, except where the context clearly indicates a different meaning:

*Authorized agent or employee* means an employee(s) of the City of Iowa Colony.

*Food establishment* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

- (a) A restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, ending location, (machine), self-service food market, conveyance used to transport people, institution, or food bank;
- (b) An establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout order, or delivery service that is provided by common carriers; and
- (c) Includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on- or off-premises; and regardless of whether there is a charge for the food.

- (d) Food establishment does not include an establishment that offers only prepackaged foods that are not time/temperature controlled for safety food, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold or offered for human consumption, a bed and breakfast limited facility as defined in the TFER, or a private home that receives catered or home-delivered food.

*Inspection report card* means a document with the letter grade that is assigned by the health officer based on the total inspection score at the completion of the inspection of a food establishment.

*Inspection report form* means a complete report of a food establishment or mobile food unit inspection. This document shall reference by section number each section violated and shall state the correction to be made.

*Temporary food establishment* means a food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration. This may include a stand or a booth.

*Mobile food unit (MFU)* means a vehicle mounted, self or otherwise propelled, self-contained food service operation that is manufactured, modified, designed, or used to be readily movable (including, but not limited to catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve, or sell food. Mobile units must completely retain their ability to move at all times. A mobile food unit does not include a stand or a booth. A roadside food vendor is also classified as an MFU.

*Mobile food unit—additional permit to an existing food establishment* means a mobile food unit operated by an existing permitted food establishment as an additional source of food service.

*Non-profit organization* means an organization which exists for educational or charitable reasons, and from which its shareholders or trustees do not benefit financially. Non-profit status must be verified by submission of supporting documentation, such as an IRS form 501c.

*Person in charge (PIC)* means the individual present at a food establishment who is responsible for the operation at the time of inspection.

*Regulatory authority* means the City of Iowa Colony, Texas.

*Texas Food Establishment Rules ("TFER")* means the most current version of the rules promulgated by the Texas Department of State Health Services and set forth in 25 Texas Administrative Code, Chapter 228, as they may be amended from time to time.

### **Sec. I-3. Application of Ordinance.**

- (a) This Ordinance shall apply to all areas within the corporate limits of the city.
- (b) Persons or organizations whose food services are regulated and regularly inspected by another federal or state governmental entity are required to comply with this Ordinance.

#### **Sec. I-4. Enforcement.**

- (a) The position of Health Official is hereby established. The Health Official is not a department head and shall be appointed and removed as provided in the Home Rule Charter. Regardless of any other provision from any source, the Health Official serves at the will of the City.
- (b) The Health Official must have all qualifications required either by law to enforce this ordinance or by the City Manager.
- (c) The City Manager may appoint one or more Deputy Health Officials, and any reference herein to the Health Official shall also include any Deputy Health Officials, unless the context clearly requires otherwise.
- (d) The Health Official is hereby authorized to enforce this ordinance.

### **ARTICLE II. PERMIT**

#### **Sec. II-1. Required.**

No person shall participate in any way in operating a food establishment, temporary food establishment, mobile food unit, child care center, or group residence that provides food service without a valid permit issued by the city. Permits are not transferable from place to place or person to person. A valid permit shall be posted in public view in every establishment required to have a permit. Each and every food establishment, whether under one roof or not, shall be considered a separate establishment, and a permit must be obtained for each establishment. Each such establishment is subject to the requirements in this Ordinance.

#### **Sec. II-2. Duration.**

- (a) Permits shall be issued annually and shall extend from the date of issuance or renewal, as applicable. Annual renewal applications must be submitted at least thirty (30) days prior to the expiration date of the permit. A permit shall be issued only if the establishment is in complete compliance with this Ordinance.
- (b) A mobile food unit (commonly known as a 'food truck') that operates for a period of no more than three (3) consecutive days in conjunction with a single event or celebration may obtain a temporary food establishment permit.

#### **Sec. II-3. Fees.**

- (a) Before any application for a permit under this Ordinance shall be considered filed, the applicant shall pay the applicable fees set forth in the Fee Ordinance of the City.
- (b) The re-inspection fee set forth in the Fee Ordinance shall apply in cases where reinspection is deemed necessary by the city's Health Official.
- (c) A non-profit organization as defined by this Ordinance is required to submit an application for a permit, and upon submission of supporting documentation of nonprofit status, the organization will be issued a permit, but all fees associated with this permit shall be waived.

(d) Permit application fees are not refundable and shall not be prorated.

**Sec. II-4. Suspension and Other Decisions of the Health Official.**

(a) The city may suspend any permit to operate a food establishment, temporary food establishment, and/or mobile food unit, if the permit holder does not comply with the requirements of this Ordinance, and the violation creates an immediate threat to the health or safety of any portion of the public. Suspension is effective upon written notice, and service operations shall immediately cease. Whenever a permit is suspended, the city shall notify the permit holder or the person in charge of the food establishment in writing of the reason(s) for the suspension.

(b) The notice of suspension shall also inform the recipient of the opportunity to appeal the suspension to the Building Codes Board of Appeals.

(c) The Building Codes Board of Appeals is hereby authorized to hear appeals from decisions of the Health Official under the same rules and procedures applicable to an appeal to that Board under the Building Codes.

**Sec. II-5. Revocation.**

The city may revoke a permit for serious or repeated violation(s) of any of the requirements of this Ordinance or for interference with the health official/code compliance officer in the performance of his/her duties. Prior to revocation, the city shall notify the permit holder or the person in charge of the food establishment in writing of the reason(s) for which the permit is subject to revocation and inform them of the opportunity for a hearing before the city manager. If the permit holder requests a hearing, they shall file their written request for a hearing with the city secretary within ten (10) days following service of such notice of revocation. If a request for hearing is filed, a hearing shall be scheduled within thirty (30) days of the city's receipt of such request. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

**Sec. II-6. Service of Notice.**

A notice provided for in this Ordinance is properly served when it is delivered to the permit holder or the person in charge of the establishment; when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder or person in charge of the establishment; or when it is delivered to the last known address of the permit holder or of the person in charge of the establishment by a well-established commercial courier such as Federal Express or United Parcel Service, for example.

**Sec. II-7. Application for a New Permit After Revocation.**

The holder of a permit that has been revoked must wait one hundred eighty (180) days after the final date of the revocation decision before making written application for a new permit.

**ARTICLE III. INSPECTIONS**

**Sec. III-1. Frequency.**

Inspections shall be performed as often as necessary to enforce this Ordinance.

**Sec. III-2. Access.**

The authorized agent of the City, after proper identification, shall be permitted to enter any food establishment, mobile food unit, or establishment for which a permit has been issued or is required, at any reasonable time for the purpose of making inspections to determine compliance with this Ordinance. The employees/agents of the City shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received or used or to persons employed by the establishment, and compliance with this ordinance.

**Sec. III-3. Reports.**

When an inspection of a food establishment is conducted, the findings shall be recorded on an inspection report form, and a copy of each inspection report form with number score and corresponding letter grade shall be provided to the food service manager or other person in charge (PIC) of the establishment. Upon conclusion of the inspection, the city's health officer shall post the retail food establishment's inspection report card on the main public entrance of the establishment showing the number score and corresponding letter grade. No person except the City Health Officer shall alter, deface, or remove the inspection report.

**Sec. III-4. Correction of Violations.**

(a) The inspection form shall specify a reasonable period of time to correct the violations and such violations must be corrected within the specified period; provided, however that:

- (1) If an imminent health hazard exists the establishment, including a mobile food unit, shall immediately cease food service operations and operations shall not be resumed until authorized by the city; and
- (2) All violations at temporary food establishments shall result in cessation of temporary food service operations.

(b) The establishment or mobile food unit shall not resume operations until such time as a reinspection determines that the condition(s) responsible for the requirement to cease operations no longer exists. The city shall offer to reinspect the establishment within a reasonable time.

**ARTICLE IV. CONSTRUCTION, REMODELING AND CONVERSION**

**Sec. IV-1. Plans.**

Two (2) sets of properly prepared plans and specifications for each construction, remodeling, or alteration of a food establishment shall be submitted to the code compliance department prior to any on-site construction. The plans must be drawn to scale no smaller than one-eighth inch and shall consist of a plot plan, floor plan, foundation plan, structural plan, plumbing plan, elevation plan, wall section, engineer's scale and survey (if required by applicable law), mechanical and electrical details, and health equipment detail with elevations.

**Sec. IV-2. Other Code Requirements.**

A building permit shall be required for construction, alteration, remodeling, or conversion of a food establishment in accordance with the International Building Code adopted by the city. Any construction, alteration, remodeling, or conversion of a food establishment shall comply with all applicable federal and state laws and codes and regulations of the city. To the extent of a conflict between or among the provisions of this Ordinance and other codes or ordinances of the city, the more restrictive provision shall control.

#### **Sec. IV-3. Ownership of Food Establishment.**

- (a) Often, when an existing food establishment is purchased, the purchase does not include the property or the structure, but includes the rental or lease of space and equipment. The city requires that the person who operates a food establishment obtain a valid food dealer's permit. The person who applies for the food dealer's permit is considered, legally, to be the owner.
- (b) The person who is registered on the food dealer's permit is the responsible party for the property, premises, structure and complete operating services. The operator of the food establishment is the ultimate responsible party, and the conditions under which the food establishment was leased or rented does not release the operator from the requirements of this Ordinance.
- (c) A new owner may continue to operate a food establishment without interruption from the city when the establishment is in complete compliance with this Ordinance. Total compliance is the basis for issuing the food dealer's permit, which must be obtained prior to opening the establishment for business. An inspection of the premises and operations can demonstrate the extent to which the food establishment is in compliance. Upon normal conditions, depending on the condition of the food establishment, many violations can be corrected within such a short period of time that an interruption of food services is unnecessary and not required.
- (d) Depending on the wear and tear (depreciation) on the establishment, the building and equipment may already be close to compliance, and it is the responsibility of the new owner to schedule an inspection from the city to determine what is required to meet current codes.

### **ARTICLE V. MOBILE FOOD UNITS**

#### **Sec. V-1. General.**

A mobile food unit is subject to and must comply with not only this ordinance but also all other applicable requirements in all other ordinances, including but not limited to the Food Truck Ordinance No. \_\_\_\_\_. [Drafter's Note: This blank on the final version of this ordinance will be filled in with the number of the food truck ordinance as probably passed at the same meeting as this ordinance.], as it may be amended from time to time, and all other applicable law. The city's health official and/or code enforcement officer, may also impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation and may prohibit the sale of some or all potentially hazardous foods.

#### **Sec. V-2. Mobile Food Unit Regulations.**

The following additional regulations shall apply to mobile food units:

- (1) *Plan submission.* Plans must be submitted to the code compliance department at the time of permit application prior to operation of a mobile food unit. Plans shall show the signage, layout, arrangement of equipment, and construction material of the inside of the mobile food unit including food preparation, storage and service window areas.
- (2) *Fixed location.* A mobile food unit operating from a fixed location shall obtain written permission from the property owner to operate on the property owner's premises. A copy of such letter must be provided to the city with the permit application. The operator of a fixed location mobile food unit shall notify the code compliance department each time the mobile food unit changes location of operation no later than twenty-four (24) hours after the change has taken place and provide written permission to operate at such location. A mobile food unit operating from a fixed location cannot set up within twenty-five (25) feet of the roadway or the public easement.
- (3) *Identification of mobile food units.* Every mobile food unit must be readily identifiable by the business name which must be printed, permanently affixed and prominently displayed upon at least two (2) sides of such units in letters not less than three (3) inches in height.

Additionally, the following identification requirements are for mobile food units used for the purpose of selling or dispensing frozen desserts, prepackaged food and beverages from a moving truck:

- a. A sign clearly visible from both the front and the rear, mounted on the top of the truck, must bear the warning sign "CAUTION - CHILDREN". The lettering for such sign shall be in block style letters and not less than six (6) inches in height and one-half inch wide, and letters shall be black against a yellow background.
  - b. Flasher-type warning lights displaying yellow to the front and red to the rear and which operate continuously while the truck is stopped for the purpose of making a sale shall be installed at each end of the "CAUTION - CHILDREN" sign.
- (4) *Sanitation requirements.* The following additional sanitation requirements shall apply:
- a. Any accident involving a mobile food unit shall be reported in writing, to the code compliance department within twenty-four (24) hours from the time the accident occurred, and before operation of mobile food unit resumes if such accident results in damage to the water system, waste retention tank, food service equipment, or any facility which may result in the contamination of the food being carried. Such report shall be made by the holder of the mobile food unit permit.
  - b. In the event that the permit issued under this Ordinance to any food establishment that has agreed to be a central preparation facility for a mobile food unit has been revoked, suspended, or without timely renewal, the permit for the same mobile food unit shall be automatically suspended until and unless the permit for the food establishment is restored to valid status.

## ARTICLE VI. MISCELLANEOUS

**Sec. VI-1. Conflicts in Terms.**

In the event of a conflict of terms between this ordinance and any other ordinance or other law, the more restrictive provision shall govern and control.

**Sec. VI-2. Future Amendments.**

Future amendments of any codes, statutes, rules, or regulations hereby adopted (other than clarifications or technical notices of any type) are not adopted by this Ordinance and must be subsequently approved and adopted by the City Council.

**Sec. VI-3. Effect of Ordinance.**

This ordinance shall not be construed to relieve or lessen the responsibility of any person owning, operating, or controlling any food establishment for any damages to persons or property caused by defects, nor shall the City Council, the City, its agents or representatives assume any such liability by reason of these regulations, the inspections authorized by this Ordinance, or any permits or certificates issued pursuant to this Ordinance.

**Sec. VI-4. References to Ordinance.**

Any reference herein to this Ordinance shall also refer to any codes, statutes, rules, and regulations adopted by this Ordinance.

**Sec. VI-5. Offenses, Penalties, and Remedies.**

a. Any references in this Ordinance to “the penalty provisions of this Ordinance” or similar phrases shall refer to this section and the penalties herein.

b. Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance or of any code, statute, rule, or regulation hereby adopted shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000.00.

c. Any person who violates any provision of this Ordinance, but does so neither intentionally, knowingly, recklessly, nor with criminal negligence, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500.00.

d. Each day or portion of a day a violation continues, occurs, or recurs shall constitute a separate offense.

e. The City shall have the right to enforce this ordinance and any code, statute, rule, or regulation hereby adopted by injunction and by other actions in a civil court and/or by any and all remedies from any and all sources.



f. All rights and remedies of the City provided in this ordinance shall be cumulative of all other rights and remedies provided herein, by other ordinances, or by any applicable law. Furthermore, the exercise of one right or remedy by the City shall not be construed as an election of remedies and shall not impair any other right or remedy of the City. The City may exercise any right or remedy herein either alone or together with any other right or remedy under this ordinance, any other ordinance, or any applicable law. Without limiting the generality of the foregoing, pursuing or receiving any civil remedy for any violation of this ordinance shall not preclude the pursuit or receipt of any criminal penalty for any violation hereof.

**Sec. VI-6. Nonwaiver.**

The failure or omission of the City, upon one or more occasions, to enforce any right, obligation, or remedy under this Ordinance or any other law concerning utilities shall never be construed as a waiver of the City's right to strictly enforce such right, obligation, or remedy, and the City may resume such strict enforcement without advance notice.

**Sec. VI-7. Nonwaiver of Immunity.**

Nothing in this Ordinance or in any other law concerning utilities shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the City or its officers, agents, employees, or representatives.

**Sec. VI-8. Nonliability.**

Neither the City, nor its officers, employees, agents, or representatives shall be liable to any person, other than the City, for any act, omission, or condition in any way concerning this ordinance or the subject matter hereof.

**Sec. VI-9. Severability.**

In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Iowa Colony Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Sec. VI-10. Effective Date.**

This ordinance shall take effect as of the date of its passage and adoption.

**PASSED AND APPROVED ON THE FIRST READING ON APRIL 19, 2021.**

PASSED, APPROVED, AND ADOPTED ON THE SECOND READING ON May 17, 2021.



MICHAEL BYRUM-BRATSEN,  
MAYOR

ATTEST:



KAYLEEN ROSSER, CITY SECRETARY



Iowa Colony/Ordinance/Food Service Ordinance (05-17-21)