

ORDINANCE NO. 3838

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 8, ARTICLE VIII OF THE CODE OF THE CITY OF MESQUITE; BY DELETING THE CURRENT ARTICLE VIII IN ITS ENTIRETY AND ADDING A NEW ARTICLE VIII; THEREBY PROVIDING CERTAIN AMENDMENTS AND DELETIONS TO THE MOST CURRENT EDITION OF THE TEXAS FOOD ESTABLISHMENT RULES; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1: That Chapter 8 of the Code of the City of Mesquite, Texas, is hereby amended by deleting Article VIII in its entirety and adding a new Article VIII to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

ARTICLE VIII. FOOD SERVICE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 8-541. Permit required.

Any person who sells or conveys food or operates a food establishment shall obtain a permit from the health official and shall comply with the requirements of this article. The article shall be liberally construed and applied to promote its underlying purpose of protecting public health.

Sec. 8-542. Compliance with article; enforcement.

It shall be unlawful for any person to violate any provision of this article or for any person who owns, operates or is in charge of a food establishment to allow any person employed at the food establishment to violate any provision of this article.

Sec. 8-543. Health official designated.

The health official of the City shall be responsible for the enforcement of this article. The health official, or his designated representatives, has the authority to issue citations to persons violating the provisions of this article. It shall be unlawful for any person to interfere with the health official or his representatives in the performance of his duties as prescribed by this article.

Sec. 8-544. Reserved.

DIVISION 2. FOOD ESTABLISHMENTS RULES

Sec. 8-545. Adoption of the Texas Food Establishment Rules.

The Texas Food Establishment Rules, published by the Texas Department of Health, Bureau of Food and Drug Safety, Retail Foods Division, is hereby adopted by the City as the official food establishment rules of the City, save and except the amendments, modifications and deletions contained in this division. As the Texas Food Establishment Rules are subsequently amended or modified, such edition shall be incorporated herein by reference. A copy of the most current edition of the Texas Food Establishment Rules, which shall be maintained by the office of the City Secretary as an original document and ordinance of the City, is hereby incorporated as fully as if set out at length herein, and from the effective date of the ordinance from which this section derives, the provisions thereof shall be controlling within the limits of the City.

Sec. 8-546. Amendments and deletions of the Texas Food Establishment Rules.

The Texas Food Establishment Rules are amended and changed in the following respects:

- (1) *Section 229.162(33)(A)*. Amend by deleting the section in its entirety and adding a new Section 229.162 (33)(A) to read as follows:

The term 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; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary or permanent facility or locations; group residence; outfitter operations; bed and breakfast operations; produce stands and food processing plants.

- (2) *Section 229.162(33)(B)*. Amend by deleting the section in its entirety and adding a new Section 229.162 33(B) to read as follows:

The term does not include: a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization bake sale; a private home or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and Welfare Publication No. (FDA) 78-2091.

- (3) *Section 229.162(34)*. Amend by deleting the last sentence.
- (4) *Section 229.162(71)*. Amend by adding a sentence at the end of the paragraph to read as follows:

Street vending operations utilizing pushcarts will not be permitted in the City.

- (5) *Section 229.162(77)*. Amend by adding a sentence at the end of the paragraph to read as follows:

Roadside vendors, unless meeting the definition and requirements of catering trucks, will not be permitted in the City.

- (6) *Section 229.162(94)*. Amend to read “five consecutive days” instead of “14 consecutive days.”

- (7) *Sections 229.162(101) – (128)*. Amend by adding new Sections 229.162(101) – (128) to read as follows:

(101) **APPROVED SOURCE** shall mean a food-processing establishment where the conditions and methods of preparation and/or packaging are subject to official regulation or inspection by federal, state and local regulatory authorities and where all federal, state and local regulations are complied.

(102) **CATERING TRUCK** shall mean a vehicle from which approved, prepackaged foods are sold or conveyed in such a manner that no direct food contact results.

(103) **CITY HEALTH OFFICER** shall mean the physician appointed by the City Council to administer ordinances relating to public health. The title of this position in State law is Health Authority.

(104) **CLOSED** shall mean tightly fitted together leaving no openings large enough to permit the entrance of vermin.

(105) **CONCESSION FACILITY** shall mean a food service establishment, which is operated in association with sports and athletic or similar recreational activities on a seasonal basis.

(106) **CONDIMENTS** shall mean spices, salt, pepper, sugar, catsup, mustard, mayonnaise, sauces, non-dairy creamers and other items added by the consumer to food.

(107) **CONDITIONAL FOOD ESTABLISHMENT** shall mean a food establishment that is permitted to operate up to 120 days while completing plan review procedures as specified in the City Health Department Construction and Equipment Standards for Food Establishments.

(108) **CORROSION-RESISTANT MATERIALS** shall mean those materials that maintain their original surface characteristics under prolonged

influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions of use.

- (109) **EVENT** shall mean a gathering of persons at a predetermined location and time with specific purposes and goals unrelated to the temporary sale of food. Events shall include, but are not limited to, non-profit organizations, fund-raising activities, circuses, carnivals, sports and athletic activities, cultural activities, national holiday celebrations, parades and promotions of existing stationary businesses.
- (110) **FRP WALLBOARD** shall mean fiberglass reinforced polyester wallboard with a thickness of 3/32 inch or greater.
- (111) **HEALTH AUTHORITY** shall mean the health official of the City or his designated representative.
- (112) **HEALTH OFFICIAL** shall mean the person appointed by the City Manager having enforcement responsibility for all City ordinances relating to food service establishments, swimming pools and liquid wastes, and such other duties as set forth by ordinance.
- (113) **HEAVY FOOD PREPARATION** shall mean any area in which foods are prepared utilizing a grill, griddle, deep-fat fryer, commercial-type oven and any similar food preparation equipment or any area subject to flooding or wet cleaning procedures due to the cutting or processing of meat, poultry, fish or pork. Heavy food preparation includes, but is not limited to, cafeterias, fast food restaurants, full service restaurants, pizza preparation, donut preparation, meat and fish markets.
- (114) **HYGIENIC PRACTICES** shall mean the exhibition by food service employees of personal practices and methods that reduce the likelihood of contaminating food, drink and food-contact surfaces of equipment, utensils or single-service articles, and that promote sanitary food preparation and service.
- (115) **INCIDENTAL SALES** shall include retail facilities where non-potentially hazardous, prepackaged food sales constitutes less than 20 percent of the total retail space.
- (116) **LIGHT FOOD PREPARATION** shall mean any area in which foods are prepared without the use of fryers, grills or other similar equipment. Light food preparation is usually limited to the preparation of sandwiches, salads or other similar exposed foods and fountain-type cold drinks.
- (117) **MALL KIOSK** shall mean a food service establishment conveying only prepackaged foods and operating for a period of more than 14 days but not

to exceed 60 days. Mall kiosks will be limited to food service activities as defined in (120) NO FOOD PREPARATION.

- (118) 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 labeling law.
 - (119) NO FOOD PREPARATION shall mean any area in which foods are provided pre-wrapped, from an approved source, with microwave or convection-type ovens or self-contained frying devices. No food preparation is usually limited to prepackaged sandwiches or similar food, candies and containerized cold drinks.
 - (120) NON-FOOD CONTACT SURFACE shall mean a surface (including but not limited to a shelf, counter, fan or an exterior part of equipment) that does not normally come into contact with food in the operation of a food establishment.
 - (121) PERISHABLE FOOD shall mean any food of such type or in such condition as may spoil.
 - (122) PERSONAL HYGIENE shall mean the application of hygienic practices by food service employees to food preparation, service and dishwashing activities.
 - (123) PRE-COOKED LINKED PRODUCTS shall mean certain products containing any combination of beef, pork, poultry and vegetable protein, wrapped in a shell or membrane, cut into individual links and thoroughly cooked. Such products are considered to be potentially hazardous foods.
 - (124) RECONSTITUTED shall mean recombining dehydrated food products with water or other liquids.
 - (125) SAFE TEMPERATURES, as applied to potentially hazardous food, shall mean temperatures of 41° F - 5° C (41 degrees Fahrenheit - 5 degrees Celsius) or below, or temperatures of 135° F - 58° C (135 degrees Fahrenheit - 58 degrees Celsius) or above.
 - (126) SEAL shall mean to close the junction between surfaces in a way that prevents entry of moisture.
 - (127) WHOLESOME shall mean in sound condition, clean, free from adulteration and otherwise suitable for use as human food.
- (8) *Section 229.163(a).* Amend by deleting the section in its entirety and adding a new Section 229.163(a) to read as follows:

- (a) *Responsibility, assignment.* The permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation. The person in charge shall be a certified food service manager and registered with the health official.
1. Registered food service managers required. A food establishment shall employ at least one person who is a full-time, on-site supervisory employee of that food establishment responsible for food preparation and service and who has a valid and current food service manager registration issued by the health official.
 - a. A food establishment is in compliance with the provisions of this section if there is one full-time registered food service "person in charge" on duty during all times of operation.
 - b. Food establishments that serve, sell or distribute only prepackaged foods and non-potentially hazardous beverages, and temporary food establishments are exempt from the provisions of this section.
 - c. Compliance may be required of establishments having exemption if they have repeated or serious or critical food code violations, or if the establishment is judged by the health official to be capable of causing foodborne illness.
 - d. The health official may require additional certified operators in sufficient number to ensure that all areas of food preparation and service, during times of operation, are under the direction of certified supervisory personnel. It shall be unlawful for any person, under these conditions, owning, operating or managing a food establishment to allow said establishment to be operated with less than the required number of certified supervisory personnel.
 2. *Registered food service manager replacement.* If a food establishment cannot meet the requirements of this section because of the termination or permanent transfer of a registered food service manager, the food establishment shall:
 - a. Notify the health official, in writing, within seven days of the effective date of termination or permanent transfer of the registered food service manager;

- b. Employ another registered food service manager within 30 days of the effective date of termination or permanent transfer of the previous registered food service manager; and
 - c. During said 30-day compliance period, a certified owner, operator or manager shall be present at said establishment no less than 25 percent of the normal weekly operating hours of the establishment.
3. *Registration.* The health official shall issue a food service manager registration to any person who submits the required application, pays the required fee and provides evidence of completion of a food service manager certification course. An approved food service manager certification course shall meet the following minimum criteria:
- a. The course shall be taught by a person adequately trained in sanitary food handling who possesses one of the following qualifications:
 - (i) The person is a registered professional sanitarian in the State of Texas or is registered by the National Environmental Health Association; or
 - (ii) The person possesses an earned four-year (or greater) college degree in the life sciences, food science or nutrition.
 - b. The course is taught in a formal classroom setting or through an approved community college television course format.
 - c. The course requires a minimum of 15 instructional hours.
 - d. The course requires completion of a thorough examination with a score of 70 percent or greater accepted as passing.
 - e. The examination may be taken no more than two times unsuccessfully before the food service manager is required to repeat the course.
 - f. The course curriculum shall include the following topics:
 - (i) Food temperature requirements;

- (ii) Types of foodborne illnesses;
 - (iii) Prevention of foodborne illnesses;
 - (iv) Food microbiology;
 - (v) Infectious diseases transmittable through food;
 - (vi) Disease reporting;
 - (vii) Prevention of contamination;
 - (viii) Vermin control;
 - (ix) Approved food sources; and
 - (x) Personal hygiene of food handlers.
4. Food service manager certification courses which are correspondence courses and which meet the requirements shall not be accepted as initial registration courses. Such courses may, if approved by the health official, be accepted for refresher courses for renewal of registrations.
5. The health official may require certified personnel to successfully complete additional training when:
- a. The employing food service establishment has repeated or persistent violations of critical health code requirements and effective corrective action has not been instituted over a reasonable period of time; or
 - b. The employing food service establishment has been implicated by the health official as the source of foodborne illness.
6. Renewal and evidence of registration.
- a. Unless sooner revoked by the health official, a food service manager registration expires three years from the date of issuance.
 - b. During those times a registered food service manager is on duty at a food establishment, the registered food service manager must possess evidence of registration.

- c. Where required, the food manager's registration certificate shall be prominently posted in the establishment.
 - d. A food service manager certificate of registration is not transferable.
7. A food service manager registration may be renewed for a subsequent three-year period if the applicant:
- a. Submits application for renewal within 30 days before expiration of the current food service manager registration; and
 - b. Pays to the City the required fee; and
 - c. Provides evidence that within the six months prior to submitting the application for renewal he has:
 - (i) Attended a food service manager refresher training course approved by the health official; or
 - (ii) Received a passing score on a national examination for certification of food service managers that meets requirements of the United States Food and Drug Administration and the Texas Department of Health.
8. Denial of registration or renewal; revocation of registration.
- a. The health official may refuse to issue or renew a food service manager registration or may revoke a food service manager registration if the applicant or holder:
 - (i) Has been convicted of interfering with the lawful inspection of a food establishment; or
 - (ii) Makes a false statement of material fact in the application for registration or renewal of registration; or
 - (iii) Was employed as a food service manager of an establishment where the establishment's food service permit was suspended two or more times within a 24-month period or where the establishment's food service permit was revoked.

9. The decision of the health official to deny issuance or renewal of a food service manager registration or to revoke a food service manager registration may be appealed to the Director of Community Development within 10 days of the denial or revocation. A hearing before the Director will be provided at the earliest setting.
 10. *Fees.* The fee for obtaining or renewing a food service manager registration shall be \$40.00. The fee for replacing a lost, stolen or damaged certificate of registration shall be \$10.00.
 11. *Employee responsibilities.* Any person who does not possess a valid certificate (food handler's card) of satisfactory completion of an approved course of study in sanitary food handling within 30 days after his employment in a food establishment shall not be allowed to continue his employment. Every certificate issued hereunder shall remain effective for a period of three years and may be renewed upon successful completion of additional approved refresher courses. The health official shall be responsible for conducting or arranging for the conducting of an approved course of study in sanitary food handling as often as may be reasonably necessary for carrying out the purposes of this section. Persons possessing valid food service manager registrations shall be exempt from this requirement.
 - a. Each applicant for a food handler's card shall pay the City a fee of \$15.00. The fee for replacing a lost, stolen or damaged certificate of registration shall be \$5.00.
 - b. Current food handler's cards and/or current food service manager certification for each employee shall be available at said food service establishment for review by the health official.
 - c. The health official may revoke food handler cards without appeal if the food handler is observed violating personal hygiene practices or is found to be incompetent in preventing foodborne illness through safe food handling and preparation practices. Upon revocation, the food handler will have 30 days to attend the food handler orientation program and be issued a new food handler's card.
- (9) *Section 229.163(b).* Amend the section by replacing the word "or" in the next to the last sentence with the word "and" to read as follows:

...test that is part of an accredited program, ***and*** by responding correctly to the...

- (10) *Section 229.163(d)(5)*. Amend by adding a new Section 229.163(d)(5) to read as follows:

(5) *Duty of health official*. The health official may cause a person working or applying for work in a food establishment to be examined to determine if the person is in violation of this section. If the health official has reasonable cause to suspect that a person working at a food establishment is in violation of this section, the health official may take reasonably necessary action to prevent further infection of or transmission to others including, but not limited to:

- (a) Securing a morbidity report of the person;
- (b) Excluding the person from the food establishment; or
- (c) If the health official determines there is an imminent and serious threat to the public health or safety, closing the food establishment facility in which the person works until the health official determines that the risk of infection or transmission to others has been abated.

- (11) *Section 229.163(j)(2)*. Amend by deleting the section in its entirety and adding a new Section 229.163(j)(2) to read as follows:

The health official may waive or modify certain requirements for employees involved in minimal food handling capacities.

- (12) *Section 229.164(j)(3)(B)*. Amend by deleting the section in its entirety and adding a new Section 229.164(j)(3)(B) to read as follows:

Ice for consumer use shall be dispensed only by employees with scoops, tongs or other ice dispensing utensils or through automatic service, ice-dispensing equipment. Ice dispensing utensils shall be stored on a clean surface out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap.

Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially-filled package not exceeding one pint in capacity or drawn from a commercially-filled container stored in a mechanically-refrigerated bulk milk dispenser. When milk and milk products of less than one-half pint are required for mixed drinks, cereal or

dessert service, milk and milk products may be poured from a commercially-filled container.

Cream or half-and-half shall be provided in an individual service container or drawn from a refrigerated dispenser designed for such service.

Nondairy creaming or whitening agents shall be provided in an individual service container, a protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service.

Nondairy Products. Nondairy creaming, whitening or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one gallon in capacity and cooled to 41° F (41 degrees Fahrenheit - 5 degrees Celsius) or below within four hours after preparation.

- (13) *Section 229.164(n)(1)*. Amend by deleting the section in its entirety and adding a new Section 229.164(n)(1) to read as follows:

Frozen Food. Stored frozen foods shall be maintained frozen at a temperature of 0° F - minus 18° (0 degrees Fahrenheit - minus 18 degrees Celsius).

- (14) Section 229.165(k)(9). Amend by adding the following at the end of the paragraph in Section 229.165(k)(9):

Mechanical dishwashing machines shall be used if reusable tableware is provided for customers. Chemicals added for sanitization purposes shall be automatically dispensed.

- (15) Section 229.166(j)(3). Amend by deleting the section in its entirety and adding a new Section 229.166(j)(3) to read as follows:

Grease interceptors or traps. Grease interceptors or traps shall be required when any foods are prepared using a grill, griddle, deep fat fryer, commercial-type ovens and any similar food preparation equipment. The capacity of any required grease interceptor/trap shall be determined by the number of plumbing fixtures as follows:

1 - 5	=	500 Gallons
6 - 10	=	750 Gallons
More than 10	=	1,000 Gallons

Grease interceptors or traps shall be located outside the establishment to be easily accessible for cleaning.

- (16) Section 229.166(1)(4)(B). Amend by deleting the section in its entirety and adding a new Section 229.166(1)(4)(B) to read as follows:

Plastic bags and wet-strength paper bags shall be used to line receptacles for storage inside the food establishment or within closed outside receptacles. Plastic and wet-strength paper bags shall be securely tied or closed before disposal. Garbage and refuse bags shall be placed in dumpsters or commercial containers in an unbroken condition.

- (17) Section 229.166(1)(6)(B). Amend by deleting the section in its entirety and adding a new Section 229.166(1)(6)(B) to read as follows:

Equipment for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the equipment is not installed flush with the base pad, under the unit. When a food establishment shares a dumpster or commercial container with one or more other businesses, the person in charge of the food establishment shall be responsible for correcting any violations.

- (18) *Section 229.167*. Amend by adding the following language prior to Section 229.167(a) to read as follows:

Physical facilities. Any person desiring to operate a food establishment shall submit plans in accordance with this section. All food establishments shall be constructed of materials which facilitate cleaning, minimize deterioration and prevent vermin harborage. Food establishments shall be maintained in accordance with this section. When a food establishment is hereafter constructed, extensively remodeled, changes ownership, significantly changes the menu as determined by the health official or when an existing structure is converted for use as a food establishment, properly prepared plans and specifications for such construction, remodeling or alteration showing layout, arrangement and construction materials of work areas and the location, size and types of fixed equipment and facilities shall be submitted to the health official for approval before such work is begun.

- (19) *Section 229.167(c)(1)*. Amend by deleting the section in its entirety and adding a new Section 229.167(c)(1) to read as follows:

(c) *Floors, walls, and ceilings.*

1. *Cleanability.* Except as specified in paragraph (4) of this subsection, the floors, floor coverings, walls, wall coverings and ceilings shall be designed, constructed and installed so they are

smooth, non-absorbent and easily cleanable, except that anti-slip floor coverings or applications may be used for safety reasons. Floors shall be free of cracks, chips, holes and deterioration. The health official shall require repair or replacement of any floor which fails to meet the requirements of this section. The health official shall establish approved floor surfaces in food preparation areas based upon the degree of preparation expected. Food establishments involved in heavy preparation shall incorporate quarry tile, cement-based terrazzo tile or an equivalent floor covering as approved by the health official. Food establishments involved in light food preparation shall incorporate a commercial grade sheet vinyl or equivalent floor covering as approved by the health official. Establishments involved in no food preparation shall incorporate sealed concrete, vinyl asbestos tile or an equivalent floor covering as approved by the health official. An approved sealer shall be required at the floor/wall interface.

- a. *Toilets.* Toilet floors must meet the conditions set forth above. Childcare facilities shall install quarry tile, ceramic tile, cement-based terrazzo tile or an equivalent material as approved by the health official. Floor drains shall be required in toilets of food establishments involved in heavy and light food preparation. Floor drains shall be required in childcare facilities. A handwash lavatory is required to be located in or immediately adjacent to each toilet facility.
- b. *Walk-in coolers.* Food establishments storing potentially hazardous foods in walk-in coolers shall install in the cooler quarry tile flooring or an equivalent material as approved by the health official. Food establishments storing non-potentially hazardous foods in walk-in coolers shall install in the cooler-sealed concrete or an equivalent material as approved by the health official.
- c. *Dry storage areas.* All food establishments with dry storage areas not exposed to excessive moisture shall install sealed concrete, vinyl asbestos tile or an equivalent material as approved by the health official. A more moisture resistant flooring may be required if the dry storage area is subject to moisture.
- d. *Food preparation areas.* Floor drains shall be required in food preparation, dishwash, bar and service areas of food establishments involved in heavy food preparation; however, floor drains may be waived in

existing food service establishments that change ownership.

- (20) Section 229.167(c)(6). Amend by deleting the section in its entirety and adding a new Section 229.167(c)(6) to read as follows:

Wall and ceiling coverings and coatings; food contact surfaces; equipment specifications and requirements.

- (a) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

1. *Food preparation areas.* The health official shall establish approved wall surfaces in food preparation areas based upon the degree of preparation expected. Food establishments involved in heavy and light preparation shall install wall surfaces of FRP, ceramic tile, certain types of bricks sealed with light-colored epoxy paint or equivalent materials as approved by the health official in all food preparation, tableware and utensil washing, and service areas. Wall surfaces must extend eight feet in height or to the ceiling if the ceiling height is less than eight feet. The health official shall require durable and easily cleanable wall surfaces in areas exposed to excessive splash in establishments not involved in food preparation. Walls shall be smooth, durable and non-absorbent and shall be maintained in a condition that facilitates thorough and rapid cleaning and shall be free of cracks, chips, holes and deterioration. The health official shall require repair or replacement of any wall which fails to meet the requirements of this section.
2. *Toilets.* Food establishments involved in heavy and light food preparation, including child care facilities, shall install FRP, ceramic tile, certain types of brick sealed with light-colored, enamel or epoxy paint, or equivalent materials as approved by the health official. Wall surfaces must extend at least four feet in height with the remainder consisting of any light-colored, smooth, washable material. Wall surfaces in toilet facilities of establishments that are not involved in food preparation shall be of any smooth, light-colored, washable material as approved by the health official. Self-closing devices shall be required on restroom doors in all food establishments.

3. *Walk-in coolers.* Wall surfaces shall be smooth, easily cleanable and capable of withstanding effects of low temperature and moisture. Shelving racks shall be stainless steel, epoxy-coated, non-corrosive metal or equivalent as approved by the health official.
 4. *Dry storage areas.* Shelving shall be light-colored, epoxy or enamel painted wood if the storage area is not subject to moisture. Alternate shelving may be required if the storage area becomes subject to moisture.
 5. *Ceilings shall be of light color, smooth, relatively non-absorbent, durable and easily cleanable.* Ceiling materials may be washable drop-in panels, vinyl-coated gypsum panels, taped and bedded sheetrock with light-colored epoxy or enamel paint, or an equivalent material as approved by the health official. The health official shall require repair or replacement of any ceiling which fails to meet the requirements of this section.
- (b) *Food preparation, bar and service areas.* Food contact surfaces shall be stainless steel with the exception of certain approved polymer cutting boards. Customer service counters, food packaging areas, take-out windows and similar areas shall be surfaced with a material that is smooth, non-absorbent, durable and easily cleanable as approved by the health official. Soft drink syrup canisters or containers shall be situated on six inch high non-corrosive racks or within non-corrosive pans with one inch curbs. Cabinets, tables or other similar equipment made of wood, particle board or Formica shall not be allowed in areas subject to moisture; provided child care facilities shall be authorized to install cabinets with Formica covered or sealed wood exterior surfaces and light-colored, enamel or epoxy-painted wood interiors.
- (c) *Equipment shall be maintained in a condition that facilitates thorough and rapid cleaning and in working order.* The health official may require certain equipment to be approved by the National Sanitation Foundation (NSF) for its intended use and shall require repair or replacement of any equipment which fails to meet the requirements of this section.
- (21) *Section 229.167(d)(4).* Amend by adding the following at the end of the paragraph in Section 229.167(d)(4):

Toilet rooms shall have exhaust fans and floor drains.

- (22) *Section 229.167(e)*. Amend by deleting the word “handwashing” in the title of Section 229.176(e).
- (23) *Section 229.167(e)(1)*. Amend by adding the following at the end of the paragraph in Section 229.167(e)(1):

Food preparation areas. Freestanding handwash lavatories shall be required and conveniently located in the food preparation, service and utensil washing areas. A free-standing, stainless steel, three compartment sink with basins large enough to allow immersion of the largest utensil shall be installed in the dishwash area if all kitchen utensils cannot be sanitized in the commercial dishwasher. A free-standing, stainless steel, four-compartment sink shall be required in bar areas if all glassware is not sanitized in a commercial dishwasher.

- (24) *Section 229.167(e)(2)*. Amend by deleting the section in its entirety and adding a new Section 229.167(e)(2) to read as follows:

Handwashing supplies, availability. Each handwashing lavatory or group of two adjacent lavatories shall be provided a supply of hand cleaning liquid, powder or bar soap, hand sanitizer and/or single use gloves, and a covered waste receptacle.

- (25) *Section 229.169(a)*. Amend by deleting the section in its entirety and adding a new Section 229.169(a) to read as follows:

Mobile food establishment provisions. This section shall apply to the sale and conveyance of food from catering trucks. The sale or conveyance of food from any other type of vehicle shall be prohibited.

Permit. All catering trucks shall have a valid food service permit and such permit shall be maintained in the catering truck at all times. The permit shall bear the name of the company, owner or manager, the vehicle number and the vehicle registration plate number (license plate). The permit shall remain valid for one year. The vehicle shall comply with all State of Texas motor vehicle rules.

Food storage areas. All food storage areas in catering trucks shall be maintained free of rust and corrosion, clean and protected from contamination.

Food items. All foods conveyed from catering trucks shall be prepackaged, single-service size, wholesome and unadulterated. All foods shall be obtained from an approved source. Potentially hazardous foods shall be hermetically sealed, labeled as to type of

food, location of preparation and date of preparation. All potentially hazardous food shall be disposed of at the end of each day of operation. Sale of certain foods, such as boiled eggs, may be prohibited during months in which daily temperatures exceed 90° F (90 degrees Fahrenheit - 32 degrees Celsius).

Condiments. All condiments shall be served in single-service containers, or approved, commercially-filled, dispenser-type containers. Bulk dispensers, bottles or other containers shall not be permitted for conveyance of any condiment.

Food handling. No direct food handling of any type shall be permitted by catering truck operators or customers. It shall be unlawful for catering truck operators to sell, dispense or convey ice in any manner, except from an approved automatic ice dispenser. Soft drinks and tea shall be conveyed only in prepackaged cans, bottles or cartons. Hot coffee may be conveyed from bulk dispensers into single-service cups. All hot potentially hazardous foods shall be maintained at 140° F (140 degrees Fahrenheit or 60 degrees Celsius) or above in a mechanical warming oven. All cold potentially hazardous food shall be maintained at 41° F (41 degrees Fahrenheit – 5 degrees Celsius) or below.

- (26) *Section 229.169(b)(1).* Amend by deleting the section in its entirety and adding a new Section 229.169(b)(1) to read as follows:

Supplies, cleaning and serving operations. Mobile food establishments shall operate from a central preparation facility or other fixed food establishment and shall report to such location for supplies and for cleaning and servicing operations daily.

- (27) *Section 229.170(a).* Amend by adding the following at the end of the paragraph in Section 229.170(a):

General. A temporary food establishment permit shall be obtained prior to the preparation or sale of any food product. The permit shall allow conveyance of food from an approved temporary facility at a single location for no more than 14 consecutive days. A temporary food establishment permit shall be issued only if food is to be sold or conveyed in conjunction with an event. Each separate event shall require a separate temporary food establishment permit.

- (28) *Section 229.170(f).* Amend by deleting the section in its entirety and adding a new Section 229.170(f) to read as follows:

Water. Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing and for

cleaning and sanitizing utensils and equipment. Water need not be under pressure for temporary food establishments serving only non-potentially hazardous foods with light food preparation activities, but water shall come from approved sources which include: commercially-bottled drinking water, closed portable water containers, enclosed vehicular water tanks, on-premise water storage tanks or piping, tubing or hoses connected to an approved source. Hot and cold running water under pressure with a water heater volume sufficient to handle daily handwashing and utensil sanitizing demands may be required of temporary food establishments serving potentially hazardous foods or foods requiring heavy or extensive preparation.

(29) *Sections 229.170(l) – (p).* Amend by adding new Sections 229.170(l)-(p) to read as follows:

- (l) *Inspections.* The health official may inspect temporary food establishments at any reasonable time. The health official may require certain temporary food establishments to be inspected and to be in compliance with all applicable sections of this ordinance prior to the scheduled event.
- (m) *Personnel practices.* Temporary food service facility employees shall abide by all applicable sections of this ordinance with respect to personal hygiene and sanitary food handling practices. Employees may be required to obtain food handler's certificates prior to the event. Temporary food establishment employees shall be exempt from the manager registration requirements of this ordinance. Facilities with fryers, grills, smokers or similar heavy food preparation equipment used at concessions shall require a registered certified manager.
- (n) The sale or conveyance of fish or shellfish products (except certain prepackaged frozen products) from temporary food establishments is prohibited.
- (o) *Itinerant vendors and delivery of food.*
 - 1. This section is applicable to the sale or conveyance of food by itinerant vendors, persons delivering previously ordered food and all other sales and conveyance of food other than catering trucks.
 - 2. *Itinerant sales or conveyance of food.*
 - a. It shall be unlawful for any person to sell or convey potentially hazardous foods or perishable foods (such as produce) from house-to-house or place-to-place in any zoning within the City.

- b. Any person who sells or conveys non-potentially hazardous, commercially prepackaged foods from house-to-house or place-to-place within the City shall obtain a permit from the health official.
- c. Any person desiring to sell or convey from house-to-house or place-to-place non-potentially hazardous foods, which are not commercially prepackaged, shall apply for a permit. The health official shall approve or deny the application based on the type of non-potentially hazardous food intended for sale or conveyance.
- d. Any foods sold or conveyed from house-to-house or place-to-place shall meet all applicable requirements of this ordinance related to approved source, temperature control, labeling, protection from contamination, wholesomeness, etc.
- e. Any person who sells or conveys food from house-to-house or place-to-place shall comply with all provisions of the City code of ordinances relating to solicitors, vendors and outdoor sales.

3. *Delivery of food.*

- a. This section pertains to persons who deliver food which has been ordered by individuals or businesses in the City from an itinerant vendor, through United States mail, by telephone or other means of communication.
- b. Any person who delivers food previously ordered to the person who placed the order shall comply with all applicable sections of this ordinance related to approved source, temperature control, labeling, protection from contamination, wholesomeness, etc.
- c. Vehicles used for the delivery of food previously ordered to the person who placed the order shall meet the following minimum criteria:
 - (i) The vehicle shall comply with all State of Texas rules for motor vehicles.
 - (ii) The vehicle shall be equipped or maintained to adequately store food during transportation to

prevent contamination, adulteration or damage to the food or to containers in which the food is stored.

(iii) The vehicle shall be maintained in a clean and sanitary condition.

4. Any person who delivers food previously ordered to the person who placed the order shall not be required to obtain a permit from the health official provided that:

a. The health official shall have the authority to inspect the vehicle, food products and any invoices and bills of lading at any reasonable time and shall have all authorities defined under enforcement.

b. The person delivering food shall comply with all applicable sections of this ordinance.

5. Any person who solicits orders for food from house-to-house or place-to-place shall comply with all provisions of the City code of ordinances relating to solicitors, vendors and outdoor sales.

(p) *Concession facilities.*

1. *General.* Concession facilities are food service establishments generally associated with athletic and recreational facilities. Concession facilities are seasonal and often operate more days per year than temporary food establishments but significantly less days per year than permanent food establishments. The degree of regulation of a concession facility shall depend upon the type of foods (potentially or non-potentially hazardous) conveyed, the volume of food conveyed and the number of days of operation per year.

2. A concession facility permit shall be obtained from the health official prior to operation. The person in charge of a concession facility shall ensure that all necessary inspections are arranged prior to opening for the season.

3. Concession facilities shall comply with all requirements of this ordinance provided that the health official may waive certain requirements which are deemed unnecessary for protection of public health.

(30) *Section 229.171(f).* Amend by deleting the section in its entirety and adding a new Section 229.171(f) to read as follows:

(f) *Permit requirement, prerequisite for operation.*

1. No person shall sell, offer to sell or convey food or operate a food establishment within the City without having first obtained a permit issued by the health official. Permits shall not be transferable from one person to another person or place. A valid permit shall be posted in plain view of customers in every food establishment. A conditional food establishment permit may be issued to the new owner of an existing food establishment pending completion of plan review requirements.
2. Application. A person desiring to operate a food service establishment shall make written application for a permit on forms provided by the health official. Such application shall include: the applicant's full name, post office address and whether such applicant is an individual, firm, corporation or partnership. If the applicant is a partnership, the names of the partners and their complete addresses shall be included. The application shall also include the location and type of the proposed food establishment, the signature(s) of the applicant(s) or agent(s), and such other information as may be required by the health official. If the application is for a temporary food establishment, it shall also include the inclusive dates of the proposed operation. Permit approval shall be based upon the food establishment rules, regulations and ordinances in effect at the time the original application for the permit is filed.
3. *Permit fees.*
 - a. Permanent, fixed food service establishments:

1-9 Employees	-	\$250.00/year
10-19 Employees	-	\$300.00/year
Over 19 Employees	-	\$350.00/year
 - b. Temporary permits for temporary food service establishments - \$75/event
 - c. Catering trucks - \$200.00/year/vehicle
 - d. Concession facilities - \$100.00/season
 - e. Day care centers - \$200.00/year

- f. Itinerant sales - \$200.00/year
- g. Bed and breakfast facilities:
 - Limited - \$200.00/year
 - Extended - \$250.00/year
 - Food establishment - \$300.00/year
- h. Mall kiosk - \$100.00/period
- i. Incidental Sales - \$100.00/year

No fee shall be charged to any food establishment owned and operated by a governmental agency, independent school district or non-profit institution with an EIN (Employer Identification Number) and/or a 501(c)3 number from the IRS (Internal Revenue Service); however, such establishment shall comply with all other requirements of this ordinance.

- 4. *Operating authority.* A permit issued under this article gives only the person in charge to whom the permit is issued the authority to operate the food establishment identified on the permit. As a lawful condition to the operation of the establishment, the health official may impose in the permit such additional requirements relating to the operation of the food establishment as he determines necessary to protect the public health and safety.
- 5. *Duration.* Permits granted under the provision of this article, unless otherwise specified, shall remain in force for one year from date of issuance unless suspended or revoked for cause. Permits shall remain the property of the City.
- 6. *Suspension of permits.* Permits may be suspended temporarily by the health official for repeated failure of the permit holder to comply with the requirements of this ordinance. Whenever a permit holder or operator has failed to correct a violation after receiving two written notices for the violation, the health official may suspend the permit. The permit holder or operator 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 health official by the permit holder. Notwithstanding the other provisions of this ordinance, whenever the health official finds unsanitary or other conditions in the operation of a food service establishment which constitute a substantial hazard to the public health, a written notice may be issued to the permit holder or

operator citing such condition, specifying the corrective action to be taken and specifying the time period within which such action shall be taken. If necessary, such order may state that the permit is immediately discontinued. Any person to whom such an order is issued shall comply immediately herewith, but upon written request to the health official, shall be afforded a hearing before the Director of Community Development as soon as possible. A closure order shall be prominently posted until such time the permit is reinstated.

7. *Reinstatement of suspended permits.* Any person whose permit has been suspended may at any time make written application for a reinspection for the purpose of reinstating the permit. Within 10 days following the receipt of a request, which shall include a statement signed by the applicant that in his opinion, the conditions causing suspension of the permit have been corrected, the health official shall make a reinspection. If upon reinspection, the applicant is complying with the requirements of this ordinance, then the permit shall be reinstated.
8. *Revocation of permits.* For serious or repeated violations of any of the requirements of this ordinance or for interference with the health official in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the health official. Prior to such action, the health official shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five days following service of such notice, unless a request for a hearing is filed with the health official by the permit holder within such five-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.
9. *Hearings.* The hearings provided for in this section shall be conducted by the Director of Community Development at a time and place designated by him. Based upon the record of such hearing, the Director shall make a finding and shall sustain, modify or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the health official.
10. *Food service establishments outside jurisdiction of the health official.* Food from food establishments outside the jurisdiction of the health official may be sold within the City if such food service establishments conform to the provisions of this ordinance or to substantially equivalent provisions. To determine the extent of

compliance with such provisions, the health official may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

- (31) *Section 229.171(i)(1)*. Amend by adding a new paragraph to the end of Section 229.171(i)(1) to read as follows:

It shall constitute an offense for any person to hinder, physically prevent, interfere with or otherwise obstruct the lawful inspection of a food establishment by the health official. Such actions may also constitute reason for suspension of a permit. In addition, it shall also constitute an offense if any person willfully provides false information to the health official as it relates to enforcement of the provision of this ordinance.

- (32) *Section 229.171(n)*. Amend by deleting the section in its entirety and adding a new Section 229.171(n) to read as follows:

Examination and detention or destruction of food. The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these rules. A receipt for samples shall be issued by the regulatory authority. The department shall, upon written notice to the owner or person in charge specifying the reason therefor, destroy or place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code, Chapter 431.

- (33) *Section 229.171(j)(6)*. Amend by deleting the section in its entirety and adding a new Section 229.171(j)(6) to read as follows:

Inspection report form. For the purpose of Chapter 437, Texas Health and Safety Code, the department adopts the Retail Food Establishment Inspection Report form.

SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and

upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense.

SECTION 5. That the present ordinances of the City of Mesquite are inadequate to provide for the proper regulation of food service establishments creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 20th day of November, 2006.

Mike Anderson
Mayor

ATTEST:

APPROVED:

Judy Womack
City Secretary

B. J. Smith
City Attorney