

## ARTICLE 6-6 FOOD ESTABLISHMENTS\*

### Division 1. Generally

#### Sec. 6-6-1 Definitions

The provisions of this article relating to the definitions of words, terms and phrases are hereby incorporated by reference and made a part hereof, and shall not apply and govern the interpretation of these regulations, except as otherwise specifically declared or as is clearly apparent from the context of the regulations herein. The following words, terms and phrases shall have the ascribed meaning indicated below.

Authorized agent or employee. The employees of the regulatory authority.

Base of operation. An operating base to which a mobile food establishment vehicle returns for such things as discharging liquid or solid waste, refilling water tanks and ice bins, and boarding food.

Commissary. A fixed catering establishment, restaurant, or any other fixed, licensed place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored. A commissary includes a location where food services are outsourced by an entity or facility in that location that serves the facilities' students, inmates, detainees, residents, patients or customers.

County health authority. The physician appointed as provided in [section 6-1-2](#).

Food establishment. An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption.

Food grade materials. Materials and utensils used in food service and preparation that are approved by the U.S. Food and Drug Administration as safe for food handling and storage. Generally, material that will not transfer or allow the transfer of noxious or toxic substances to food.

Food handler. A food establishment employee who works at any time with unpackaged food, food equipment or utensils, or food contact surfaces.

Mobile food establishment. A self-propelled mounted food establishment designed to be readily moveable. This includes vehicles in which food is prepared on site within the vehicle. A mobile food establishment equipped with food preparation equipment must meet regulations applicable to a fixed food establishment and regulations applicable to mobile food establishment.

Municipality. The City of Odessa.

Packaged. Bottled, canned, cartoned, securely bagged, or securely wrapped, and packaged in a fixed, licensed food establishment or a food processing plant. Packaged does not include food or drink in a wrapper, carry-out box, or other nondurable container used to containerize food with

the purpose of facilitating food protection during service and receipt of the food by the consumer.

*Potentially hazardous food (PHF).* A food that requires time and temperature control for safety to limit pathogen growth or toxin production which consist in whole or in part of milk, or dairy products, eggs, poultry, uncooked beef, pork, fish, shellfish, edible crustacean, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

*Pushcart.* A non-self-propelled mobile food establishment limited to serving only prepackaged, non-potentially hazardous food or prepackaged ice cream.

*Regulatory authority.* The county health department as provided in [section 6-1-1](#).

*Roadside food vendor.* A person who sells or serves whole, uncut, and unprocessed fruits or vegetables from a temporary location adjacent to a public road or highway. Food shall not be prepared or processed by a roadside food vendor. A roadside food vendor is classified as a mobile food establishment.

*Single-service articles.* Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

*Site plan.* A drawing, not necessarily to scale, depicting the existing conditions at the proposed location of the mobile food establishment and the proposed location of the mobile food establishment on the property.

*State rules.* The regulations found at 25 Texas Administrative Code, chapter 229, sections 161 through 171 and sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

*Temporary food establishment.* A food establishment that operates for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-100; Ordinance 2014-19, sec. 1, adopted 4/8/14)

## **Sec. 6-6-2 Penalty; injunction**

(a) Any person who violates a provision of these rules, and any person who is the permit holder of, or otherwise operates, a food establishment that does not comply with the requirements of these rules, and any responsible officer of that permit holder or those persons, shall be fined not more than two thousand dollars (\$2,000.00).

(b) The regulatory authority may seek to enjoin violations of these rules.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-110)

### **Sec. 6-6-3 Adoption of state rules**

The city adopts by reference the provisions of the current rules or rules as amended by the state board of health found in 25 Texas Administrative Code, chapter 229, sections 161 through 171 and 173 through 175, regarding the regulation of food establishments in this jurisdiction.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-101)

### **Sec. 6-6-4 Supplemental rules**

The following supplemental rules are adopted:

- (1) Doors to walk-in units must be constructed of solid tightfitting material and equipped with hinges and a latch. Air curtains may not substitute for solid doors.
- (2) Deli meats, once opened, must be date-marked indicating the month, day and year the package was opened.
- (3) No soft ice cream or ice cream mixes, including yogurt, may be served from mobile snow cone units. All ice cream must originate from a commercial manufactured source.
- (4) All outdoor tent or frame food establishments built on site for events lasting more than three (3) days and serving potentially hazardous food (PHF) must have a two-compartment sink for washing table and kitchen utensils and a separate handwashing sink. Sinks must have hot and cold running water with a drainage system approved by the regulatory authority.
- (5) All outdoor tent or frame food establishments serving potentially hazardous food (PHF) must have a controlled heat source and refrigeration adequate to maintain hot food at least 135 degrees Fahrenheit and to maintain cold food at least 41 degrees Fahrenheit. The use of sterno equipment at outdoor events is prohibited.
- (6) Use of utensils and surface materials that are not food grade materials is prohibited. The regulatory authority may evaluate the safety of materials that are not marked as food grade material or designated as such by the U.S. Food and Drug Administration. The opinion of the regulatory authority shall be the final determination as to whether the use of the material is prohibited.
- (7) Operation of more than two (2) food establishments from the same commercial kitchen is prohibited. Each food establishment must obtain a separate permit. The kitchen must have sufficient lighting and be of suitable size, construction, and design to facilitate maintenance and sanitary operations of each food establishment business.

- (8) A snow cone stand must have a two-compartment sink with a drain board on both sides of the sink. A snow cone stand must have a separate handwashing sink with hot and cold running water.
- (9) Resale of deli or restaurant food intended for single sale is prohibited.
- (10) Food establishments' water systems shall meet the requirements of Texas Food Establishment Rules section 229.166(i)(6). A food establishment that cooks, prepares and sells open food products must have a three-compartment sink with hot and cold running water available for all three compartments. Food establishments that use only single service articles only must have a two-compartment sink. Compartments must be large enough to immerse the establishment's largest piece of equipment for washing, rinsing and sanitizing. Water temperature for handwashing and equipment washing must be 120 degrees Fahrenheit. The establishment must have a potable system under pressure. The establishment must have a separate handwashing sink with hot and cold running water by mixer faucet and properly plumbed to a wastewater tank. The unit must have a minimum ten (10) gallon water heater or an instantaneous water heater.
- (11) Food establishments must provide hand sanitizing gel or foam, in a separate unit from hand soap, and disposable hand drying towels in the food production area.
- (12) Salad bar sneeze guards must be installed over self-serve buffet style food service units in a restaurant or food service operation. Installation must meet the requirements of the regulatory authority as illustrated in the county health department's "Installation Guide of Food Protective Devices."
- (13) Door-to-door vendors of potentially hazardous food (PHF) must obtain a county health department permit.
- (14) Door-to-door sale of tamales is prohibited.
- (15) At the final health inspection for an initial permit, adequate food for a business opening must be stocked in cold storage units. The food establishment must have facilities and equipment ready for test cooking by the regulatory authority and its agents.
- (16) All food establishment owners must obtain food handler cards for owners or managers and assistant managers working in food establishments. Owners or managers and assistant managers must obtain food handler cards from entities certified to provide food handler classes by the Texas Department of State Health Services (TDSHS) in Austin, Texas. The food handler cards must be displayed with the health department permit. At least one food handler cardholder must be on the premises of a food establishment at all times. Food service owners, managers, or assistant managers will have one year from this update requirement to obtain food

handler cards. A registry of accredited programs is posted on the Texas Department of State Health Services website.

(17) Children in diapers or training pants are prohibited from entering a food preparation area at any time during setup or operation. Changing or removing diapers or training pants in any area in any food establishment where food is served is prohibited.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-102; Ordinance 2014-19, sec. 2, adopted 4/8/14)

### **Sec. 6-6-5 Notices; hearings**

(a) A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.

(b) The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-109)

### **Sec. 6-6-6 Mobile food establishments**

(a) Initial/renewal permit applications.

(1) All mobile food establishments serving food and/or drink in the city must be inspected and permitted by the county health department prior to serving food to the public.

(2) Mobile food establishments shall comply with the requirements of the Texas Food Establishment Rules, section 229.169 and sections 229.161 through 229.171.

(3) All mobile food establishments serving food and/or drink in the city shall be inspected and permitted by the appropriate city personnel prior to serving food to the public.

(4) No more than twenty-five (25) mobile food establishment permits shall be in effect at any time within the city limits. Permits will be issued on a first-come, first-served basis, are non-transferable and are valid for multiple private property locations if a site plan for each location is provided and approved during the permitting process. A mobile food establishment operator may not receive or maintain more than

two (2) permits during each calendar year. This restriction to the number of mobile food establishment permits issued does not apply to food vendors seeking or holding a temporary or seasonal food vendor permit.

(5) Roadside food vendors must comply with subsections (a), (b), (g), (i) and (j) of this section. All other initial and renewal applications for a mobile food establishment permit shall include:

(A) Copy of current permit from the county health department.

(B) A site plan depicting the location(s) of the mobile food establishment. The site plan shall depict the assigned mobile food establishment parking space location, total number of parking spaces on the site, and the square footage of the property.

(C) Written and notarized permission of the owner of the property or business where the mobile food establishment will be located to allow the operation of the mobile food establishment.

(D) A notarized statement from that business or from a business within 150 feet that employees of the mobile food establishment may use its restroom facilities during hours of the mobile food establishments operation.

(E) A notarized statement from the owner of a commissary stating that the mobile food establishment uses the facility as its base of operation.

(F) Name of the mobile food establishment vehicle, make, model, license plate and vehicle identification numbers of the vehicle.

(G) Name, address and telephone number of the owner of the mobile food establishment.

(H) Name, address and telephone number(s) of operators and drivers of the mobile food establishment.

(I) Application fee of \$150.00.

(J) Quarterly registration fee of \$150.00.

(b) Appeal. If the issuing officer denies a mobile food establishment permit to any person or revokes a mobile food establishment permit, the office shall immediately convey the decision to the applicant or permit holder, and provide the applicant a written report of the reason for the denial within seventy-two (72) hours. The applicant or permit holder shall have ten (10) days from the date of written notice of revocation or denial to file a notice of his appeal from the order denying or revoking his permit to the city council. The applicant shall have, at his option, a hearing on his appeal at the next city council regular meeting. After holding the hearing on the

revocation or denial, the city council shall by majority vote either sustain or issue an order reinstating the license.

(c) Judicial review. If the applicant or permit holder requests a hearing under subsection (b), the hearing shall be held in accordance with the Administrative Procedure Act of the state, and review from the decision (on the record of the hearing) shall be had to the county court in which the city is located. The hearing shall also be subject to the Texas Open Meetings and Records Law.

(d) Operating restrictions.

(1) Commissary; base of operations. Mobile food establishments, except roadside food vendors selling only whole, uncut fruits or vegetables, shall operate from a commissary or other fixed food establishment and shall report at least once daily to such location for all supplies and for all cleaning and servicing operations. The commissary shall keep a daily log of the mobile food establishments' supply, cleaning and servicing operations, and have the log available to the regulatory health authority for inspection.

(2) The commissary or other fixed food establishment used as a base of operation for a mobile food establishment shall be constructed and operated in compliance with the requirements of this chapter or by the approval of the county health department.

(3) Mobile food establishments that serve only whole, uncut fruits or vegetables or food that is prepared and packaged in individual servings at a fixed, licensed food establishment and transported to and stored at the mobile food establishment under conditions meeting requirements of these sections, or beverages that are not potentially hazardous and are dispensed from covered urns or protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization exits at the mobile food establishments' base of operations.

(4) The hours of operation of a mobile food establishment shall be from 6:00 a.m. to 8:00 p.m. No mobile food establishment shall be in operation within the city limits before 6:00 a.m. or after 8:00 p.m.

(5) No mobile food establishment shall operate in a public park without prior written authorization from the director of parks and recreation department.

(6) The mobile food establishment sales area shall not exceed six hundred square feet in area. At no time may the required number of parking spaces for the principal use of the property be rendered nonconforming due to mobile food establishment location at or use of the site.

(7) One (1) mobile food establishment shall be permitted per site. The site shall be the physical address where the mobile food establishment locates to conduct operations.

(8) During periods of non-use, a mobile food establishment and equipment must remain locked and secured. Food items, utensils and equipment must be stored according to the requirements of this chapter.

(e) Potable water for food preparation; water for handwashing. Mobile food establishments' water systems shall meet the requirements of Texas Food Establishment Rules section 229.166 (i)(6). A mobile food establishment that cooks, prepares and sells open food products and dispenses them via single service articles must have a two compartment sink with hot and cold running water available for both compartments. Compartments must be large enough to immerse the establishment's largest piece of equipment for washing, rinsing and sanitizing. The establishment must have a potable water system under pressure. The establishment must have a separate handwashing sink with hot and cold running water by mixer faucet and properly plumbed to a wastewater tank. The unit must have a minimum ten (10) gallon water heater or any instantaneous water heater.

(f) Waste retention. If liquid waste results from the operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is at least fifteen (15%) percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the tank when the mobile food unit is in motion. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system. Liquid waste shall be disposed of in accordance with existing laws. Mobile food establishment operators shall be prohibited from discharging fat, oil, grease or wastewater into sanitary sewer system.

(g) Hot and cold food units. A mobile food establishment serving potentially hazardous food (PHF) must have equipment to keep hot food at least 135 degrees Fahrenheit at all times. A mobile food establishment serving potentially hazardous food (PHF) must have equipment to keep cold food at most 41 degrees Fahrenheit at all times. If a cooling or heating unit is propane or natural gas operated, the fire marshal must approve the unit.

(h) Servicing area. A commissary that services a mobile food establishment vehicle must have a servicing area that has overhead protection for any supplying, cleaning or servicing of the vehicle. Within the servicing area, there shall be a location provided for the flushing and draining of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. The surface of the servicing area shall be constructed of smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean and be graded to drain.

(Ordinance 2014-19, sec. 3, adopted 4/8/14)

## **Sec. 6-6-7 Food handler cards**



Mobile food establishment owners must obtain food handler cards for owners or managers and assistant managers working in mobile food establishments. Owners or managers and assistant managers must obtain food handler cards from entities certified to provide food handler classes by the Texas Department of State Health Services (TDSHS) in Austin, Texas. The food handler cards must be displayed with the health department permit. At least one food handler cardholder must be on the premises of a mobile food establishment at all times. Food service owners, managers or assistant managers will have one year from this updated requirement to obtain food handler cards. A registry of accredited programs is posted on the Texas Department of State Health Services website. (Ordinance 2014-19, sec. 4, adopted 4/8/14)

**Secs. 6-6-8 through 6-6-30    Reserved**

**Division 2. Permit**

**Sec. 6-6-31    Required; transfer; posting; seasonal or temporary permits**

(a) A person may not operate a food establishment in the city without a permit issued by the regulatory authority. Permits are nontransferable from one (1) person to another or from one (1) location to another location except as otherwise permitted by this article. A valid permit must be posted in or on every food establishment regulated by this article.

(b) A bed and breakfast establishment with seven (7) or fewer rooms for rent that serves only breakfast to its overnight guests is not a food establishment for the purposes of this article. Any other bed and breakfast is a food establishment and shall follow the applicable state rules and must obtain a permit under this article.

(c) All free food events serving perishable or baked items to the public will require a health permit issued by the county health department.

(d) All seasonal permits are limited to six (6) uses during the year.

(e) All temporary permits are limited to fourteen (14) consecutive days.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-103)

**Sec. 6-6-32    Application; inspection of premises; fee**

(a) Any person desiring to operate a food establishment must make written application on a form provided by the regulatory authority. The application must contain the name and address of the applicant, the location and type of proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis, and the same information is required for a renewal permit as for an initial permit.

(b) Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with local ordinances and state law. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.

(c) The following fee schedule applies to permits issued under this article:

(1) Standard permit fees based on the number of employees:

(A) 1 to 10 employees: \$140.00.

(B) 11 to 35 employees: \$300.00.

(C) 35+ employees: \$600.00.

(2) Special permit fees:

(A) All mobile food establishments: \$150.00 quarterly.

(B) A food establishment kitchen with the same owner may have two additional units for the standard commissary/concession fee. Any additional units will be charged sixty dollars (\$60.00).

(i) Seasonal: \$100.00.

(ii) Temporary: \$60.00.

(iii) Snow cone stands: \$100.00.

(iv) Foster home: \$100.00.

(v) Day care center: \$150.00.

(vi) Nursing home: \$300.00.

(vii) Plan review fee: \$150.00.

(viii) Replacement health permit: \$50.00.

(ix) Commissary: \$100.00.

(3) Exemptions to permit fee:

(A) Non-profit charitable organization.

(B) Church or religious organization.

(4) Plan review fee: \$150.00.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-104; Ordinance 2014-19, sec. 5, adopted 4/8/14)

**Sec. 6-6-33 Renewal**

County health department permits for the operation of all food establishments with the exception of temporary permits shall be renewed January 1 of each year, with a penalty of twice the permit fee if not renewed by January 31. (Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-105)

**Sec. 6-6-34 Review of plans**

(a) When a food establishment is constructed, or twenty (20%) or greater of the area of an existing food establishment is remodeled; or when an existing structure is converted from another use to a food establishment, prepared site plans, specifications and blueprints shall be submitted to the county health department for review before the start of construction. Specifications must indicate proposed layout, equipment arrangement, mechanical plans and construction materials used for work areas, and the types and models of fixed equipment and facilities. The county health department will notify the operator of the food establishment within five (5) days of submission of the department's decision to approve or not to approve the plans.

(b) The operator of any proposed food establishment must also comply with all city building codes and permitting requirements.

(c) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-106; Ordinance 2014-19, sec. 6, adopted 4/8/14)

**Sec. 6-6-35 Suspension**

(a) The regulatory authority may, without warning, notice or hearing, suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by subsection (b) of this section. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten (10) days of receipt of a request for a hearing.

(b) Whenever a permit is suspended, the holder of the permit or the person in charge 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 regulatory authority by the holder of the permit within ten (10) days. If no written request for a

hearing is filed within ten (10) days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

(Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-107)

### **Sec. 6-6-36 Revocation**

The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in the performance of its duties. Prior to the revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final. (Ordinance 2000-31, sec. 2, adopted 9/26/00; 1957 Code, sec. 8-108)