

**ORDINANCE NO. 04-85**

**AN ORDINANCE AMENDING TITLE X1, CHAPTER 111: FOOD AND FOOD ESTABLISHMENTS, OF THE CITY OF HARLINGEN CODE OF ORDINANCES BY AMENDING SECTIONS 111.01 ADOPTION OF STATE RULES, 111.02 PERMIT REQUIRED, 111.03 APPLICATION FOR PERMIT, 111.04 ISSUANCE OF PERMIT, 111.05 RECORD OF PERMIT HOLDERS, 111.06 PERMIT FEES, 111.07 SUSPENSION OR REVOCATION OF PERMIT; HEARINGS, 111.09 POSTING OF PERMIT AND CERTIFICATE; INSPECTION SHEETS TO BE KEPT, 111.10 ISSUANCE OR PERMIT PREREQUISITE TO OBTAINING ANY OTHER LICENSE, 111.11 CORRECTION OF VIOLATIONS, 111.12 EXAMINATION AND CONDEMNATION OF FOOD; HOLD ORDER, 111.13 SUBMISSION OF PLANS; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING**

**WHEREAS**, The Elected City Commission of the City of Harlingen, Texas finds it is in the interest of the public to amend Chapter 111 - Food and Food Establishments of the Code of Ordinances, now therefore:

**BE IT ORDAINED BY THE CITY OF HARLINGEN:**

**SECTION I:** Chapter 111: Food and Food Establishments of the City of Harlingen Code of Ordinances is hereby amended by repealing in their entirety Section 111.01 Adoption of State Rules, Section 111.02 Permit Required, Section 111.03 Application for Permit, Section 111.04 Issuance of Permit, Section 111.05 Record of Permit Holders, Section 111.06 Permit Fees, Section 111.07 Suspension Or Revocation Of Permit; Hearings, Section 111.09 Posting Of Permit And Certificate; Inspection Sheets To Be Kept, Section 111.10 Issuance Of Permit Prerequisite To Obtaining Any Other License, Section 111.11 Correction of Violations, Section 111.12 Examination and Condemnation of Food; Hold Order and Section 111.13 Submission of Plans; and such Sections are replaced by the following language and shall read in their entirety as follows:

**111.01 ADOPTION OF STATE RULES**

(A) *Rules on food service sanitation.* The Inspection, grading, regarding, and placarding of eating and drinking establishments within the city, the issuing, suspension, and revocation of permits for the operation of such establishments, sale of adulterated, misbranded, or wholesome food and drink, and the enforcement of this subchapter shall be regulated in accordance with the terms of the most recent *Texas Food Establishment Rules* promulgated by the Texas Department of Health, three copies of which shall be on file in the office of the City Secretary and the office of the *Environmental Health Director*.

(B) ***Conflict.*** In the event there is a conflict between the provisions of the codes adopted by reference in this section and other provisions of this code or ordinances of the city, the other provisions of this code or ordinance of the city shall prevail.

#### **111.02 PERMIT REQUIRED**

It shall be unlawful for any person in any way or manner to engage in, conduct, or operate any

business of a food handler, either from an established place of business or vehicle used for retail sales

within the corporate city limits of the city without first having applied for and received a permit in writing to do so from the ***Environmental Health Director***, as herein provided.

#### **111.03 APPLICATION FOR PERMIT**

Each applicant for permit required by this subchapter shall file with the ***Environmental Health Director*** a written application therefore which shall state the name address of such applicant, also a description by street and number or other appropriate designation of the location of such business, and other information as may be required by the ***Environmental Health Director***.

#### **111.04 ISSUANCE OF PERMIT**

(A) If after investigation and consideration of an application for a permit required by this subchapter and all proper matters in connection therewith, it shall appear to the ***Environmental Health Director*** that the statements made in such application are true, and the premises and vehicle conform to the requirements of this subchapter, the sanitary provisions of this code and other ordinances of the city and other laws applicable thereto, and that the applicant has complied with all the laws and ordinances regulating such business, and upon payment of all applicable fees, the ***Environmental Health Director*** shall grant the permit applied for.

#### **111.05 RECORD OF PERMIT HOLDERS**

A record shall be kept by the ***Environmental Health Department*** of all establishments who hold a permit under this subchapter.

#### **111.06 PERMIT FEES**

(A) ***The Environmental Health Director*** shall issue a Food Handler Permit certificate(s)

under the provisions of this subchapter and upon payment of the corresponding annual permit fee(s) collected by the Environmental Health Department:

**FEE SCHEDULE**

**(A) Eating & Drinking Establishment., (i.e. restaurants, delicatessens, mobile food establishments, group homes, day care centers, bars, etc.):**

- |  |                           |
|--|---------------------------|
| <b>1.) For each establishment having one and not more than two employees:</b>  | <b>\$ 40.00 Annually</b>  |
| <b>2.) For each establishment having at least three but not more than five employees:</b>                                  | <b>\$ 60.00 Annually</b>  |
| <b>3.) For each establishment having at least six but not more than ten employees:</b>                                     | <b>\$ 80.00 Annually</b>  |
| <b>4.) For each establishment having more than ten employees:</b>  | <b>\$ 100.00 Annually</b> |
| <b>5.) Temporary Food Vendors:<br/>(Valid for four (4) events, of not more than 48 hours each, during a calendar year)</b> | <b>\$ 30.00</b>           |

**111.07 SUSPENSION OR REVOCATION OF PERMIT; HEARINGS.**

(A) *The Environmental Health Director or, in his absence, the Sr. Health Inspector* in consultation with the City Manager, may suspend any food handler permit certificate to operate a food service establishment if the operation of the same constitutes a substantial and imminent hazard to public health. Suspension is effective immediately upon written notification, and all food service operations shall immediately cease. Whenever a food handler permit certificate is suspended in accordance with this division, a hearing shall be held before the City Commission as soon as possible.

(B) Whenever a food handler permit certificate is suspended, except in the case of a substantial and imminent hazard to public health as provided for in division (A) of this section, the holder of the food handler permit certificate or person in charge shall be notified in writing that the food handler permit certificate will be suspended on a specified date and that an opportunity for a hearing by the City Commission will be provided if a written request for a hearing is filed with the *Environmental Health Director* by the holder of the food handler permit certificate within ten days of service of the written notice. All food service operations shall cease effective upon the date specified in the notice pending such hearing. If no request for a hearing is filed within ten days, the

suspension is sustained. The ***Environmental Health Director*** may terminate the suspensions at any time if reasons for the suspensions no longer exist.

(C) ***The Environmental Health Director***, after providing opportunity for a hearing by the City Commission, may revoke a food handler permit certificate for serious violations or repeated violations of any of the requirement of these rules or for interference with the ***Environmental Health***

***Department*** in the performance of its duties. Prior to revocation, the ***Environmental Health Director*** shall notify the holder of the food handler permit certificate or person in charge, in writing, of the reasons for which the food handler permit certificate is subject to revocation and the food handler permit certificate may be revoked at the end of ten (10) days following service of such notice. If the City Commission determines after such hearing that revocation is warranted or if a written request for a hearing is not filed with the ***Environmental Health Director*** by the holder of the food handler permit certificate within such ten day period, the revocation is sustained.

(D) A notice provided for in this section is properly served when it is delivered in person to the holder of the food handler permit certificate 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 food handler permit certificate. A copy of the notice shall be filed in the records of the ***Environmental Health Department***.

(E) The hearings provided for in divisions (A), (B), and (C) of this section shall be conducted by the City Commission at a time and place designated in a written notice to the food handler permit certificate holder. Based upon recorded evidence of such hearings, the City Commission 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 food handler permit certificate by the City Commission.

(F) Whenever a revocation of a food handler permit certificate has become final, the holder of the revoked food handler permit certificate may make a written application for a new food handler permit certificate.

#### **111.09 POSTING OF PERMIT CERTIFICATE; INSPECTION FORMS TO BE KEPT**

Each food handler permit certificate issued under this subchapter shall at all times be kept posted and displayed in a conspicuous place in or about such place of business, premises, or vehicle.

Inspection forms must be kept on the premises to be produced upon request of the *Environmental Health Director* or his designated representative.

#### **111.10 ISSUANCE OF PERMIT CERTIFICATE PREREQUISITE TO OBTAINING ANY OTHER LICENSE.**

No license under any provision of this code or other ordinance of the city shall be issued to any person owning or operating any food handling business which is required to have a food handler permit certificate by the provisions of this subchapter, unless such food handler permit certificate shall have first been granted by the *Environmental Health Director*.

#### **111.11 CORRECTION OF VIOLATIONS**

When a food service establishment receives a rating score of less than 60, the food service establishment shall initiate corrective action on all identified violations within 48 hours. One or more re-inspections will be conducted at reasonable time intervals to assure corrections. In the case of temporary food service establishments all violations shall be corrected within 24 hours. If violations are not correct within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the *Environmental Health Department*.

#### **111.12 EXAMINATION AND CONDEMNATION OF FOOD; HOLD ORDER**

Food may be examined or sampled by the *Environmental Health Department* as often as necessary for enforcement of these rules. The *Environmental Health Department* may, upon written notice to the owner or person in charge, specifying with the particular reasons therefore, place a hold order on any food which it believes is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetics Act, Texas Health & Safety Code, Chapter 431.0 et. seq. The *Environmental Health Department* shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the establishment. The *Environmental Health Department* shall permit storage of the food under conditions specified in the hold order, unless storage is not possible within risk to public health, in

which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed within ten days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of the evidence produced at the hearing the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring in into compliance with the provisions of the Texas Food Establishment Rules.

### ***111.13 SUBMISSION OF PLANS***

Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the ***Environmental Health Department*** for review and approval before a building permit for such construction, remodeling or conversion may be issued and before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials or work areas, plumbing fixtures, and the type and model of proposed fixed equipment and facilities. The ***Environmental Health Department*** shall approve the plans and specifications if they meet the requirements of the Texas Food Establishment Rules. No food service establishment shall be constructed, extensively remodeled, or converted except in accordance with the plans and specifications approved by the ***Environmental Health Department***.

**SECTION II:** That the City Secretary of the City of Harlingen, Texas is hereby authorized and directed to cause a true and correct copy of the caption of this Ordinance to be published in a newspaper having general circulation in the City of Harlingen, Cameron County, Texas.

**FINALLY ENACTED THIS** 17th day of November, 2004 at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER

551.

CITY OF HARLINGEN

\_\_\_\_\_  
Rick Rodriguez, MAYOR

ATTEST:

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Sylvia R. Trevino, CITY SECRETARY