

Ordinance No. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS, AMENDING CHAPTER 110, (ENTITLED “FOOD ESTABLISHMENTS”) OF THE CITY OF PFLUGERVILLE’S CODE OF MUNICIPAL ORDINANCES BY DESIGNATING THE CITY OF PFLUGERVILLE TO BE THE REGULATORY AGENCY ADMINISTERING THE CHAPTER; PROVIDING A CUMULATIVE CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PROPER NOTICE AND MEETING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 110 (entitled “*Food Establishments*”) of the Municipal Code of Ordinances was adopted to protect the public health and welfare in regards to food safety; and

WHEREAS, City Council initially designated the Williamson County and Cities Health District as the regulatory agency that would administer the chapter; and

WHEREAS, City Council deems it proper to best serve the public by designating the City of Pflugerville as the agency that shall enforce the chapter; and

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

Section 1. Amendment to Chapter 110.

The City of Pflugerville’s Code of Municipal Ordinances Chapter 110 (entitled “*Food Establishments*”) is hereby deleted in its entirety and replaced with EXHIBIT “A”.

Section 2.

EXHIBIT “A”

CHAPTER 110: FOOD ESTABLISHMENTS

GENERAL PROVISIONS

§ 110.01 SHORT TITLE.

This chapter shall be known, and may be cited, as the Food Establishment Ordinance of the City of Pflugerville.

(Ord. 301-89-07-25, passed 7-25-89)

§ 110.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms not defined herein shall be construed in accordance with customary language.

The words “authorized agent or employee” mean the designated employees of the regulatory authority.

The words “City Council” mean the Pflugerville City Council.

The words “food establishment” mean an operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as a: food service establishment, retail food store, catering operation, institution, temporary food establishment, mobile food unit, and/or a roadside food vendor.

The words “food handler” mean any person in a food establishment who handles food or drink during preparation or serving; or who comes in contact with any eating or cooking utensils; or who is employed in an area where food or drink is prepared, served, transferred, stored, packed, sold, or otherwise handled.

The words “health official” mean the authorized representative of the City of Pflugerville.

The words “nonprofit food establishment” means a food establishment operated by a federal tax exempt charitable organization for fundraising or other events.

The words “state laws” mean the state laws found in Chapter 437 of the Texas Health and Safety Code.

The words “state rules” mean the state rules 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.

The words “regulatory authority” mean the City of Pflugerville.

The words “temporary food establishment” mean a food establishment operating for a temporary period of no less than four (4) hours and no more than fourteen (14) consecutive days in conjunction with a fair, carnival, circus, public exhibition, or other public gathering.

The words “working days” mean the days that the regulatory authority is open to conduct business with the public.

(Ord. 301-89-07-25, passed 7-25-89; Am. Ord. 369-92-10-27, passed 10-27-92; Ord. 733-04-01-13, passed 1-13-04; Ord. 1025-09-10-27, § 1, passed 10-27-09)

§ 110.03 CONSTRUCTION OF CHAPTER.

Wherever in this chapter a reference is made to a statute, ordinance, rule, or regulation which has been amended or superseded, the reference shall be deemed to mean the amended or superseding provision to the extent that such is a reasonable application.

(Ord. 301-89-07-25, passed 7-25-89)

§ 110.04 APPLICATION OF REGULATIONS.

(A) Except as provided in subsection (B) below, the regulations of this chapter shall apply to all food establishments within the city.

(B) The following are exempt from this chapter:

(1) Governmental entities, provided that they show proof of a contractual relationship with another approved jurisdiction to provide food inspection services.

(2) Temporary food establishments as defined in this chapter.

(Ord. 301-89-07-25, passed 7-25-89; Am. Ord. 369-92-10-27, passed 10-27-92; Ord. 733-04-01-13, passed 1-13-04; Ord. 1025-09-10-27, § 2, passed 10-27-09)

PERMITS

§ 110.20 PERMITS.

(A) A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this ordinance. All permits expire on December 31 each year. A valid permit must be posted in or on every food establishment regulated by this ordinance.

§ 110.21 APPLICATION FOR PERMIT AND FEES.

(A) Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the 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 state laws and rules. A food establishment that does not comply with state laws and rules may be denied a permit or the renewal of a permit. The establishment shall remain closed until the corrections are made to bring the establishment into compliance.

§ 110.22 REVIEW OF PLANS.

Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work is begun. Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. The approved plans and specifications must be followed in construction, remodeling or conversion.

§ 110.23 REGISTRATION OF FOOD HANDLERS.

(A) It shall hereafter be unlawful for any person operating any food establishment, to work or employ a food handler until such food handler is in possession of a food handler's certificate that is valid during the time of such employment.

(1) Recognition of certificates. The regulatory authority shall recognize certificates from food handlers who attend a state sanctioned food handler's class offered online or at various sites in the county.

(2) Education and examination of applicant. No food handler's certificate shall be recognized by the regulatory authority for any person required by law or by this article to have or exhibit such certificate until the applicant shall have met the following requirements:

(a) Complete a state approved class in basic food sanitation. The primary emphasis of this class will be directed toward the food workers' sanitation practices and behavior when working in a food establishment. It will be the responsibility of the person in charge of the food establishment to ensure that safe food practices are in use at all times.

(3) Display of food handler certificates. Upon completion of the prescribed class and the necessary administrative processing, each individual will be issued a food handler's certificate that will be posted at the place of employment in a location readily accessible to the regulatory authority for verification.

(4) Managers and supervisory personnel. Managers, assistant managers, and shift supervisors who have completed the Texas state Food Protection Manager Certification Program must post their certification from the state with the employee's certifications.

§ 110.26 ENFORCEMENT OF ORDINANCE.

(A) Food establishments shall be inspected a determined number of times during a calendar year according to risk factors set by the Texas Department of Health. High-risk establishments, that prepare and serve potentially hazardous food and/or serve a highly susceptible population, shall

be inspected a minimum of four (4) times a calendar year. Establishments that serve only prepackaged, non-potentially hazardous foods shall be inspected a minimum of two (2) times a calendar year.

(B) Additional inspections of food establishments shall be performed as deemed necessary to protect against public health hazards or nuisances. Additional fees are charged to the establishment for these visits. Visits associated with unsubstantiated complaints received by this office will not require an additional fee.

(C) Following are guidelines for enforcement of these rules in an establishment that earns more than thirty (30) demerits on multiple inspections during a twelve (12) month period:

(1) First failure. “UNSATISFACTORY” placard shall be posted on front door or window and shall not be covered from sight, defiled, or removed until an inspection is performed earning thirty (30) or fewer demerits. The follow-up inspection will occur within (two) working days of the failed inspection.

(2) Second failure within twelve (12) months of first failure. “UNSATISFACTORY” placard shall remain/be posted on front door or window and shall not be covered from sight, defiled, or removed until an inspection is performed earning thirty (30) or fewer demerits. The permit shall be suspended and the operations of the establishment shall cease immediately. The establishment shall remain closed for a minimum of 48 hours and fulfill the following requirements before reopening:

(a) The management of the establishment must meet with and submit a written plan of action to the health official or his appointee. The plan of action shall address critical violations of the previously failed inspections.

(b) A reinstatement fee of \$100 will be paid to the City of Pflugerville located at 201-B E. Pecan Street, Pflugerville, Texas 78660.

(c) A follow-up inspection will be conducted within one working day of fulfillment of the requirements listed under (1) and (2) above.

(d) The establishment shall be placed on a thirty (30) day inspection schedule until two (2) consecutive inspections result in a score of thirty (30) or fewer demerits.

(3) Third failure within twelve (12) months of first failure. “UNSATISFACTORY” placard shall remain/be posted on front door or window and shall not be covered from sight, defiled, or removed. The person in charge shall be notified in writing of the intent of the regulatory authority to permanently revoke their permit.

§ 110.27 FEES.

The City Council shall establish by resolution a fee schedule to be paid in connection with this chapter. The schedule of fees shall be posted in the office of the City Secretary and may be amended only by action of the City Council.

(Ord. 301-89-07-25, passed 7-25-89; Am. Ord. 369-92-10-27, passed 10-27-92; Ord. 733-04-01-13, passed 1-13-04)

SANITATION REQUIREMENTS

§ 110.40 ADOPTION OF TEXAS FOOD ESTABLISHMENT RULES AND APPLICATION OF STATE LAW.

The City of Pflugerville adopts by reference the provisions of the current rules or rules as amended by the Texas Board of Health found in 25 Texas Administrative Code Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishment in this jurisdiction. In the event that there is a conflict between the Texas Board of Health Rules and this Food Establishment Ordinance, the more stringent, as determined by the health official, shall prevail.

(Ord. 301-89-07-25, passed 7-25-89; Am. Ord. 733-04-01-13, passed 1-13-04)

§ 110.41 APPLICATION OF SUBCHAPTER.

The regulations set out in sections 110.40 through 110.51 shall apply to all food establishments, including temporary food establishments and mobile food units, except as specifically otherwise stated in this chapter.

(Ord. 301-89-07-25, passed 7-25-89) Penalty, see § 10.99

§ 110.42 RESTROOMS.

(A) Every food establishment shall provide its employees with at least one restroom with associated handwashing facilities conveniently located within the establishment. Food establishments with five or more employees on duty at one time shall provide two restrooms, one each for males and females. Restrooms required under division (B) and (C) of this section may be utilized as employee restrooms if the restrooms are located within the food establishment or within 75 feet of the main food preparation area of the food establishment.

(B) A new or extensively remodeled food establishment that provides reusable tableware, or serves alcoholic beverages, or has seating for 20 or more persons shall have available for public use at least two restrooms, one each for males and females, which are conveniently accessible from the seating or dining area of such food establishment. Such restrooms shall conform with the requirements of the city construction code related to handicapped access.

(C) If two or more new or extensively remodeled small food establishments share a common seating or dining area, such food establishments may also share public restrooms, provided that the restrooms are in compliance with the requirements of division (B) above.

(Ord. 301-89-07-25, passed 7-25-89; Am. Ord. 733-04-01-13, passed 1-13-04) Penalty, see [§ 10.99](#)

ADMINISTRATION AND ENFORCEMENT

§ 110.71 VIOLATIONS.

(A) Any person who violates a provision of this chapter and any person who is the holder of a permit or who otherwise operates a food establishment that does not comply with the requirements of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed the maximum amount authorized by law for violation of a city ordinance, as set forth in section 10.99. Each day of such violation shall constitute a separate offense. Such penalty shall be cumulative and not exclusive of any other rights or remedies the city may have.

(B) The city, including the city's police department, and the inspector of food establishments may seek to enjoin violations of this chapter.

(C) Nothing herein contained shall prevent the city or its duly authorized designees from taking other lawful action as is necessary to prevent or remedy any violation of this chapter.

(D) It shall not be necessary for the complaint to allege or to prove that the act or omission was knowingly done or omitted.

(Ord. 301-89-07-25, passed 7-25-89; Am. Ord. 369-92-10-27, passed 10-27-92; Ord. 427-95-10-24, passed 10-24-95; Ord. 733-04-01-13, passed 1-13-04; Ord. 1025-09-10-27, § 3, passed 10-27-09) Penalty, see [§ 10.99](#)

Section 3. Cumulative Clause.

That this ordinance shall be cumulative of all provisions of the City of Pflugerville, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

Section 4. Severability.

That it is hereby declared to be the intention of the City Council of the City of Pflugerville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council

without incorporation in this ordinance of any such unconstitutional phrases, clause, sentence, paragraph or section.

Section 6. Effective Date.

This ordinance shall be effective upon passage and publication as required by State and Local law.

PASSED AND ADOPTED by the City Council of the City of Pflugerville this ____ day of _____, 2012.

APPROVED this ____ day of _____ 2012.

Jeff Coleman, Mayor
City of Pflugerville

A P P R O V E D A S T O F O R M:

George Hyde, City Attorney for the
City of Pflugerville

Attest: _____
Karen Thompson, City Secretary