

ORDINANCE NO. 16-2091

AN ORDINANCE OF THE CITY OF LAKE JACKSON, TEXAS, AMENDING CHAPTER 50 HEALTH AND SANITATION TO UPDATE FOOD SERVICE ESTABLISHMENT REGULATIONS; PROVIDING THAT ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH SHALL BE REPEALED TO THE EXTENT OF THE CONFLICT ONLY; PROVIDING FOR A PENALTY; PROVIDING A SAVINGS CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FIVE DAYS AFTER PUBLICATION

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

Section 1: That Ch. 50 is amended to read as follows:

DIVISION 1. GENERALLY

Sec. 50-31. Adoption of Department of State Health Services Rules.

- (a) The current rules or rules as amended, commonly known as the Texas Food Establishment Rules (TFER), that are found in 25 Texas Administrative code, Chapter 228 are hereby adopted as the food establishment rules of the city, save and except those sections added, deleted or amended in this chapter.
- (b) If there is a conflict between a rule adopted in this section and any other section of this article, the more restrictive provision shall apply.

Sec. 50-32. Interference.

It is a violation of this chapter for any person to interfere with the duties and actions of the regulatory authority.

Sec. 50-33. Definitions.

All terms defined in this chapter, unless specifically defined otherwise, shall have the meanings ascribed to them by the Texas Food Establishment Rules. The following terms are specifically defined:

Caterer means any person or entity that transports complete meals from an approved establishment to another location for consumption, but shall not include persons operating restaurants that routinely deliver food on order or persons that deliver a product or distribute a product to vending machines.

Commissary or central preparation facility means a facility that mobile food service establishments use to dispose of waste and to obtain supplies.

Food establishment or food service establishment means an establishment engaged in production, service, and/or sales of non-residential food and/or drink for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

Person in charge means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.

Regulatory authority means the City of Lake Jackson Health Officer, Building Official or other person designated by the city manager.

Temporary food establishment means a food service establishment which operates at the same location for a period of time of not more than 14 consecutive days in conjunction with a single event, such as a fair, carnival, circus, exhibition or similar temporary gathering.

Time/temperature Control for Safety food (TCS)—(formerly *Potentially Hazardous Food (PHF)*) A food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation

Sec. 50-34. Inspection placard to be displayed.

Every non-temporary food service establishment shall display, in public view of the front door and immediately upon receipt, the regulatory authority's inspection placard stating the rating received at the time of the most recent inspection of the establishment.

Sec. 50-35. Correction of violations.

(a) Corrections of the violations found during inspection shall be accomplished within the period specified on the regulatory authority's inspection report.

1. If an imminent health hazard exists, such as the complete lack of refrigeration, loss of power, loss of hot water or sewage backup into the establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory agency.

(b) When the rating score of the establishment is less than seventy (70), the establishment shall immediately initiate corrective action on all violations specified by the regulatory authority.

(c) For temporary food service establishments, all violations shall be corrected immediately and the establishment shall cease food service operations until authorized to resume by the regulatory authority.

Sec. 50-36. Grease interceptors.

(a) *Servicing of Grease Interceptors.* Food service establishments must service grease interceptors quarterly and in accordance with Sec. 102-159. The regulatory authority may require that the food service establishment service the grease interceptors more frequently.

(b) *Report of Service.* Each establishment must provide the regulatory authority with a copy of the grease interceptors Servicing Manifest or Invoice immediately after the grease interceptor has been serviced. The invoice shall contain the name and address of the food service establishment; the name and address of the licensed waste carrier; the name and address of the licensed disposal site; the signature of the operator of the establishment, the waste carrier and the disposal site; and the quantity and date of grease removal and disposal.

Sec. 50-37. Power Failure.

(a) *Power failure greater than thirty (30) minutes and less than four (4) hours.* If there is a power failure, mechanical failure, or other condition that results in an internal machine thermometer that cannot maintain food temperatures, and such condition continues for a length of time greater than thirty (30) minutes but less than four (4) hours, the following steps must be taken:

1. The food establishment must be closed during the power failure;
2. A log must be kept of the time that the power failure initially occurred, the temperature of the food at that time, and the time and temperature of the TCS food at one (1) hour intervals until the power is restored;
3. The regulatory authority must be notified immediately of the power failure; and
4. The documentation must be provided to the regulatory authority immediately upon request.

(b) *Power Failure greater than four (4) hours.* If there is a power failure, mechanical failure, or other condition that results in an internal machine thermometer that cannot maintain food temperatures, and such condition continues for a length of time greater than four (4) hours, the following steps must be taken:

1. The food establishment must be closed during the power failure;
2. The food establishment must not re-open until an inspection has been conducted by the regulatory authority;
3. A log must be kept of the time that the power failure initially occurred, the temperature of the food at that time, and the time and temperature of the TCS food at one (1) hour intervals until the power is restored;
4. The regulatory authority must be notified immediately of the power failure; and
5. The documentation must be provided to the regulatory authority immediately upon request.

Sec. 50-38. Detention and destruction of food.

(a) The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of this article.

(b) The regulatory authority shall, upon written notice to the owner or person in charge specifying the reason, place any food under detention which it has probable cause to believe is adulterated, misbranded, or a hazard to public health. No food subject to a detention order shall be used, served or moved from the establishment. The regulatory authority shall allow storage of the detained food under conditions specified in the detention order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The detention order shall state that a request for hearing may be filed within ten (10) 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 evidence produced at the hearing, the detention order may be vacated or the person in charge of the food may be directed by written order to destroy such food or to bring it into compliance with the provisions of this article.

(c) Time temperature control for safety foods (TCS). Immediate destruction of TCS food shall be ordered and accomplished if:

- (1) The TCS food is in a container or package that does not bear a date or day, and is not properly labeled to show evidence that the TCS food is less than seven (7) days old; or
- (2) The TCS food is at a temperature of greater than 5 degrees Celsius (41 degrees Fahrenheit) and less than a temperature of 57 degrees Celsius (135 degrees Fahrenheit); or
- (3) When using time as a public health control, the TCS food exceeds the time that is four hours past the point in time when the food is removed from temperature control.

Sec. 50-39. Food service employee illness. When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food service establishment employee, the regulatory authority require may any or all of the following measures:

- (1) The immediate exclusion of the employee from all food service establishments.
- (2) The immediate closing of the food service establishment until the regulatory authority determines no further danger of disease outbreak exists.
- (3) Restriction of the employee's services to areas of the establishment where there is no danger of transmitting disease.
- (4) Adequate medical and laboratory examination of the food service establishment employees.

Sec. 50-40. Temporary food service establishment.

- (a) All TCS food shall be prepared in a licensed food establishment or on the temporary food service establishment's premises. No TCS food or beverages stored or prepared in a private home may be offered for sale, sold or given away from a temporary food facility.
- (b) Non-TCS food, such as baked items, prepared in a kitchen in a private home may be sold at a function, such as a religious or charitable organization bake sale.

Sec. 50-41. Mobile food establishments.

- (a) Mobile food service establishments that serve TCS foods shall operate from a central preparation facility, commissary, or other fixed food service establishment that is permitted and regularly inspected by the regulatory authority.
- (b) Central Preparation Facility Authorization. A signed letter of authorization is required, to verify facility use, if the Central Preparation Facility is not owned by the mobile unit operator.
- (c) Central Preparation Facility Inspection Report. A copy of the most current health inspection of the central preparation facility must be maintained on the mobile unit at all times.
- (d) Central Preparation Facility
 - (1) Protection.
 - (A) A Mobile Food Unit servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operations. Those areas used only for the loading of water and/or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.
 - (B) Within the servicing area, the location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies.
 - (C) A servicing area will not be required where only packaged food is placed on the Mobile Food Unit or where Mobile Food Units do not contain waste retention tanks.
 - (D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.
 - (E) Potable water servicing equipment shall be installed in the servicing area according to the Plumbing Code and shall be stored and handled in a way that protects the water and equipment from contamination.
- (e) Pushcarts shall be limited to pre-packaged ice cream or pre-packaged non-TCS food as approved by the regulatory authority. Pushcarts must have a central preparation facility to receive supplies and for cleaning the cart.
- (f) Food prepared in a private home may not be used or offered for human consumption from a mobile food service establishment.
- (g) Mobile food service establishments must comply with all state and local laws pertaining to vehicle registration.
- (h) Mobile food service establishments must have a Certified Food Manager on site when preparing or selling food.

Sec. 50-42. Caterer.

(a) *License.* Any entity that operates as a caterer must obtain either a yearly license or a temporary license issued for the duration of a single event. The license shall be posted at the caterer's commissary location and at the location of the event.

(b) *Additional requirements - Notification to the city.* Prior to catering an event, a caterer shall provide the city with written notification of the location, time, date, number of persons to be served and menu items, as well as the phone number, license number and name of the person certified in food protection management who will be the person in charge of catering the event.

Sec. 50-43. Food manager certification.

(a) By October 1, 2014, all food service establishments that have six (6) or more food handlers on duty at any time are required to have at least one certified food manager on duty during all hours of operation.

(b) By October 1, 2014, food service establishments that have five (5) or less food handlers on duty at any time are required to have at least one certified food manager employed in a managerial capacity and shall have at least one certified food handler on duty during all hours of operation.

(c) Temporary food establishments and establishments that serve, sell, or distribute only prepackaged non-TCS foods are exempt from this section.

(d) Except for a temporary food establishment, all food employees shall successfully complete at least an accredited food handler training course within 30 days of employment. The employee does not need to re-take the course if the employee changes employers.

(e) The food establishment shall maintain a certificate of completion of the food handler training course for each food employee on the food establishment's premises.

(f) The requirement to complete a food handler training course shall be effective September 1, 2016.

Sec. 50-44. Violations.

(a) A violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-5 of the Code of Ordinances of the City of Lake Jackson.

(b) The regulatory authority shall issue the citation to the person in charge or to such other person that the regulatory authority has probable cause to believe is the person responsible for the violation.

DIVISION 2. LICENSES

Sec. 50-46. Required; general conditions.

(a) Any operation that is engaged in business as a food service establishment is required to have a city issued license. This may be either a yearly license to operate or a temporary license issued for the duration of a single event.

(b) The regulatory authority may not issue a license or conduct a plans review until all requisite fees have been paid.

Sec. 50-47. Application.

(a) *Contents.* Any person desiring to operate a food service establishment shall make written application and pay the non-refundable fee as required in section 50-48 of this article. Such application shall include, but not be limited to, the following:

- (1) The applicant's full name, post office address and street address;
- (2) Whether such applicant is an individual, firm or corporation and, if a partnership, the name of each partner and his address;
- (3) The location and type of the proposed food service establishment;
- (4) Dates of event for temporary food service establishments;
- (5) The signature of the applicant; and

(6) All other information deemed necessary by the regulatory authority.

(b) *Food manager certificate.* A copy of the certified food manager certificate must be submitted with the license application or renewal.

(c) Temporary food establishments and establishments that serve, sell, or distribute only prepackaged non-TCS foods are exempt from this section.

(d) *Inspection.* After the application has been submitted and all fees paid, the regulatory authority shall inspect the food service establishment for compliance with this chapter. If the establishment complies with this chapter, the regulatory authority shall issue the license.

Sec. 50-48. Fees.

The following fee schedule shall be applicable to licenses issued under this article:

Description	Fee
Large food service establishments over 10,000 square feet, per year	500.00
Medium risk surcharge	25%
High risk surcharge	50%
Small food service establishments less than 10,000 square feet and greater than 1,000 square feet, per year	250.00
Medium risk surcharge	25%
High risk surcharge	50%
Very small food service establishments 1,000 square feet or less, per year	125.00
Medium risk surcharge	25%
High risk surcharge	50%
Mobile food service establishments, per year	125.00
Caterer's license, per year	125.00
Nonprofit organizations	-0-
Sidewalk Café, per year	50.00
Temporary food service establishments	50.00
License for mobile food service establishment additional vehicles	75.00
Renewal fee following closure of more than 30 days plus inspection fee	75.00
Re-inspection fee (minimum one hour), per hour	25.00
Adult/child care facility: Thirteen or more clients, per year	100.00
Adult/child care facility: Twelve to eight clients, per year	50.00
Adult/child care facility: Seven or less clients (registration fees only)	25.00
Public Swimming Pools	125.00

Sec. 50-49. Two or more non-mobile establishments.

If a person or entity owns or operates two (2) or more establishments, the person shall complete separate applications and pay separate fees for each establishment.

Sec. 50-50. Posting of license.

Permanent food service establishments must post the license in a place that is seen from the front door. Temporary and mobile food service establishments must post the license within immediate view of customers.

Sec. 50-51. Transferability of license.

A license is valid only for the location specified on the license and it may not be transferred from place to place or from establishment to establishment. Mobile food service establishments may retain the same license when moving from place to place as long as the vehicle remains the same.

Sec. 50-52. Renewals.

Each food service establishment shall apply to renew its license and pay its renewal fees no later than March 31 of each year. A ten (10) percent late fee will be assessed during the period within one (1) to thirty (30) days following the renewal date. A fifty dollar (\$50.00) late fee will be assessed if the application and/or payment are thirty one (31) to sixty (60) days late. Any establishment that is more than 60 days late with the application for payment, shall meet all building and application requirements for new food service establishments.

Sec. 50-53. Denial of issuance.

If the application for a license does not conform to the requirements of this article or other pertinent laws or ordinances, the regulatory authority shall return the application and documents to the applicant and give a written reason for the license denial.

DIVISION 3. LICENSE SUSPENSION AND REVOCATION

Sec. 50-56. Suspension.

(a) Whenever a food service establishment is required under the provisions of this article to cease operations, it shall not resume operations until such time as the regulatory authority determines that conditions responsible for the requirement to cease operations no longer exist.

(b) The city may, without warning, notice or hearing, suspend any license to operate a food service establishment if the holder of the license does not comply with the requirements of this article, if the operation of the food service establishment constitutes a substantial hazard to public health, or if the person in charge refuses to allow the regulatory authority to inspect the establishment.

(c) Suspension is effective upon service of the notice required by section 50-59. The holder of the license may request a hearing within ten (10) days of notice of suspension. The city shall hold the hearing with twenty (20) days of the request. If no written request for a hearing is filed within the ten (10) days, the suspension is sustained.

(d) The regulatory authority may end the suspension at any time if the reasons for suspension no longer exist.

Sec. 50-57. Revocation.

The regulatory authority may, after providing opportunity for a hearing, revoke a license-for serious or repeated violations of any of the requirements of this article or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the city shall notify the holder of the license, or the person in charge, in writing, of the reason for which the license is subject to revocation and that the license shall be revoked at the end of such ten (10) days following service of such notice unless a written request for a hearing is filed with the city within the ten-day period. If no request for a hearing is filed within the ten-day period, the revocation of the license becomes final.

Sec. 50-58. Reapplication after revocation.

The holder of a revoked license may apply for a new license.

Sec. 50-59. Service of notices.

A notice provided for in this article is properly served when it is delivered to the holder of the license 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 license.

Sec. 50-60. Hearings.

The hearings provided for in this article shall be conducted by a committee appointed by the city manager at a time and place designated by the committee. Based upon the recorded evidence of such hearing, the city shall make a final finding, 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 license.

Section 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict only.

Section 3: If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4: The City Secretary shall publish the caption of this ordinance within ten (10) days of final passage in the official newspaper of the City. This ordinance shall take effect and be in force five (5) days after publication in accordance with Section 3-15 of the Charter of the City of Lake Jackson, Texas.

PASSED on the first reading this 1st day of February 2016.

PASSED AND APPROVED on second reading this 16th day of February 2016.

Joe Rinehart, Mayor

ATTEST:

Alice A. Rodgers, City Secretary

APPROVED AS TO FORM:

Sherri Russell, City Attorney