

ORDINANCE NO. 1118-2

AN ORDINANCE REGARDING THE REGULATION OF FOOD ESTABLISHMENTS INCLUDING FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, TEMPORARY FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS; PROVIDING A PENALTY; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lindsay, Texas, is a Type A general law municipality located in Cooke County, created in accordance with Chapter 6 of the Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, there is a need to protect health, safety, and welfare of the citizens of the City of Lindsay (the "City"); and

WHEREAS, rules to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented are a mechanism to protect the health, safety, and welfare of the City; and

WHEREAS, the Texas Food Establishment Rules are provided for in 25 Texas Administrative Code, Chapter 228; and

WHEREAS, adoption by ordinance of the Texas Food Establishment Rules is necessary to allow enforcement of the Texas Food Establishment Rules in compliance with State Law.

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

SECTION 1.

Adoption of Texas Food Establishment Rules

(a) City of Lindsay, Texas 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 228, regarding the regulation of food establishments in this jurisdiction.

(b) Definitions.

Authorized agent or employee means the employees or contractors for the regulatory authority.

Food establishment means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

Regulatory authority means the City of Lindsay, Texas.

State rules mean the state rules found at 25 Texas Administrative Code, Chapter 228. These rules are also known as the Texas Food Establishment Rules.

Temporary food establishment means a food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

**SECTION 2.
PERMITS AND EXEMPTIONS**

- (a) A person may not operate a food establishment without a permit issued by the regulatory authority. The person in charge of a food establishment shall be a certified food protection manager who has shown proficiency of required information through passing an examination approved by the Texas Department of Health. Permits are not transferable 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 a conspicuous public place regulated by this ordinance.
- (b) A food establishment operated solely by a nonprofit organization is exempt from the permit fees as required of this ordinance, but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.
- (c) A temporary food establishment may operate under a temporary permit issued by the regulatory authority and shall operate in compliance with state rules.

**SECTION 3.
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 as established in the City of Lindsay Fee Schedule. 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 will be denied a permit or the renewal of a permit.
- (c) Permits for temporary food establishments that have been inspected and permitted by another regulatory authority in the State of Texas (temporary permits from other regulatory authorities are not allowed) may be provided a temporary permit without an inspection from the regulatory authority.
- (d) Fees for any application, permit, or inspection required under this ordinance shall be required as established in the City of Lindsay Fee Schedule.

**SECTION 4.
REVIEW OF PLANS**

- (a) 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 twenty

(20) percent 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.

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

SECTION 5. SUSPENSION OF PERMIT

(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 Section 5(b). 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 twenty (20) 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 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.

SECTION 6. REVOCAION OF PERMIT

(a) The regulatory authority may, after providing opportunity for a hearing by the regulatory authority, 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 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.

(b) If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final.

SECTION 7. ADMINISTRATIVE PROCESS

(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.

SECTION 8. REMEDIES

(a) It shall be an offense for any person to violate a provision of this ordinance, the rules adopted by this ordinance, or a permit issued under this ordinance. Each day that a violation occurs or continues shall be a separate offense.

(b) An offense under this section shall be punishable by a fine of not more than two thousand dollars (\$2,000.00) per violation.

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

SECTION 9. CUMULATIVE

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

SECTION 10. SEVERABILITY

It is hereby declared to be the intention of the City Council 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 shall 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 and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 11. SAVINGS

All rights and remedies of the City of Lindsay are expressly saved as to any and all violations of the ordinances of the City of Lindsay related to operating mobile food units within the City that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 12.
PUBLICATION**

The City Secretary is authorized and directed to cause publication of the descriptive caption and penalty clauses of this ordinance as provided by law.

**SECTION 13.
EFFECTIVE DATE**

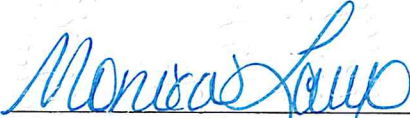
This Ordinance shall be in full force and effect after its passage and publication.

PASSED AND APPROVED ON THIS 12 DAY OF October, 2018.



Scott Neu, Mayor

ATTEST:



Monica Laux, City Secretary