

ORDINANCE NO. O-2008 - 50

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PHARR, TEXAS, AMENDING CHAPTER 62 "HEALTH AND SANITATION", ART. II. DIVISION 4. OF THE CODE OF ORDINANCE MANUAL REGARDING FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, TEMPORARY FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, ROADSIDE FOOD VENDORS AND FOOD HANDLERS; PROVIDING FOR PENALTIES AND AN EFFECTIVE DATE.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, THAT:

ARTICLE I. IN GENERAL

Sec. 62-81 Enforcement interpretation.

The sections of this article shall be enforced by the health officer, or his/her designated representative, in accordance with the interpretations thereof, and provided further, that where the provisions of the laws of the State of Texas are in conflict with such compliance provisions, the state law shall govern and shall control the interpretation given any of the provisions of this article. This Ordinance is intended to further the public's health, safety, and welfare.

ARTICLE II. FOOD ESTABLISHMENTS

Sec. 62-82 Adoption of Texas Food Establishment Rules

- (a) The City of Pharr adopts by reference the provisions of the current rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 299, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction.
- (b) Definitions

The words "authorized agent or employee" means the employees of the regulatory authority.

The words "food establishment" mean food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

The words "municipality of Pharr" in this ordinance shall be understood to refer to the City of Pharr.

The words "state rules" means that the state rules found 25 Texas Administrative Code, Chapter 229, Sections 161 through 173 through 175. These rules are also known as the Texas Food Establishment Rules.

The rules "regulatory authority" means the City of Pharr Health Department.

Sec. 62-83 Permits and Exemptions.

- (a) A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one location to another location, except as otherwise permitted by this ordinance. A valid permit must be posted in or on every food establishment regulated by this ordinance.
- (b) A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this ordinance, but is not exempt from compliance with the state rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

Sec. 62-84 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 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) The following fee schedule applies to permits issued under this ordinance:

1. Establishments employing 10 employees or less: \$50.00
2. Establishments employing 11 or more employees: \$100.00

Sec. 62-85. 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 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 material of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications must be followed in construction, remodeling or conversion.
- (b) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

Sec. 62-86. 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 Paragraph (5) (B) of this ordinance. When a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within 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 hearing is filed within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

Sec. 62-87. Revocation of Permit

- (a) 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 revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reasons for which the permit is subject to revocation and that the permit shall be revoked at the end of ten days following service of such notice unless a written request for 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 day period, the revocation of the permit becomes final.

Sec. 62-88. Administrative Fees

- (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.

SUBDIVISION C. FOOD HANDLERS

DIVISION I. GENERALLY

Sec. 62-89. Definitions

The definitions as set out in Texas Food Establishment Rules 229.162 T.a.C. shall be given the same meanings as if it set out herein.

Sec. 62-90. Adoption of food service sanitation code; penalty for violation.

- (a) For the purpose of regulating food service and food service establishments, the current rules or rules amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, Section 161 through 171 and 173 through 175 regarding the regulations of food establishments is hereby adopted and made part of this article as if fully set out in this article, and the provisions thereof shall govern all matters covered therein within the city, except those provisions which may be in conflict with other provisions of this Code. A copy of such administrative code is on file in the City Clerk's office.

DIVISION 2. PERMIT.

Sec. 62-91. Required; transfer prohibited; posting; temporary permits.

- (a) It shall be unlawful for any person to operate a food establishment or retail food store within the city without a valid health permit issued to him by the regulatory authority of the city. A city of Pharr health permit is required if a location sells anything that people normally eat, drink, or chew including water, ice, gum and alcoholic beverages. Only a person who complies with provisions of this article shall be entitled to receive and retain such a permit.
- (b) Permits shall not be transferable from one person to another person or from one food establishment or retail food store to another such establishment or retail food store.
- (c) A valid permit shall be posted in a conspicuous place in every food establishment and retail food store.
- (d) Temporary food sales permits: Food sales will be prohibited from curbsides, sidewalks and vacant lots. Any food-use fundraising must be prepared, cooked, served, and delivered within the premises of any currently approved site by the health department. At least one person of the organization must have a current food handler's certificate or a certified food protection certificate issued by the city of Pharr that is responsible for the group's food safety of sale food items.

A caterer may be used that has a current health permit copy and a current copy of their most recent passing inspection submitted to the Health Department for approval. An application must be filled out seven (7) days prior to the planned event for approval.

Sec. 62-92. Application; inspection by health department, issuance; fee.

- (a) Application. Any person desiring to operate a food service establishment or retail food store within the City shall make a written application for such permit on forms to be provided by the City Health Department. Such application shall include the following information:
 - (1) The applicant's full name, office address and telephone number, including the address and telephone of the home office, if any, and whether such applicant is an individual, firm or corporation, and, if a partnership, the names, addresses and telephone numbers of the

general and/or limited partners.

- (2) The location and type of food establishment or retail food store, markets that offer only fresh fruits and vegetables for sale, food vending machines, or religious or charitable organization's bake sales.

Sec. 62-93. Issuance.

- (a) At least one person must be present in the food establishment and completely in charge and responsible at all times of food operations of receiving, prepping, cooking, and serving that is a Certified Food Manager in possession of a valid C.F.M. certificate is required. Any state, municipality, agency or school of instruction whose food manager's certificate program of certification has been accredited by the Texas Department of Health may issue a food manager's certificate or license. The certificate shall provide evidence that the applicant attended and satisfactorily completed a course of instruction. Such course shall include, as a minimum, not less than 15 hours of training, or a re-certification consisting of 7 hours, the contents of which cover minimum essential knowledge of safe food handling practices, the biological basis of food-borne infection and transmission, the safe receiving, preparation, handling and storage of food by all employees found in food service operations. The certificate shall be issued and be on a form designed by the regulatory authority and shall remain the property of the regulatory authority to be returned to the regulatory authority if revoked and copy of C.F.M. certificate must be on the premises at all times for verification by the regulatory authority. A City of Pharr C.F.M. I.D. card must also be worn in a conspicuous, easily readable location on their person while on duty.
- (b) A graduate of an institution of higher education who has completed all requirements for an associates or higher degree in hotel and restaurant management may be issued a permit without taking the food manager's course upon providing satisfactory proof of graduation from an approved school. A dietician currently registered by the A.D.A. and licensed by the Texas State Board of Examiners of Dietitians may be issued a permit without taking the food manager's course upon providing satisfactory proof of current licensure and registration and must wear and possess a valid City of Pharr C.F.M. I.D. card while on duty.
- (c) A fee of \$15.00 will be charged for each food manager's required City of Pharr I.D. card issued by the health department.

Sec. 62-94. Term

A food manager's license or certificate shall be valid for a period of five (5) years

from the date of course completion. The City of Pharr may issue a C.F.M. certification that is nationally recognized and accepted through their own registered C.F.M. program whose fee will include the city of Pharr I.D. tag, unless said certificate is sooner revoked by the health director as described in Section 62-95. A Registered Exam Administrator and Trainer may only administer the C.F. certification program.

Sec. 62-95. Revocation.

The City Health Director, or his designated representative, may revoke or suspend a food manager's certificate upon a material violation of food service sanitation ordinance, rules or regulation. Notice of revocation of a food manager's certificate shall be by written notice to the certificate holder, sent or delivered to the address or location of the food establishment or that of the certificate holder, and after affording the certificate holder an opportunity for hearing before the City Manager.

SUBDIVISION D. FOOD HANDLING CERTIFICATION

Sec. 62-96. Certification

- (a) **Certification.** It shall be unlawful for any employee of a food establishment to begin work without obtaining a food handling certification. A minimum of two hours of food sanitation training is required every two years to ensure employee performance of their duties in accordance with food service sanitation ordinances, rules and regulations. This training shall be an approved regulatory authority course. A fee of \$15.00 will be charged for each food handler permit issued by the regulatory authority. The City of Pharr requires a City of Pharr Health Department issued I.D. card permit. A food handler's food handling certification permit shall be valid for a period of two years from date of issuance, unless the City Health Director sooner revokes permit.
- (b) **Posting.** Each food handler's food handling certification permit shall be at all times worn on his or her person in a conspicuous and acceptable location for easy identification and viewing by the health director or his designated representative while on duty.

Sec. 62-97. Revocation

The City Health Director, or his designated representative, may revoke or suspend a food handler's food handling certification permit upon a material violation of food service sanitation ordinances, rules or regulations. Notice of revocation of a food handler's food handling certification permit shall be by written notice to the

permittee, sent or delivered to the address or location of the food establishment or that of the permittee and after affording the permittee an opportunity for a hearing before the City Manager.

Sec. 62-98. Remedies

- (a) Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment and does not comply with the requirements of these rules any responsible officer of that permit holder or those persons shall be fined no less than \$50.00 (Fifty dollars) or more than \$1,000.00 (one thousand dollars) per violation.
- (b) The regulatory authority may seek to enjoin violations of these rules.

Sec. 62-99. Severability

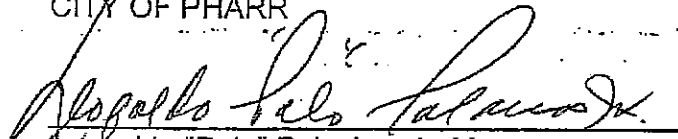
If any section, subsection, sentence, clause, phrase, or portion of this division is, for any reason, held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Sec. 62-100. Effective date

This Ordinance shall go into effect when passed and approved by the Board of Commissioners following three (3) separate readings.

PASSED AND APPROVED ON THE FIRST READING BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the 21ST day of OCTOBER, 2008

CITY OF PHARR


Leopoldo "Polo" Palacios, Jr. Mayor

ATTEST:


Aida V. Montoya, City Clerk