

ORDINANCE NO. 2023-O-29

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MANVEL BY AMENDING CHAPTER 33 "FOOD AND FOOD HANDLERS," TO AMEND THE DEFINITIONS; AMENDING THE PROVISIONS PERTAINING TO GREASE TRAP REQUIREMENTS; REPEALING PROVISIONS IN CONFLICT THEREWITH; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000.00 PER DAY FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council of the City of Manvel, Texas, has deemed it in the best interest of the health, safety, and welfare of the citizens of the City to regulate food and food handlers; and

WHEREAS, this regulation is integral to maintaining the public health and to support the vision of citizens and City Council of the City of Manvel; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANVEL, TEXAS:

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Manvel is hereby amended by amending Chapter 33 "*Food and Food Handlers*," Article I to read and provide as follows:

"Chapter 33 - FOOD AND FOOD HANDLERS

ARTICLE I. - IN GENERAL

Sec. 33-1. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employee shall mean any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is stationed in a room in which food or drink is prepared or served, including but not limited to, the permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in the food establishment.

Food means (1) articles used for food or drink for human consumption; (2) a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, (3) chewing gum, and (4) components of any such article.

Hair restraints shall mean a hat, hair covering or net, beard restraint, or clothing that covers body hair and is designed and worn to effectively keep hair from contacted exposed food, equipment, utensils, linens, or single-use and single-service articles. This requirement does not apply to food employees, such as counter staff, who only serve beverages and wrapped or packaged foods, hostesses, and wait staff, if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, whose hair is secured.

Health officer shall mean any person in the code enforcement/health office, or other person designated by the city manager, assigned to inspect food establishments, educate food establishment employees and food employees on local and state statutory requirements for health and safety in food service, and enforce all local and state health and safety laws as permitted by law.

Imminent health hazard shall mean a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operations to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury; including but not limited to, a complete rack of refrigeration, sewage back-up into the establishment, or an inspection score less than 50.

Misbranded-food shall mean be deemed misbranded if:

- (1) Its labeling is false or misleading in any particular;
- (2) It is offered for sale under the name of another food;
- (3) It is an imitation of another food, unless its label bears the word "imitation" in type of uniform size and prominence and immediately thereafter the name of the food imitated; and except in cases of mixture and compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article if the name is accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced. No one administering this chapter may constitute oleomargarine as an imitation of butter;
- (4) The container is so made, formed, or filled as to be misleading;

- (5) It is in package form without a label containing: (a) the common name of the food, (b) the name and place of business of the manufacturer, packer, or distributor; (c) an accurate statement of the quantity of the content in terms of weight, measure, or numerical count; and (d) the name of the food source for each major food allergen contained in the food unless the food source is already part of the common name;
- (6) If any word, statement, or other information required by or under authority of this chapter of state law to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) If it purports to be or is represented as food for which a definition and standard of identity has been prescribed by state regulations, unless, (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such foods;
- (8) If it purports to be or is represented as: (a) A food for which a standard of quality has been prescribed by state regulations, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (b) A food for which standard or standards of fill of container have been prescribed by state regulations, and it falls below the standard of fill container applicable thereto, unless it labels bears, in such manner and form as such regulations specify, a statement that it falls below such standard;
- (9) If it is not subject to the provisions above, unless it bears labeling clearly giving: (a) the common or usual name in the food, if any there be; and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such may be designated as spices flavorings, and colorings, without naming each; provided that, to the extent that compliance with the requirements of clause (b) of this subsection is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the state commissioner of health; provided further that the requirements above shall not apply to any bottled carbonated drinks or soft drinks and, provided further, that clause (b) of this subsection shall not apply to any bottled carbonated drinks or soft drinks or the dispensing of carbonated soft drinks in single service cups. Nothing in this chapter shall be construed as requiring proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas except insofar as the provisions of the law require to secure freedom of adulteration or misbranding;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the state commissioner of health determines to be, and by regulations prescribed, as necessary in order to inform purchasers as to its value for such uses; or

(12) If it bears or contains any artificial flavorings, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the state commissioner of health. The provisions of this subsection and subsections (7) and (9) with respect to artificial coloring are not to apply in the case of butter, cheese, and ice cream.

Nonprofit organization/establishment shall mean an organization whose operations is not conducted or maintained for the purpose of making a profit, and from which its shareholders or trustees do not benefit financially. Nonprofit status must be verified by submission of supporting documentation, such as an IRS form 501c.

Private water system shall mean a drinking water system that is not connected to a public water system and is not regulated by the Texas Commission on Environmental Quality, including private wells. Such systems have additional requirements, including, but not limited to, water sampling and testing every six months. Upon request, proof of testing may be required and documents submitted to the regulatory authority.

Regulatory authority shall mean the City of Manvel, Texas.

Temporary food establishment shall mean a food establishment that operates for a period of no more than ten consecutive days in conjunction with a single event or celebration. This may include a stand or a booth.

Restaurant shall mean a business establishment whose primary function is the ability for the general public to obtain dining or take-out food service, where the services rendered are for the consumption of food that is cooked, held, stored, prepared, or served on the premises. The term restaurant excludes: grocery stores, convenience stores, day cares, public and private schools, governmental entities, churches, non-profit entities, and businesses not generally open for public access.

~~[Restaurant shall mean restaurant, coffee shop, cafeteria, short order café, luncheonette, tavern, sandwich shop, sandwich stand, soda fountain, hospitals, institutions, private, public and parochial school lunchrooms, private and semi-private clubs, stadium concession stand, and all other food or beverage establishments, as well as other kitchens or other places in which food or drink is prepared for serving or for sale elsewhere.]~~

State law definitions shall mean any term used in this chapter and not specifically defined herein shall have the meaning ascribed to it in the Texas Food, Drug and Cosmetic Act, V.T.C.A., Health and Safety Code, Ch. 431.

Time/temperature controlled for safety (TCS) food shall mean a food that requires time/temperature controlled for safety to limit pathogenic microorganism growth or toxin formation.

Utensils shall mean and include any kitchenware, tableware, glassware, cutlery, vessels, containers, or other equipment with which food or drink comes in contact during storage, preparation, serving, eating, or drinking.

Sec. 33-2. State regulations adopted.

(a) The city adopts by reference the Texas Food Establishment Rules 2015. The Texas Food Establishment Rules 2015 shall be considered incorporated herein by reference for all purposes.

(b) From and after enactment of this chapter, the Texas Food Establishment Rules 2015 shall govern the regulation of food and food establishments in the city in addition to any other requirements set forth in this chapter and other applicable laws and regulations. For purposes of this chapter, the words, terms and phrases set forth in the Texas Food Establishment Rules 2015 as definitions shall have the meanings and interpretations set forth therein.

(c) Except as where may be specifically stated herein, this chapter shall be enforced by the city code enforcement officer/health officer, or such other personnel designated by the city manager.

(d) A copy of the Texas Food Establishment Rules 2015 shall be on file in the office of the city secretary.

Sec. 33-3. Local amendments and definitions.

The *Texas Food Establishment Rules 2015* adopted in section 33-1 are hereby amended as follows:

(1) The following provisions are added:

- a. 228.2(153) Code enforcement/health officer—A city "code enforcement officer" or "health officer" shall mean any person in the health office/code enforcement office, or other person designated by the city manager, assigned to inspect food establishments, educate food establishment employees and food employees on local and state

statutory requirements for health and safety in food service, and enforce all local and state health and safety laws as permitted by law.

- b. 228.2(154) Reconstituted—Food created or prepared by recombining dehydrated food products with water or other liquids.
- c. 228.2(155) Sanitation—Effective bactericidal treatment process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on tableware, utensils, equipment, and alike.
- d. 228.186(o)(2)(F) Service Animals—In areas that are not used for food preparation or storage, a food establishment may, at the owner or manager's discretion, or where required by law, allow patrons to bring service animals on the premises. Notices stating where a patron is allowed to bring service animals on the premises shall be posted in all areas where the service animals are to be allowed by the food establishment.

(2) The following provisions are adopted in place of the identically numbered provisions in the *Texas Food Establishment Rules 2015*:

- a. 228.2(57) Food establishment—Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, whether for charge or not, as follows:
 - 1. A restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank. This includes any establishment where prepackaged time/temperature control for safety (TCS) food and food products are offered to the ultimate consumer and intended for off premise consumption;
 - 2. An establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers; and
 - 3. Includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority.
 - 4. An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises regardless if there is a charge for the food.
 - 5. Food establishment does not include :
 - i. An establishment that offers only prepackaged foods that are not TCS foods;

- ii. A produce stand that only offers whole, uncut fresh fruits and vegetables;
 - iii. A food processing plant;
 - iv. A cottage food production operation; [✗]
 - v. A private home that receives catered or home-delivered food;
- b. 228.2(59) Food protection manager certification—A document obtained by a person in charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a conference for food protection-recognized accrediting agency as conforming to the conference for food protection standards for accreditation of food protection manager certification programs. Food establishments having multiple preparation areas or at such distance that a single individual may not effectively supervise activities in each, must have a person in charge who has a valid food service manager's certification located in each area.
 - c. 228.2(85) Mobile food unit (MFU)—A vehicle mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to, trailers and food hand cart) and used to store, prepare, display, serve, or sell food. Mobile units must completely retain their mobility at all times. A mobile food unit does not mean a stand or a booth. A mobile food unit operating in the city must have onsite at least one food employee who possesses a food manager certification.
 - d. 228.2(143) Temporary food establishment—A food establishment that operates a stand or booth for a period of no more than ten consecutive days in conjunction with a single event or celebration. A temporary food establishment operating in the city must have onsite at least one food employee who possesses a food manager certification.
 - e. 228.42(a)(2) is amended by changing "closed beverage container" to "screw top lid" and adding a requirement that management designate a specific location to store all approved employee beverage containers."

Section 3. The Code of Ordinances of the City of Manvel is hereby amended by amending Chapter 33 "*Food and Food Handlers*," to adopt a new section 33-51 to read and provide as follows:

“ARTICLE IV. CONSTRUCTION, REMODELING AND CONVERSION

Sec. 33-51. Plans.

- (a) No construction, remodeling, or alteration of a permitted food establishment shall be conducted without any and all required permits.
- (b) One hard copy and an electric copy of properly prepared plans and specifications for each construction, remodeling, or alteration of a food establishment shall be submitted to the permit department prior to any on-site construction. The plans must be drawn to scale no smaller than one-eighth inch and shall consist of a plot plan, floor plan, foundation plan, structural plan, plumbing plan, elevation plan, wall section, engineer's scale and survey (if required by applicable law), mechanical and electrical details, and health equipment detail with elevations, any of the city standard details that apply, and the city's signature block on the first page.
- (c) Grease traps / interceptors. All food establishments that discharge fats, oils, and/or grease into the city sanitary sewer shall have a grease trap/interceptor:

 - (1) New commercial shell building. All new commercial shell buildings with food establishments shall have a minimum 500-gallon grease trap/interceptor per food establishment or a minimum 500-gallon communal grease trap/interceptor per 2,500 square feet for the new shell commercial building. Changes in food establishments may result in larger or smaller gallon grease trap/interceptor size as determined by TCEQ's 'Grease Interceptor Sizing Worksheet' which shall be certified by a licensed plumber.
 - (2) All other commercial buildings. Food establishments shall have a grease trap/interceptor as determined by the Texas Commission on Environmental Quality's (TCEQ) 'Grease Interceptor Sizing Worksheet', as amended from time to time. The grease trap/ interceptor size determined by TCEQ's 'Grease Interceptor Sizing Worksheet' shall be certified by a licensed plumber. Changes in food establishments may result in larger or smaller gallon grease trap/interceptor size.
 - (3) Sublets or rent space. When a food establishment sublets or rents a space or section of the establishment to a second party, an updated TCEQ 'Grease Interceptor Sizing Worksheet' shall be required by a licensed plumber. In the event the grease trap/ interceptor requirement, per the TCEQ worksheet, exceeds the grease trap/interceptor currently installed, the grease trap/interceptor shall be increased as required by the sizing sheet.
 - (4) Undersized grease traps / interceptors. If it is determined a food establishment's grease trap / interceptor is undersized by the Director of Public Works or designee, a larger grease trap / interceptor may be required after consultation with the food establishment.
- (d) Servicing of grease traps/ interceptors. Food establishments that have been required to install grease traps or interceptors will follow the maintenance requirements below:

 - (1) Grease traps and interceptors shall be cleaned as often as necessary to ensure that sediment and floating materials do not accumulate to impair the efficiency of the grease

trap / interceptor; to ensure the discharge is in compliance with local discharge limits; and to ensure no visible grease is observed in discharge.

(2) Grease traps and interceptors subject to these standards shall be completely evacuated a minimum of every 90 days, or more frequently when:

- i. Twenty-five (25) percent or more of the wetted height of the grease trap or interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils, or greases; or
- ii. The discharge exceeds BOD, COD, TSS, FOG, pH, or other pollutant levels established by the POTW; or
- iii. If there is a history of non-compliance.

(3) Report of service. Each establishment may be required to 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.

(e) All food prep areas shall have smooth wall board. Such as FRP (fiberglass reinforced panels). No rough or porous wall board will be allowed.

(f) All food establishments, temporary food establishments, and mobile food units shall have only commercially designed equipment. Residentially designed equipment will not be permitted within a commercial food establishment operation.

[Sec. 33-51. Plans.

~~(a) No construction, remodeling, or alteration of a permitted food establishment shall be conducted without any and all required permits.~~

~~(b) One (1) hard copy and an electric copy of properly prepared plans and specifications for each construction, remodeling, or alteration of a food establishment shall be submitted to the permit department prior to any on-site construction. The plans must be drawn to scale no smaller than one-eighth (1/8") inch and shall consist of a plot plan, floor plan, foundation plan, structural plan, plumbing plan, elevation plan, wall section, engineer's scale and survey (if required by applicable law), mechanical and electrical details, and health equipment detail with elevations, any of the City of Manvel standard details that apply, and the city's signature block on the first page.~~

~~(c) All food establishments shall have a minimum of a 500-gallon grease trap/interceptor.~~

~~(1) Under sink grease traps for all food establishment shall be strictly prohibited. The only exception is for MFU's~~

- ~~(2) Servicing of grease interceptors. Food service establishments must service grease interceptors quarterly. The regulatory authority may require that the food service establishment service the grease interceptors more frequently, if deemed necessary.~~
- ~~(3) Report of service. Each establishment may be required to 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.~~
- ~~(d) All food prep areas shall have smooth wall board. Such as FRP (fiberglass reinforced panels.). No rough or porous wall board will be allowed.~~
- ~~(e) All food establishments, temporary food establishments, and mobile food units shall have only commercially designed equipment. Residentially designed equipment will not be permitted within a commercial food establishment operation.]~~

...”

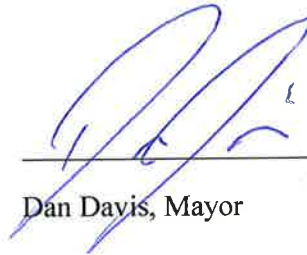
Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Manvel, save and except the change described above.

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Manvel, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 6. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

PASSED AND APPROVED on first reading this 5 day of September, 2023.

PASSED, APPROVED, AND ADOPTED on second and final reading this 18 day of September, 2023.



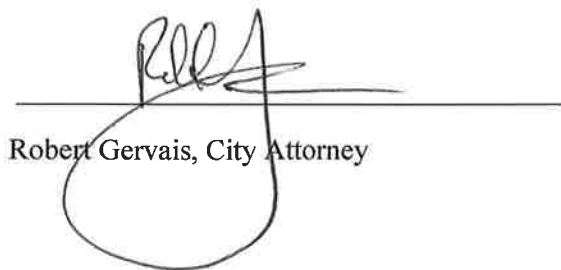
Dan Davis, Mayor

ATTEST:



Tammy Bell, City Secretary

APPROVED AS TO FORM:



Robert Gervais, City Attorney

