

ORDINANCE NO. 2023 -1445

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, REPEALING AND REPLACING CHAPTER 10, ARTICLE II OF THE FULSHEAR CODE, GOVERNING FOOD AND FOOD ESTABLISHMENTS; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the City Council of the City of Fulshear, Texas, continuously reviews the City of Fulshear Code of Ordinances for opportunities to update, simplify, clarify, refine, and generally improve the Code to make it more effective and efficient and to remove portions of the Code that are no longer valid; and

WHEREAS, there is a need to protect the health, safety, and welfare, of the citizens of the City of Fulshear; and

WHEREAS, the City Council desires to update its regulations governing food and food establishments and desires to adopt by reference the provisions of the current rules or rules as amended by the Executive Commissioner of the Texas Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments, and

WHEREAS, the adoption by ordinance of the Texas Food Establishment Rules is necessary to allow the 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 FULSHEAR, TEXAS:

Section 1. Article II of Chapter 10 of the City of Fulshear Code of Ordinances is hereby repealed and replaced with a new Article II to read as follows:

“ARTICLE II. - FOOD AND FOOD ESTABLISHMENTS

Sec. 10-19. – Texas Food Establishment Rules adopted.

The City of Fulshear, Texas, hereby adopts and incorporates herein by this reference the provisions of the current rules or rules as amended by the Executive Commissioner of the

Texas Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments, as defined therein, within this jurisdiction, the corporate boundaries of the City of Fulshear. Within this article, the Texas Food Establishment Rules adopted herein may be referred to as the 'Rules' or the 'TFER.'

Sec. 10-20. – Identification of the regulatory authority and authorized representative and other Definitions.

- A. Within the TFER, the term 'regulatory authority' shall mean the City of Fulshear, and the 'authorized representative' of the regulatory authority (also referred to as the 'authorized agent or employee') shall be the City's Environmental Health Specialist(s), other employees of the City of Fulshear so designated by the City Manager, or an independent contractor so designated by the City Manager. All applications, plans, requests, notices, or other submittals required or authorized by the TFER shall be submitted to the authorized representative unless otherwise specified by the TFER.
- B. The words "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.

Sec. 10-21. Permits and Exemptions

- A. A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferrable from one person to another or 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 temporary food establishment may operate under a temporary permit issued by the regulatory authority and shall operate in compliance with the state rules.

Sec. 10-22. 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 will be denied a permit or the renewal of a permit.
- C. For any permit, license, inspection, or reinspection required by the TFER, the applicant or holder of the permit or license shall pay the corresponding fee for such permit, license, inspection, or reinspection as set forth within the City's schedule of fees as may be adopted and amended from time to time.

Sec. 10-23. 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 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 specifications will result in a permit denial, suspension, or revocation.

Sec. 10-24. 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 this section. When a permit is suspended, food operations shall immediately cease. Suspension of a permit is a decision made by an administrative official and may be appealed to the Zoning Board of Adjustment in accordance with applicable law.
- 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. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

Sec. 10-25. 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 reason for which the permit is subject to revocation and that the permit shall be automatically revoked on the 21st day after the notice is given unless a notice of appeal is timely filed with the Zoning Board of Adjustment and the authorized representative who issued the notice of revocation, in accordance with applicable law.
- B. If on the 21st day after the notice of revocation is given there has been no appeal timely filed in accordance with this section, then the permit is automatically revoked and the revocation of the permit becomes final.

Sec. 10-26. 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 Zoning Board of Adjustment, in accordance with the rules, laws, and proceedings applicable thereto, including Section 211.010 of the Local Government Code.

Sec. 10-27 – Offenses, Penalties, and Injunctive Relief.

- A. A person commits an offense if the person performs an act prohibited by this article or fails to perform an act required by this article.
- B. A person commits an offense if the person knowingly provides false information on an application for a permit required by this article.
- C. A person commits an offense if the person uses a permit that has not been issued to that person by the regulatory authority.
- D. A person commits an offense if the person knowingly provides false information on an application for a food manager certificate or food handler registration.
- E. A person commits an offense if the person uses a food manager certificate or food handler registration that has not been issued to the person by the regulatory authority.
- F. Each occurrence of any such violation of this article shall constitute a separate offense.
- G. A person commits a separate offense each day that the person performs an act prohibited by this article or fails to perform an act required by this article.
- H. Except as otherwise provided, proof of criminal negligence is required for conviction of an offense under this chapter. Proof of a higher degree of culpability than criminal negligence constitutes proof of criminal negligence.
- I. An offense under this section is a fine only offense and is punishable by a fine not to exceed \$2,000. See Section 1-17.
- J. The regulatory authority may seek to enjoin violations of these rules.

Sec. 10-28. Validity of permits and licenses issued under previous Ordinance 2022-1392.

Food establishment permits or licenses lawfully issued pursuant to Ordinance 2022-1392 prior to the effective date of this article shall be valid until such permit or license expires as determined by the authority under which it was issued or is suspended, revoked, restricted, modified, withdrawn, or otherwise terminated by the regulatory authority. For purposes of Section 10-27, such permits or licenses shall be considered to have been issued by the regulatory authority.”

Section 2. Severability. In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances 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 Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 3. Repeal. All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. Effective date. That this Ordinance shall be effective and in full effect immediately upon its adoption and publication as may be required by law.

PASSED, APPROVED, AND ADOPTED this 14 day of November, 2023.





Aaron Groff, Mayor

ATTEST:



Mariela Rodriguez, City Secretary