

CITY OF COCKRELL HILL, TEXAS

ORDINANCE NO. 2014-01282014 B

AN ORDINANCE OF THE CITY OF COCKRELL HILL, TEXAS, AMENDING THE CITY CODE BY REPEALING SECTIONS 112.01 THROUGH 112.05 OF THE CITY OF COCKRELL HILL CODE OF ORDINANCES, "FOOD AND FOOD ESTABLISHMENTS" AND ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES, PROVIDING FOR A PERMITTING PROCESS, AND ESTABLISHING VIOLATIONS AND PENALTIES; PROVIDING A REPEALER CLAUSE; PROVIDING SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR INJUNCTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sections 112.01 through 112.05 of the Code of Ordinances of the City of Cockrell Hill, Texas ("Code"), sets forth provisions regarding food and food establishments within the City of Cockrell Hill, Texas ("City"); and

WHEREAS, the City Council of the City of Cockrell Hill, Texas ("City Council"), has determined that it would be beneficial to establish more comprehensive regulations for food establishments to allow for the more effective regulation of food preparation and food establishments and to safeguard public health and provide consumers with food that is safe and unadulterated; and

WHEREAS, the City Council has determined that it is in the best interest of the City to repeal the current food and food establishment provisions and to replace them in their entirety with the following food establishment regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COCKRELL HILL, TEXAS, THAT:

Section 1. All of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. That Sections 112.01 through 112.05 of the Code of Ordinances, "Food and Food Establishments," are hereby repealed in its entirety and replaced with the following:

"CHAPTER 112: FOOD ESTABLISHMENTS

112.01 Designation of health authority.

- (A) The Regulatory Authority in charge of ensuring minimum standards of environmental health and sanitation within the scope of that department's functions.

- (B) Whenever necessary to make inspections to enforce any of the standards or provisions adopted herein, the Regulatory Authority or an Authorized Representative may enter a Food Establishment at any reasonable time.

112.02 State regulations adopted.

- (A) The City of Cockrell Hill (the "City") adopts by reference the provisions of the rules promulgated by the Health and Human Services Commission, as amended from time to time, found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in the City.
- (B) A copy of each rule manual shall be kept on file in the office of the City Secretary.

112.03 Definitions.

In addition to the definitions adopted in the State Rules listed in section 112.02, the following definitions shall apply to this chapter:

- (A) ***REGULATORY AUTHORITY.*** The City Administrator of the City of Cockrell Hill or his or her designee.
- (B) ***AUTHORIZED REPRESENTATIVE.*** An agent, representative, or employee of the regulatory authority. An authorized representative includes without limitation a Registered Professional Sanitarian employed by the Health Department.
- (C) ***HEALTH DEPARTMENT.*** An agent, representative, or employee of Dallas County Health and Human Services, including without limitation a Registered Professional Sanitarian employed by the Dallas County Health and Human Services.
- (D) ***OWNER.*** The owner, operator or manager of a Food Establishment. Each new owner or operator shall comply with the current City code.
- (E) ***FOOD ESTABLISHMENT.*** A food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.
- (F) ***STATE RULES.*** The state rules found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.
- (G) ***CHILD CARE FACILITY.*** A facility keeping more than 12 unrelated children that provides care, training, education, custody or supervision for children under 15 years of age, who are not related by blood, marriage or adoption to the owner or

operator of the facility, for all or part of the day, whether or not the facility is operated for profit or charges for the services it offers. Nonprofit facilities will be required to make application for a permit and meet the requirements of this chapter but are exempt from the permit fee set forth in Sections 112.05(A) and 112.05(B).

112.04 Food permits.

- (A) Permit requirement. It shall be unlawful for an Owner to operate a Food Establishment within the corporate limits of the City unless the Owner possesses a current and valid permit issued by the City. Only a valid permit is eligible for renewal.
- (B) Permit application. To obtain a permit from the City, the Owner must submit a written permit application to the [City or Regulatory Authority] on forms provided by the City Secretary and pay all applicable permit and inspection fees. Each application shall state the name and address of the applicant and Owner(s), the location of the Food Establishment and include the applicant's signature. Additionally, each applicant shall execute a consent authorizing the inspection of the Food Establishment by the City and the Regulatory Authority.
- (C) Posting. A valid permit shall be posted in public view in a conspicuous place at every Food Establishment regulated by this chapter.
- (D) Non-transference (change of ownership). Permits issued under this chapter are not transferable. If a Food Establishment changes ownership, the new Owner must apply for a permit and meet the current standards set forth in the City Code, state law and State Rules.
- (E) Multiple permits. A separate permit shall be required for every Food Establishment or temporary food establishment with separate and distinct facilities and operations (as determined by the Health Department) whether situated in the same building or at separate locations. Separate and distinct lounge operations (in a food facility) will require a separate permit from food operations. However, multiple lounges on the same floor in the same building and under the same liquor license will not require a separate permit.
- (F) Permit suspension. The Regulatory Authority may, with written warning or notice, suspend any permit to operate a Food Establishment if the operation of the Food Establishment does not comply with this chapter. Suspension is immediately effective upon service of the written notice by the Regulatory Authority as required by subsection (H) of this section. When a permit is suspended, the Owner shall immediately cease all food operations. The Owner shall be afforded

an opportunity for a hearing within ten (10) days of receipt of a request for a hearing. If the Regulatory Authority does not receive a written request for a hearing from the Owner within ten (10) business days of service, the suspension is final. The Regulatory Authority may end the suspension at any time if the conditions requiring the permit suspension no longer exist.

- (G) Emergency suspension. 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 immediate threat to public health and safety. Suspension is immediately effective upon service of the written notice by the Regulatory Authority as required by subsection (H) of this section. When a permit is suspended by emergency, the Owner shall immediately cease all food operations. The Owner shall be afforded an opportunity for a hearing within ten business (10) days of the City Administrator's receipt of a written request for a hearing. If the City Administrator does not receive a written request for a hearing from the Owner within ten (10) business days of service, the emergency suspension is final.
- (H) Notification of right to hearing. If a permit is suspended under subsection (F) or (G) of this section, the Owner shall be notified in writing that: (i) the permit is, upon service of the notice, immediately suspended; (ii) an opportunity for a hearing will be provided if a written request for a hearing is filed with the Regulatory Authority by the Owner within ten (10) business days; and (iii) if no written request for hearing is filed within ten (10) business days, the permit suspension is final.
- (I) Permit revocation. The Regulatory Authority, after providing notice and an opportunity for a hearing, may revoke a permit for serious or repeated violations of any of the requirements of this chapter or for interference with the Regulatory Authority's performance of its duties. Prior to revocation, the Regulatory Authority shall provide the Owner with ten business days written notice of the reason(s) that the permit is subject to revocation and such notice shall include a statement that the permit shall be revoked at the end of the ten (10) business days following service of such notice if the Owner does not request a hearing. Unless a written request for a hearing is filed with the Regulatory Authority by the Owner within such ten-day period, the permit revocation is final.
- (J) Service of notice. A notice provided for in this chapter is properly served when it is delivered to the Owner, including without limitation the person in charge of the Food Establishment, or when it is sent by registered or certified mail, return receipt requested, to the Owner's last known address. A copy of the notice shall be filed in the records of the Regulatory Authority.

- (K) Hearings. Except as provided by Subsection (L), the hearings provided for in this chapter 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 a final finding on any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the Owner by the Regulatory Authority.
- (L) Right of appeal. Any Owner who wishes to dispute the decision of the Regulatory Authority at hearing may appeal the decision to the City Council. The hearing under this Subsection shall be conducted by the City Council within ten (10) business days. Based upon the recorded evidence of such hearing, the City Council shall make a final finding, and shall sustain, modify or rescind any notice or order issued by the Regulatory Authority. A written report of the hearing decision shall be furnished to the Owner by the City Council.
- (M) Application after revocation. When a permit revocation has become final, the Owner must submit an application to the Regulatory Authority for any permit required under subsection (A) and pay all applicable fees to re-open or operate a Food Establishment within the corporate limits of the City.

112.05 Permit, Inspection and Investigation Fees.

- (A) Permit fee. A permit fee, as set forth in the city's fee ordinance, shall be paid at the time the application for a food establishment permit is filed. The permit fee shall be paid to the City of Cockrell Hill at 4125 W. Clarendon Drive, Cockrell Hill, Texas. 75211.
- (B) Permit renewal fee. A permit renewal fee, as set forth in the city's fee ordinance, shall be paid on an annual basis for a permit to remain valid. The renewal fee shall be paid to the City of Cockrell Hill at 4125 W. Clarendon Drive, Cockrell Hill, Texas. 75211.
- (C) Annual inspections fee. In addition to the permit renewal fee, an annual inspection fee, as set forth in the city's fee ordinance, shall be paid for the annual inspection of a Food Establishment and one re-inspection. The annual inspection fee shall be paid on an annual basis. The annual inspection fee shall be paid to the City of Cockrell Hill at 4125 W. Clarendon Drive, Cockrell Hill, Texas. 75211.
- (D) Preoperational inspection fees. In addition to the permit fee, a preoperational inspection fee, as set forth in the city's fee ordinance, shall be paid for the preoperational inspection or the inspection of a remodel of or addition to an existing Food Establishment. The preoperational inspection fee shall be paid to

the City of Cockrell Hill at 4125 W. Clarendon Drive, Cockrell Hill, Texas. 75211.

- (E) Complaint investigation. Notwithstanding the required fees in subsections (A) – (D) of this Section, a complaint investigation fee, as set forth in the city's fee ordinance, shall be required to be paid for the investigation of a complaint of non-compliance with the State Rules. A separate fee shall be paid for any complaint that requires a re-inspection. The complaint investigation fee shall be paid to the City of Cockrell Hill at 4125 W. Clarendon Drive, Cockrell Hill, Texas. 75211.

112.06 Review of plans.

- (A) Submission of plans. 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 and approval before construction, remodeling or conversion is begun. Extensive remodeling means that twenty percent (20%) or greater of the area of the Food Establishment is to be remodeled or when equipment required by these rules is to be relocated or removed. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Regulatory Authority shall approve the plans and specifications if they meet the requirements of these rules. No Food Establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Regulatory Authority.
- (B) Preoperational inspection. The Regulatory Authority shall inspect any Food Establishment prior to its beginning operation to determine compliance with approved plans and specifications and with the requirements of this chapter.
- (C) Permit denial. A permit application shall be denied if the Owner of a Food Establishment fails to comply with the approved plans and specifications.
- (D) Plan review fee. A plan review fee, as set forth in the city's fee ordinance, shall be paid at the time the application for a food establishment permit is filed. The plan review fee shall be paid to the City of Cockrell Hill at 4125 W. Clarendon Drive, Cockrell Hill, Texas. 75211.

112.07 Inspections.

- (A) Before a permit is issued, the Regulatory Authority or its Authorized Representative shall inspect and approve the Food Establishment. An inspection

of a Food Establishment shall be performed at least once annually and shall be prioritized based upon assessment of the food establishment's compliance and potential of causing foodborne illness according to 25 TAC 229.171(h).

- (B) The Regulatory Authority shall classify food establishments as special priority, high priority, medium priority, or low priority, according to the type of operation; particular foods that are prepared; number of people served; susceptibility of the population served; history of violations and any other risk factor deemed relevant to the operation.
- (C) Refusal of an owner, manager or employee to allow the Authorized Representative of the Regulatory Authority, upon presentation of credentials, to inspect any permitted business or operation therein during normal business hours will result in an immediate suspension of the permit, requiring all permitted activities to abate until after such time as a hearing may be held per subsection 112.04(K) or a hearing on the appeal of the Regulatory Authority's determination per subsection 112.04(L).

112.08 Food manager certification; food handler training certificates.

- (A) Requirement.
 - (1) Each Food Establishment shall have at least one person employed in a managerial capacity possessing a current food manager certificate approved by the Regulatory Authority.
 - (2) Each Food Establishment with six or more employees that is required to have certified food managers must have at least one certified manager on site during all operations.
 - (3) Every employee of a Food Establishment other than a certified Food Manager must maintain a valid food handler certification registered with the Regulatory Authority.
 - (4) Food manager and food handler certification documentation must be maintained in the Food Establishment and presented to the Regulatory Authority or to an Authorized Representative upon request.
- (B) Expiration.
 - (1) Food manager certificates are valid for a period of five years from the date issued unless revoked by the Regulatory Authority prior to the expiration date.

- (2) Food handler certification shall be valid for a period of up to three years as determined by the Regulatory Authority.

112.09 Violations.

A person, firm, company, corporation, or their agent, servant or employee commits an offense if the person:

- (A) operates a Food Establishment without a permit required by this chapter.
- (B) violates, disobeys, omits, neglects or fails to comply with an order or a determination issued by the Regulatory Authority, an Authorized Representative or the City Council pursuant to this chapter.
- (C) violates, disobeys, omits, neglects or fails to comply with any provision of this chapter.

112.10 Penalties.

- (A) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$500 for each offense.
- (B) Any person, firm, association of persons, company, corporation or its agents, servants, or employees violating or failing to comply with any provisions of this chapter shall be fined, upon conviction, no more than \$500.00.
- (C) Each violation of this chapter shall constitute a separate offense.
- (D) Each day on which a violation of this chapter occurs or is permitted to exist shall constitute a separate offense.
- (E) A criminal charge or fine does not serve to limit any other remedies available to this jurisdiction in law or equity."

Section 3. This Ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Cockrell Hill, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.


Section 4. If any section, article, paragraph, sentence clause, phrase or word in this Ordinance or application thereto any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any Ordinances which 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 6. Any violation of this Ordinance may be enjoined, and this remedy shall be in addition to any penal provision in this Ordinance.

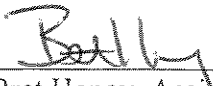
Section 7. This Ordinance shall become effective, and be in full force and effect, from and after the date of its passage, and it is accordingly so ordained.

PASSED AND APPROVED the 28 day of January, 2014.



Luis Carrera, Mayor
City of Cockrell Hill, Texas

ATTEST:



Bret Haney, Assistant City Administrator
City of Cockrell Hill, Texas

[SEAL]

APPROVED AS TO FORM:



Robert F. Brown, City Attorney
City of Cockrell Hill, Texas