ORDINANCE NO. 081924

AN ORDINANCE OF THE CITY OF ROGERS, TEXAS, ADOPTING REGULATIONS TO REGULATE FOOD AND FOOD ESTABLISHMENTS IN THE CITY TO PROTECT THE PUBLIC HEALTH AND SAFETY; PROVIDING COMPREHENSIVE REQUIREMENTS FOR THE SALE OF FOOD AND THE OPERATION OF FOOD ESTABLISHMENTS IN THE CITY; ADOPTING BY REFERENCE THE CURRENT RULES AS AMENDED BY THE EXECUTIVE COMMISSIONER OF THE HEALTH AND HUMAN SERVICES COMMISSION REGARDING THE REGULATION OF FOOD ESTABLISHMENTS IN THE CITY AND ALL RULES, REGULATIONS, AND ORDERS SET FORTH BY THE BELL COUNTY PUBLIC HEALTH DISTRICT (BCPHD); PROVIDING FOR FINES AND PENALTIES FOR VIOLATIONS; REPEALING ALL PARTS OF ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the proper care, regulation and control of the sale and providing of food and food services within the City of Rogers, Texas (herein the "City") is vital for the protection of the public health, safety, and general welfare of the City and its residents;

WHEREAS, it is necessary for the City Council for the City of Rogers (herein the "City Council") to consider and adopt reasonable food and food safety establishment regulations adopted and promulgated by the Health and Human Services Commission and the Bell County Public Health District, and such regulations will protect the health, safety, and welfare of the City and its residents;

WHEREAS, it is further necessary for the City Council to adopt procedures and regulations requiring the issuance of permits to sell or otherwise provide food and food-related services, as provided in this Ordinance, to the public and the City's residents, and it is further necessary for the City Council to adopt reasonable regulations enabling the City to enforce the regulations adopted through this Ordinance and to impose fines and penalties for violations of this ordinance;

WHEREAS, the City Council finds that the regulations set forth in this Ordinance are both reasonable and necessary for the protection of the health and safety of the public; and

WHEREAS, the rules, regulations and requirements established by Ordinance may not be inconsistent with State law;

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

Section 1. **Findings of Fact.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this Ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. **Food Establishments Regulations Adopted.** The City Council hereby adopts the "Food and Food Establishments Regulations" contained in this Ordinance for the purpose of regulating the sale and provision of food and food services within the City of Rogers, to read as set forth in and attached hereto entitled "Food and Food Establishments Regulations" of the City of Rogers" attached to and incorporated into this Ordinance as though fully transcribed herein for all purposes.

Section 3. **Repeal of Conflicting Ordinances.** All prior ordinances inconsistent with this Ordinance are repealed to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

Section 4. **Savings Clause.** All rights and remedies of the City of Rogers are expressly saved as to any and all violations of the provisions of any ordinances affecting or related to the sale of food in the City 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 5. **Effective Date.** This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

Section 6. **Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity 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 of this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

Section 7. **Open Meetings.** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on this the 19th day of August 2024.

ATTEST:

Mercedes Covey, City Secretary

CITY OF ROGERS, TEXAS

Jeff Watson, Mayor

FOOD AND FOOD ESTABLISHMENTS REGULATIONS

OF

THE CITY OF ROGERS

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FOOD AND FOOD ESTABLISHMENTS

ARTICLE I. IN GENERAL

Section 1. Adoption of Texas Food Establishment Rules.

The City adopts by reference provisions of the current rules or rules as amended by the Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228, (Texas Food Establishment Rules or TFER), regarding the regulation of food establishments in this jurisdiction and all rules, regulations, and orders set forth by the Bell County Public Health District (BCPHD or the District) as they now exist and as they may be amended from time to time. All penalties, conditions, and terms of the Texas Food Establishment Rules and applicable BCPHD rules, regulations, and orders are adopted, and made a part hereof, as if fully set out in this Chapter, with the additions, insertions, deletions, and changes as set forth in this Chapter.

Section 2. Purpose. The purpose of this Chapter is the protection of the public health and safety of the citizens and visitors of the City of Rogers by establishing minimum standards of sanitation and safety for food establishments.

Section 3. Definitions. The following definitions are provided for interpretation and application of this Chapter, and where permitted, enhance definitions found in state regulations. Any definitions not listed are to be understood as defined by applicable state regulations.

Approved means acceptable to the City and/or BCPHD based on a determination of conformity with rules, regulations, principles, practices, and generally recognized standards that protect public health or safety.

Authorized agent means an employee of BCPHD who represents the District and member entities of the District, including the City, in conducting the duties and responsibilities under the purview of the Health District Agreement and any BCPHD order relating to retail food sanitation or as otherwise specified by city codes. As the agent represents those entities and is operating in the capacity conducting duties related to public health and service on their behalf, the agent is designated as and carries the privileges of a public servant for the purposes of enforcement of the laws, rules, regulations, and provisions of an applicable BCPHD order and specific city ordinances designated as the responsibility of BCPHD.

Central preparation facility, also known as a commissary or base of operations, means a facility that is an approved and permitted retail food establishment at which food is prepared, stored, and wrapped, a MFU is supplied with fresh water and ice, emptied of waste water into a proper waste disposal system, and cleaned, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in the MFU utensil-washing sink. Use of a private residence as a central preparation facility is prohibited under the TFER. Private homes, rooms used as living or sleeping quarters, or areas directly opening into rooms used as living or sleeping quarters may not be used as central preparation facilities.

City means the City of Rogers, Texas, the City Council of the City of Rogers, Texas, or its representatives, employees, agents, or designees.

City Administrator means the City's city administrator or their designee.

City-owned food truck court, means a food truck court owned by the City, including The Yard Food Truck Plaza.

Fire Marshal means the City's fire marshal or their designee.

Food establishment means a facility that prepares, stores, displays, serves, or sells food as defined by the TFER (TCS, Non-TCS, packaged or un-packaged) intended for human consumption whether or not the consumption is on site. The term includes restaurants, taverns, clubs, retail food stores, grocery stores, convenience stores, mobile food units, temporary food establishments, warehouses, universities or schools of higher education, mobile food unit commissaries, central preparation facilities, or base of operations, or other establishments at the discretion of BCPHD. The term does not include those specifically excluded from this definition in the TFER, with the exception of a facility that sells only prepackaged non-TCS foods. The term does not include school food service locations that are not a university or school of higher education. A school food service location will be required to meet standards for food handler certification/manager certification as defined in BCPHD's current Retail Food Sanitation Order.

Mobile food unit (MFU) means a vehicle mounted, self or otherwise propelled, self-contained food service operation, that is designed to be readily movable (including, but not limited to catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve, or sell food. Mobile food units must completely retain their mobility at all times. A MFU also includes a stand or a booth if the stand or booth is not a permanent structure and is set up and broken down daily and complies with all other applicable MFU requirements under this Chapter and all applicable BCPHD rules, regulations, and orders. A roadside food vendor is classified as a MFU.

Operator means a person who owns, operates, or manages a food establishment.

Permit means a document issued by the BCPHD or the City as applicable that authorizes a person to operate a food establishment. Can also be referred to as a license. When applicable, both BCPHD and City permits are required to operate a food establishment within the City.

Permit holder means a person who possesses a valid permit to operate a food establishment.
Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other entity or their legal representatives, agents, or assigns.

Person in charge means the individual present at a location who is responsible for operating a food establishment at the time of inspection.

Roadside food vendor means a person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as a mobile food unit.
Servicing area means a base location to which a mobile food unit returns regularly for such things as vehicle cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food. No food preparation, service, or utensil/warewashing may be conducted at a servicing area. Private homes, rooms used as living or sleeping quarters, or areas directly opening into rooms used as living or sleeping quarters may not be used as servicing areas.

Texas Food Establishment Rules (TFER) means the current food establishment rules promulgated by the Texas Department of Health Services.

Time/Temperature Control for Safety (TCS) Foods mean foods that require time and temperature control for safety to limit pathogenic microorganism growth or toxin formation, and as further defined by the Texas Food Establishment Rules.

Temporary private event means an event lasting no more than twenty-four (24) consecutive hours that is hosted by a private property owner or tenant on the owner's or tenant's private property, e.g., a child's birthday party, business employee appreciation day, blood drive event, or a homeowners' association event.

Temporary special event means a single event or celebration that lasts for a period of no more than fourteen (14) consecutive days.

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.

Transient mobile food unit operator means a mobile food unit operator whose primary business model is to operate at temporary private events.

Sections 4 - 15. Reserved.

ARTICLE II. PERMITS

Section 16. City Permit Required to Operate a Food Establishment.

(a) A person must have a City permit or other written City authorization issued under this Chapter to operate a food establishment within the City unless otherwise provided by other local, state, or federal laws, rules, policies, guidelines, or regulations or authorized by the City in writing.

(b) Exemptions from City permitting under this Chapter.

1. Food establishments operated solely by nonprofits registered with the state as 501(c) organizations are exempt from obtaining a City permit

issued under Section 17(a) (*Fixed food establishment permit application process*) and Section 17(b) (*MFU permit application process*) of this Chapter but are not exempt from compliance with all other applicable local, state, and federal laws, rules, policies, guidelines, and regulations. The City may require any information necessary to determine whether an organization is a nonprofit for purposes of this exemption.

2. Businesses not requiring City permits. The following businesses do not require a City permit issued under Section 17 of this Chapter:

   A. A day care facility;

   B. An establishment that offers only prepackaged foods that are not time/temperature control for safety (TCS) food;

   C. A produce stand that only offers whole, uncut fresh fruits and vegetables;

   D. A food processing plant;

   E. A Bed and Breakfast limited facility as defined by the TFER;

   F. A cottage food industry;

   G. An area where cottage food is prepared, sold, or offered for human consumption;

   H. A private home that receives catered or home-delivered food;

   I. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale (if allowed by law); and

   J. A child's beverage stand as described by Tex. Loc. Gov't Code § 250.009, as amended;

(c) A permit or other written authorization issued by the City under this Chapter:

1. Is non-transferable and non-refundable;

2. Authorizes the operation of the food establishment only at the location, for the type of food service, and for person for which the permit or written authorization was issued, unless otherwise permitted by this ordinance or by other local, state, or federal law, rule, regulation, guideline, or policy;

3. Expires on the date indicated on the permit or written authorization unless sooner suspended or revoked for cause; and

4. Must be renewed and amended using the same process as applying for an original permit or written authorization.

(d) Incomplete applications for a permit or other written authorization issued under this Chapter will not be accepted. Failure to provide all required information or documentation or falsifying required information or documentation may result in denial, suspension, or revocation of a permit or written authorization.

(e) A valid permit or written authorization issued under this Chapter must be posted in a location conspicuous to consumers in every food establishment regulated by this Chapter, including MFUs and temporary food establishments.

1. This permit or written authorization may be in the form of a sticker, decal, etc.

(f) It is unlawful for any person to violate any applicable term or condition of a City permit or other City written authorization issued under this Chapter or any provision of this Chapter.

Section 17. Permit Applications.

(a) Fixed food establishment permit application process.

1. Before applying for a City fixed food establishment permit, a fixed food establishment operator must obtain a completed food dealer's application for the City of Rogers issued by the BCPHD.

2. To apply for a City fixed food establishment permit, the fixed food establishment operator must submit to the City a completed City fixed food establishment application, any documents and information required by City policy or guidelines and any applicable BCPHD regulation or order, and any applicable City fees.

(b) MFU permit application process.

1. Before applying for a City mobile food unit permit, a mobile food unit operator must obtain a BCPHD food dealer's permit.

2. To apply for a City mobile food unit permit, the mobile food unit operator must submit to the City a completed City mobile food unit application, any documents and information required by City policy and any applicable BCPHD regulation or order, and any applicable City fees.

3. The City may require any of the following information and documentation, as applicable, to be submitted to the City with the City's mobile food unit permit application:

(A) The name and address of the applicant and a copy of applicant's valid and current driver license;

(B) The color, make, and model of the vehicle to be used for the proposed MFU;

(C) Proof of vehicle insurance for the MFU;

(D) Sales tax number with a copy of sales tax permit;

(E) The signature of the applicant;

(F) A copy of the applicant's BCPHD food dealer's permit;

(G) A copy of the applicant's state or nationally accredited food handler's certification and/or certified food manager's certificate;

(H) Proof that the MFU passed a fire safety inspection performed by the Fire Marshal and that the inspection is current;

(I) Whether the MFU is a transient MFU operator as defined by this Chapter;

(J) A list of any food items that will be cooked or grilled outside of the MFU or the MFU's central preparation facility;

(K) A signed letter of authorization, to verify facility use, if the MFU operator's central preparation facility is not owned by the mobile food unit operator, and the most current health inspection report from the public health authority having jurisdiction over the facility;

(L) A completed variance request application for the central preparation facility;

(M) Proof of compliance with Section 32, below (*Ice cream trucks permitted to operate in residential areas*);

(N) A water and wastewater plan that complies with all local, state, and federal laws, rules, policies, guidelines, and regulations. If an approved liquid waste transporter will be used to remove wastewater from the MFU a copy of the approved liquid waste transporter contract must be provided to the City with the

applicant's permit application; and

(O) Any other information or documentation deemed necessary by the City.

Section 18. Operation of a MFU at a City-Owned Food Truck Court.

(a) Before operating a MFU at a City-owned food truck court, a MFU operator must enter into a rental agreement with the City for a space.

(b) A MFU operator must have a valid City mobile food unit permit issued under Section 17(b), unless exempted under Section 16(b)(1), to receive a permit to operate at a City-owned food truck court.

(c) The City may require any of the following to be submitted to rent a space at a City-owned food truck court under this Section:

1. Any information or documentation required under Section 17(b)(3), above;

2. A completed City rental application;

3. Any applicable City fees; and

4. Any other documentation or information deemed necessary by the City.

Section 19. Operation of Transient Mobile Food Units on Private Property for Temporary Private Events.

(a) A private property owner or tenant may host temporary private events with the operation of transient mobile food units on their private property in any zoning district within the City if the following conditions are met:

1. If required by City policy, the private property owner or tenant obtains a City permit or written City authorization for the operation of the transient mobile food unit operator; and

(A) If the City requires a City permit or written City authorization under Subsection (a)1, the private property owner or tenant hosting the event is responsible for obtaining the permit or authorization. If a tenant applies for the City permit or written City authorization, the signature of the property owner or property management company for the private property must be on the tenant's application.

i. Private property owners and tenants that are nonprofits registered with the state as 501(c) organizations are

exempt from obtaining a City permit or written City authorization as required by this Subsection but must comply with all other provisions of this Section and any applicable City policy. The City may require any information necessary to determine whether an organization is a nonprofit for purposes of this exemption.

(B) The private property owner or tenant must submit to the City a completed City application with any information or documentation deemed necessary by the City, pay any applicable City fees, and comply with the terms of this Section and any applicable part of this Chapter and any applicable City policy to receive this City permit or written City authorization.

2. The transient mobile food unit operator has valid City mobile food unit permit issued under Section 17(b) unless exempted under Section 16(b)1.

(A) The transient mobile food unit operator is responsible for obtaining a City mobile food unit permit prior to operating at a temporary private event.

(b) The City may enact policies limiting:

1. The number of days per a year private property owners and tenants may host temporary private events with the operation of transient mobile food units based on zoning districts and/or property uses;

2. The number of MFUs that may operate at a temporary private event or at or on a private property for a temporary private event and where the MFUs may be parked and operated; and

3. The number of consecutive days private property owners and tenants may host a temporary private event with the operation of transient mobile food units based on zoning districts and/or property uses.

(c) A transient mobile food unit may be parked on a City public street while operating at temporary private event under this Section, provided that the mobile food unit is parked directly adjacent to the private property where the temporary private event is being held and the mobile food unit is not parked or operated:

1. In such a way that that the MFU is likely to or does impede or inconvenience the public, physically or visually obstruct pedestrian or vehicular traffic, cause a traffic hazard, violate a local, state, or federal law, rule, policy, guideline, or regulation, including the City's current fire code, or interfere with on-site traffic circulation or parking;

2. In parking spaces that are required to serve the principal business on the site per the required parking ratios in Sec. 7.5.4.B. and Sec. 6.9 of the City's Unified Development Code or in parking spaces that are required to serve the MFU(s) per the required parking ratio(s) set by City policy or ordinance; or

3. In an intersection visibility triangle.

(d) Both the private property event host and the transient mobile food unit operator are responsible for complying with Subsection (c), above.

Section 20. Operation of a Temporary Food Establishment at Temporary Special Events.

(a) A City permit or other written City authorization is required for the operation of a temporary food establishment at a temporary special event within the City sponsored or hosted by the City or at a temporary special event held on or in City property hosted by a private event organizer or host.

(b) The requirements and application process for the operation of a temporary food establishment at a temporary special event within the City sponsored or hosted by the City or at a temporary special event held on or in City property hosted by a private event organizer or host will be as established by any applicable City ordinance, rule, regulation, policy, or guideline.

1. The City may require a City permit or other written City authorization to be obtained by either the private event organizer or host or the temporary food establishment operator, or both, according to applicable City ordinances, rules, regulations, policies, or guidelines.

2. The City may require a MFU operator to have valid City mobile food unit permit issued under Section 17(b), unless exempted under Section 16(b)1, for a temporary special event if required by any applicable City ordinance, rule, regulation, policy, or guideline.

(c) A person who receives a City permit or written City authorization to operate a temporary food establishment at a temporary special event within the City may be required to submit to and pass a fire safety inspection performed by the Fire Marshal and a food sanitation inspection performed by an authorized agent prior to beginning operation at the temporary special event and pay any applicable fees for these inspections. The City or an authorized agent may designate the times and locations of required inspections.

Section 21. Denial, Suspension, and Revocation of BCPHD Permit. BCPHD may deny, suspend, and revoke a permit as provided by BCPHD's current retail food sanitation order.

Section 22. Suspension, Denial, and Revocation of City Permit or Written City Authorization.

(a) Permit or written City authorization denial, suspension, or revocation.

1. The City may deny, suspend, or revoke a City permit or other written City authorization issued under this Chapter if the applicant, permit holder, person in charge, operator, property owner, tenant, event organizer or host, person issued a City written authorization, or any employee or agent of these parties:

(A) Does not comply with all applicable federal, state, and local laws, rules, policies, guidelines, and regulations;

(B) Knowingly provides false information on an application;

(C) Has an applicable BCPHD permit denied, suspended, or revoked; or

(D) Interferes with an authorized agent or the City in the performance of their duties.

2. Before denying, suspending, or revoking a permit or other written authorization, the City will provide the applicant, permit holder, person in charge, operator, property owner, tenant, event organizer or host or person issued a City written authorization with written notice of the denial, suspension, or revocation. The written notice will include:

(A) The reason the permit or written authorization is subject to denial, suspension, or revocation; and

(B) A statement that the permit or other written City authorization will be denied, suspended, or revoked on a specified date unless the applicant, permit holder, or person issued the written authorization timely files an appeal as provided under Subsection (d), below.

(b) Permit or written authorization suspension.

1. When a permit or written authorization is suspended, food operations must immediately cease.

(A) Whenever a food establishment is required under the provisions of this Section to cease food operations, it may not resume operations until such time as a reinspection by the City and/or BCPHD determines that conditions responsible for the requirement

to cease operations no longer exist. Opportunity for reinspection will be offered within a reasonable time.

(B) The City may reinstate a City permit or written City authorization if the reason for suspension no longer exists.

2. Regardless of Subsection (a)(2), above, the City may suspend any City permit or written City authorization issued under this Chapter without prior notice, warning, or hearing if the food establishment constitutes an imminent hazard to public health, safety, or welfare.

3. A permit holder or person issued the written authorization may appeal a suspension issued under Subsection (b)(2), above, as provided under Subsection (d), below.

(c) Service of notice.

A notice as required in this Section is properly served:

1. When the City personally serves the denial, suspension, or revocation notice to the applicant, permit holder, person in charge, operator, property owner, tenant, event organizer or host or person issued a City written authorization; or

2. Five (5) calendar days after the City deposits the denial, suspension, or revocation notice in the mail to the applicant, permit holder, person in charge, operator, property owner, tenant, event organizer or host or person issued a City written authorization.

(d) Appeal; hearing.

1. The applicant or permit holder or person issued the written authorization must file a written request to appeal and request a hearing with the City within ten (10) calendar days following service of notice of a permit or written authorization denial, suspension, or revocation. If no written appeal and request for hearing is filed within this period, the denial, suspension, or revocation will become final.

2. The hearings provided for under this Subsection will be conducted by a hearing officer designated by the City Manager at a time and place designated by the City. This hearing must be scheduled no more than ten (10) business days from the date of the City's receipt of a request for a hearing. Based upon the evidence of the hearing, the hearing officer must make final findings and sustain, modify, or rescind any denial, suspension, or revocation considered in the hearing. A written report of the hearing decision must be furnished to the applicant or permit holder or person

issued the written authorization by the City, as applicable.

Section 23 - 30. Reserved.

ARTICLE III. REQUIREMENTS FOR MFU OPERATORS

Section 31. Permitted Locations for MFU Operation. Unless otherwise provided by this Chapter or by other local, state, or federal law, rule, policy, guideline, or regulation or authorized by the City in writing, mobile food units may:

(a) Not be operated in a public right-of-way, including a public street;

(b) Not be operated or parked:

1. Where such activity is likely to or does impede or inconvenience the public, physically or visually obstruct pedestrian or vehicular traffic, cause a traffic hazard, violate a local, state, or federal law, rule, policy, guideline, or regulation, including the City's current fire code, or interfere with on-site traffic circulation or parking,

   (A) MFU operators must comply with the restrictions against parking, stopping, or standing a motor vehicle in a fire apparatus access road or fire lane as provided under the City's current fire code.

2. In parking spaces that are required to serve the principal business on the site per the required parking ratios in Sec. 7.5.4.B. and Sec. 6.9 of the City's Unified Development Code or in parking spaces that are required to serve the MFU(s) per the required parking ratio(s) set by City policy or ordinance,

3. In an intersection visibility triangle, or

4. In a City park or on other City property;

(c) Not be parked or stored in residentially zoned or used areas within the City;

1. Mobile food unit operators do not have to comply with this Subsection (d) until sixty (60) days after May 9, 2024.

(d) Only be parked, stopped, and stood on asphalt or concrete; and

(e) Not be parked in violation of Section 38(b), below, which provides the separation requirements for MFUs between existing buildings, building entrances and exits, and other MFUs.

Section 32. Ice Cream Trucks Permitted to Operate in Residential Areas.

(a) Mobile food unit vehicle operators, excluding push-cart operators and stands and booths, selling only prepackaged, fully and individually wrapped ice cream, frozen desserts, or other novelty frozen foods, hand-scooped ice cream, sno-cones, raspas, or shaved ices, or the like (ice cream truck operators) may operate their MFUs in residentially zoned or used areas in City public streets in compliance with this Section. Ice cream truck operators do not have to comply with the requirements of this Section if otherwise authorized by the City by permit, or by other local, state, or federal law, rule, policy, guideline, or regulation.

(b) All ice cream trucks vending in City public streets under this Section must:

1. Obtain a permit to operate in the residential areas of the City;

2. Have an automatic flashing device consisting of two lamps at the front of the vehicle, mounted at the same level and as widely spaced laterally as possible and displaying simultaneously flashing amber lights, and two (2) lamps at the rear of the vehicle mounted at the same level and as widely spaced laterally as possible and displaying simultaneously flashing amber lights, to be used at all times while the vehicle is in use for food service or solicitation of sales; and

3. Display signs in front and rear of the vehicle bearing the word "CAUTION- CHILDREN" in block style letters not less than six (6) inches high.

(c) Effective date of Subsection (b). The requirements of Subsection (b), above, will become effective sixty (60) days after May 9, 2024.

(d) A person may not sell ice cream, frozen desserts, or other novelty frozen foods from a MFU in a City public street before sunrise or after sunset.

(e) Prior to making a sale or dispensing such frozen dessert products in a City public street, the operator of an ice cream truck must drive to the side of the street, as close as practicable to the curb, and if there is no curb, then as close as practicable to the hedge of the paved portion or the edge of the portion used for vehicular traffic of said road and must stop, stand, or park such vehicle in full compliance with all applicable ordinances of the city and statutes of the state, and particularly ordinances governing the stopping, standing, or parking of vehicles, and such vehicle may not remain so stopped, standing or parked for no longer than is necessary to actively make immediate sales, dispense their frozen dessert products, and clean their food handling area, including the washing of hands and cleaning of food surface areas. In no case may an ice cream truck be parked at a location for more than twenty (20) minutes. An ice cream truck operator may not park and wait for customers at any location.

(f) Ice cream truck operators may not vend in a City public street within one block of an elementary or junior high school or middle school on days when the applicable school

is in session either during school hours or within one hour before or one hour after school hours.

Section 33. Push-Carts. Unless otherwise provided by this Chapter or by other local, state, or federal law, rule, policy, guideline, or regulation or authorized by the City in writing, a push-cart MFU operator may not:

(a) Use a push-cart that exceeds four feet by five feet (4' x 5');

1. All push carts must be on wheels, non-motorized, and readily moveable by one individual, and
2. Push-cart construction must be smooth and durable with cleanable surfaces.

(b) Enter or occupy a public roadway to solicit or conduct a sale;

(c) Physically or visibly obstruct pedestrian or vehicular traffic;

(d) Sell, distribute, or offer for sale, goods, or services that have not been approved by the BCPHD or, if applicable, by the City; or

(e) Be located within a construction area.

Section 34. Reserved.

Section 35. Signs.

(a) Unless otherwise authorized by the City in writing or by other local, state, or federal law, rule, policy, guideline, or regulation, a MFU operator may only display signs attached to the exterior of the MFU and one sandwich board sign.

1. Signs attached to the exterior of the MFU:

   (A) Must be secured and mounted flat against the MFU; and

   (B) May not project more than six (6) inches from the exterior of the mobile food unit.

2. Sandwich board signs:

   (A) May only be displayed while the MFU is operating;

   (B) Must not interfere with pedestrian or vehicular access;

   (C) May not exceed a total of six (6) square feet per sign face; and

(D) May not be placed more than ten (10) feet away from the MFU.

(b) Regardless of Subsection (a), a MFU operator operating on any City property or at a temporary special event may not display a sandwich board sign unless the operator's City permit or other written City authorization or a City rule, regulation, guideline, or policy authorizes the display of such sign and the sign is in compliance with the applicable permit, written authorization, rule, regulation, guideline, or policy.

(c) The MFU must be clearly and legibly marked with the food establishment's name or a distinctive identifying symbol. The lettering must be at least three (3) inches in height and of a color contrasting with the background color. If a symbol is used, it must be at least twelve (12) inches in diameter or of an equivalent size.

Section 36. Proof of Ready Mobility and Re-Inspections.

(a) BCPHD or the City may require a MFU to come, on an annual basis or as often as required, to a location designated by BCPHD or the City as proof that the MFU is readily moveable.

(b) An authorized agent or the City may require that any MFU found to violate this Chapter come to a location designated by the authorized agent or the City for re-inspection.

Section 37. Noise.

(a) A MFU operator may not emit any amplified sound from a MFU unless authorized by the City in writing or otherwise permitted under a local, state, or federal law, rule, policy, guideline, or regulation or as provided by Subsection (b), below.

(b) Ice cream truck operators may play amplified music while driving in residentially zoned or used areas if:

1. The music does not violate the City's current sound ordinances;

2. The music is not broadcast within 100 yards of a school during school hours when the school is in session or within 100 yards of a hospital, church, courthouse, funeral home, or cemetery; and

3. The operator turns off the music while stationary except when stopped at a controlled intersection.

(c) If a MFU operator is using a generator, the generator must have an operational volume below 65 dB unless otherwise authorized by the City in writing or by other local, state, or federal law, rule, policy, guideline, or regulation.

Section 38. MFU Fire Safety.

(a) MFU operators must have their MFU inspected and approved by the Fire

Marshal for compliance with the City's fire and explosion safety standards and the City's current fire code as provided by this Section to operate within the City.

1. MFU operators required to have City permits issued under Section 17(b) who:

   (A) Had a valid City permit to operate a MFU within the City on May 9, 2024 must have their MFU inspected and approved by the Fire Marshal within thirty (30) days after June 1, 2024 and then every year thereafter; or

   (B) Did not have a valid City permit to operate a MFU within the City on May 9, 2024 must have their MFU inspected and approved by the Fire Marshal prior to applying for a City permit issued under this Chapter and, once a permit is issued, then every year thereafter.

2. MFU operators who would require a valid City mobile food unit permit issued under Section 17(b) without the permitting exemption in Section 16(b)1, above, who were:

   (A) Legally operating a MFU within the City on May 9, 2024 must have their MFU inspected and approved by the Fire Marshal within thirty (30) days after June 1, 2024 and then every year thereafter; or

   (B) Not legally operating a MFU within the City on May 9, 2024 must have their MFU inspected and approved by the Fire Marshal prior to beginning MFU operations within the City and then every year thereafter.

3. A MFU operator with a current, valid Fire Marshal inspection and approval on May 9, 2024 is not required to get their MFU inspected and approved by the Fire Marshal within thirty (30) days after June 1, 2024 as provided by Sections 38(a)1(A) and 38(a)2(A), above; such MFU operator is required to get their MFU inspected and approved by the Fire Marshal prior to their current MFU's Fire Marshal inspection and approval expiration date and then every year thereafter.

4. MFUs operating at temporary special events described in Section 20, above, will be inspected by the Fire Marshal as provided under Section 20(c).

(b) Mobile food units must be separated from existing buildings and other mobile food units and from any building entrances or exits as required by the Fire Marshal and/or any safety standard or policy established by the Fire Marshal.

(c) The Fire Marshal may establish fire and explosion safety standards and policies for MFUs, including, but not limited to, establishing fire safety requirements, providing when MFU fire safety inspections will be conducted, such as designating times, days, and locations for fire safety inspections, and regulating how proof of inspections must be displayed on MFUs (e.g. decals, stickers, etc.).

(d) A MFU must display proof of a current City fire safety inspection in a location that is conspicuous to consumers.

(e) The Fire Marshal may assess fees for fire safety inspections, including fees for fire safety inspections and decals.

(f) Fire safety inspections during MFU operation.

1. The Fire Marshal may conduct fire safety inspections on a MFU during the MFU's hours of operation and other reasonable times.

2. If after the Fire Marshal presents official credentials and requests to conduct a MFU fire safety inspection, the permit holder, person in charge, operator, property owner, tenant, event organizer or host, person issued a City written authorization, or any of these parties' employees or agents refuses access, the Fire Marshal may apply for a warrant to gain access to the MFU as provided by law. The Fire Marshal is not required to obtain a warrant if a legal exception to the warrant requirement applies.

3. If during a fire safety inspection, the Fire Marshal determines that a MFU is not in compliance with the City's fire and explosion safety standards or the City's current fire code, food operations must immediately cease and may not resume until the Fire Marshal authorizes food operations to resume.

(g) Failure to comply with this Section, a fire and explosion safety standard or policy, or a provision of the City's current fire code may result in a City MFU permit or other written City authorization issued under this Chapter being denied, suspended, or revoked.

(h) Failure to comply with a fire and explosion safety standard or policy established by the Fire Marshal or the City's current fire code is an offense under this Chapter.

Section 39. Central Preparation Facilities, Variances, and Servicing Areas.

(a) Central preparation facilities.

1. Mobile Food Units must operate from a central preparation facility or other fixed food establishment and must report to such location daily for supplies and for cleaning and servicing operations as required under 25

Tex. Admin. Code §228.221, as amended.

2. Approved liquid waste transporters may be used to remove wastewater from a MFU and approved servicing areas may be used to dispose of wastewater; however, approved liquid waste transporters and approved servicing areas are in addition to having a central preparation facility. Approved liquid waste transporters and approved servicing areas cannot replace the central preparation facility requirement.

3. If required by City policy, central preparation facilities must be approved by the City. Residences, including apartment complexes and daycares, may not serve as central preparation facilities. An existing fixed food establishment may serve as a central preparation facility for a MFU only if approved by both the BCPHD and the City.

4. Central preparation facilities and servicing areas are required to contain any facility or accommodation determined necessary by the BCPHD or the City to ensure compliance with all regulatory codes, including approved potable water connections and adequately sized grease interceptors with the ability to accept MFU wastewater.

5. Food for public consumption must be prepared and stored at the MFU's central preparation facility or inside the mobile food unit. Food for public consumption may not be prepared or stored at any other location, including, but not limited to, an unpermitted kitchen pursuant to 25 Tex. Admin. Code §228.62, as amended.

   (A) Regardless of Subsection -39(a)(5), above, a MFU operator and their employees and agents may:

      i. Cook and grill outside the enclosed portion of the MFU adjacent to the MFU if the following conditions are met:

         a. A lid is used to cover the food while it is cooking;

         b. All further preparation of food (cutting, slicing, assembly, etc.) is completed inside the MFU or within the MFU's central preparation facility;

         c. No ice is placed, stored, or used outside of the enclosed portion of the MFU;

         d. The BCPHD and all applicable City departments, which may include the City's Fire Department, approve this activity;

         e. The activity complies with all terms and

conditions of any applicable City permit or authorization;

f. A public nuisance, health hazard, or vehicular or pedestrian hazard is not caused by this activity; and;

g. The MFU operator and the MFU operator's employees and agents comply with all applicable local, state, and federal laws, rules, policies, guidelines, and regulations.

ii. Have TCS and non-TCS foods available for public consumption outside of the enclosed portion of a MFU at a temporary special event if the following conditions are met:

a. No ice is placed, stored, or used outside of the enclosed portion of the MFU;

b. The food has overhead covering;

c. The BCPHD and all applicable City departments inspect and approve this activity, including, but not limited to, the location where this food may be placed outside of the enclosed portion of a MFU, the type of container this food may be placed in, and the time that the food may be set out, on-site at the temporary special event;

d. The activity complies with all terms and conditions of any applicable City permit or authorization;

e. A public nuisance, health hazard, or vehicular or pedestrian hazard is not caused by this activity; and

f. The MFU operator and the MFU operator's employees and agents comply with all applicable local, state, and federal laws, rules, policies, guidelines, and regulations.

iii. Have non-TCS condiments and non-TCS, individually wrapped, prepackaged foods (e.g. prepackaged chip bags and candy) available for public consumption outside of the enclosed portion of the MFU on the ledge of the MFU near the MFU's customer service window if the following conditions are met:

a. No ice is placed, stored, or used outside of the enclosed portion of the MFU;

b. The food has overhead covering;

c. The condiments are in self-service, closed containers, such as pump condiment containers or squeeze bottles;

d. All drinks for public consumption are stored within the MFU;

e. The BCPHD and all applicable City departments approve this activity;

f. The activity complies with all terms and conditions of any applicable City permit or authorization;

g. A public nuisance, health hazard, or vehicular or pedestrian hazard is not caused by this activity; and

h. The MFU operator and the MFU operator's employees and agents comply with all applicable local, state, and federal laws, rules, policies, guidelines, and regulations.

iv. Have non-TCS condiments and non-TCS, individually wrapped, prepackaged foods (e.g. prepackaged chip bags and candy) available for public consumption on tables adjacent to the MFU if the following conditions are met:

a. The MFU is parked and operated only on private property at all times this activity is performed;

b. The tables are located only on private property at all times they are being used for this activity;

c. The tables, measured together, do not measure more than twenty (20) square feet in surface area;

d. No ice is placed, stored, or used outside of the enclosed portion of the MFU;

e. The food has overhead covering;

f. The condiments are in self-service, closed containers, such as pump condiment containers or squeeze bottles;

g. All drinks for public consumption are stored within the MFU;

h. The BCPHD and all applicable City departments approve this activity;

i. The activity complies with all terms and conditions of any applicable City permit or authorization;

j. A public nuisance, health hazard, or vehicular or pedestrian hazard is not caused by this activity; and

k. The MFU operator and the MFU operator's employees and agents comply with all applicable local, state, and federal laws, rules, policies, guidelines, and regulations.

2. The MFU operator must always maintain the most recent health inspection of the central preparation facility on the MFU and must have this inspection available for inspection.

(b) Variance from central preparation facility requirement.

1. A MFU operator may be permitted or authorized to operate within the City without a central preparation facility if the MFU operator is granted a variance from this requirement in accordance with 25 Tex. Admin. Code § 228.243, as amended.

(A) A MFU operator may not be a issued a City mobile food unit permit under Section 17(b) without a central preparation facility unless both the City and the BCPHD approve the variance.

(B) Nonprofit MFU operators who would require a valid City mobile food unit permit issued under Section 17(b) without the permitting exemption in Section 16(b)1 may not operate within the City at any location or event without a central preparation facility unless both the City and the BCPHD approve the variance.

2. The City may require a MFU operator to submit to the City a completed

variance request application for the central preparation facility and any related information and documentation deemed necessary by the City to review the MFU operator's variance request, including photographs of the MFU operator's proposed servicing area. The City may also inspect a proposed servicing area located within the City as provided by Section 58 (*City inspection*) as part of the City's review of a MFU operator's variance request.

(A) A mobile food unit is not required to have a servicing area if a servicing area is not required under 25 Tex. Admin. Code §228.221(c)(1)(C), as amended.

(c) Existing City MFU permit holders. Unless otherwise authorized by the City in writing, MFU operators who were legally operating within the City outside of a temporary special event with a valid City MFU permit or other written City authorization to operate a MFU within the City, or who were legally operating within the City as a nonprofit MFU operator outside of a temporary special event, on May 9, 2024 under a variance granted from the BCPHD to operate without a central preparation facility have until ninety (90) days after May 9, 2024 to comply with TFER's central preparation facility requirement or be granted a variance from this requirement as provided under Subsection (b), above, in order to continue to operate within the City.

(d) Servicing records.

1. The City may require a MFU operator to maintain documentation of each visit to their MFU's central preparation facility and/or approved servicing area, as applicable, on the MFU at all times and have that documentation available for inspection. If required by the City, this documentation must contain the dates, and times, and the signature of the central preparation facility or servicing area representative, as applicable, verifying when the MFU visited its central preparation facility or servicing area and which services were performed during each visit.

2. It is unlawful for an operator of a MFU to be in operation without a valid servicing record in their possession if this record is required by the City. If servicing records are required by the City, the operator of a MFU must keep and maintain servicing records on the MFU for a period of one year from the date of servicing and these servicing records must be immediately available to any City employee or authorized agent for inspection.

(e) Central preparation facility and servicing area information on file with City.

1. Central preparation facilities.

(A) If required by City policy, a MFU operator must have on file with the City:

i. Any information or documentation related to the MFU operator's central preparation facility deemed necessary by the City; and

ii. If the central preparation facility is not owned by the MFU operator, a signed letter of authorization to verify use of a central preparation facility.

(B) If required by City policy, central preparation facilities used by MFU operators operating within the City must be approved by the City.

(C) This Subsection (e)(1) will become effective ninety (90) days after May 9, 2024.

2. Servicing areas.

(A) If required by City policy, a MFU operator must have on file with the City:

iii. Any information or documentation related to the MFU operator's servicing area deemed necessary by the City; and

iv. If the servicing facility is not owned by the MFU operator, a signed letter of authorization to verify use of a servicing area.

(B) If required by City policy, servicing areas used by MFU operators operating within the City must be approved by the City.

(C) This Subsection (e)(2) will become effective ninety (90) days after May 9, 2024.

(f) Servicing area and central preparation facility changes. If a MFU operator makes any change to their City approved central preparation facility or servicing area the MFU operator must notify the City in writing, provide any requested information or documentation deemed necessary by the City, and receive City approval for the change. An MFU operator who makes any change to their City approved central preparation facility or servicing area is prohibited from operating within the City until the City approves this change.

Section 40. Utility Connections. Unless otherwise approved by the City in writing, utility connections to mobile food units are limited to only electrical service in full compliance with the City's and the state's currently adopted electrical code. If these codes conflict, the stricter provision prevails. All electrical extension cords must be of industrial grade quality

and utilized in a safe manner as not to be a nuisance or a trip hazard.

Section 41. Water and Wastewater Requirements.

(a) If required by City policy, MFU operators operating within the City must have a City approved water and wastewater plan on file with the City. This requirement will become effective ninety (90) days after May 9, 2024.

1. If a MFU operator makes any change to their City approved water and wastewater plan, the MFU operator must notify the City in writing, provide any requested information or documentation deemed necessary by the City, and receive City approval for the change. An MFU operator who makes any change to their City approved water and wastewater plan is prohibited from operating within the City until the City approves this change.

(b) If liquid waste results from the operation of a mobile food unit, the permit holder, person in charge, operator, person issued a City written authorization, and these parties' employees and agents must:

1. Store the liquid waste in a permanently installed, vented retention tanks that meet state and local requirements. Retention tanks must be drained and thoroughly flushed during servicing operations;

2. Discharge all liquid waste to an approved grease interceptor at the MFU's central preparation facility, at an approved servicing area, or by an approved liquid waste transporter. In no circumstances may the person in charge of a MFU discharge liquid waste from the MFU onto the ground, roadway, or into any drainage infrastructure.

3. Not discharge liquid waste from retention tanks when the mobile food unit is at an operation location unless the connection is approved by the City in writing;

4. Ensure that the waste connection of the MFU is located below the water connection to preclude contamination of the potable water system;

5. Not connect to a sewerage system at an operation location unless approved by the City in writing;

6. Connect water connections that have been approved by the City through food grade hoses with proper backflow protection; and

7. Comply with all local, federal, and state laws, rules, policies, guidelines, and regulations related to liquid waste, including the City's liquid waste regulations.

(c) The City may require a MFU operator to keep a water and wastewater service log and provide a copy of this log to the City and authorized agents upon request. If the City requires such a log to be kept by a MFU operator, the MFU operator must maintain a copy of this log on the MFU at all times.

Section 42. Exterior Surfaces of MFUs. Exterior surfaces of MFUs must be of weather resistant materials and comply with all applicable local, state, and federal laws, rules, policies, guidelines, and regulations.

Section 43. Damage Report. Any accident involving a mobile food unit that results in damage to the water system, waste retention tank, food service equipment, or any facility that may result in the contamination of the food being transported or any damage that results in a violation of this Chapter must be reported to the City and BCPHD within 24 hours of the time the accident occurred. All reports must be made by the City MFU permit holder or person issued a written City authorization to operate the MFU within the City.

Section 44. Operation Capacity Limited.

(a) Unless otherwise provided by this Chapter or authorized by the City in writing or by other local, state, or federal law, policy, rule, guideline, or regulation, MFU permit holders, persons in charge of MFUs, MFU operators, persons issued a City written authorization for the operation of a MFU, and these parties' employees and agents:

1. Must prepare, serve, store, and display food and beverages on or in the mobile food unit itself;

2. May not attach, set up, or use any other device or equipment intended to increase the selling, serving, storing, or displaying capacity of the MFU, including, for example, selling food from a table under a free-standing canopy;

   (A) All food vending must be done from the MFU.

3. May not allow or place items such as, but not limited to, brooms, mops, hoses, equipment, containers, and boxes or cartons to remain adjacent to or beneath the MFU; and

4. May not place tables, umbrellas, canopies, patio heaters, chairs, and other like furniture and appurtenances outside of the MFU.

(b) Regardless of Subsection (a), MFU operators operating on private property may place tables, umbrellas, canopies, patio heaters, chairs, and other like furniture and appurtenances outside of the MFU on the private property if all the following conditions are met and the items are:

1. Readily moveable;

2. If lightweight, removed when the MFU is not in operation;

3. In good condition;

4. Adequately secured or anchored at all times; and

5. Not placed:

   (A) In a public right-of-way, including a public street,

   (B) Where such items are likely to or do impede or inconvenience the public, physically or visually obstruct pedestrian or vehicular traffic, cause a traffic hazard, violate a local, state, or federal law, rule, policy, guideline, or regulation, including the City's current fire code, or interfere with on-site traffic circulation or parking,

   (C) In parking spaces that are required to serve the principal business on the site per the required parking ratios in Sec. 7.5.4.B. and Sec. 6.9 of the City's Unified Development Code or in parking spaces that are required to serve the MFU(s) per the required parking ratio(s) set by City policy or ordinance,

   (D) In an intersection visibility triangle, or

   (E) In a City park or on other City property.

Section 45. Garbage and Trash.

(a) MFU operators must provide covered garbage and trash receptables for employee and customer use of sufficient size that refuse is fully contained in a manner that prevents litter and remains insect- and rodent-proof.

(b) Before a MFU leaves a vending site, the MFU operator must remove all garbage and trash caused by the MFU's business, the operator's employees and agents, and the MFU's customers from the vending site. Excessive garbage and trash may not be allowed to accumulate inside or around the mobile food unit.

(c) All garbage and trash must be disposed of in an approved garbage receptacle.

Section 46. City-Owned Food Truck Courts. A MFU operator renting a space at a City-owned food truck court must comply with the terms of their agreement with the City for the rental of the space and all applicable City laws, policies, guidelines, rules, and regulations related to the City-owned food truck court.

Section 47. MFU Parking Ratios. The City may require a minimum number of parking spaces per a mobile food unit. MFU parking ratios may be set by City policy or ordinance.

Sections 48 -55. Reserved.

ARTICLE IV. FOOD ESTABLISHMENT REQUIREMENTS

Section 56. Requirements for Food Establishment Permit Holders.

Permit holders, persons in charge, operators, property owners, tenants, event organizers and hosts, persons issued a City written authorization to operate a food establishment, and these parties' employees and agents must comply with:

(a) All applicable local, state, and federal laws, rules, policies, guidelines, and regulations, including, but not limited to, the City's most current ordinance regulating the disposal of liquid waste and wastewater, BCPHD's current retail food sanitation order, and the TFER; and

(b) The terms and conditions of the applicable permit or other written City authorization.

Section 57. Food Establishment Construction and Remodel.

(a) Whenever a food establishment is constructed or extensively remodeled or whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling, or conversion must be submitted to the City and, if required, to BCPHD for review and approval before work is begun.

1. Extensive remodeling means that twenty percent (20%) or greater of the area of the food establishment is to be remodeled.
2. The plans and specifications for the food establishment must include, as required by the City and the BCPHD based on the type of operation, type of food preparation, and foods prepared the following information:

    (A) Intended menu;

    (B) Anticipated volume of food to be stored, prepared, and sold or served;

    (C) Proposed layout, mechanical schematics, construction materials, and finish schedules;

    (D) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation

specifications;

(E) Evidence that standard procedures that ensure compliance with the requirements of the TFER are developed or are being developed; and

(F) Other information that may be required by the City or the BCPHD for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

(b) Failure to follow the approved plans and specifications may result in BCPHD or City permit or other written City authorization denial, suspension, revocation or the refusal of the BCPHD to issue a City of Rogers permit application.

(c) The Fire Marshal may perform a fire safety inspection prior to operation of a newly constructed or extensively remodeled food establishment or converted structure prior to food operation if the Fire Marshal determines that such an inspection is needed for fire safety.

Section 58. City Inspection.

(a) The City may conduct inspections of a food establishment, servicing area, or central preparation facility located within the City during the food establishment's, servicing area's, or central preparation facility's hours of operation and other reasonable times to determine compliance with this Chapter and any term or condition of a City permit issued under this Chapter. The City may assess fees for inspections of food establishments, servicing areas, and central preparation facilities.

(b) If after the City presents official credentials and requests to conduct an inspection under this Section, the permit holder, person in charge, operator, property owner, tenant, event organizer or host, person issued a City written authorization, or any of these parties' employees or agents refuses access, the City may apply for a warrant to gain access to the food establishment, servicing area, or central preparation facility as provided by law. The City is not required to obtain a warrant if a legal exception to the warrant requirement applies.

Section 59. Discharge of Fats, Oils, or Grease Used for Cooking.

(a) It is unlawful for a person to discharge fats, oils, or grease used for cooking through any grease interceptor.

(b) Food establishment operators must dispose of all fats, oils, and grease used for cooking by their food establishments by City approved methods (e.g. picked up by a recycling company that accepts these fats, oils, and grease from commercial businesses).

Section 60 - 63. Reserved.

ARTICLE V. MISCELLANEOUS

Section 64. Sale of Unsound, Unwholesome Food Prohibited. It is unlawful for any person in the City to sell, offer, or expose for sale any unsound, unwholesome, spoiled, or putrid food.

Section 65. Fees. There shall be no charge or permit fees for any permits issued under these Food and Food Establishments regulations as adopted by this Ordinance.

Section 66. Enforcement.

(a) This Chapter may be enforced by any authorized agent and any City employee or department so designated by the City Manager.

(b) Criminal prosecution.

1. A person who violates a provision of this Chapter, policy, or standard established under this Chapter, or term or condition of a permit issued under this Chapter is guilty of Class C misdemeanor. A person commits a separate offense for each day or part of a day during which a violation is committed or continued.

2. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense will be punishable by a fine not to exceed five hundred dollars ($500.00). Although not required, if a culpable mental state is in fact alleged in the charge of the offense, and the offense governs fire safety, zoning, or public health or sanitation, including the dumping of refuse, such offense will be punishable by a fine not to exceed two thousand dollars ($2,000.00).

(c) Civil remedies.

The City may seek to enjoin violations of these rules and any other civil remedies available under law.

(d) Non-exclusive remedies; other enforcement.

1. The City's decision to pursue civil or criminal remedies is not exclusive; the City may pursue criminal or civil remedies, or both, for any offense committed under this Chapter.

2. Enforcement under this Chapter does not preclude enforcement or prosecution by BCPHD, the state, or any other authority under local, state, or federal laws, rules, policies, guidelines, and regulations.

(e) City May Seek Injunctive Relief. The City may enforce this Ordinance through

injunctive relief in an appropriate court of law such as a temporary restraining order, temporary injunction, and a permanent injunction. Injunctive relief is available to the City in order for the City to enforce the terms and provisions of this Ordinance to protect the health and safety of the public. Therefore, the City shall not be required to post bond in order to obtain injunctive relief to enforce the terms and provisions of this Ordinance.

Section 67. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such portion must be deemed a separate, distinct, and independent provision and such holding may not affect the validity of the remaining portions of this ordinance.