



**ORDINANCE 1008**

**AN ORDINANCE AMENDING THE CITY'S CODE OF ORDINANCES CHAPTER 34 HEALTH AND SANITATION; PROVIDING FOR THE ADOPTION OF THE TEXAS ADMINISTRATIVE CODE REGULATIONS REGARDING TEXAS FOOD ESTABLISHMENTS; ADOPTING ADDITIONAL FOOD ESTABLISHMENT AND FOOD SERVICE REGULATIONS; APPOINTMENT OF A HEALTH OFFICIAL AND FOR THE INSPECTION OF FOOD ESTABLISHMENTS; ADOPTING A FEE SCHEDULE; PROVIDING A PENALTY FOR VIOLATIONS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS** the City Council seeks to promote the health, safety and general welfare of the community by preventing illness and death within the City limits; and

**WHEREAS** the City Council seeks to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented; and

**WHEREAS** the Texas Administrative Code Chapter 25 Section 229.171 provides that local regulatory authorities are required to apply state rules relating to Texas Food Establishments; and

**WHEREAS** Texas Health and Safety Code Section 438.037 expressly provides that home-rule municipalities are not precluded from adopting local laws regulating food service employees; and

**WHEREAS** the City Council hereby finds and determines that the regulations adopted herein are in the best interests of the health, safety and welfare of the citizens of Cibolo.

**NOW, THEREFORE: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CIBOLO, TEXAS:**

**I.  
CODE AMENDED**

The City of Cibolo Code of Articles Chapter 34 is hereby amended by adding Article III Services as follows:

## **ARTICLE III. FOOD SERVICES**

### **Section 34-80. Texas Administrative Code Rules and Regulations Adopted**

(a) Texas Health and Safety Code Chapter 438 Public Health Measures Relating to Food are hereby adopted and incorporated by reference and made a part of this article as if set out herein in full, except for any penalties contained therein..

(b) 25 Tex. Admin. Code, ch. 217, Milk and Dairy, subchapter C, rules for the Manufacture of Frozen Desserts and rule 217.65, Examination and Standards for Frozen Desserts are hereby adopted and incorporated by reference and made a part of this article as if set out herein in full, except for any penalties contained therein.

(c) 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175, regarding the regulation of food establishments are hereby adopted and incorporated by reference and made a part of this article as if set out herein in full, except for any penalties contained therein.

### **Section 34-81. Definitions**

*Authorized agent or employee* means the health official representing the City of Cibolo.

*Food establishment* means a food establishment as that term is defined by 25 TAC 229.161.

*Food Employee* means a person working with unpackaged food, food equipment or utensils, or food contact surface as that term is defined in 25 TAC 229.162.

*Health Official* means the individual designated by the City responsible for the enforcement of this Article.

*Permit* means a license to operate a food establishment within the City of Cibolo for a specified period of time for a stated fee as established in Exhibit "A" of this Article.

*State Rules* means rules found in 25 Tex. Admin. Code, ch. 229, §§ 161 through 171 and 173 through 175. These rules are also known as the Texas Food Establishment Rules.

### **Section 34-82. Appointment of Health Official**

The Health Official shall be appointed by the City Manager or his designee.

**Section 34-83. Duties and Powers of the Health Official**

(a) *Generally.* The health official is hereby authorized and directed to enforce the provisions of this Article and other related state and local laws. The health official shall have the authority to render interpretations of this Article and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Article, the Texas Administrative Code Title 25 Subchapter K and shall not have the effect of waiving requirements specifically provided for in this Article.

(b) *Appeals.* The city manager shall hear and decide on all appeals of orders, decisions or determinations made by the health official relative to the application and interpretation of this Article.

(c) *Health official qualifications.* The health official shall at all times maintain the minimum qualifications and licenses as required by the applicable and relevant laws.

(d) *Right of entry.* It shall be unlawful for any person to interfere, hinder, or delay the health official, deputies, inspectors, or other City officers in the discharge of any duties under this Article or to refuse to comply with the orders of the health official. The health official shall issue all necessary notices or orders to ensure compliance with this chapter.

(e) *Order of correction.* The health official shall have the authority whenever, in his opinion, a nuisance detrimental to health exists to cause the same to be abated or removed.

**Section 34-84. Inspection of Food Establishment**

(a) As often as deemed necessary for the proper enforcement of the provisions of this Article and the State Rules, the health official shall inspect every food establishment that is located within the city. The person operating the food establishment shall, upon request of the health official, permit access and allow the inspection of all parts of the establishment.

Establishments will be evaluated based on degree of public health risk. The level of risk will be based on the size and scope of food processing operations and population being served. The frequency of inspections will be set through consultation with city management. Facilities with higher risk (level 3) and needing more attention will be visited on a 3 times per year basis. Facilities with a slightly lower risk (level 2) will be visited on a semi-annual basis. Facilities only handling a few pre-packaged foods, with the lowest risk (level 1) will be visited on an annual basis.

(b) In case of any items of violation identified by or brought to the attention of the health official, the person in charge of this establishment will be advised of the violation. A second inspection will be made after a lapse of sufficient time, as the health official

deems sufficient for correction of the violation. Any violation of the same provision on such second inspection shall call for an immediate suspension of the food establishment permits.

(c) In the interest of public clarification, the results from compiling the inspection report will be converted to a letter grade with the letter "A" being the highest level of food service operation. The criteria for the various certificates are:

- (1) Grade "A" — attain a sanitation score of 85 or above;
- (2) Grade "B" — attain a sanitation score between 70 and 84;
- (3) Grade "C" — below 70 on the sanitation inspection.

An inspection certificate shall be issued and copy shall be posted by the health official at some conspicuous location on the premises where it will be clearly visible to all patrons. The certificate shall not be defaced or removed by any person except the health official. Violation of this section shall be a Class C misdemeanor punishable by a fine not to exceed \$200.00 per day that the certificate is removed, moved or defaced and/or suspension of the food establishment permit for 30 days. The health official shall permit the owner to correct any noncritical infractions within no more than 24 hours unless the owner can demonstrate to the health official's reasonable satisfaction that such infraction cannot be corrected within the allotted 24 hours or less. If the health official determines that the infraction is of an immediate threat to the public health, there shall be no grace period for correction. Repeat violations may result in higher point deduction.

#### **Section 34-85. Food Handler Sanitation Training Course**

It shall be unlawful for any employer to employ any person as a Food Employee without such employee having completed a food handler sanitation training course pursuant to 25 TAC Subchapter K.

#### **Section 34-86. Examination and Condemnation of Unwholesome or Questionable Food or Drink**

(a) Samples of food, drink and other substances may be taken and examined by the health official as often as he deems necessary for the detection of unwholesomeness and deleterious qualities.

(b) Any food which appears to the health official to be of a questionable nature from the standpoint of wholesomeness or possible deleterious quality may be held for further examination by attaching a "City of Cibolo Retained" tag to the item(s) foodstuffs so retained and may not be removed or disturbed without the permission of the health official. The health official shall promptly proceed by examination, laboratory or otherwise to determine the wholesomeness of such food. As soon as such

wholesomeness has been determined, such food must be immediately released. If however, such food is found to be unwholesome or deleterious, the health official must promptly condemn such food and may file petition in a court of competent jurisdiction for injunction to restrain the owner from selling such condemned food and to obtain order for destruction of such unwholesomeness or deleterious food or drink.

#### **Section 34-87. Procedure When Infection Suspected**

When suspicion arises as to the possibility of transmission of infection from any food establishment employee, the health official is authorized to require any or all of the following measures:

- (a) Immediate exclusion of the employee from all food establishments.
- (b) The immediate closing of the food establishment concerned until no further danger of disease outbreak exists in the opinion of the health official.
- (c) Adequate medical examination of the employee and of his associates with such laboratory examinations as may be indicated.

#### **Section 34-88. Permits**

(a) It shall be unlawful for any person to operate a food establishment without a valid food establishment permit issued by the city. Permits are valid for one year, except for temporary permits, which are valid for two weeks. All permits expire on September 30 of each year and are due and payable on October 1 of each year. All permits must be renewed within thirty (30) days or they will be suspended. A Permit issued to a new business prior to or after the due date may be prorated in order to assure the annual renewal is in line with the September 30<sup>th</sup> due date. Permits are not transferable from one establishment to another or from one person to another. Permits must be posted in a conspicuous place.

(b) All permits may be suspended or revoked by the health official upon the violation by the holder of any of the terms of this Article, following which, unless corrections are immediately made, action may be instituted in the name of the city in any court of competent jurisdiction to obtain a restraining order or permanent injunction preventing such person from operating unless immediate compliance with the provisions of this Article is obtained. Revocation of a permit for any cause whatsoever is still affected by the issuance of the statement that the permit has been revoked. Reapplication for permit may be made at any time and will be approved provided that full compliance of the provisions of this Article is accomplished.

(c) 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 city for review before work is begun. Extensive remodeling means

that 20 percent or greater of the area of the food establishment will be remodeled. The plans and specifications shall comply with the current adopted codes and local amendments and indicate the proposed layout, equipment arrangement, mechanical plans and construction materials of work area, and the type and model of proposed fixed equipment and facilities. Prior to opening for business, each new establishment will be inspected by the health official to ensure compliance with this Article.

(d) All permits shall incur as fee as set by City Council in Schedule "A" of Ordinance 977.

**Section 34-89. Penalty**

Except as provided for in Section 34-84(c), any person, firm, corporation or agent who shall violate a provision of this Article, or fail to comply therewith, or with any other requirements thereof, shall be guilty of a Class C misdemeanor. Such person shall be considered guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Article is committed or continued, and upon conviction of any such violation, such person shall be punished by a fine not to exceed \$2,000.00.

**II  
CUMULATIVE CLAUSE**

That this ordinance shall be cumulative of all provisions of the City of Cibolo, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

**III  
SEVERABILITY**

That it is hereby declared to be the intention of the City Council of the City of Cibolo that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, clause, sentence, paragraph or section.

**IV  
SAVINGS**

That all rights and privileges of the City of Cibolo are expressly saved as to any and all violations of the provision of any Ordinances effected by this Ordinance; and any such accrual of said ordinances at the time of the effective date of this Ordinance; and, as to

such accrued violation 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.

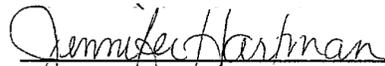
**V  
PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government

**VI  
EFFECTIVE DATE**

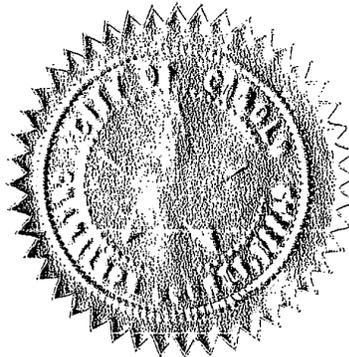
This ordinance shall be effective upon passage and publication as required by State and Local law.

**PASSED AND APPROVED THIS** 27 **DAY OF** march, 2012.

  
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Jennifer Hartman  
Mayor  
City of Cibolo, Texas

ATTEST:

  
\_\_\_\_\_  
Peggy Cimics  
City Secretary  
City of Cibolo, Texas



APPROVED AS TO FORM:

\_\_\_\_\_  
CHARLES E. ZECH  
City Attorney  
City of Cibolo, Texas