

ORDINANCE NO. 105

FOOD HEALTH ORDINANCE

Repaired
3-10-87
Approved w/
County Agreement

AN ORDINANCE DEFINING FOOD, POTENTIALLY HAZARDOUS FOOD, FOOD SERVICE ESTABLISHMENT, TEMPORARY FOOD SERVICE ESTABLISHMENT, REGULATORY AUTHORITY, UTENSILS, EQUIPMENT, ETC.; PROVIDING FOR THE SALE OF ONLY SOUND, PROPERLY LABELED FOOD; REGULATING THE SOURCES OF FOOD; ESTABLISHING SANITATION STANDARDS FOR FOOD, FOOD PROTECTION, FOOD SERVICE PERSONNEL, FOOD SERVICE OPERATIONS, AND OTHER FACILITIES; REQUIRING PERMITS FOR THE OPERATION OF FOOD SERVICE ESTABLISHMENTS; REGULATING THE INSPECTION OF SUCH ESTABLISHMENTS; PROVIDING FOR THE EXAMINATION AND CONDEMNATION OF FOOD; PROVIDING FOR INCORPORATION BY REFERENCE OF THE TEXAS DEPARTMENT OF HEALTH, DIVISION OF FOOD AND DRUGS "RULES ON FOOD SERVICE SANITATION 301.73.11.001-.011"; AND PROVIDING FOR THE ENFORCEMENT OF THIS ORDINANCE, AND THE FIXING OF PENALTIES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
MAGNOLIA:

Section 1. The definitions; the inspection of food service establishments; the issuance, suspension and revocation of permits to operate food service establishments; the prohibiting of the sale of unsound or mislabeled food or drink; and the enforcement of this ordinance shall be regulated in accordance with the Texas Department of Health, Division of Food and Drugs "Rules on Food Service Sanitation 301.73.11.001-.011," three certified copies of which shall be on file in the office of the municipal clerk: Provided, that the words "municipality of Magnolia" in said ordinance shall be understood to refer to City of Magnolia and the words "regulatory authority" shall be understood to refer to the City of Magnolia.

Section 2. Violations of the Rules on Food Service Sanitation are subject to the penalties and remedies listed in the Compliance Procedures, designated "Attachment A," which is attached hereto and incorporated as a part hereof.

Section 3. All permits, licenses and certificates described in Attachment A shall expire on December 31 annually. Upon making application for permit, license or certificate, the applicant shall pay to the City fifty cents (.50¢) for each month remaining in the year. Payment for renewal shall be six dollars (\$6.00) per year, and shall be paid on or before January 2nd each year.

PASSED and APPROVED on this 11 day of Sept,
1984.

Fabian Sneiger
Fabian Sneiger
Mayor pro tempore

Attest:
Mary McQuerry
Mary McQuerry
City Secretary

Approved as to form:
Burke Martin
Burke Martin
City Attorney

COMPLIANCE PROCEDURES(a) Permits, Licenses, or Certificates

- (1) General. No person shall operate a food service establishment who does not have a valid permit, license, or certificate issued to him by the regulatory authority. Only a person who complies with the requirements of these rules shall be entitled to receive or retain such a permit, license, or certificate. Permits, licenses, or certificates are not transferable. A valid permit, license, or certificate shall be posted in every food service establishment.

(2) Issuance of Permit, License, or Certificate.

- (A) Any person desiring to operate a food service establishment shall make written application for a permit, license, or certificate, on forms provided by the regulatory authority. Such application shall include the name and address of each applicant, the location and type of the proposed food service establishment, and the signature of each applicant.
- (B) Prior to approval of an application for a permit, license, or certificate the regulatory authority shall inspect the proposed food service establishment to determine compliance with the requirements of these rules.
- (C) The regulatory authority shall issue a permit, license, or certificate to the applicant if its inspection reveals that the proposed food service establishment complies with the requirements of these rules.

(3) Suspension of Permit, License, or Certificate.

- (A) The regulatory authority may, without warning, notice, or hearing suspend any permit, license, or certificate to operate a food service establishment if the holder of the permit, license, or certificate does not comply with the requirements of these rules, or if the operation of the establishment does not comply with the requirements of these rules, or if the operation of the food service establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Paragraph (3)(B) of Subsection (a) of this rule. When a permit, license, or certificate is suspended, food service operations shall immediately cease. Whenever a permit, license, or certificate is suspended, the holder of the permit, license, or certificate shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.

(B) Whenever a permit, license, or certificate is suspended, the holder of the permit, license, or certificate, or the person in charge shall be notified in writing that the permit, license, or certificate is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit, license, or certificate within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

(4) Revocation of Permit, License, or Certificate. The regulatory authority may, after providing opportunity for a hearing, revoke a permit, license, or certificate for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit, license, or certificate, or the person in charge, in writing of the reason for which the permit, license, or certificate is subject to revocation and that the permit, license, or certificate shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit, license, or certificate within such ten day period. If no request for hearing is filed within the ten day period, the revocation of the permit, license, or certificate becomes final.

(5) Service of Notices. A notice provided for in these rules is properly served when it is delivered to the holder of the permit, license, or certificate, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit, license, or certificate. A copy of the notice shall be filed in the records of the regulatory authority.

(6) Hearings. The hearings provided for in these rules 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, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit, license, or certificate by the regulatory authority.

(7) Application after Revocation. Whenever a revocation of a permit, license, or certificate has become final, the holder of the revoked permit, license, or certificate may make written application for a new permit, license, or certificate.

(b) Inspections

- (1) Inspection Frequency. An inspection of a food service establishment shall be performed at least once every six months. Additional inspections of the food service establishment shall be performed as often as are necessary for the enforcement of these rules.
- (2) Access. Agents of the regulatory authority, after proper identification, shall be permitted to enter any food service establishment at any reasonable time, for the purpose of making inspections to determine compliance with these rules. The agents shall be permitted to examine the records of the establishments to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.
- (3) Report of Inspections. Whenever an inspection of a food service establishment or commissary is made, the findings shall be recorded on the inspection report form set out in Paragraph (5) of Subsection (b) of this rule. The inspection report form shall summarize the requirements of these rules and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from 100. A copy of the inspection report form shall be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

(4) Correction of Violations.

- (A) The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:
 - (i) If an imminent health hazard exists, such as complete lack of refrigeration or sewage backup into the establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority.
 - (ii) All violations of 4- or 5-point weighted items shall be corrected as soon as possible, but in any event, within 10 days following inspection. Within 15 days after the inspection, the holder of the permit, license, or certificate shall submit a written report to the regulatory authority stating that the 4- or 5-point violations have been corrected. A follow-up inspection shall be conducted to confirm correction.

(iii) All 1- or 2-point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(iv) When rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.

(v) In the case of temporary food service establishments, all violations shall be corrected within 24 hours. If violations are not corrected within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the regulatory authority.

(B) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of food service operations. An opportunity for appeal from the inspection findings and time limitations will be provided if a written request for a hearing is filed with the regulatory authority within ten days following cessation of operations. If a request for a hearing is received, a hearing shall be held within 20 days of receipt of that request.

(C) Whenever a food service establishment is required under the provisions of this rule to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exists. Opportunity for reinspection shall be offered within a reasonable time.

(5) Inspection Report Form.

An inspection report form based on the requirements of these rules is appended.

(c) Examination and Condemnation of Food

(1) General. Food may be examined or sampled by the regulatory authority as often as necessary for enforcement of these rules. The regulatory authority may, upon written notice to the owner or person in charge specifying with particularity the reasons therefor, place a hold order on any food which it believes is in violation of Subsection (a) of rule .003. or any other provision of these rules. The regulatory authority shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the establishment. The regulatory authority shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order

shall state that a request for hearing may be filed within ten days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of these rules.

(d) Review of Plans

- (1) Submission of Plans. Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service 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. 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 service establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority.

- (2) Pre-operational Inspection. Whenever plans and specifications are required by Paragraph (1) of Subsection (d) of this rule to be submitted to the regulatory authority, the regulatory authority shall inspect the food service establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of these rules.

(e) Procedure When Infection is Suspected. When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food service establishment employee, it may secure morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:

- (1) The immediate exclusion of the employee from all food service establishments;
- (2) The immediate closing of the food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists;
- (3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;
- (4) Adequate medical and laboratory examination of the employee, of other employees and of his and their body discharges.

(F) Remedies

(1) Penalties. Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than two hundred dollars.

(2) Injunctions. The regulatory authority may seek to enjoin violations of these rules.

(3) Repeal and Date of Effect. These rules shall be in full force and effect on the 1 day of November, 1984 after their adoption and publication as provided by law; and, at that time, all ordinances and parts or ordinances in conflict with these rules are hereby repealed.

(4) Unconstitutionality Clause. Should any section, paragraph, sentence, clause, or phrase of these rules be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby.