

WFWCPHD Food Ordinance Changes

First, I want to thank you for providing feedback regarding our draft food ordinance. One of the best parts (even if it can sometimes cause conundrums) of rewriting an ordinance is getting input from the community to ensure that we are making changes that will make things better.

As a result of stakeholder feedback we have made the following adjustments to the draft ordinance since our public meetings. Please review the draft changes and if you have any additional feedback feel free to use the survey link to do so.

Explanation of Changes by Section:

Sec. 58-220

17) *Imminent Hazard to Public Health* also called imminent health hazard means a significant threat or danger to health due to a product, practice, circumstance, or event that creates a situation that would likely lead to foodborne illness as determined by the regulator authority. Imminent health hazards include but are not limited to: no water service, no electrical power, sewage backup, rodent or insect infestation as determined by the regulator authority, a food establishment that receives an inspection score of 69 or below during an inspection, or a food vendor, who is not required to obtain a permit, whose practices are likely to lead to foodborne illness.

Text was added to clarify that unsafe food practices could be considered an imminent hazard to public health regardless of permit status.

21) *Non-profit Organization* means a corporation where no part of the income is distributable to a member, director, or officer of the corporation

A definition of non-profit organization was added. This definition is consistent with how business code defines non-profit.

25) *Pop-Up Food Vendor* a food establishment that operates on a temporary basis and may “pop-up” at various locations. A pop-up food vendor must comply with all of the sanitation regulations required of temporary food establishments. **A pop-up food vendor does not have to operate in conjunction with a public event.** Pop-up food vendors must have a contract with a central preparation facility **and at least one certified food protection manager.**

Text was added to clarify that pop-up food vendors are required to have a certified food protection manager and that they need not be tied to a public event.

32) *Sample Permit* an add on permit that allows a food establishment to provide open samples of their products to customers prior to sale **at locations other than their permitted food establishment.** A sampling permit must meet the sanitation requirements of a temporary food event. Sampling permits do not have to be tied to a public event. **A sampling permit is not required to provide samples within a permitted food establishment.** If a third party retailer is providing samples within an establishment it is **the responsibility of the permitted food establishment to ensure that are meeting the food safety standards outlined in this ordinance.**

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It became clear during the stakeholder's meetings that the "sampling permit" was not accomplishing what we wanted it to accomplish. We have changed it from being like a temporary event permit to being an add on to an annual permit. This would allow a restaurant or other annually permitted facility to provide a sample portion of food at locations outside of their permitted location. The sampling add on is not required for samples provided within the establishment regardless of whether they were provided by the permit holder or a third party vendor. Food manufacturers or cottage food vendors wishing to provide open samples of their product prior to sale would require a temporary permit like they do under the current ordinance.

Temporary Event

We eliminated the definition of "temporary event". Temporary Event permits are now just "Temporary Permits" and need not be tied to a public event.

37) *Temporary Permit* means a food facility that operates for a temporary period of time. The facility operates at a fixed location for no longer than 14 consecutive days. **No more than 15 temporary event permits will be issued per business or applicant per calendar year. If an establishment wishes to operate more frequently than is permitted with a temporary permit they may upgrade to the pop-up food vendor permit.**

We changed "Temporary Event Permit" to "Temporary Permit." These permits are no longer required to be tied to a public event. While we did add back in a cap on the number of events (we went with 15 which would allow a vendor to participate at every Art Walk and also be able to set up at other times) we eliminated the language regarding frequency; so you could do four temporary permits in a week if they were at different locations. We also added language clarifying that a vendor could upgrade to a Pop-up Food Vendor.

Sec 58-222

A person shall not operate a retail food establishment nor vend food without a valid, current permit issued by the regulatory authority **unless exempt herein**. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this division. A valid permit must be posted in or on every food establishment regulated by this division.

We added in language "unless exempt herein" because non-profit organizations are exepeted in the next section.

Sec 58-223

1) *Retail Food Establishment*: Valid for 1 year.

- a) Small: 0-2500 sq ft
- b) Medium: 2501-5000 sq ft
- c) Large: 5001 + sq ft
- d) **[REDACTED]**

We added in the establishment sizes that will correspond to the permit fees in the separate fee ordinance.

B) Permit-exempt entities, such as non-profit organizations, shall still comply with all sections herein.

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We added paragraph B that states that even though non-profit organizations are exempt from permitting they must still comply with the regulations therefore allowing us to investigate complaints and take necessary enforcement action.

Sec 58-228

- 1) Except as specified in subsection (3) below, a certified food protection manager shall be scheduled and available to the food establishment during all hours of operation as required in FDA Food Code, §2-101.11 and §2-102.12.

Several establishments expressed concerns about the requirement that a certified food manager (CFM) be on duty at all times. This requirement is written into the Texas Food Establishment Rules and is state law; however, there is a state statute that states a county or public health district can require a CFM to be on duty at all times if the county has a population over 4 million. While these two state laws appear to conflict with each other, the statute does not expressly prohibit a county or public health district from having a CFM requirement that is more strict. We felt that due to the conflict between the state laws, there was justification for splitting the difference. We made it to where a CFM must be “scheduled and available” but would allow for them to be on a break or perhaps running a brief errand.

- 3) c) Temporary and sampling food establishments are exempt from the requirements in subsection (b) of this section.

In paragraph 3) c) we removed the reference to sampling permits as they are no longer a stand alone permit.

Food Handlers

- 1) All food employees, except for the certified food protection manager, that prepare or handle exposed Time/Temperature Control for Safety (TCS) food shall successfully complete an accredited food handler training course, prior to accepting employment.preparing or handling exposed TCS food.
- 2) Volunteers working with exposed TCS food are not required to have a valid food handler's card provided that they are under direct supervision of a person who has a valid Certified Food Protection Manager Certificate or food handler's certificate.
- 3) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee

In the food handler's section we amended the text about having a food handler's card prior to accepting employment to instead read as prior to preparing or handling exposed food which is really the goal of the regulation.

Additionally, we added paragraph 2) which allows for volunteers to work in food establishments without a food handler's card provided they are supervised by someone who has either a food handler's card or CFM. This decision is in line with how the Department of State Health Services handles volunteers in food establishments in their jurisdiction.

Sec 58-234

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A permit holder is not eligible to reapply for a food permit for 90 days following the revocation of a permit.

In the revocation of permit section we added text to specify the length of time a permit holder must wait prior to reapplying for a permit following revocation.

Sec 58-242

1) Every food establishment that prepares, serves, provides, sells, displays or stores for future sale, or offers for sale frozen desserts that are dairy-based, ~~or~~ contain dairy, ~~or a dairy alternative~~ prepared in a frozen dessert mixing machine for human consumption must have a frozen dessert permit in addition to its permit, regardless of permit category.

We added the text “or dairy alternative” to capture the non-dairy frozen dessert options made and served from the same machine that meets the intent of the regulation.