

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> February 10, 2015		<b>DATE SUBMITTED:</b> January 20, 2015	
<b>DEPARTMENT OF ORIGIN:</b> CMO's		<b>SUBMITTED BY:</b> Hugh R. Walker	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
<p><b>AGENDA ITEM DESCRIPTION:</b> As requested by the Brazos County Health Department, a proposed ordinance amending Chapter 50 of the Bryan City Code, "Health and Sanitation," Article II, "Food Service Establishments," Sections 50-23 and 50-24 requiring closure by food establishments operating without a permit and the payment of re-inspection fees; providing procedures for the suspension and revocation of food establishment permits to include a hearing process upon the revocation of a food establishment permit and re-application procedures to include payment of required fees and an opening compliance inspection; establishing the failure to pay required fees as grounds for a permit suspension; repealing all ordinances or parts of ordinances in conflict therewith; providing a savings clause; providing for codification; finding and determining that the meetings at which the ordinance is passed are open to the public as required by law; and, providing for an effective date.</p>			
<p><b>SUMMARY STATEMENT:</b> Chapter 50, Article IV of the Bryan City Code adopts the food service sanitation rules and regulations governing food service establishments within the City of Bryan. The intent and purpose of Chapter 50, Article IV of the Bryan City Code is to provide for the inspection of food establishments in the City of Bryan and to provide for the issuing, suspending, or revoking of permits for the handling of food in such establishments, the right to request a hearing upon revocation of a permit, and re-applications procedures and fees.</p> <p>The City of Bryan has entered into a Cooperative Agreement with the City of College Station and the County of Brazos, Texas, creating the Brazos County Health Department, a Public Health District established pursuant to TEX. HEALTH CODE, §121.041 <i>et seq.</i> Section 50-21 of the Bryan City Code designates the Brazos County Health Department as the authorized representative of the City of Bryan for enforcement of rules and regulations set forth in Chapter 50, Article IV of the Bryan City Code, including fees assessed against food service establishments.</p> <p>To enforce fees assessed against food service establishments, it is necessary that the Brazos County Health Department be granted authority to suspend permits for failure to pay required fees. The proposed ordinance amends an existing City ordinance to provide the Health Department the authority to suspend permits for failure to pay required fees. This proposed change impacts quality of life by providing citizens and visitors additional assurance that restaurants abide by standard health practices.</p>			
<p><b>STAFF ANALYSIS AND RECOMMENDATION:</b> The Brazos County Health Department staff recommends approving the proposed ordinance. While the proposed ordinance can create a hardship for a restaurant, the intent is to provide a safe eating environment in which citizens and visitors do not need to be concerned with food-borne health concerns.</p> <p>According to Health Department staff, the proposed amendment is part of an effort to standardize the two cities' food service ordinances to ultimately attain standardization recognized by the Food &amp; Drug Administration (FDA). The Health Department's efforts to become standardized has been addressed and supported several times by the local Board of Health – although no formal Board action has occurred. While the two cities' food service inspection</p>			

and permitting ordinances are similar in most areas, the proposed change allows the ordinances to more closely mirror one another.

The City of College Station City Council is scheduled to consider similar ordinance amendments at their Thursday, January 22, 2015, City Council meeting.

**OPTIONS (In Suggested Order of Staff Preference):**

1. Approve the proposed amendment
2. Modify the proposed amendment, which may require consultation with the Brazos County Health Department and consideration at a future City Council meeting
3. Do not approve the proposed ordinance

**ATTACHMENTS:**

1. Proposed ordinance
2. Chapter 50 of the City of Bryan Code of Ordinances (Sections 50-1 to 50-275) (pdf file); this attachment includes sections referenced within the Council Action Form and the proposed ordinance

**FUNDING SOURCE:** na

**APPROVALS:** Hugh R. Walker, 01/20/2015

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 01-20-2015

**APPROVED FOR SUBMITTAL: CITY ATTORNEY**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 50 OF THE BRYAN CITY CODE, "HEALTH AND SANITATION," ARTICLE II, "FOOD SERVICE ESTABLISHMENTS," SECTIONS 50-23 AND 50-24 REQUIRING CLOSURE BY FOOD ESTABLISHMENTS OPERATING WITHOUT A PERMIT AND THE PAYMENT OF RE-INSPECTION FEES; PROVIDING PROCEDURES FOR THE SUSPENSION AND REVOCATION OF FOOD ESTABLISHMENT PERMITS TO INCLUDE A HEARING PROCESS UPON THE REVOCATION OF A FOOD ESTABLISHMENT PERMIT AND RE-APPLICATION PROCEDURES TO INCLUDE PAYMENT OF REQUIRED FEES AND AN OPENING COMPLIANCE INSPECTION; ESTABLISHING THE FAILURE TO PAY REQUIRED FEES AS GROUNDS FOR A PERMIT SUSPENSION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR CODIFICATION; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 50, Article IV of the Bryan City Code adopts the food service sanitation rules and regulations governing food service establishments within the City of Bryan; and

**WHEREAS**, the intent and purpose of Chapter 50, Article IV of the Bryan City Code is to provide for the inspection of food establishments in the City of Bryan and to provide for the issuing, suspending, or revoking of permits for the handling of food in such establishments, the right to request a hearing upon revocation of a permit and re-applications procedures and fees; and

**WHEREAS**, Chapter 50, Article IV of the Bryan City Code sets forth the types of and amounts of fees that may be assessed against food service establishments related to the enforcement of such food service sanitation rules and regulations; and

**WHEREAS**, the City of Bryan has entered into a Cooperative Agreement with the City of College Station and the County of Brazos, Texas, creating the Brazos County Health Department, a Public Health District established pursuant to TEX. HEALTH CODE, §121.041 *et seq.*, of which each entity is a participating member; and

**WHEREAS**, Section 50-21 of the Bryan City Code designates the Brazos County Health Department as the authorized representative of the City of Bryan for enforcement of rules and regulations set forth in Chapter 50, Article IV of the Bryan City Code, including fees assessed against food service establishments; and

**WHEREAS**, in order to enforce such fees assessed against food service establishments, it is necessary that the Brazos County Health Department be granted authority to suspend permits for failure to pay required fees;

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

## Section 1.

Chapter 50, "Health and Sanitation", Article II, "Food Service Establishments", Section 50-23. "Same - Issuance", is hereby amended as follows:

### **Section 50-23. Same – Issuance.**

- a) Any person desiring to operate a food establishment shall make written application for a permit 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 establishment, and the signature of each applicant.
- b) Prior to approval of an application for a permit the regulatory authority shall inspect the proposed food establishment to determine compliance with the requirements of this article.
- c) The regulatory authority shall issue a permit to the applicant, if its inspection reveals that the proposed food establishment complies with the requirements of this article.
- d) If an establishment is found to be operating without a permit, the establishment must immediately close operations until such time as a permit may be issued by the Regulatory Authority. Re-inspection fees as determined by the Board of Health may outlined under Section 50-37 of this chapter shall be charged to the establishment

## Section 2.

Chapter 50, "Health and Sanitation", Article II, "Food Service Establishments", Section 50-24. "Same – Suspension," is hereby amended as follows:

### **Section 50-24. Same – Suspension.**

- a) The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the holder of the permit, or person in charge, or if the operation of the establishment does not comply with the requirements of this article, and if the operation of the food establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by subsection (b) of this section. When a permit is suspended, food service operations shall immediately cease.
- b) Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended, and notified of the right to appeal such suspension as provided in section 50-27. 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.
- c) Unless otherwise provided in this ordinance, within one calendar year, the first permit suspension will result in a mandatory 24-hour closure. The second permit suspension will result in a mandatory 72-hour closure. Upon a third permit suspension ~~in one calendar year~~ within a twelve (12) month period, the permit will be revoked, and the owner ~~must~~ may seek a hearing as set forth in Sections 50-27 and 50-28 hereof or apply for a new permit. If granted, the owner must pay the yearly fee plus the re-inspection fee, and pass an opening compliance inspection, meeting all requirements outlined in this ordinance. score a 90 or higher on the re-inspection. All closures are subject to a re-inspection fee.
- d) Failure to pay any and all permit fees, re-inspection fees, late charges and any others owed to the regulatory authority when due may result in a permit suspension until such time as all fees and/or late charges have been paid.

Section 3.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4.

The Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

Section 5.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 6.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001 *et seq.*, Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

Section 7.

It is the intention of the City Council that, this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

Section 8.

This ordinance shall become effective immediately after its second and final reading.

**PRESENTED AND GIVEN** first reading the 27<sup>th</sup> day of January, 2015, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, **PASSED AND APPROVED** on the 10<sup>th</sup> day of February, 2015, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

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Jason P. Bienski, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Janis K. Hampton, City Attorney