

Chapter 50 - HEALTH AND SANITATION**ARTICLE I. - IN GENERAL****Sec. 50-1. - Sale of unpasteurized milk or milk products prohibited.**

- (a) The retail sale or offer for sale of milk or a milk product which is not Grade "A" pasteurized as defined by state law is prohibited.
- (b) Proof of the sale or offer for sale of milk or a milk product without a Grade "A" pasteurized label on the container in which it was sold shall constitute prima facie evidence that the milk or milk product was not Grade "A" pasteurized.

(Code 1988, § 15-1; Ord. No. 720, § 2, 1-23-1989)

Secs. 50-2—50-20. - Reserved.**ARTICLE II. - FOOD SERVICE ESTABLISHMENTS**

FOOTNOTE(S):

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Editor's note—Ord. No. 1939, § 1, adopted Nov. 8, 2011, amended the former Art. II, §§ 50-21—50-37, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter. For complete derivation see the Code Comparative Table at the end of this volume.

Sec. 50-21. - Food service sanitation ordinance adopted.

There is hereby adopted by the city, for the purpose of establishing rules and regulations for food service sanitation, including permits and penalties, the Texas Department of State Health Services, "Rules On Texas Food Establishments 229.161 - 229.171 and 229.173 - 229.175", current copies of which may be obtained on the Texas Department of State Health Services web site. Provided, that the words "municipality of" in such ordinance shall be understood to refer to the City of Bryan or its authorized representative. The authorized representative for enforcement of such ordinance shall be the Brazos County Health Department, also referred to in this article as the "regulatory authority." Such rules are hereby adopted and incorporated as fully as if set out at length herein, provided that all amendments to the rules adopted in this section shall take effect, and the provisions thereof shall be controlling with the corporate limits of the city.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-22. - Permit—Generally.

- (a) *Required; compliance.* No person shall operate a food establishment who does not have a valid permit issued to him or her 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.
- (b) *Transferability.* A permit may not be transferred from one person to another person or from one food establishment to another. A permit may not be transferred from one type of operation to another, unless approved by the regulatory authority.
- (c) *Application; fees.* A permit shall only be issued after the appropriate application has been filed with

the regulatory authority and the required fees have been paid. Fees shall be set by the Brazos County Health Department Board of Health. A valid permit shall be posted in public view in every food establishment. Permits shall be annually renewed on or before January 1 of each year.

- (d) *Renewal.* The application for a renewal permit and the accompanying fee must be received by the regulatory authority on or before January 7 of the calendar year for which the permit is sought. If such application and fee are not received by the date herein specified, up to 20 percent of the fee due and owing as a late penalty for failure to comply with the requirements of subsection (a) above shall be paid by the applicant. Any application fee or permit renewal fee not received by January 15 may result in immediate closure of the food establishment. The charging of such late fee or the immediate closure of the food establishment will have no effect on the city's right to seek criminal penalties permitted by the enforcement provision of this article.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 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.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 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 the permit will be revoked, and the owner must reapply for a new permit, pay the yearly fee plus the re-inspection fee, and score a 90 or higher on the re-inspection. All closures are subject to a re-inspection fee.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-25. - Same—Revocation.

The regulatory authority may, after providing opportunity for a hearing, revoke a permit, for serious or repeated violations of any of the requirements of this article 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 or the person in charge, in writing of the reason for which the permit is subject to revocation, and that the permit 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 within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-26. - Service of notice.

A notice provided for in this article is properly served when it is delivered to the holder of the permit, 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. A copy of the notice shall be filed in the records of the regulatory authority.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-27. - Hearings.

- (a) A person may request a hearing to contest the regulatory authority's denial of an application for permit or a suspension or revocation of a permit or a hold order. A hearing request does not stay the regulatory authority's order for the suspension of a permit, or revocation of a hold order.
- (b) A person desiring a hearing in response to a denial of an application for permit, a suspension or revocation shall submit a request for a hearing to the municipality within ten calendar days of the date of the notice.
- (c) A request for hearing shall be in writing and contain the following:
 - (1) Statement of issue of fact for which hearing is requested and
 - (2) Statement of defense, mitigation, denial or explanation concerning each allegation of fact.
- (d) The hearings provided for in this article shall be conducted by the municipality's city manager or his designee at a time and place designated by same. Based upon the recorded evidence of such hearing, the city manager or his designee shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written decision shall be furnished to the holder of the permit by the municipality.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-28. - Application after revocation.

Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-29. - Examination and condemnation of food.

Food may be examined or samples may be taken for laboratory analysis by the regulatory

authority as often as necessary for enforcement of this article. The regulatory authority may, upon written notice to the owner or person in charge, place a hold order on any food which it believes is in violation of Texas Department of State Health Services "Texas Food Establishment Rules," or any other provision of this article. The regulatory authority shall tag, label, or otherwise identify any food subject to the hold order, stating the specific reasons for placing the food under the hold order with reference to the applicable provisions of the Texas Food Establishment Rules (TFER) and the hazard or adverse effect created by the observed condition. The regulatory authority shall completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, regulatory authority's tag or identification, and location. 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. If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the hold order is violated, the regulatory authority may remove the food that is subject to the order to a place of safe keeping. The hold order shall state that a request for a 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 the 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 this article. The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of this ordinance if a person operating a food establishment or employee fails to comply with a hold order as specified in this section.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-30. - Inspections—Frequency; agents' right of access.

- (a) An inspection of a food establishment shall be performed as often as necessary for the enforcement of these rules based on public health risks posed by the establishment and the establishment's past compliance history. Inspections may also be made where consumer complaints and/or reports of foodborne illness outbreaks warrant a need to perform an inspection.
- (b) Agents of the regulatory authority, after proper identification, shall be permitted to enter any food 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.
- (c) If a person denies access to the regulatory authority, the regulatory authority shall:
 - (1) Inform the person that:
 - a. The permit holder is required to allow access to the regulatory authority as specified under this section,
 - b. Access is a condition of the acceptance and retention of a food establishment permit to operate under section 50-22 of this article,
 - c. If access is denied, an order issued by the appropriate authority allowing access,

hereinafter referred to as an inspection order, may be obtained according to law; and

- (2) Make a final request for access.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-31. - Same—Report.

- (a) *Contents; rating score.* Whenever an inspection of a food establishment or commissary is made, the findings shall be recorded on the inspection report form referenced in subsection (b) of this section. The inspection report form shall summarize the requirements of these rules and shall set forth a weighted point value for each requirement. 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.
- (b) *Inspection report form.* An inspection report form is based on the requirements of these rules, is adopted by reference, and is on file in the regulatory authority's office, appended.
- (c) The most current scored inspection report must be displayed in a BCHD-supplied holder inside each permitted establishment. The establishment is responsible for duplicate replacement holders. The encased scored inspection report must be displayed within ten feet of the establishment's main public entrance or other location agreed upon by the inspector and representative of the establishment, and must be visible at eye level (48-66 inches) to patrons of the establishment. Patrons should be advised to direct questions about the report to BCHD. Failure to post the most current scored inspection report in the manner described or facilitating its removal may result in a re-inspection fee.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-32. - Same—Correction of violations.

- (a) *Time period for inspections.* The inspection report form shall specify a reasonable period of time for the correction of the violation found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:
- (1) If the regulatory authority determines an imminent health hazard exists, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority. An imminent health hazard exists under conditions including but not limited to:
- a. Lack of potable water.
 - b. Inadequate refrigeration.
 - c. Sewage backup.
 - d. Lack of sanitation; defined as a score of 69 or below.
 - e. Lack of hot water.
 - f. Extended interruption of electricity or water.
 - g. Misuse of poisonous/toxic chemicals.
 - h. Onset of an apparent food-borne disease outbreak.
 - i. Fire/flood.

Failure to exclude an infectious employee.

k. Other conditions that affect public health.

- (2) All violations of four- or five-demerit items shall be corrected immediately or a plan of action shall be developed and implemented as agreed upon by the person in charge and inspector.
 - (3) All three-demerit violations shall be corrected immediately; provided however, in those circumstances where immediate action is not possible, the violation will be remedied prior to the expiration of ten days.
 - (4) Other violations require corrective action, not to exceed 90 days or the next inspection, whichever comes first.
 - (5) In the case of temporary food establishments, all violations shall be corrected immediately. If violations are not corrected immediately, the establishment shall immediately cease food service operation, until authorized to resume by the regulatory authority.
- (b) *Follow-up inspection.* Any violation documented on three consecutive inspections will require a follow-up inspection within five business days and a re-inspection fee determined by the Brazos County Board of Health will be invoiced. If the invoice has not been paid after 30 days, there will be a 20 percent additional fee collected, and after 60 days the permit may be suspended.
- (c) *Failure to comply with time limits for corrections.* 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.
- (d) *Required to cease operations.* Whenever a food establishment is required under the provisions of this rule to cease operations, it shall not resume operations until such time as a re-inspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-33. - Employees—Food handler's card.

- (a) *Required.* Each person working in a food establishment, handling food, or dishware shall obtain a valid food handler's card. It is an offense for an employee to begin to work or for an employer to hire any person who does not have a valid food handler's card by the first day of employment. This card is to be issued by the BCHD or a food handler program licensed by the Texas Department of State Health Services. The card shall be valid for such a time as the issuer may designate, but not to exceed four years.
- (b) *Posting.* Original or copy of the food handler's card shall be posted or kept on-site by management and made available to the regulatory authority.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-34. - Same—Procedure when infection is suspected.

When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food 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 establishments;
- (2) The immediate closing of the food 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 or her body discharges.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-35. - Review of plans and specifications for newly constructed, remodeled or converted establishment.

- (a) *Submission of plans.* 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 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 this article. No food establishment shall be constructed, extensively remodeled, or converted, except in accordance with plans and specifications approved by the regulatory authority.
- (b) *Preoperational inspection.* Whenever plans and specifications are required by subsection (a) of this section to be submitted to the regulatory authority, the regulatory authority shall inspect the food establishment prior to its beginning operation, to determine compliance with the approved plans and specifications and with the requirements of this article.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-36. - Food manager certification.

- (a) *Employment of registered food manager.* A food establishment shall employ at least one person who is a fulltime, on-site supervisory employee who is responsible for food preparation and service and who has a valid and current food manager certification that is recognized by the Texas Department of State Health Services. Food establishments that serve, sell, or distribute only pre-packaged foods, non-potentially hazardous foods or beverages, or temporary food service events are exempt from the provisions of this section.
- (b) *Termination or permanent transfer of registered food service manager.* If a food establishment cannot meet the requirements of subsection (a) of this section because of the termination, expiration or permanent transfer of a certified food service manager, the food establishment shall:
 - (1) Hire another employee with a current food manager certification; or
 - (2) Register a current employee for a food manager class within ten days of the termination, expiration, or permanent transfer. The approved course must be successfully completed

within 30 days.

- (c) Non-compliance with this section will result in a follow-up fee to be determined by the Brazos County Board of Health.
- (d) If it is determined that lack of knowledge is a factor in a permit suspension, the current food manager can be required by the BCHD to retake an approved food manager class.

(Ord. No. 1939, § 1, 11-8-2011)

Sec. 50-37. - Penalties; fees; injunctions.

- (a) *Penalties.* Any person who shall violate any of the provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$25.00 nor more than \$2,000.00. In addition thereto, such persons may be enjoined from continuing such violations. Each day such violation shall continue or be permitted to continue, shall be deemed a separate violation.
- (b) *Fees.* In addition to such fees as may be specifically set forth in this article, the Brazos County Health Department Board of Health, as the City of Bryan's authorized representative, may designate such other types of and amounts of fees that may be charged or assessed against food establishments, persons or businesses within the city necessary to the administration and enforcement of the provisions of this article, including, but not limited to, permit fees, license fees, certificate fees, registration fees and inspection fees. The Brazos County Health Department Board of Health shall provide an updated fee schedule to the city secretary within 30 days of any fee changes approved by the board.
- (c) *Injunctions.* The regulatory authority may seek to enjoin violations of this article.

(Ord. No. 1939, § 1, 11-8-2011)

Secs. 50-38—50-62. - Reserved.

ARTICLE III. - RESERVED

FOOTNOTE(S):

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Editor's note—Ord. No. 1850, § 4, adopted Dec. 8, 2009, deleted in its entirety Art. III, §§ 50-63, 50-64, which pertained to retail foodstore sanitation and derived from Code 1988, §§ 15-220, 15-221; Ord. No. 753, § 1, adopted Nov. 13, 1989; Ord. No. 796, § 3, adopted June 24, 1991.

Secs. 50-63—50-86. - Reserved.

ARTICLE IV. - NUISANCES

FOOTNOTE(S):

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State Law reference— Regulation of nuisances, V.T.C.A., Local Government Code § 217.041 et seq.

DIVISION 1. - GENERALLY

Sec. 50-87. - General prohibition.

Whatever is dangerous to human life or health, or whatever renders the ground, the water, the air, or food a hazard or injury to human life or health or that is offensive to the senses or that is or threatens to become detrimental to the public health, is hereby declared to be a nuisance, and as such, liable to be abated, and the person guilty of causing, permitting, or suffering a nuisance to exist upon any premises or upon any building occupied or controlled by him or her or in any street, alley, sidewalk, or gutter immediately adjacent to such premises shall, upon conviction, be punished as provided in section 1-14.

(Code 1988, § 11-16; Ord. No. 998, § 1, 4-9-1996)

Sec. 50-88. - Specific enumeration.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (1) *Weeds or grass.* Weeds and/or grass, or other uncultivated plants on any premises, which grow in such rank profusion as to harbor reptiles or rodents, or create a fire hazard; and weeds and/or grass, or other uncultivated plants on any premises, which are permitted to, or do, attain a greater height than 12 inches.
- (2) *Heaps of rubbish.* The keeping of any garbage, trash, debris, cultivated brush, rubbish, waste, wood and metal scrap, inoperative or abandoned appliances and furniture.
- (3) *Dilapidated structures and fences.* Any unsightly, partially destroyed, dilapidated, or unfinished building or structure, discarded building materials, or dilapidated fences.
- (4) *Offensive odors.* Any noxious, unpleasant, or strong odor or stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
- (5) *Animal carcasses.* The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (6) *Pollution of water.* The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (7) *Stagnant water.* Any accumulation of unwholesome, impure, stagnated or offensive water permitted or maintained, as well as the conditions or other causes that give rise or permit such accumulation.
- (8) *Other impure matter.* Any accumulation of carrion, filth or other impure or unwholesome matter.
- (9) *Abandoned wells and sewers.* Any abandoned well, sewer, or excavation not properly protected.

(Code 1988, § 11-17; Ord. No. 998, § 1, 4-9-1996)

Sec. 50-89. - Abatement—Generally.

- (a) *Owner shall abate nuisance.* It shall be the duty of the owner or his or her agent or the occupant of any lot, building, or place in this city where any nuisance may exist, to remove, abate, or destroy

the same without delay. On any refusal by any owner or occupant of any lot, building, or place of any kind in this city where a nuisance exists in the judgment of the city manager or his or her designee to remove or abate same, the city manager or his or her designee shall abate the nuisance as provided for in this division.

- (b) *Nuisances where no known person responsible.* Whenever any nuisance is found in any place in this city for the removal, abatement, or destruction of which no person can be held liable under the provisions hereof, it shall be the duty of the city manager or his or her designee to remove, abate, or destroy same.

(Code 1988, § 11-18; Ord. No. 998, § 1, 4-9-1996)

Sec. 50-90. - Same—Weeds and grass.

- (a) *Height limit.* It shall be unlawful and a violation of this Code for any person, firm, corporation, partnership, association of persons, owner, agent, occupant or anyone having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city, to suffer or permit grass, weeds or brush that is uncultivated to grow to a greater height than 12 inches on any lot, tract or parcel of land within the corporate limits of the city.

- (b) *Exemptions.* Exempted from the weed provisions of this section are the following:

- (1) State highway rights-of-way;
- (2) Actively utilized crop production and/or grazing areas;
- (3) Heavily wooded areas filled with uncultivated underbrush;
- (4) The cultivation of concentrated wildflowers from March 1 until June 15 of each year in areas where grasses and weeds do not exceed 18 inches in height.

(Code 1988, § 11-26; Ord. No. 998, § 1, 4-9-1996)

Sec. 50-91. - Same—Notice to property owners.

- (a) When any violation of this division is found to exist in the judgment of the city manager or his designee, such individual shall serve the owner and any other person responsible for creating the violation with a citation alleging the specific criminal violations occurring and informing the owner of his/her rights to contest the matter in municipal court, together with a notice of abatement of the violation.

- (b) The notice must be given:

- (1) Personally to the owner in writing;
- (2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or
- (3) If personal service cannot be obtained:
 - a. By publication at least once;
 - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

- (4) If the notice to a property owner is returned by the United States Postal Service as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
- (c) The notice shall inform the owner:
- (1) Of each specific violation causing the nuisance occurring on the property;
 - (2) That failure of the owner to abate, or cause abatement of, the violation within seven calendar days of receipt of said notice as provided in subsection (b) above:
 - a. Shall subject the owner to further criminal penalties as set forth in the City Code; and
 - b. May result in the city abating the nuisance, assessing the costs against the owner and filing a lien on the property; and
 - (3) That if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, and the city has not been previously informed, in writing, by the owner of an ownership change, the city, without further notice, may correct the violation at the owner's expense and assess the expenses against the property; and
 - (4) An explanation of the property owner's right to request an administrative hearing before the building and standards commission about the city's abatement of the nuisance.
- (d) The city shall conduct an administrative hearing on the abatement of nuisance under this provision if, not later than the fifth calendar day after the date of the notice of the nuisance, the property owner files with the city's code enforcement department a written request for a hearing. The fact that a hearing has been requested shall not affect the city's right to abate weeds and grass nuisances prior to such hearing.
- (e) An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date a request for hearing is filed. The owner may testify or present any witnesses or written information relating to the city's abatement of the nuisance.

(Code 1988, § 11-27; Ord. No. 998, § 1, 4-9-1996; Ord. No. 1295, §§ 1—3, 7-24-2001; Ord. No. 1550, § 1, 9-27-2005; Ord. No. 1743, § 1, 11-22-2008)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 342.006.

Sec. 50-92. - Correction or removal of nuisance by city.

If the owner of property, notified as provided in section 50-91, does not comply with the city's requirements set forth in the notice within ten calendar days after the date of notification, the city may:

- (1) Do the work or make the improvements required; and
- (2) Pay for the work done or improvements made and charge the expenses to the owner of the property.

(Code 1988, § 11-28; Ord. No. 998, § 1, 4-9-1996)

Sec. 50-93. - Assessment of expenses; lien.

- (a) To obtain a lien against the property, the mayor, municipal health authority or city official designated by the mayor shall file a statement of expenses with the county clerk. The lien statement must state the name of the owner, if known, and the legal description of the property.

The lien attaches upon the filing of the lien statement with the county clerk.

- (b) The lien obtained by the city is security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the city.
- (c) The lien is inferior only to:
 - (1) Tax liens; and
 - (2) Liens for street improvements.
- (d) The city council may authorize the city attorney to bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.
- (e) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.
- (f) The remedy provided by this section is in addition to the remedy provided by section 50-95
- (g) The city council may authorize the city attorney to foreclose a lien on property under this division in a proceeding relating to the property brought under subchapter E, chapter 33, Tax Code (V.T.C.A., Tax Code § 33.91 et seq.).

(Code 1988, § 11-29; Ord. No. 998, § 1, 4-9-1996)

Sec. 50-94. - Injunctive relief for abatement of nuisances.

Notwithstanding any penal provision herein, the city attorney is authorized to file suit on behalf of the city for such injunctive relief as may be necessary to abate such nuisance whenever any nuisance as herein defined is found in any place within the city or in any area outside the city limits for a distance of 5,000 feet.

(Code 1988, § 11-32)

Sec. 50-95. - Penalty.

Any person violating any provision of this division shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not to exceed \$2,000.00 as provided in section 1-14.

(Code 1988, § 11-31; Ord. No. 998, § 1, 4-9-1996)

Secs. 50-96—50-120. - Reserved.

DIVISION 2. - NOISE

Sec. 50-121. - General prohibition.

Any unreasonably loud, disturbing, unnecessary noise which causes material distress, discomfort, or injury to persons of ordinary sensibilities in the immediate vicinity thereof is hereby declared to be a nuisance and, as such, is liable to be abated, is hereby prohibited, and the person guilty of causing, permitting, or suffering them or any of them upon any premises or upon any building occupied or controlled by him or her or in any street, alley, sidewalk, or gutter immediately adjacent to such premises shall, upon conviction, be fined as provided in section 1-14. Any noise of such character, intensity, and continued duration which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities is hereby declared to be a nuisance and, as such, is liable to be abated, is hereby prohibited, and the person guilty of causing, permitting, or suffering

same upon any premises or in or on any building occupied or controlled by him or her or in any street, alley, sidewalk, or gutter immediately adjacent to such premises shall, upon conviction, be fined as provided in section 1-14.

(Code 1975, § 17-20; Code 1988, § 11-46)

Sec. 50-122. - Enumeration.

The following acts, among others, are declared to be noise nuisances in violation of this division, but such enumeration shall not be deemed to be exclusive:

- (1) *Musical instruments.* The playing of any radio, record player, or other musical instrument in such manner or with such volume as to disturb the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel, or other type of abode.
- (2) *Loudspeakers and amplifiers.*
 - a. The use of any stationary loudspeaker or amplifier in such manner or with such volume that it disturbs persons of ordinary sensibilities in the immediate vicinity thereof; or
 - b. The operation of such loudspeaker or amplifier at any time on Sunday; provided, however, upon application by the user of such devices, the city council or his or her designee may make special exemption or exception to this clause for such time or times as the council, city manager or his or her designee feels will serve the public welfare, as provided in this article.
- (3) *Animals and birds.* The keeping of any animal or bird which, by causing frequent or long-continued noise, shall disturb the comfort and repose of any person of ordinary sensibilities in the immediate vicinity.
- (4) *Horns or other signal devices on vehicles.* The continued or frequent sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle except as a danger or warning signal; the creation by means of any such signal device of any unreasonable loud or harsh sound for any unnecessary and unreasonable period of time.
- (5) *Whistle.* The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger or the blowing of any other loud or far-reaching steam whistle within the city.
- (6) *Operation of vehicles.* The running of any automobile, motorcycle, or other vehicle so out of repair, so loaded, or in such manner as to create loud, grating, grinding, jarring, or rattling noise or vibrations.
- (7) *Exhaust without mufflers.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or boat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (8) *Devices operated by compressed air.* The use of any mechanical device operated by compressed air, unless the noise to be created is effectively muffled and reduced.
- (9) *Construction work.* The erection, including excavation, demolition, alteration, or repair work on any building other than between the hours 7:00 a.m. and 7:00 p.m. on weekdays and Saturdays, except in case of urgent necessity in the interest of public safety and convenience,

and then only by permit from the city manager or his or her designee, which permit may be renewed during the time the emergency exists.

(10) *New schools, churches, and hospitals.*

- a. The creation of any excessive noise on any street adjacent to any church, school, or institution of learning while the same is in session, or adjacent to any hospital, which unreasonably interferes with the workings of such institutions;
- b. Provided, conspicuous signs or other evidence are displayed in such manner as to indicate that such is a church, school, or hospital street, or that such institutions are churches, schools, or hospitals.

(11) *Loading and unloading vehicles.* The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and containers.

(12) *Shouting of peddlers.* The raucous shouting and crying of peddlers, hawkers, and vendors, which disturbs the peace and quiet of the neighborhood.

(13) *Use of drums, etc., to attract attention.* The use of any drum, loudspeaker, or other instrument or device for the purpose of attracting attention by creation of noises, such as speaking, music or hallooing, to any performance, show, theater, moving picture house, sale of merchandise, or display, which causes crowds of people to block or congregate upon the sidewalks and/or streets near or adjacent thereto.

(14) *Sounding of sirens, etc., on vehicles.* The sounding of any siren, horn, or other signal device on any automobile, ambulance, truck, motorcycle, bus, or other vehicle in the city, except as a danger or warning signal to persons or animals using the streets, sidewalks, and public thoroughfares, shall constitute a violation of this section.

(Code 1975, § 17-21; Code 1988, § 11-47; Ord. No. 1109, §§ 2, 3, 3-24-1998)

Sec. 50-123. - Sound amplifying equipment—Defined.

The words "sound amplifying equipment" as used herein shall mean any machine or device for the amplification of the human voice, music, or any other sound. The words "sound amplifying equipment," as used herein, shall not be construed as including standard automobile radios when used by the occupant of the vehicle in which installed or radios in homes or radios being used by radio dealers when being demonstrated for sale, or warning devices on ambulances, police cars, and motorcycles, or firefighting equipment, or horns or other warning devices used only for traffic safety purposes, nor shall the term include the use of sound amplifying equipment at the site of and for the purpose of announcing sporting events.

(Code 1975, § 17-22; Code 1988, § 11-48)

Sec. 50-124. - Same—Use for commercial advertising prohibited.

The use of sound amplifying equipment for commercial advertising purposes is hereby prohibited within the city.

(Code 1975, § 17-24; Code 1988, § 11-49; Ord. No. 1109, §§ 4, 5, 3-24-1998)

Secs. 50-125—50-146. - Reserved.

DIVISION 3. - SMOKING

FOOTNOTE(S):

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State Law reference— Smoking in public places, V.T.C.A., Penal Code § 48.01; ordinance adopted not preempted, V.T.C.A., Penal Code § 48.01(note).

Sec. 50-147. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Air purification system shall mean an electrically powered hospital grade, HEPA media filter that will clean all of the air in a fully enclosed bar area within a bowling alley every 15 minutes as follows: not less than 95 percent removal of gases, vapors, volatile organic compounds (V.O.C.) and odors and contains an air barrier system or other barrier system, if required by a licensed professional engineer, to prevent air from the fully enclosed bar area of the bowling alley area from being drawn across other areas of the bowling alley.

Bar shall mean an establishment that is dedicated predominately to the serving of alcohol rather than food.

Public meeting shall mean a meeting required to be open to the public under V.T.C.A., Government Code ch. 551.

Public place shall mean an enclosed, indoor area to which the public has access and includes, but is not limited to the following:

- (1) The common areas of a retail store, office, grocery store, or other commercial establishments;
- (2) A restaurant or cafeteria;
- (3) A public or private primary or secondary school;
- (4) A public or private institution of higher education;
- (5) A hospital or nursing home;
- (6) An elevator;
- (7) City and school buses;
- (8) City buildings, owned or leased by the city for city purposes;
- (9) An enclosed theater, auditorium, movie house, or arena;
- (10) A courtroom or jury waiting or deliberation room.

Smoke or *smoking* shall include:

- (1) Carrying or holding a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or device;

- (2) Lighting a pipe, cigar, or cigarette of any kind or other smoking equipment or device; or
- (3) Emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind or any other smoking equipment or device.

Ventilation system shall mean a HVAC system designed by a licensed professional engineer to meet the requirements of this division and all other requirements of the city's building codes. A ventilation system must provide an air change every 15 minutes; must exhaust the air to the exterior of the building and must prevent the air from the fully enclosed bar area of a bowling alley from being drawn across other areas of the bowling alley; must be equipped with a functioning air barrier system, if required by a licensed professional engineer, to prevent air from the fully enclosed bar area of the bowling alley from being drawn across other areas of the bowling alley.

(Code 1988, § 11-66; Ord. No. 1270, § 1, 2-27-2001; Ord. No. 1275, § 1, 3-27-2001)

Sec. 50-148. - Smoking prohibited in public places.

- (a) A person commits an offense if the person smokes at a public meeting or in a public place or in any other enclosed, indoor area in which "no smoking" signs are conspicuously posted by the person in charge, and the person is not in an area designated as a smoking area under section 50-149 below.
- (b) It is an exception to the application of subsection (a) of this section that the person is smoking:
 - (1) In a situation in which the person is present at an event in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function;
 - (2) As a participant in an authorized theatrical performance;
 - (3) In a tobacco specialty shop;
 - (4) In a bar;
 - (5) During a bingo occasion in a bingo hall to which entry by individuals of an age younger than 18 years of age has been prohibited at all times by means of a notice posted at all entrances to the premises by a bingo license holder;
 - (6) In a bowling alley to which entry by individuals of an age younger than 18 years of age has been prohibited at all times by means of a notice posted at all entrances to the premises by the person in charge;
 - (7) In the fully enclosed bar area within a bowling alley, but only if:
 - a. The fully enclosed bar area is equipped with an air purification system (defined herein) or separate ventilation system (defined herein);
 - b. Air from the fully enclosed bar area cannot be drawn across other areas of the bowling alley; and
 - c. Entry into the fully enclosed bar area of the bowling alley by persons of an age younger than 18 years of age has been prohibited at all times by means of a notice posted at all entrances to such area by the person in charge.

Smoking shall be allowed and smoking signs are not required to be posted by the person in charge under section 50-150 when smoking is permitted by the exceptions set forth in this subsection.

(Code 1988, § 11-67; Ord. No. 1270, § 1, 2-27-2001; Ord. No. 1275, § 1, 3-27-2001)

Sec. 50-149. - Designation of no smoking and smoking areas.

- (a) The person in charge shall designate the following areas as "nonsmoking":
- (1) Food order areas, cashier areas, check-out lines for stores;
 - (2) City library;
 - (3) Elevators;
 - (4) City and school buses, including associated terminals;
 - (5) Restrooms;
 - (6) Movie theaters, hospitals, and rest home facilities;
 - (7) Within a 20-foot radius of the entryway of all public places;
 - (8) Restaurants or cafeterias with a seating capacity of 50 people or less; and
 - (9) All other public places including restaurants and cafeterias with seating capacity of more than 50 people.
- (b) The person in charge may designate a smoking area between the hours of 10:00 p.m. to 6:00 a.m. in restaurants and cafeterias with a seating capacity greater than 50 persons; provided, however, the smoking areas cannot be greater than 50 percent of the seating capacity and there shall be a four-foot separation between the smoking and nonsmoking areas.
- (c) Smoking areas shall not be designated to cover areas of subsections (a)(1) through (a)(8) of this section. It is not required that any smoking areas be designated.

(Code 1988, § 11-68; Ord. No. 1270, § 1, 2-27-2001; Ord. No. 1275, § 1, 3-27-2001)

Sec. 50-150. - Signs required.

- (a) The person in charge of a public place shall place signs visible at each entrance of the building to notify persons entering that smoking is prohibited or that smoking is prohibited except in areas designated as smoking areas.
- (b) The person in charge shall conspicuously post signs in areas designated as a smoking area that smoking is permitted in the area.

(Code 1988, § 11-69; Ord. No. 1270, § 1, 2-27-2001; Ord. No. 1275, § 1, 3-27-2001)

Sec. 50-151. - Facilities to extinguish smoking materials required.

All public places shall be equipped for extinguishing smoking materials. Facilities for extinguishing smoking materials that are located in areas of public places other than designated smoking areas shall be accompanied by clearly visible signs, stating "no smoking."

(Code 1988, § 11-70; Ord. No. 1270, § 1, 2-27-2001; Ord. No. 1275, § 1, 3-27-2001)

Sec. 50-152. - Owner/operator responsible.

A person commits an offense if he or she is the owner, operator, manager or an employee of an establishment and he or she intentionally permits or fails to make a reasonable effort to prevent smoking in a "no smoking" area.

(Code 1988, § 11-71; Ord. No. 1270, § 1, 2-27-2001; Ord. No. 1275, § 1, 3-27-2001)

Sec. 50-153. - Culpable mental state not required; exception.

It is an offense for any person to perform an act prohibited or to fail to perform an act required under this division. There shall be no requirement of a culpable mental state for any violation under this division except as provided in section 50-152.

(Code 1988, § 11-72; Ord. No. 1270, § 1, 2-27-2001; Ord. No. 1275, § 1, 3-27-2001)

Secs. 50-154—50-174. - Reserved.**DIVISION 4. - REGULATION OF TOBACCO PRODUCTS****Sec. 50-175. - Definitions.**

The following words, terms and phrases, when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar shall mean an establishment that derives 50 percent or more of its gross revenues from the sale of alcoholic beverages for on-premises consumption.

Restaurant bar shall mean any area of a restaurant, excluding the dining area:

- (1) That is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises; and
- (2) In which food service, if any, is only incidental to the consumption of alcoholic beverages.

Tobacco-product vending machine shall mean any self-service device that, upon insertion of any coin, paper currency, token, card, key, or other item, dispenses one or more tobacco products. The term does not include any machine that is in storage, in transit, or otherwise not set up for use and operation.

(Code 1988, § 11-80; Ord. No. 902, § 1, 1-25-1994)

Sec. 50-176. - Restrictions upon placement of tobacco-product vending machines.

- (a) A person commits an offense if he or she owns or allows the display or use of any tobacco-product vending machine upon any property within the city.
- (b) It is a defense to prosecution under this section that the tobacco-product vending machine is situated in a:
 - (1) Premises where entry by any person under 18 years of age is prohibited by law;
 - (2) Bar or restaurant bar;
 - (3) Workplace with the permission of the employer (or its duly authorized representative), provided that:
 - a. The employer usually has no person under 18 years of age employed at the workplace; and
 - b. The tobacco-product vending machine is situated at a location within the workplace to which no person other than an employee of the workplace is usually permitted to have access.

(Code 1988, § 11-81; Ord. No. 902, § 1, 1-25-1994)

Sec. 50-177. - Penalties.

Any person, agent or employee thereof who violates any of the provisions of this division shall be fined an amount not less than \$25.00 nor more than \$200.00; provided, however, in the event a person has previously been convicted under this section, such person shall be fined an amount not less than \$50.00 for a second conviction hereunder, and shall be fined an amount no less than \$100.00 for a third conviction hereunder and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense.

(Code 1988, § 11-82; Ord. No. 902, § 1, 1-25-1994)

Secs. 50-178—50-207. - Reserved.**DIVISION 5. - DISCHARGE OF HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES****Sec. 50-208. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Hazardous response shall mean a response from the fire department, which in the act of controlling and abating a situation involving either "hazardous substances" and/or "hazardous waste," requires the use of equipment and/or personnel beyond normal fire suppression duties.

Hazardous substances shall mean any substances that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to health, safety, or to the environment when used, transported, released or improperly stored.

Hazardous waste shall mean a solid waste that may cause or significantly contribute to serious illness or death, or that may pose a substantial threat to human health or the environment, if not managed properly, and which includes liquids, semisolids, and compressed gases.

(Code 1988, § 11-85; Ord. No. 980, § 1, 1-23-1996)

Sec. 50-209. - Nuisance.

It shall be unlawful for any person or entity to release, discharge or deposit any hazardous substance or waste upon or into any facility or property, including airspace, within the city limits or within 5,000 feet outside the city limits. A violation of this section shall constitute a public nuisance which endangers the safety, health, and welfare of residents of the city.

(Code 1988, § 11-86; Ord. No. 980, § 1, 1-23-1996)

Sec. 50-210. - Controlling and/or abatement.

- (a) The fire chief, or his or her designee, is authorized to control, abate and remove the effects of any hazardous substance or waste unlawfully released, discharged or deposited upon or into any property or facilities within the city limits or within 5,000 feet outside the city limits.
- (b) In the event that any person undertakes, either voluntarily or upon order of the fire chief, or his or her designee, or other city official, to abate or remove the effects of any hazardous substance or waste unlawfully released, discharged, or deposited upon or into any property or facilities with

the city, the fire chief, or his or her designee, may take such action as is necessary to supervise or verify the adequacy of the abatement or removal.

(Code 1988, § 11-87; Ord. No. 980, § 1, 1-23-1996)

Sec. 50-211. - Recovery of costs.

- (a) The following described persons or entities shall be jointly and severally liable to the city for the payment of all cost incurred by the city as a result of such cleanup or abatement activity:
- (1) The persons or entities whose negligent or willful act or omission proximately caused such release, discharge or deposit; or
 - (2) The persons or entities that owned or had custody or control of the hazardous substance or waste at the time of such release, discharge or deposit, without regard to fault or proximate cause; and
 - (3) The persons or entities that owned or had custody or control of the container which held such hazardous substance or waste at the time or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.
- (b) Recoverable cost incurred by the city shall include, but not be limited to, the following: actual labor costs of all utilized city personnel, including benefits and administrative overhead, cost of equipment operation, cost of any contract labor and materials, and costs of actual fire suppression services provided by the fire department, in addition to any other services provided by the fire department provided in controlling, abating or removing the nuisance pursuant to subsection (a) (3) of this section. If legal assistance is required in order to enforce this division, recoverable costs shall also include any attorney's fees and court costs incurred in the enforcement of this division.
- (c) The remedies provided by this section shall be in addition to any other remedies provided by law.

(Code 1988, § 11-88)

Secs. 50-212—50-230. - Reserved.

DIVISION 6. - GRAFFITI

FOOTNOTE(S):

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Editor's note—Ord. No. 1836, § 1, adopted Sept. 22, 2009, amended the former Art. IV, Div. 6, §§ 50-231—50-238, and enacted a new Div. 6 as set out herein. The former Div. 6 pertained to similar subject matter and derived from Code 1988, §§ 11-89—90.6; Ord. No. 1488, § 1, adopted July 27, 2004.

Sec. 50-231. - Declaration of public nuisance.

The existence of graffiti on public or private property is declared to be an objectionable, unsightly public nuisance and therefore, subject to the removal and abatement provisions specified in this division.

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-232. - Definitions.

In this division:

Felt tip marker shall mean an indelible marker or similar implement with any size tip.

Graffiti shall mean a drawing or the inscribing of a message, slogan, sign or symbol or mark of any type that is made on any public or private building, structure or surface, and that is made without permission of the owner.

Graffiti implement shall mean any aerosol paint container, any type of felt tip marker or paint stick or etching tool capable of scarring or otherwise defacing glass, metal, concrete or wood.

Guardian shall mean any person to whom custody of a minor has been given by a court order.

Owner as used herein shall include, but not be limited to, any equitable owner, any person having a possessory right to the land or building or the person occupying it, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, or any person, individual, corporation, or partnership in apparent control of the property or any agent or employee of any of the foregoing.

Paint stick or graffiti stick shall mean any device containing a solid form of paint, chalk, wax, epoxy, or other similar substances capable of being applied to a surface by pressure, and upon application, leaving a visible mark.

Parent shall mean a person who is the natural or adoptive parent of a person. As used herein, the term "parent" shall also include a court appointed guardian or other person 18 years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-233. - Offense of possession of graffiti implement.

- (a) It shall be unlawful for any person to have in his or her possession, for the purpose of defacing property, any graffiti implement in any public park, public school ground, public library, public playground, public swimming pool, public recreational facility, any public right-of-way or other public grounds or public buildings in the city when such premises are closed to the public.
- (b) It shall be unlawful for any person to have in his or her possession, for the purpose of defacing property, any graffiti implement while on private property not open to the public. The graffiti implement shall be presumed to be for the purpose of defacing property if it is in the holder's possession while the holder is on private property closed to the public and without the consent of the owner.
- (c) It shall be an offense for the parent or legal guardian of a child between the ages of ten and 17 years of age to intentionally, knowingly, recklessly, or with criminal negligence allow the child to violate the provisions of subsection (a) or (b) of this section.
- (d) It shall be an affirmative defense to prosecution under subsections (a) and (b) of this section if the person uses the graffiti implement in their employment or in connection with a school, civic, or religious activity or has written permission from the director or owner of the premises to engage in an authorized activity utilizing the implements.

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-234. - Owner responsibility and graffiti removal program.

- (a) It shall be unlawful for an owner to permit graffiti to remain on his property except where:
- (1) The graffiti is located on transportation infrastructure; or
 - (2) The removal of the graffiti would create a hazard for the person performing the removal.
- (b) Prior to any enforcement or removal actions by the city, the city will inform the property owner in writing that the city will remove the graffiti from the owner's property free of charge and will request that the owner give written permission for removal and release the city, its contractor's, and volunteer personnel from liability in performance of the graffiti abatement by completing a permission and release from liability form.
- (c) If the property owner grants written permission to the city to remove the graffiti, the city will remove the graffiti free of charge. The city will only paint or repair the area effected by the graffiti, and will not paint or repair any more extensive an area than where the graffiti is located. No enforcement efforts or liens will be placed against a property owner who has given written permission for the city to remove the graffiti.
- (d) If the city informs the property owner in writing of the graffiti abatement free of charge under this section and the U.S. Post Office returns the notice as "refused" or "unclaimed" or if the property owner fails to respond to the city's request for permission to abate the graffiti within 30 days from the date the permission is requested, the property owner will be deemed to have refused the offer.
- (e) If the property owner refuses the city's offer to abate the graffiti for no charge, the city will serve the property owner with written notice to remove graffiti within 15 calendar days of receiving notification. The notice shall be in writing and shall contain:
- (1) The date the graffiti was observed on the property;
 - (2) A description of the graffiti;
 - (3) The address or location of the property;
 - (4) The owner's name, if known; and
 - (5) The specific deadline for removal of the graffiti.
- (f) Notice has been given when the information in subsection (e) of this section has been:
- (1) Delivered in person to an owner;
 - (2) Mailed to the owner's last known mailing address by certified mail, return receipt requested;
 - (3) Published at least once in a newspaper of general circulation in the city;
 - (4) Posted on or near the front door to each building containing graffiti; or
 - (5) Posted on a placard attached to a stake driven into the ground on the property to which to the notice relates.

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-235. - Hearing.

The owner of a lot or parcel subject to abatement under this division may request a hearing by notifying the code enforcement official within ten calendar days following the date the city provides the

required notice. The hearing shall be conducted by the municipal judge to determine if the conditions constitute graffiti under the provisions of this division. Unless notice is waived by the owner, the owner shall be provided written notice of the time and place of the hearing at least ten calendar days prior thereto. At the hearing, the owner and the code enforcement official may present any relevant evidence. If the municipal judge finds that conditions constituting a duty to abate graffiti hereunder exist, the hearing official shall issue an order so directing the owner to abate the graffiti within three calendar days

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-236. - Failure to abate graffiti.

If the graffiti is not removed by the owner within 15 calendar days after the date the notice is received, or if it is determined at a hearing that the condition of the property constitutes a nuisance and the owner fails to remove the graffiti within three calendar days of the hearing, the city may, without further notice, make entry upon the property and remove the graffiti. If the city removes the graffiti under this section, the expenses of removal, as stated in a fee schedule adopted by the city, will be charged to the property owner and a lien may be filed against the property.

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-237. - Assessment of expenses; liens.

- (a) The city may assess the expenses of removal incurred by the city for the abatement of graffiti pursuant to section 50-236 against the real property on which the graffiti abatement was done.
- (b) To obtain a lien against the property for expenses incurred under section 50-236, the city must file a statement of expenses with the county clerk of Brazos County. The statement of expenses must contain:
 - (1) The name of the property owner, if known;
 - (2) The legal description of the property; and
 - (3) The amount of the expenses incurred under section 50-236
- (c) The lien is inferior only to tax liens and liens for street improvements. A lien described by subsection (b) attaches to the property on the date on which the statement of expenses is filed in the real property records of Brazos County and is subordinate to:
 - (1) Any previously recorded lien; and
 - (2) The rights of a purchaser or lender for value who acquires an interest in the property subject to the lien before the statement of expenses is filed as described by subsection (b).

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-238. - City initiatives.

The city may provide the following graffiti removal assistance:

- (1) Publishing information where and how to obtain free paint, painting tools and materials for graffiti removal and information on the city graffiti abatement program.
- (2) Making every effort to use its available resources for prompt removal of graffiti from city-owned property. Similarly, business owners and homeowners shall be encouraged to remove

graffiti from their properties as soon as possible.

- (3) Maintaining a paint bank within the department of code enforcement from which community-based groups or individuals may obtain paint and materials needed to remove graffiti. Local businesses and other potential donors shall be encouraged to contribute to the paint bank.

(Ord. No. 1836, § 1, 9-22-2009)

Sec. 50-239. - Penalties.

Violation of any of the provisions of this section shall be a misdemeanor offense and shall be punishable by a fine of not less than \$50.00 nor more than \$500.00 for the first offense and a fine of not less than \$100.00 nor more than \$500.00 for the second offense. The court shall have discretion to provide other means of punishment which may include community service.

(Code 1988, § 11-90.6; Ord. No. 1488, § 1, 7-27-2004)

Secs. 50-240—50-256. - Reserved.

ARTICLE V. - MOSQUITO CONTROL

Sec. 50-257. - Collections of water to be treated.

It shall be unlawful to have, keep, maintain, cause, or permit within the city any collection of standing or flowing water in which mosquitoes breed or are likely to breed, unless such collection of water is so treated as effectually to prevent such breeding.

(Code 1975, § 13-41; Code 1988, § 11-91)

Sec. 50-258. - What constitutes a collection of water.

Any collections of water considered by section 50-257 shall be held to be those contained in ditches, pools, ponds, excavations, holes, depressions, open cesspools, privy vaults, foundations, cisterns, tanks, shallow wells, barrels, troughs (except horse troughs in frequent use), urns, cans, boxes, bottles, tubs, buckets, defective house gutters, automobile tires, tanks or flush closets, or other similar water containers.

(Code 1975, § 13-41; Code 1988, § 11-92)

Sec. 50-259. - Methods of treatment.

The methods of treatment of collections of water directed toward the prevention of breeding mosquitoes shall be approved by the county health authority, and shall be one or more of the following:

- (1) Screening with wire netting of at least 16 meshes to the inch each way, or with any other material which will prevent the ingress or egress of mosquitoes.
- (2) Complete emptying every seven days of unscreened containers, together with their thorough drying or cleaning.
- (3) Using a larvicide's approved by and applied under the directions of the county health authority.

- (4) Covering completely the surface of the water with kerosene, petroleum, or paraffin oil once every seven days.
- (5) Cleaning and keeping sufficiently free of vegetable growth and other obstructions and stocking with mosquito-destroying fish.
- (6) Filling or draining to the satisfaction of the county health authority or accredited representative.
- (7) Proper removal or destruction of tin cans, tin boxes, broken or empty bottles, and similar containers likely to hold water.

(Code 1975, § 13-42; Code 1988, § 11-93)

Sec. 50-260. - Notice.

The natural presence of mosquito larvae or pupae in standing or running water shall be sufficient evidence that mosquitoes are breeding there, and failure to prevent such breeding within three days after such notice by the county health authority, his or her authorized agent or representative, shall be deemed a violation of this article.

(Code 1975, § 13-43; Code 1988, § 11-94)

Sec. 50-261. - City to treat at cost of property owner.

If the person responsible for conditions giving rise to the breeding of mosquitoes fails or refuses to take measures necessary to prevent the same within three days after the due notice has been given him or her by the county health authority or his or her authorized agent, the city is hereby authorized to do so. All necessary costs incurred by the city for this purpose shall either be charged against the property owner or other person offending, or against the property, are against the property owner or other person offending and against the property, or recovered by the city pursuant to any other remedy available at law or in equity.

(Code 1975, § 13-44; Code 1988, § 11-95)

Sec. 50-262. - Enforcement.

For the purpose of enforcing the provisions of this article, the county health authority or his or her duly accredited agent acting under his or her authority may at all reasonable times enter in and upon any premises within his or her jurisdiction, and any person charged with any of his or her duties imposed by this article failing within the time designated by this article or within the time stated in the notice of the county health authority, as the case may be, to perform such duties or to carry out the necessary measures to the satisfaction of the county health authority, shall be deemed guilty of violation of this article.

(Code 1975, § 13-45; Code 1988, § 11-96)

Secs. 50-263—50-270. - Reserved.

ARTICLE VI. - MOBILE FOOD VENDORS

FOOTNOTE(S):

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Editor's note—Ord. No. 2052, § 1, adopted July 8, 2014, contained provisions intended for use as Ch. 91. At the editor's discretion, these provisions have been alternately set out as a new Art. VI of Ch. 50

Sec. 50-271. - Definitions.

- (a) *City* shall mean City of Bryan.
- (b) *Edible goods* shall include, but are not limited to:
 - (1) Prepackaged food including, but not limited to, candy, beverages, and ice cream.
 - (2) Prepared food which is prepared off-location for sale in the mobile food unit.
 - (3) On-site prepared food which is prepared in the mobile food unit.
- (c) *Food service establishment* shall mean businesses that sell edible goods and have been inspected and approved by the Brazos County Health Department, including commercial kitchens and commissaries, and shall specifically exclude accessory or self-serve retail food sales.
- (d) *Mobile* shall mean the state of being in active, but not necessarily continuous, movement.
- (e) *Mobile food vendors* shall mean any business which sells edible goods from a non-permanent (i.e. mobile) location within the City of Bryan. The term shall include, but not be limited to:
 - (1) *Mobile food trucks*: A self-contained motorized unit selling items defined as edible goods.
 - (2) *Concessions carts*: Mobile vending units that must be moved by non-motorized means.
 - (3) *Concession trailers*: A vending unit which is pulled by a motorized unit and has no power to move on its own.
- (f) *Non-refrigerated* shall mean edible goods that are not required to be kept at a temperature below 41 degrees Fahrenheit according to the federal Food and Drug Administration and the Texas Food Establishment Rules.
- (g) *Sell* shall mean the act of exchanging a good for payment or in return for a donation.
- (h) *Stationary location* shall mean the position of the mobile food vendor when addressing the public for the purpose of sales and not in motion.

(Ord. No. 2052, § 1, 7-8-2014)

Sec. 50-272. - Permit and application.

- (a) *Permit application*. No person shall act as a mobile food vendor in the city without a permit issued by the city. Every permit, including those from the City of Bryan and Brazos County Health Department, shall be displayed at all times in a conspicuous place where it can be read by the general public on the mobile food vendor's truck, concession cart, or concession trailer. A person shall make application for a permit to the city on forms furnished by the city and shall provide the following information:
 - (1) Name, legal name of business or entity, business address, and telephone number of the applicant.
 - (2) The trade name under which the applicant conducts business.
 - (3) Type of business organization or corporation as defined by state law;
 - (4) If applicable, copy of chapter or articles of incorporation and current listing of directors, partners, or principals (publicly traded companies are exempted);
 - (5) Sales tax number with a copy of sales tax permit;

- (6) Signed permission from all private property owners where the mobile food vending unit will be stationed;
 - (7) Name, phone number, and photocopy of the applicant's driver's license;
 - (8) Proof of motor vehicle insurance.
 - (9) Copy of permits to do business in Texas for foreign companies;
 - (10) Description of product being sold;
 - (11) Vehicle and/or unit make, model, and license plate numbers;
 - (12) Copy of the Brazos County Health Department permit issued to the mobile food vendor.
- (b) *Fees.* All fees required under this section will be set by city council resolution.
- (c) *Permit decisions.* The city will evaluate the data furnished by the applicant and may require additional information. Within 30 days of receipt of a completed permit application, the city will determine whether or not to issue a mobile food vendor permit. The city may deny an application for a permit for any of the following grounds:
- (1) Failing to provide all of the information required by the city;
 - (2) The applicant's past record of ordinance violations;
 - (3) Safety record of the applicant or any driver, based on such things as civil and criminal lawsuits and violations of environmental laws and ordinances;
 - (4) Providing false, misleading or inaccurate information to the city.
- (d) *Permit.*
- (1) Permits shall be issued for a time period, not to exceed one year or may be stated to expire on a specific date.
 - (2) Permits are required to be renewed prior to the expiration date.
 - (3) A new permit application is required to be submitted within 15 days of the following, whereupon the previous permit will be voided and the previous permit canceled:
 - i. When ownership of the operating entity is changed; or
 - ii. The city determines that operations or management methods are no longer adequately described by the existing permit application.
 - (4) Permits are not transferrable.
- (e) *Suspension or revocation of permit.* A permit may be revoked by the city for any violation of this section.
- (f) *Appeals.* A mobile food vendor has the right to appeal a determination made by the public works director to the city manager by submitting a written appeal to the city secretary, with a copy to the public works director, not more than five days after receiving notice of the suspension or denial of permit. The city manager or his or her designee will hear the appeal and issue a written finding not more than 20 days after the notice was delivered to the city secretary. The city manager's determination is final.

(Ord. No. 2052, § 1, 7-8-2014)

Sec. 50-273. - Zoning and location restrictions.

- (a) *Distance regulations.*

- (1) No mobile food vendor shall conduct business within any single-family residential or agricultural zoning district, including townhouse districts, but may be located in such districts when serving and within 100 feet to a property with an active building permit or located within a public park facility. A mobile food vendor selling food that is not prepared in the mobile food vending unit is exempted from this subsection.
 - (2) A mobile food vendor may not be located within 100 feet of the property line of an open and operating fixed-location food service establishment. This buffer may be reduced upon receiving written permission from said establishments.
- (b) *Stationary restrictions.* A mobile food vendor shall not conduct sales at a stationary location:
- (1) For a duration of no more than five consecutive days at a location.
 - (2) For a duration exceeding eight hours per location per day.
 - (3) For a duration exceeding 30 minutes on any public street designated on the City of Bryan's Thoroughfare Plan as a major collector or lesser.
 - (4) On any public street designated on the City of Bryan's Thoroughfare Plan as a minor arterial or greater.
 - (5) In congested areas where the operation impedes vehicular or pedestrian traffic or where it impedes access to the entrance of any adjacent building or driveway.
 - (6) In public parking spaces in downtown Bryan, the boundaries of which are:
 - a. North: MLK, Jr. Street
 - b. South: 30th Street
 - c. East: Texas Avenue
 - d. West: Sims Avenue
 - (7) In a designated bike lane.
 - (8) Between the hours of 2:00 a.m. and 5:00 a.m.
 - (9) Within the boundaries of Downtown First Fridays during the event, held on the first Friday of each month between the hours of 5:00 p.m. and 10:00 p.m., unless specifically authorized by permit issued by the Downtown Bryan Association. The boundaries of Downtown First Fridays are:
 - A. North: MLK, Jr. Street
 - B. South: 30th Street
 - C. East: Texas Avenue
 - D. West: Sims Avenue
 - (10) Within 500 feet of any festival entrance during the Texas Reds festival.
- (c) *Location regulations.*
- (1) No mobile food vendor shall locate on any private property without written permission to do so and must comply if asked to leave by the property owner or city official. A copy of the written permission to operate in a specific location, signed by the private property owner, shall be kept within the mobile vending unit at all times.
 - (2) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill in or

upon any motor vehicle without permission of the owner.

- (3) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or city official not to do so, or if there is placed near or at the entrance thereof a sign bearing the words "no advertisement".

(Ord. No. 2052, § 1, 7-8-2014)

Sec. 50-274. - Mobile food vendor requirements.

- (a) Each unit shall be equipped with a trash receptacle with lid to prevent windblown litter and shall be disposed of in accordance with the city's solid waste ordinance. All solid waste and recyclables shall be bagged. Receptacles shall not be overfilled to prevent complete lid closure. All disturbed areas must be cleaned following each stop at a minimum of 20 feet of the sales location.
- (b) If liquid waste results from food processing of a mobile food vendor's truck, concession cart, or concession trailer, the waste shall be contained in a permanently installed retention tank located on the vending unit.
- (c) Liquid waste, solid waste, and recyclables shall be removed from a mobile food vendor's truck, concession cart, or concession trailer at a disposal site approved by the city or by a city permitted waste transporter. Removal of waste shall be in a manner that a public health hazard or nuisance is not created.
- (d) Liquid waste from a mobile food vendor shall be characterized as food service waste and shall meet the waste removal, manifesting, disposal, and treatment requirements of the city's sewer use ordinance prior to discharge into the city's publically owned treatment works.
- (e) Waste generated from washing or maintenance of mobile vending unit shall be done in a manner to prevent release on public or private property.
- (f) The mobile food vendor will be subject to inspection by the city upon permit application and may be subject to random inspection and upon reissuance of the permit.
- (g) No sales are allowed within public park facilities while authorized park concession units are operating.
- (h) Mobile food vendor's truck, concession cart, or concession trailer shall be self-sufficient for water and sewer utilities. Use of water and wastewater hoses to provide utility service to mobile vending unit is prohibited. Extension cords may be used for electrical service if the equipment and connection(s) used between the vending unit and supplying source pose no threat to public safety (i.e. personal injury or fire).
- (i) All signage used by the mobile food vendor, including signage painted directly on the mobile food vending unit, shall meet the standards and requirements of the city's sign ordinance, but shall not be required to obtain a sign permit under that chapter. (Chapter 98, City of Bryan Code of Ordinances.)
- (j) Mobile food vendors shall maintain the following fire prevention devices:
- (1) All mobile food vendors selling food cooked in the mobile food vendor unit shall keep at least one class ABC fire extinguisher with a minimum 3A40BC rating, with visible current inspection (tagged), fully charged, and located within 30 feet of cooking equipment;
- (2) All mobile food vendor units producing grease-laden vapors (grills, fryers, etc.) shall keep, in

addition to the extinguisher required in subsection (1), a Class K rated portable fire extinguisher, with visible current inspection (tagged), fully charged, and located within 30 feet of cooking equipment;

- (3) All mobile food vendor units producing grease-laden particles within the mobile unit shall install an extinguishing vent hood (Type 1 or other, if approved by the City of Bryan Fire Marshal or designee), which must be tested in the presence of the Bryan Fire Marshal or designee before a permit may be issued; and
- (4) All mobile food vendor units using compressed gas (LP/propane cylinders, etc.) shall keep gas containers secured outside of the passenger area of the vending unit. Compressed gas cylinders shall be secured by one or more restraints to a fixed object or nested and secured by one or more restraints and cannot be located closer than ten feet from any trash or combustible material. All valves, hoses, and connections used shall be rated for use with petroleum gas.

(Ord. No. 2052, § 1, 7-8-2014)

Sec. 50-275. - Enforcement.

- (a) It shall be unlawful for an individual to sell edible goods while displaying a valid permit issued by the City of Bryan in the name of another individual, organization, or entity outside of an employment relationship.
- (b) It shall be unlawful for any individual directly or through an agent or employee to sell goods within the corporate limits of the city after the expiration of the permit issued by the City of Bryan under this section.
- (c) It shall be unlawful for an individual directly or through an agent or employee to misrepresent on the permit affidavit any acts that are regulated under this section.
- (d) It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the City of Bryan constitutes the city's endorsement or approval of the product for sale.
- (e) It shall be unlawful to operate a mobile food vendor operation that is not in compliance with the Texas Food Establishment Rules as amended from time to time.
- (f) Any person convicted of a violation of any provision of this subsection shall be guilty of a Class C misdemeanor punishable by a fine not to exceed \$2,000.00 per occurrence in accordance with section 1-14 of this Code of Ordinances.

(Ord. No. 2052, § 1, 7-8-2014)