

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: **Health**

AGENDA DATE: **Introduction December 8, 2015; Public Hearing December 15, 2015**

CONTACT PERSON NAME AND PHONE NUMBER: **Robert Resendes, 212-6500**

DISTRICT(S) AFFECTED: **All**

STRATEGIC GOAL: **Goal 8: Nurture and Promote a Healthy, Sustainable Community**

SUBJECT:

Approval of an ordinance amending Title 9 (Health and Safety) Chapter 9.2 (Food and Food Handling Establishments), Sections 9.12.005 (Texas Food Establishment Rules-Adopted): 9.12.007 (Applicability): 9.12.010 (Definitions); 9.12.130 (Required): 9.12.220 (Required): 9.12.800 (Mobile Establishments): and 9.12.810 (Temporary, Recurrent, and Seasonal Establishments): to adopt the most recent changes to the statewide Texas Food Establishment Rules; the penalty as provided in Section 9.12.890 of the El Paso City Code.

BACKGROUND / DISCUSSION:

On August 11, 2009 the El Paso City Council adopted the Texas Food Establishment Rules (TFER). TFER was recently revised to conform to the 2013 Food and Drug Administration (FDA) Model Food Code. Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments) needs to be amended to incorporate the changes in TFER.

PRIOR COUNCIL ACTION:

El Paso City Council adopted the Texas Food Establishment Rules on August 11, 2009

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD/COMMISSION ACTION:

N/A

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD: _____

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.12 (FOOD AND FOOD HANDLING ESTABLISHMENTS), SECTIONS 9.12.005 (TEXAS FOOD ESTABLISHMENT RULES-ADOPTED); 9.12.007 (APPLICABILITY); 9.12.010 (DEFINITIONS); 9.12.130 (REQUIRED); 9.12.220 (REQUIRED); 9.12.800 (MOBILE ESTABLISHMENTS); AND 9.12.810 (TEMPORARY, RECURRENT, AND SEASONAL ESTABLISHMENTS), TO ADOPT THE MOST RECENT CHANGES TO THE STATEWIDE TEXAS FOOD ESTABLISHMENT RULES; THE PENALTY AS PROVIDED IN SECTION 9.12.890 OF THE EL PASO CITY CODE.

WHEREAS, on August 11, 2009, the City Council adopted the Texas Food Establishment Rules under Title 25 Sections 229.161 through 229.171 and 229.173-229.175 of the Texas Administrative Code; and

WHEREAS, the Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services, has repealed Title 25 Chapter 229 of the Texas Administrative Code and replaced it with Title 25 Chapter 228 of the Texas Administrative Code; and

WHEREAS, the City Council wishes to update the City Code to reflect the most current changes to the food establishment rules adopted by the Executive Commissioner of the Health and Human Services Commission; and

WHEREAS, the City Council believes that said change will protect the public health and welfare of its citizens.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS THAT:

Section 1. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.005 (Texas Food Establishment Rules--Adopted) shall be amended as follows:

Section 9.12.005 - Texas Food Establishment Rules--Adopted.

The City of El Paso adopts by reference The Texas Food Establishment Rules as adopted, currently or amended, by the Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228 regarding the regulation of food establishments in this jurisdiction, a copy of which, authenticated by the city clerk and on file in the city clerk's office is adopted in addition to Chapter 9.12, as fully as if copied at length in Title 9 (Health and Safety), Chapter 9.12.

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Section 2. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.007 (Applicability.) shall be amended as follows:

Section 9.12.007 - Applicability.

This chapter shall not apply to the following, as they are not considered to be food establishments under 25 Texas Administrative Code Section 228.2 Definitions Subsection 57(D):

- A. A food product or food service establishment that offers only prepackaged foods that are not time/temperature controlled for food safety;
- B. A produce stand that only offers whole, uncut fresh fruits and vegetables;
- C. A food processing plant;
- D. A cottage food industry;
- E. An area where cottage food is prepared, sold or offered for human consumption;
- F. A Bed and Breakfast Limited Facility; or
- G. A private home that receives catered or home-delivered food.

Section 3. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.010 (Definitions) shall be amended as follows:

Section 9.12.010- Definitions

"Establishment" means food product and food service establishments, including temporary, recurrent, seasonal, mobile, outdoor market, nonprofit and care facilities, and excluding a food product or food service establishment that offers only prepackaged foods that are not time/temperature controlled for food safety, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold or offered for human consumption, a Bed and Breakfast Limited Facility, or a private home that receives catered or home delivered-food as set forth in 25 Texas Administrative Code Section 228.2 Definitions, Subsection 57(D).

"Potentially hazardous food" means a food that requires time and temperature control for safety to limit pathogen growth or toxin production, which includes, but is not limited to, a food of animal origin, including fresh shell eggs, that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support pathogen growth.

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Section 4. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.130 (Required), Subsection 9.12.130A(1)(c) shall be amended as follows:

Section 9.12.130A(1)(c)—Required

- c. An individual working in a food processing plant, as provided in 25 Texas Administrative Code §228.2(58).

Section 5. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.220 (Required) shall be amended as follows:

Section 9.12.220—Required

Persons desiring to work in an establishment as food protection management personnel, as defined in Section 9.12.010, shall obtain a food protection management certificate from the director within sixty days from the day of his or her employment, or successfully complete and provide proof of completion of a food protection management certification program approved by the director. At least one food protection management person per establishment must be certified. However, if a person left in charge by food protection management personnel can respond correctly during a food inspection to the questions listed in the Texas Food Establishment Rules, under Section 228.32 Knowledge, that person need not obtain certification as a food protection manager. The person(s) responsible for food operations within a care facility and whose primary duties include, but are not limited to, supervision of kitchen personnel, food handling, food preparation and storage, is required to obtain a food protection management certificate. Persons providing proof of completion of a food protection management certification program, approved by the director, must present the certificate to the director and pay the fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council.

Section 6. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.800 (Mobile establishments), Subsection 9.12.800E shall be amended as follows:

Section 9.12.800E—Mobile establishments

- E. Mobile establishments shall comply with the industry standards for safe food storage and handling found in the Texas Food Establishment Rules, located in the Texas Administrative Code, Chapter 228.

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Section 7. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.810 (Temporary, recurrent and seasonal establishments), Subsections 9.12.810A(2) and 9.12.810C(3) shall be amended as follows:

Section 9.12.810A(2)—Temporary, recurrent and seasonal establishments

2. All food temperature requirements shall be met as contained in Section 228.71-228.74 of the Texas Food Establishment Rules for temporary, seasonal and recurrent establishments.

Section 9.12.810C(3)—Temporary, recurrent and seasonal establishments

3. Temporary, seasonal and recurrent establishments must provide hot and cold holding equipment for food. This equipment shall be adequate in number and capacity to provide food temperatures as specified under Section 228.71-228.74 of the Texas Food Establishment Rules.

Section 8. The provisions of this amendment shall be effective on January 1, 2016.

Section 9. That except as expressly amended herein Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments) shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2015.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Robert Resendes, MBA, MT (ASCP)
Department of Public Health, Director

ORDINANCE NO. _____