

ARTICLE 6.02 FOOD ESTABLISHMENT RULES

§ 6.02.001. Adoption of state rules.

The city adopts by reference the provisions of the current rules or rules as 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. The rules found in this chapter 6 shall be in addition to the rules found in the Texas Administrative Code.

(City council adopted 1/20/22)

§ 6.02.002. Definitions.

The words and terms used in this article that are not defined herein shall have the meanings commonly ascribed to them. Words used in the present tense include the future tense. Words in the singular number include the plural number and words in the plural number include the singular number. The word “he” shall be defined to include the word “she.”

Authorized agent or employee. The employees of the regulatory authority.

Cottage food production operation. An individual, operating out of the individual’s home, who:

- (1) Produces at the individual’s home:
 - (A) A baked good that is not a time and temperature control for safety food, as defined by section 437.0196 the Texas Health and Safety Code;
 - (B) Candy;
 - (C) Coated and uncoated nuts;
 - (D) Unroasted nut butters;
 - (E) Fruit butters;
 - (F) A canned jam or jelly;
 - (G) A fruit pie;
 - (H) Dehydrated fruit or vegetables, including dried beans;
 - (I) Popcorn and popcorn snacks;
 - (J) Cereal, including granola;
 - (K) Dry mix;
 - (L) Vinegar;
 - (M) Pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

- (N) Mustard;
 - (O) Roasted coffee or dry tea;
 - (P) A dried herb or dried herb mix;
 - (Q) Plant-based acidified canned goods;
 - (R) Fermented vegetable products, including products that are refrigerated to preserve quality;
 - (S) Frozen raw and uncut fruit or vegetables; or
 - (T) Any other food that is not a time and temperature control for safety food, as defined by section 437.0196 of the Texas Health and Safety Code;
- (2) Has an annual gross income of \$50,000.00 or less from the sale of food described by subsection (1);
 - (3) Sells the foods produced under subsection (1) only directly to consumers; and
 - (4) Delivers products to the consumer at the point of sale or another location designated by the consumer.

Food establishment. A food service establishment, a retail food store, a temporary food establishment, a mobile food unit, roadside food vendor, or any place where food or drink for human consumption is produced and offered for sale, given in exchange, or given away directly to consumers and delivered to the consumer at the point of sale or another location designated by the consumer. The term does not include a “cottage food production operation” as defined in chapter 437 of the Texas Health and Safety Code, and the term does not include the following operations and establishments, provided that the operations listed below do not expose the public to a substantial and imminent health hazard as determined by the city.

- (1) An organization that serves only its own membership and immediate guests or other structured groups of persons who gather occasionally for fellowship and society that provide the food from amongst their membership;
- (2) An establishment which handles only fresh unprocessed fruits, nuts and vegetables and which operates from a unit that is mobile in nature; and
- (3) The sale, distribution or service of food at an event, party or other special gathering that is not open to persons other than the members or invited guests of the sponsor, provided that there is no public advertisement of the event, public solicitation of funds at or for the event, or participation by the general public in the event.

Food truck. See mobile food unit.

Independent food merchant. An individual or individuals operating out of a private home who produce food or drink for human consumption and that food or drink is offered for sale, given in exchange, or given away. This term does not include individuals who operate a “cottage food production operation” as defined in chapter 437 of the Texas Health and Safety Code.

Mobile food unit. A vehicle-mounted food establishment, designed to be readily movable,

typically constructed in a truck or trailer. The term “food truck” may be used interchangeably, with the same meaning.

Mobile food vendor. Any person who sells food products or takes food product orders and sells food out of a mobile food unit on premises where there is no related business building.

Regulatory authority. The City of Newark.

State rules. The state rules found at 25 Texas Administrative Code, chapter 228. These rules are also known as the Texas Food Establishment Rules.

(City council adopted 1/20/22)

§ 6.02.003. Permits and exemptions.

- (a) A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferrable from one person to another or from one location to another location, except as otherwise permitted by this article. A valid permit must be posted in or on every food establishment regulated by this article.
- (b) A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this article but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.
- (c) To obtain a permit for a food establishment, the premises must have a current inspection by the city’s health inspector to ensure compliance with this article. If the food establishment has been inspected by the city’s health inspector on behalf of a different governmental entity within the six (6) months prior to applying for the food establishment permit, that inspection shall satisfy the inspection requirement for issuance of the permit. A food establishment vendor must pay the inspection fee established by the city fee schedule at the time an inspection of a mobile food unit is requested.
 - (1) It shall be unlawful for a person to operate a food establishment in the city without a valid inspection. An inspection shall be valid for six (6) months from the date of inspection.
 - (2) Notwithstanding the inspection requirements of this article, a food establishment operating within the city may be inspected at any time by the city health inspector to ensure compliance with this article.

(City council adopted 1/20/22)

§ 6.02.004. Application for permit and fees.

- (a) Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

- (b) Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.
 - (c) The following fee schedule applies to permits issued under this section except as provided in subsection (d):
 - (1) Annual: \$600.00 per business;
 - (2) Individual food merchant permit: \$20.00;
 - (3) Reinspections: \$75.00 per occurrence.
 - (d) Permits for mobile food units shall have additional permitting requirements as described in section 6.03.002. Permit fees for mobile food units shall be different from the food establishment annual permit and inspection fees described in subsection (c), and shall be:
 - (1) Annual: \$150.00 per business;
 - (2) Reinspections: \$75.00 per occurrence.
- (City council adopted 1/20/22)

§ 6.02.005. Review of plans.

- (a) 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 before work is begun. Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this article. The approved plans and specifications must be followed in construction, remodeling or conversion.
 - (b) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.
- (City council adopted 1/20/22)

§ 6.02.006. Suspension of permit.

- (a) The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by section 6.02.006(b) of this article. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within twenty (20) days of receipt of a request for a hearing.

- (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 that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten (10) days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

(City council adopted 1/20/22)

§ 6.02.007. Revocation of permit.

- (a) The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit 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 (10) 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 (10) day period.
- (b) If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final.

(City council adopted 1/20/22)

§ 6.02.008. Administrative process.

- (a) A notice as required in these rules 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.
- (b) The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

(City council adopted 1/20/22)

§ 6.02.009. Penalties.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this division shall be fined no more than two thousand dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, including dumping of refuse, and shall be fined not more than five hundred dollars (\$500.00) for all other violations of this division. Each day that a violation is permitted to exist shall constitute a separate offense.

(City council adopted 1/20/22)