



ORDINANCE No. 155

**FOOD ESTABLISHMENT REGULATIONS**

**AN ORDINANCE OF THE CITY OF, UHLAND TEXAS, ADOPTING THE TEXAS FOOD ESTABLISHMENT REGULATIONS AS THEY NOW EXIST AND MAY HEREAFTER BE AMENDED, ENACTING VOLUME 1, ARTICLE 4, CHAPTER 5, OF THE CITY OF UHLAND CODE OF ORDINANCES PROVIDING FOR PERMITS AND PERMIT FEES; PROVIDING FOR INSPECTIONS; PROVIDING FOR ENFORCEMENT, REVOCATION OF PERMITS AND PENALTIES; PROVIDING A REPEALER; A SEVERABILITY CLAUSE; AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING**

**WHEREAS**, the City Council of the City of Umland has the authority to provide for the permitting and inspection of food establishments located in the City in order to protect the health, safety, and welfare of the public; and

**WHEREAS**, the City Council of the City of Umland believes that it is in the best interests of the City to adopt by reference the Texas Food Establishment Regulations; and

**WHEREAS**, the City Council intends to provide for the permitting and inspection of food establishments in the City in order to ensure compliance with the Texas Food Establishment Regulations; and

**WHEREAS**, the City Council desires to provide for enforcement and penalties, including revocation of permits, for non-compliance with the Texas Food Establishment.

Regulations or if the operation of the food establishment constitutes an imminent hazard to public health.

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Uhland:**

**1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

**2. ENACTMENT**

Volume 1, Article 4, Chapter 5, of the City of Uhland Code of Ordinances is hereby established to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

**3. REPEALER**

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

**4. SEVERABILITY**

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

**5. CODIFICATION**

The City Administrator is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

**6. EFFECTIVE DATE**

This Ordinance shall be effective immediately upon passage and publication as provided for by law.

**7. PROPER NOTICE & MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, and Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED AND APPROVED** this, the 7<sup>th</sup> day of January, **2015** by a vote of \_\_\_\_ (ayes) to \_\_\_\_ (nays) to \_\_\_\_ (abstentions) of the City Council of Umland, Texas.

**City of Umland**

  
\_\_\_\_\_  
Vicki Hunter, Mayor-Pro-Tem

ATTEST:

  
  
\_\_\_\_\_  
Karen Gallaher, City Administrator

17 08 1991

## Attachment "A"

### Article 4: Health & Sanitation

## CHAPTER 5: FOOD ESTABLISHMENT REGULATIONS

### SECTION 1. ENACTMENT PROVISIONS

#### 1.1 Popular Name

This Ordinance shall be commonly cited as the "Food Establishment Regulations"

#### 1.2 Purpose

This Chapter provides standards for food establishments in order to protect the public health, safety and welfare.

#### 1.3 Scope

This chapter applies to all property within the incorporated municipal boundaries (i.e, City Limits)

### SECTION 2. DEFINITIONS

**FOOD ESTABLISHMENT:** A restaurant, café, cafeteria or similar establishment, the primary purpose of which is to sell food, beverages or meals to the public, operating either, seasonally or year round. For purposes of this Chapter, the term also includes kitchens at child or adult care facilities operating pursuant to a license issued by the State of Texas. This term includes a Mobile Unit. The term excludes a bed and breakfast establishment with seven or fewer rooms for rent that serves only breakfast to its overnight guest.

#### 2.1 General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Term that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense. Words in the plural number shall include the singular number (and vice versa), and words in the masculine gender shall include the feminine (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

## 2.2 Specific

**Authorized Agent or Employee:** an employee of the City, a representative of the City designated by the City Council. This position may be that of a food establishment inspector.

**City:** the City of Umland, Tx. Any reference herein to the City shall mean the City Council of the City or a person designated by the City Council to perform the duties or exercise the authority provided for in this Chapter.

**City Health Inspector:** That individual or organization appointed by the City Council to provide Health Inspection Services on behalf of the City.

**Food Establishment:** a restaurant, café, cafeteria or similar establishment, the primary purpose of which is to sell food, beverages or meals to the public, operating either seasonally or year round. For purposes of this Chapter, the term also includes kitchens at child or adult care facilities operation pursuant to a license issued by the State of Texas. This term includes a Mobile Unit.

**Mobile Unit:** a Food Establishment operated within or in conjunction with an automobile that is not sited in one location for more than twenty-four (24) hours.

**Nonprofit:** a not-for profit corporation organized pursuant to the laws of the State of Texas, and operating under current Articles of Incorporation on file with the Texas Secretary of State's Office, and in good standing.

**Person:** a human being, corporation, nonprofit corporation, unincorporated association, government agency, or other entity that is vending food and/or beverages to the public. The term does not include the owner of a vehicle or trailer loaned to a nonprofit corporation, school or government agency for purposes of fundraising or charitable activities.

**State Rules:** the Texas Food Establishment Regulations found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 175.

**Temporary Food Establishment:** a restaurant, café, cafeteria or similar establishment, the primary purpose of which is to sell food and meals to the public, and that operates in the City three (3) consecutive days or less.

## SECTION 3. REGULATIONS

### 3.1 Adoption of Regulations

The City adopts by reference the provisions of the Texas Food Establishment Regulations of the Texas Board of Health with are found in 25 Texas Administrative Code, Chapter 229,

Sections 161 through 175 regarding the regulation of food establishments in this jurisdiction, as such rules currently exist, and as they are amended from time to time.

### **3.2 Permits & Exemptions**

**3.2.1 Permits Required:** No person may not operate a food establishment without a permit issued by the City. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this chapter. A valid permit must be posted in or on every food establishment regulated by this Chapter. This section does not apply to food establishments that operate under a valid permit issued by Hays/Caldwell Counties.

**3.2.2. NONPROFITS:** A temporary food establishment operated solely by a nonprofit corporation, school or government agency is exempt from the permitting requirements of this Chapter, but is not exempt from compliance with state rules. The City may require any information necessary to determine whether and organization is nonprofit for purposes of this exemption. City Health Inspector is authorized to inspect nonprofit food establishments for compliance with City and state rules. Such inspections are informational and educational purposes only, and shall not result in code enforcement actions.

### **3.3 Application for Permit, Fees, & Inspections**

**3.3.1** Any person operating under a valid permit issued by Hayes County on January 1, 2015, may continue without a City permit.

**3.3.2** Any person whose previously issued permit has expired, or who seeks to operate a food establishment must make a written application for a permit on forms provided by the City. 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 required may result in denial or revocation of the permit. Renewals of permits are required may result in denial or revocation of the permit. Renewals is required for a renewal permit as for an initial permit.

**3.3.3** Except for a food establishment that was in existence and was in operation prior to the effective date of this Chapter, prior to the approval of an initial permit for a food establishment, an authorized agent or employee shall inspect the 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.

**3.3.4** The fee for a permit shall be set by the City Council, in accordance with the City's Fee Schedule Ordinance.

**3.3.5** By acceptance of a permit, the permittee agrees to permit unannounced annual or periodic inspections for compliance with the State Rules by an authorized agent or employee.

### **3.4 CERTIFIED FOOD MANAGER**

**3.4.1** Each commercial, permanently located food establishment in the City shall employ at least one Certified Food Manager, certified pursuant to an accredited program under the state rules.

**3.4.2** A bed and breakfast establishment that serves food to its guests must employ at least one Certified Food Manager, certified pursuant to an accredited program under the state rules.

**3.4.3** All individuals who work in or are employed by a Food Establishment shall take a Food Handlers Class and pass a written examination. All employees are required to carry their Food Handlers Certificate card and present it to the Health Inspector upon request.

**3.4.4** The City Health Inspector shall have the authority to perform inspections in accordance with state law. Any inspection with a result of 30 or more demerits will require a re-inspection.

### **3.5. Review of Plans**

**3.5.1** 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 City for review before work is begun. Extensive remodeling means that twenty percent (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 City if they meet the requirements of the state rules or other applicable ordinance of the City. The approved plans and specifications will result in a permit denial, suspension or revocation.

### **3.6 Suspension of Permit**

**3.6.1** The City may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes and imminent hazard to public health or if an authorized agent or employee informs the City that the food establishment is non-compliant with the State Rules and that its permit should be suspended. Suspension is effective upon service of the notice required by this section. 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.

**3.6.2** Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permits 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 City by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten days, the suspension is sustained. The City may end the suspension at any time if reasons for suspension no longer exist.



**3.6.3** The hearing, which shall be administrative in nature, shall be conducted before the Municipal Court Judge. The City may be represented at the hearing by the City Health Inspector, City Attorney, or Municipal Court Prosecutor. The hearing shall not be bound by Texas Rules of Evidence or Texas Code of Criminal Procedure.

### **3.7 Revocation of Permit**

**3.7.1** The City 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 authorized agent or employee conducting an inspection of the food establishment or otherwise performing his or her duties. Prior to revocation, the City 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 (10) day period.

**3.7.2** If no request for hearing is file within the ten (10) day period, the revocation of the permit becomes final.

### **3.8 Administrative Process**

**3.8.1** 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 City.

**3.8.2** The hearings provided for in these rules shall be conducted by the City at a time and place designated by it. Based upon the evidence presented at such hearing, the City 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 City

### **3.9 Inspector**

The City Council is hereby authorized to obtain the services of a trained food establishment inspector. Said inspector shall have those duties and authority established by this Chapter, and those other duties as may be assigned by the City Administrator.

### **3.10 Inspections**

**3.10.1** The City Health Inspector shall have the authority to perform inspections in accordance with state law.

**3.10.2** As an express condition of receiving a permit from the City, the Applicant consents to inspections by the City.

### 3.11 Violation Notices

3.11.1 The City Health Inspector has the authority to issue Violation Notices.

3.11.2 Violation Notices issued under this Chapter may be prosecuted in Municipal Court.

*County Court.*

## SECTION 4. ENFORCEMENT

### 4.1 Civil & Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Chapter as may be required by governing law. Any person violating any provision of this Chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Chapter is hereby declared to be a nuisance.

### 4.2 Criminal Prosecution

Any person violating any provision of this Chapter shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2000.00). Each day that a provision of this Chapter is violated shall constitute a separate offense. An offense under this Chapter is a misdemeanor.

### 4.3 Civil Remedies

Nothing in the Chapter shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following:

- (a.) Injunctive relief to prevent specific conduct that violates the Chapter or to require specific conduct that is necessary for compliance with the Chapter; and
- (b.) A civil penalty up to one thousand dollars (\$1000.00) a day when it is shown that the defendant was actually notified of the provisions of the Chapter and after receiving notice committed acts in violation of the Chapter or failed to take action necessary for compliance with Chapter, and other available relief.

### **FEE SCHEDULE:**

Local Distributor's License	\$37.50
Manufacture's License 1 <sup>st</sup> Establishment	\$375.00

2 <sup>nd</sup> Establishment	\$750.00
3 <sup>rd</sup> , 4 <sup>th</sup> , and 5 <sup>th</sup> Establishment	\$2,137.50
Excess of 5 Establishments	\$4,200.00
Manufacturer's Warehouse License	\$150.00
Brewpub License	\$250.00
Beer Retailer's Off Premise License	\$30.00
Beer Retailer's On Premise License	\$75.00
Retail Dealer's On Premise Late Hour License	\$125.00
Wine and Beer Retailer Permit	\$87.50
Wine and Beer Retailer Off Premise Permit	\$30.00

## SECTION 11. FOOD ESTABLISHMENTS

<u>Number of Employees</u>	<u>Fee*</u>
1-15	\$200.00
16-30	\$300.00
31+	\$400.00

\*If application filed after June 1<sup>st</sup> only one-half (1/2) of the application fee is due.

**Food Establishment Compliance Inspection fee:** \$125.00

**Food Establishment Compliance Re-inspection Fee:** Each additional inspection increased by \$25.00 and is cumulative (ex: 1<sup>st</sup> inspection \$125.00, 2<sup>nd</sup> inspection \$150.00 and 3<sup>rd</sup> inspection \$175.00 etc.).

### **Child/Adult Care, Church and School Establishment Inspection Fees:**

<b>Licensed Number of Children</b>	<b>Fee Without Food Preparation</b>	<b>Fee With Food Preparation*</b>
13-40	\$150.00	\$350.00