

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 02-32

AN ORDINANCE ADOPTING THE RULES OF THE TEXAS BOARD OF HEALTH, TITLE 25 TEXAS ADMINISTRATIVE CODE, CHAPTER 229, SECTIONS 161 THROUGH 171 AND 173 THROUGH 175, PRESCRIBING REGULATIONS AS AMENDED GOVERNING FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD UNITS AND TEMPORARY FOOD ESTABLISHMENTS IN PROSPER; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the Town of Prosper, Texas ("Prosper") to adopt the Texas Food Establishment Rules adopted by the Texas Board of Health in Title 25 Texas Administrative Code, Chapter 229, 161-171 and 173 -175, as amended herein, for the purpose of establishing comprehensive regulations for food, food establishments, mobile units and temporary food establishments in Prosper as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: FINDINGS INCORPORATED. The findings set forth above is incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: PURPOSE. The purpose of these rules is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

SECTION 3: ADOPTION OF THE TEXAS FOOD ESTABLISHMENT RULES, TITLE 25 TEXAS ADMINISTRATIVE CODES, CHAPTER 229, SECTIONS 161-171 AND 173 -175. Prosper adopts the amendments to the Texas Board of Health, Title 25 Texas Administrative Code, Chapter 229, Sections 161 -171 and 173 -175, as amended, which establishes regulations regarding food, food establishments, mobile food units and temporary food establishments, save and except the amendments set forth below ("The Texas Food Establishment Rules"). The Texas Food Establishment Rules, save and except the amendments set forth below are made a part of this Ordinance as if fully set forth herein. Copies of the Texas Food Establishment Rules are on file in the office of the Town Secretary of Prosper being marked and designated as the Texas Food Establishment Rules, published by the Texas Board of Health Bureau of Food and Drug Safety (Retail Foods Division). Prosper amends the Texas Food Establishment Rules as follows:

DEFINITIONS

Section 229.162 is amended to include the following: The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

- ADDITIVE** - means a substance that affects the characteristics of any food as specified in the Texas Health and Safety Code, Chapter 431, Subchapter 431.002(6), as amended.
- ADULTERATED (FOOD)** - means the condition of a food: (a) if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; (b) if it bears or contains any "added" poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established; (c) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; (d) if it has been processed, prepared, packed, or held under unsanitary conditions whereby it may have been rendered injurious to health; (e) if it is in whole or part of the produce of a diseased animal, or an animal which has died otherwise than by slaughter; (f) if its container is composed in whole or part of any poisonous or deleterious substance which may render the contents injurious to health.
- CLOSED** - means fitted together snugly leaving no openings large enough to permit the entrance of vermin.
- DEPARTMENT** - means the Texas Department of Health.
- DRINKING WATER** - means water that meets 30 TAC Chapter 290.101- 290.121, as amended, relating to (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems). The term is traditionally known as "potable water" and includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water", "mop water", "rainwater", "wastewater", and "non-drinking" water.
- DRY STORAGE AREA** - means a room or area designed for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.
- FOOD ESTABLISHMENT** - means a food service establishment, a retail food store, a mobile food unit, and/or an itinerant vendor.
- FOOD PROCESSING ESTABLISHMENT** - means a bakery, candy factory, cannery, packing house, meat market, ice cream plant, fish market, ice house, cold storage warehouse, produce house and any other commercial establishment in which food is processed or otherwise prepared and packaged for human consumption.
- MISBRANDED** - means the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable state or local labeling requirement.
- PROSPER or the TOWN OF PROSPER** - means the Town of Prosper, Texas.

REGULATORY AUTHORITY - means the Registered Sanitarian of Prosper or other designee having jurisdiction over food establishments.

SAFE TEMPERATURES - as applied to potentially hazardous food, means temperatures of 41 degrees Fahrenheit, or below, and 140 degrees Fahrenheit, or above.

STATE RULES - means the state rules found in Title 25 Texas Administrative Code, Chapter 229, and Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

WHOLESOME - means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

MANAGEMENT AND PERSONNEL

Section 229.163 (a) is amended as follows:

- (a) Responsibility, assignment. The permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation. There shall also be one (1) person on duty during all hours of operation that has completed a course to become a Certified Food Protection Manager as defined and accredited by the Texas Department of Health.

WATER, PLUMBING AND WASTE

Section 229.166 is amended as follows:

- (g) Plumbing, numbers and capacities.

Hand washing lavatory. At least one (1) hand washing lavatory, a number of hand washing lavatories necessary for their convenient use by employees in areas specified under subsection (h)(1) of this section, and not fewer than the number of hand washing lavatories required by the Plumbing Code with all amendments currently adopted by Prosper is required. Additional lavatories may be required by state law or by the plumbing code as adopted by Prosper.

Toilets and urinals. At least one (1) toilet and not fewer than the number of toilets required by the Plumbing Code with all amendments adopted by Prosper shall be provided for employee use.

- (j) Sewage retention, drainage, and delivery.

- (3) Grease trap, Grease interceptor.

- (A) When used, grease trap or grease interceptor shall be located to be easily accessible for cleaning. The Regulatory Authority must approve location. It shall be sized according to the Plumbing Code with all amendments adopted by Prosper and must be approved by the Regulatory Authority who has jurisdiction.
- (1) Storage facilities on the premises.
 - (2) Outdoor storage surface. An outdoors storage surface for refuses, recyclables, and returnables shall be constructed of concrete and shall be smooth, durable, and sloped to drain.
 - (3) Outdoor enclosure. If used, an outdoors enclosure for refuse, recyclables, and returnable shall be constructed of durable and cleanable materials and shall be approved by the Regulatory Authority. A dumpster enclosure shall be constructed of one hundred (100) percent masonry.
 - (6) Outside receptacles.
 - (A) Receptacles and waste handling units for refuse, recyclables, and returnable used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers and be within an enclosure, approved by the Regulatory Authority, as to shield from public view.
 - (11) Storing refuse, recyclables, and returnable. Refuse, recyclables, and returnable shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents and they shall be shielded from public view by an enclosure approved by the Regulatory Authority.
 - (13) Outside storage prohibitions.
 - (B) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is shielded from public view by an enclosure approved by the Regulatory Authority.

PHYSICAL FACILITIESSection 229.167 is amended as follows:

- (b) Outdoor areas, surface characteristics.
 - (1) Walking and driving areas. The outdoor walking and driving areas shall be surfaced with concrete / asphalt.
- (c) Floors, walls, and ceilings.
 - (6) Wall and ceiling coverings and coatings.
 - (B) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface and be re-sealed for maintenance in a timely manner. Ceiling construction in all areas except dry storage shall be nonabsorbent.
 - (9) Floor construction.
 - (A) Floors and floor coverings of all food preparation and utensil-washing areas, and the floors of all walk-in refrigeration units, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth durable material such as terrazzo, ceramic, quarry tile, or other surface approved by the Regulatory Authority, and shall be maintained in good repair. Sealed concrete or durable grades of sheet vinyl may be used in dry storage areas and shall be maintained in good repair. Nothing in this rule shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.
 - (B) Prohibited floor covering. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.
 - (C) Floor drains. Properly installed, trapped floor drains shall be provided in floors, that are water flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used.

Properly trapped floor drains are required in all restrooms and in food preparation areas. Such floors shall be constructed of terrazzo, ceramic tile, quarry tile or similar materials, and shall be graded to drain.

- (e) Hand washing lavatories.
 - (2) Hand washing cleanser, availability. Each hand washing lavatory or group of two (2) adjacent lavatories shall be provided with a supply of hand cleaning liquid or powder dispensed through a wall unit or pump. No bar soap shall be allowed.
- (k) Hand washing lavatories, conveniently located. Hand washing lavatories shall be conveniently located as specified under Section 229.166 (h)(1) of this title or as mandated by the Regulatory Authority.

MOBILE FOOD ESTABLISHMENTS

Section 229.169 is amended as follows:

- (6) Sewage, other liquid waste, and rainwater.
 - (F) Removing mobile food establishment wastes. Sewage and other liquid wastes shall be removed from a mobile food establishment at a waste servicing area, approved by the Regulatory Authority, or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.
- (b) Central preparation facility.
 - (1) Supplies, cleaning, and servicing operations. Mobile food establishments shall operate from a central preparation facility or other fixed food establishment and shall report to such location for supplies and for cleaning and servicing operations. Proof of such agreement, such as a commissary letter, with a central facility shall be in writing and shall be kept on file and updated as necessary or as the Regulatory Authority deems necessary. The central preparation facility shall be inspected for compliance by the regulatory authority having jurisdiction at the location of this said commissary and shall make available upon request any inspection form.
- (c) Servicing area and operations.

- (1) Protection.
 - (C) This servicing area will also be required where only packaged food is placed on the mobile food establishment and also where mobile food establishments do not contain waste retention tanks.
 - (D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete, and shall be maintained in good repair, kept clean, and be graded to drain.
- (2) Construction exemption. The construction of the walls and ceilings of the servicing areas will only be exempted from the provisions of Section 229.167 (c)(1) of this title (relating to Physical Facilities) as the Regulatory Authority approves.

TEMPORARY FOOD ESTABLISHMENTS

Section 229.170 is amended as follows:

- (i). Hand-washing. Hand wash facilities with water, soap and individual disposable towels shall be provided for employee hand washing. The Regulatory Authority may mandate hand sanitizer and/or a hand dip station for hand sanitizing. The hand wash facility may consist of a container of water with spigot and catch pan or two separate basins, one for washing and one for rinsing. When food exposure is limited and hand wash facilities are not available, the Regulatory Authority may permit the use of chemically treated towelettes for hand washing.

COMPLIANCE AND ENFORCEMENT

Section 229.171 is amended as follows:

- (c) Variances.
 - (1) Modifications and waivers. The Prosper Regulatory Authority may grant a variance by modifying or waiving the requirements of these rules if in its opinion a health hazard or nuisance will not result from the variance. If a variance is granted, the Department shall retain the information specified in paragraph (2) of this subsection in its records for the food establishment.
- (h) Inspection frequency, performance-based and risk-based. The Regulatory Authority, as approved by Prosper, will inspect each food

establishment at least once every six (6) months. The Regulatory Authority may inspect a food establishment more often. Inspection frequency shall be prioritized based upon assessment of a food establishment's history of compliance with these rules and the potential for causing food borne illness by evaluating:

- (1) past performance for noncompliance with these rules, including Hazard Analysis Critical Control Point (HACCP) plan requirements, that is critical;
 - (2) past performance for numerous or repeat violations of these rules, including HACCP plan requirements, that are non-critical;
 - (3) the hazards associated with the particular foods that are prepared, stored, or served;
 - (4) the type of operation including the methods and extent of food storage, preparation, and service;
 - (5) the number of people served; and
 - (6) any other risk factor deemed relevant to the operation by the Regulatory Authority.
- (l) Critical violations, time frame for corrections.
 - (2) Verification and documentation of correction.
- (C) When total cumulative demerit value of an establishment exceeds thirty (30) demerits, the establishment shall initiate immediate corrective action on all identified critical violations, as determined by the Regulatory Authority, and shall initiate corrective action on all other violations within forty-eight (48) hours unless otherwise specified on the health inspection form. One (1) or more re-inspections, at a fee of \$50.00 each, shall be conducted at reasonable time intervals to assure correction. The \$50.00 reinspection fee shall be paid before reinspection occurs.
- (o) Investigation and control.

- (1) Obtaining information: personal history of illness, medical examination, and specimen analysis. The Regulatory Authority shall act when it has reasonable cause to believe that a food employee has a possibly transmittable disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection by requiring the employee to undergo appropriate medical examinations, including but not limited to collection of specimens for laboratory analysis. Laboratory analysis, examinations by a physician, transportation, costs and any other associated costs shall be the responsibility of the employee or business suspected.

SECTION 4: REVIEW 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 before work is begun. A plan review fee of \$100.00 must be paid at time of application. Extensive remodeling means that twenty (20) percent 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, electrical and plumbing plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Regulatory Authority will approve the plans and specifications if they meet the requirements of the rules adopted by this Ordinance as amended. The approved plans and specifications must be followed in construction, remodeling and/or conversion.

Failure to follow the approved plans and specifications will result in a permit denial, suspension or revocation of a permit.

Additional plan review required by changes, additions, or revisions to approved plans, will be assessed a plan review fee at the rate of \$50.00 per hour, with a minimum charge of one (1) hour.

SECTION 5: FEES. Any person or entity 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 required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis, except where otherwise stated, and the same information is required for a renewal permit as required for the initial permit.

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 this Ordinance. A food establishment that does not comply with this Ordinance will be denied a permit or the renewal of a permit.

The following fee schedule applies to permits issued under this Ordinance:

TYPE FEE, AMOUNT, DURATION, Restaurant 350.00 One (1) year /
 Convenience 150.00 One (1) year / Daycare 150.00 One (1) year / Grocery
 500.00 One (1) year / Mobile - Hot 300.00 One (1) year / Mobile - Cold
 200.00 One (1) year / Temporary 50.00 Fourteen (14) day max / Concession
 50.00 Seasonal / School Cafeteria No charge if operated by the School
 District. If operated by contractor 200.00. In either case a, One (1) year permit
 must be obtained.

SECTION 6: SUSPENSION OF PERMIT. 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 notice. A food establishment inspection report may serve as notice. 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 ten (10) days of suspension.

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 until compliance with this Ordinance is met. A re-inspection will be made by the Regulatory Authority to ensure compliance. The request for a re-inspection must be made to the Regulatory Authority and a re-inspection fee of \$50.00 shall be paid before the inspection is performed. The Regulatory Authority may end the suspension at any time if reasons for suspension no longer exist.

SECTION 7: REVOCATION OF PERMIT. The Regulatory Authority may, after providing an opportunity for a hearing, revoke a permit for serious and/or repeated violations of any of the requirements of this Ordinance and/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.

If no request for hearing is filed within the ten (10) day period, the revocation of the Permit becomes final.

SECTION 8: ADMINISTRATIVE PROCESS. A notice, as required by this Ordinance, 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.

The Regulatory Authority shall conduct the hearings provided for in these rules 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. The Regulatory Authority shall furnish a written report of the hearing decision to the holder of the permit.

SECTION 9: APPEAL. All appeals from final suspension or revocation of a health permit shall be made in writing to Prosper's Town Administrator or his/her designee. The appeal shall be filed in writing within ten (10) days of the occurrence of the suspension or revocation. The Town Administrator or his/her designee shall attempt to hear the appeal within (30) days after notice of the appeal. The Town Administrator shall have the power to reverse a decision of the Regulatory Authority where he/she finds that such a reversal will not affect the health and/or welfare of the public. All decisions of the Town Administrator or his/her designee shall be subject to review by the Town Council at one of its regularly scheduled meetings. The decision of the Town Administrator or his/her designee will be final unless reversed by the Town Council. The Town Council's failure to take action upon any such appeal shall constitute approval of the decision by the Town Administrator or his/her designee.

SECTION 10: PENALTY PROVISION. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies to it pursuant to local, state and federal law.

SECTION 11: SAVINGS / REPEALING CLAUSE. All provisions of any ordinance in conflict with this Ordinance are hereby repealed; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 12: SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase hereof irrespective of the fact that

any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 13: EFFECTIVE DATE. This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, on this 10th day of September, 2002.



JIM DUNMIRE, Mayor

ATTESTED TO AND CORRECTLY RECORDED BY:



JENNIFER D. FINLEY Town Administrator



APPROVED AS TO FORM:



ABERNATHY, ROEDER, BOYD &
JOPLIN, P.C., Town Attorneys
RICHARD M. ABERNATHY

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