

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 6, "HEALTH AND SANITATION," OF THE TOWN'S CODE OF ORDINANCES BY REPEALING EXISTING ARTICLE 6.04, "FOOD ESTABLISHMENTS AND MOBILE FOOD UNITS," AND REPLACING IT WITH A NEW ARTICLE 6.04, "FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND TEMPORARY FOOD ESTABLISHMENTS"; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING A PENALTY FOR VIOLATION; PROVIDING FOR AN EFFECTIVE DATE; 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 Article 6.04, "Food Establishments and Mobile Food Units," of Chapter 6, "Health and Sanitation" of the Town's Code of Ordinance should be revised; and

**WHEREAS**, the Town Council hereby finds and determines that it will be advantageous, beneficial and in the best interests of the citizens of the Town to adopt the rules entitled "Texas Food Establishments," 25 Texas Administrative Code, Chapter 228, as amended.

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

**SECTION 1**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 2**

From and after the effective date of this Ordinance, existing Article 6.04, "Food Establishments, and Mobile Food Units," of Chapter 6, "Health and Sanitation," of the Town's Code of Ordinances is hereby repealed in its entirety and replaced with a new Article 6.04, "Food, Food Establishments, Mobile Food Units, and Temporary Food Establishments," to read as follows:

**"ARTICLE 6.04 FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND TEMPORARY FOOD ESTABLISHMENTS"**

**Sec. 6.04.001 Purpose**

The purpose of this Article is to protect the public health by establishing uniform requirements for food, food establishments, mobile food units, and temporary food establishments.

**Sec. 6.04.002 Adoption and amendments of State Health Rules**

The Texas Food Establishment Rules ("Rules"), contained in Chapter 228 of the Texas Administrative Code, Title 25, as adopted by the Texas Board of Health in October, 2015, and as they may be modified by the Texas Board of Health from time to time, are hereby adopted, except as amended, modified, and deleted by this Article, as the minimum standards for food, food establishments, mobile food establishments, and temporary food establishments within the

corporate town limits of the Town of Prosper, Texas; provided, however, that in said rules the words "municipality of \_\_\_\_\_" shall be understood to refer to the Town of Prosper. A copy of the Texas Food Establishment Rules hereby adopted shall be on file in the office of the Town Secretary. The Town amends the rules as follows:

Section 228.2, "Definitions," of the Rules is amended to include the following:

Food establishment is amended to include the terms, "mobile food establishments" and "temporary food establishments" as a "food establishment."

Prosper, the Town, or the Town of Prosper means the Town of Prosper, Texas.

Regulatory authority means the registered Sanitarian of the Town of Prosper or other designee having jurisdiction over food establishments.

#### **Sec. 6.04.003 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. A plan review fee as established in appendix A to this code, as it exists or may be amended must be paid at time of application. 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, 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 article as amended. The approved plans and specifications must be followed in construction, remodeling and/or conversion.

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

(c) Additional plan review required by changes, additions, or revisions to approved plans, will be assessed a plan review fee as established in appendix A to this code, as it exists or may be amended.

#### **Sec. 6.04.004 Fees**

The fees are established in appendix A to this code, as it exists or may be amended.

#### **Sec. 6.04.005 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 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.

(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 until compliance with this article is met. A reinspection will be made by the regulatory authority to ensure compliance. The request for a reinspection must be made to the regulatory authority and a reinspection fee as established in appendix A to this code, as it exists or may be amended shall be paid to the town before the inspection is performed. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

**Sec. 6.04.006            Revocation of permit**

(a) 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 article 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-day period.

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

**Sec. 6.04.007            Administrative process**

(a) A notice, as required by 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.

(b) 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.

**Sec. 6.04.008            Appeal**

All appeals from final suspension or revocation of a health permit shall be made in writing to the town manager 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 manager or his/her designee shall attempt to hear the appeal within (30) days after notice of the appeal. The town manager or his/her designee 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 manager 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 manager 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 manager or his/her designee.

**Sec. 6.04.009 Penalty for violation**

Any person, firm, corporation or business entity violating this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined as provided in section 1.01.009 of this code. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the town from filing suit to enjoin the violation. The town retains all legal rights and remedies to it pursuant to local, state and federal law."

**SECTION 3**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; 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 portion of conflicting ordinances shall remain in full force and effect.

**SECTION 4**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

**SECTION 5**

This Ordinance shall become effective after its passage and publication, as required by law.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 14TH DAY OF NOVEMBER, 2017.**



ATTEST:

  
Robyn Battle, Town Secretary

APPROVED:

  
Ray Smith, Mayor

APPROVED AS TO FORM AND LEGALITY:

  
Terrence S. Welch, Town Attorney