

ORDINANCE NO. 4149

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 8 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, BY PROVIDING CERTAIN AMENDMENTS AND DELETIONS UNDER SECTION 8-546 PERTAINING TO THE TEXAS FOOD ESTABLISHMENT RULES; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1: That Chapter 8 of the Code of the City of Mesquite, Texas, is hereby amended by providing certain additions and deletions under Section 8-546 to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

**Sec. 8-546. Amendments and deletions of the Texas Food Establishment Rules.**

The Texas Food Establishment Rules are amended and changed in the following respects:

- (1) *Section 229.162(40)(B).* Amend by deleting the section in its entirety and adding a new Section 229.162(40)(B) to read as follows:

The term includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary or permanent facility or locations; group residence; outfitter operations; bed and breakfast operations; produce stands and food processing plants.

- (2) *Section 229.162(40)(C).* Amend by deleting the section in its entirety and adding a new Section 229.162(40)(C) to read as follows:

The term does not include: a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization bake sale; a private home or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and Welfare Publication No. (FDA) 78-2091.

- (3) *Section 229.162(79).* Amend by adding a sentence at the end of the paragraph in Section 229.162(79) to read as follows:

Street vending operations utilizing pushcarts will not be permitted in the City.

- (4) *Section 229.162(40)(B)(ii)*. Amend by adding a sentence at the end of the paragraph in Section 229.162(40)(B)(ii) to read as follows:

Roadside vendors, unless meeting the definition and requirements of catering trucks, will not be permitted in the City.

- (5) *Sections 229.162(101) – 229.162(128)*. Amend by renumbering the sections to Sections 229.162(116) – 229.162(142) and by adding a new Section 229.162(143) to read as follows:

(143) FARMERS MARKET shall mean a common facility open to the public and operated by a governmental agency, a nonprofit entity, or one or more producers that gather on a regular or recurring basis to sell a variety of farm products and value-added farm products directly to consumers, subject to the food establishment rules of this Code.

- (6) *Sections 8-546(8) – 8-546(11)*. Amend by renumbering the sections in the Code of the City of Mesquite, Texas, to Sections 8-546(6) – 8-546(9).

- (10) *Section 229.164(j)(3)(B)*. Amend by deleting the section in its entirety and adding a new Section 229.164(j)(3)(B) to read as follows:

Ice for consumer use shall be dispensed only by employees with scoops, tongs or other ice dispensing utensils or through automatic service, ice-dispensing equipment. Ice dispensing utensils shall be stored on a clean surface out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap.

- (11) *Section 229.164(o)(1)*. Amend by deleting the section in its entirety and adding a new Section 229.164(o)(1) to read as follows:

*Frozen food*. Stored frozen foods shall be maintained frozen at a temperature of 0° F – minus 18° (0 degrees Fahrenheit – minus 18 degrees Celsius).

- (12) *Section 229.165(g)(2)*. Amend by adding the following at the end of the paragraph in Section 229.165(g)(2):

Mechanical dishwashing machines shall be used if reusable tableware is provided for customers. Chemicals added for sanitization purposes shall be automatically dispensed.

- (13) *Sections 8-546(15) - 8-546(21)*. Amend by renumbering the sections in the Code of the City of Mesquite, Texas, to Sections 8-546(13) – 8-546(19).

- (20) *Section 229.166(e)(1)*. Amend by adding the following at the end of the paragraph in Section 229.166(e)(1) to read as follows:

*Food preparation areas.* Freestanding handwash lavatories shall be required and conveniently located in the food preparation, service and utensil washing areas. A free-standing, stainless steel, three-compartment sink with basins large enough to allow immersion of the largest utensil shall be installed in the dishwash area if all kitchen utensils cannot be sanitized in the commercial dishwasher. A free-standing, stainless steel, four-compartment sink shall be required in bar areas if all glassware is not sanitized in a commercial dishwasher.

- (21) *Sections 8-546(24) – 8-546(29)*. Amend by renumbering the sections in the Code of the City of Mesquite, Texas, to Sections 8-546(21) – 8-546(26).

- (27) *Sections 229.171(f)(3) and 229.171(f)(8)*. Amend by deleting the sections in their entirety and adding new Sections 229.171(f)(3) and 229.171(f)(8) to read as follows:

3. *Permit fees.*

a. Permanent, fixed food service establishments:

1-9 Employees	-	\$250.00/year
10-19 Employees	-	\$300.00/year
Over 19 Employees	-	\$350.00/year

b. Temporary permits for temporary food service establishments - \$75/event

c. Concession facilities - \$100.00/season

d. Day care centers - \$200.00/year

e. Bed and breakfast facilities:

Limited	-	\$200.00/year
Extended	-	\$250.00/year
Food establishment	-	\$300.00/year

f. Mall kiosk - \$100.00/period

g. Mobile Units (Catering, ice cream trucks and itinerant vendors - \$200

h. Incidental Sales - \$100.00/year

i. Farmers Markets - \$10/single event  
\$100/season not exceeding eight months  
\$250/year if in a permanent facility

No fee shall be charged to any food establishment owned and operated by a governmental agency, independent school district or non-profit institution with an EIN (Employer Identification Number) and/or a 501(c)3 number from the IRS (Internal Revenue Service); however, such establishment shall comply with all other requirements of this ordinance.

8. *Revocation of permits.* For serious or repeated violations of any of the requirements of this ordinance, including but not limited to two scores below 70 during any 12 consecutive month period, or for interference with the health official in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the health official. Prior to such action, the health official shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five days following service of such notice, unless a request for a hearing is filed with the health official by the permit holder within such five-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(28) *Sections 8-546(31) – 8-546(33).* Amend by renumbering the sections in the Code of the City of Mesquite, Texas, to Sections 8-546(28) – 8-546(30).

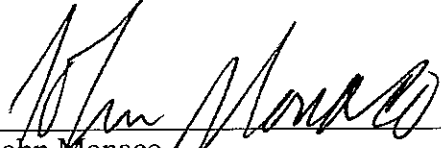
SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

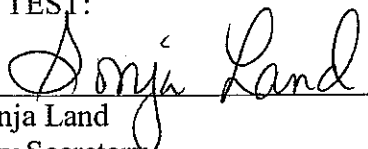
SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

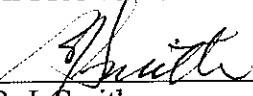
SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense.

SECTION 5. That the present ordinances of the City of Mesquite are inadequate to provide for the proper regulation of food service establishments creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,  
on the 2nd day of May, 2011.

  
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John Monaco  
Mayor

ATTEST:  
  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:  
  
\_\_\_\_\_  
B. J. Smith  
City Attorney