



ORDINANCE NO 653-2018-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS, ORDERING THE AMENDMENT OF CHAPTER 10, BUSINESSES AND BUSINESS REGULATIONS, ARTICLE V. FOOD ESTABLISHMENTS OF THE CITY OF VENUS CODE OF ORDINANCES TO INCLUDE A PROCESS FOR THE INSPECTION AND PERMITTING OF FOOD ESTABLISHMENTS TO PROMOTE THE SAFETY OF FOOD IN CITY FOOD ESTABLISHMENTS, CONFIRMING TEXAS OPEN MEETINGS ACT COMPLIANCE, PROVIDING A SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE, PROVIDING A PUBLICATION CLAUSE, PROVIDING AN EFFECTIVE DATE, AND PROVIDING A CERTIFICATION OF ADOPTION.

WHEREAS, the City of Venus, Texas (“City”), is a Type A general law city operating pursuant to the laws of the State of Texas, by and through its duly elected council members;

WHEREAS, the City is authorized and empowered to adopt and enforce ordinances, not inconsistent with state law, that are necessary to protect the welfare and safety of its inhabitants (TEXAS LOCAL GOVERNMENT CODE § 51.012);

WHEREAS, the City Council (“Council”) of the City serves as the elected governing body; directly responsible for the promotion and protection of the public health and safety of its citizens and inhabitants;

WHEREAS, the city is experiencing rapid growth, particularly in the food service industry, with restaurants, food vendors, etc. opening for business monthly;

WHEREAS, the city has not before regulated food preparation, food safety, and food service in the city;

WHEREAS, the City has a duty to protect its citizens and visitors, assuring all food consumed at retail and other food service locations is safe and healthy to eat;

WHEREAS, city staff have done a comprehensive review of other ordinances and permit/inspection processes of other cities to develop this ordinance;

WHEREAS, Council finds the city staff's approach is fair, effective and the best approach to ensuring food safety in the city; and

WHEREAS, the ordinances of the City are codified together in the CITY OF VENUS CODE OF ORDINANCES, hosted and managed by Municode.com as authorized and directed by TEXAS LOCAL GOVERNMENT CODE Section 53.001 and as such any new ordinance or regulation adopted should be included and codified in the Code to promote public awareness and to provide an easy way for citizens to learn of this new ordinance.

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

SECTION A. CHAPTER 10 AMENDMENT

Chapter 10 – Businesses and Business Regulations, Article V. Food Establishments of the CITY OF VENUS CODE OF ORDINANCES is hereby amended to add new sections as follows:

Sec. 10-163. – 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 means the employees or contractors working at the direction of the regulatory authority.

City means the City of Venus, Texas.

Food establishment means:

- (1) A food service establishment, a retail food store, a temporary food establishment, a mobile food unit, food truck and/or a roadside food vendor;
- (2) An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as a restaurant, satellite or catered feeding location, catering operation, if the operation provides food directly or indirectly to people for consumption;
- (3) A market, vending location, conveyance used to transport people, institution, or food bank/pantry.
- (4) The transportation vehicle or central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

- (5) An operation that is conducted in a mobile, stationary, temporary or permanent facility or location where the consumption of food takes place on or off premises, regardless of whether there is a charge for the food served. This includes pop-up restaurants located in a temporary location.

Regulatory authority means the City of Venus, Texas, its staff and professional contractors working at its direction.

State rules means the state rules found in 25 TEXAS ADMINISTRATIVE CODE Chapter 228. These rules are commonly known as the “Texas Food Establishment Rules.”

Sec. 10-164. – Grease traps.

- (a) All food establishments, including school and prison cafeterias, must be equipped with a grease trap. A plumbing permit must be obtained by a licensed plumber prior to installation of a grease trap. Grease traps will be installed and sized in accordance with currently adopted plumbing code. The standard size grease trap for most food establishments will be a 1,000-gallon trap. However, the minimum grease trap allowed for smaller operations will be a 50-pound trap.
- (b) Grease traps installed in food establishments shall be located outside of the establishment unless approved in writing by the city. A grease trap may not be installed in any part of a building where food is handled. Grease traps shall be located to be easily accessible for cleaning.
- (c) All grease trap waste shall be pumped and removed and its tanks thoroughly cleaned at least once every three months. Any deviation from this schedule must be granted in writing from the city. The city may require additional plumbing, increase the frequency of cleansings or require immediate pumping of a grease trap if it deems it necessary in order to prevent grease from entering the city's sanitary sewer system. Any establishment which utilizes microorganisms in any grease trap within the city will still be required to comply with the plumbing schedule.
- (d) All grease waste must be transported by a grease hauler licensed by the Texas Natural Resource Conservation Commission (TNRCC). The grease hauler is responsible for proper disposal of grease waste in an approved permitted site. It is the responsibility of the grease hauler to forward a copy of each waste trip ticket to the city.
- (e) Exceptions. Mobile food vendors, roadside vendors, temporary food establishments, day care centers, churches, and concession stands are exempt from the requirement of grease traps. The city may grant other exceptions based upon food operations.

Sec. 10-165. – Backflow prevention and cross connection control.

All food establishments must comply with Chapter 32, Utilities, Article V. Backflow and Cross Connection Control Program of this code in regard to plumbing and backflow prevention/cross-connections as well as any applicable adopted plumbing code and state law.

Sec. 10-166. – Permit required.

A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferrable from one person or entity to another or from one location to another location, except as otherwise permitted by this article. A valid permit must be visibly posted in or on every food establishment regulated by this article.

Sec. 10-167. – 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 required 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) Fees for permits issued under this article shall be set by city council and included in the master fee schedule.

Sec. 10-168. – 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 twenty (20) percent or greater of the area of the food establishment is to be remodeled or when equipment required by the rules is to be relocated or removed. 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.
- (c) Fees for the review of plans shall be issued by the regulatory authority, set by city council and included in the master fee schedule.

Sec. 10-169. – Inspections.

- (a) Before a permit is issued, the city or its authorized representative shall inspect and approve the food establishment. An inspection of a food establishment shall be performed at least two times annually and shall be prioritized based upon assessment of a food establishment's compliance and potential of causing food-borne illness according to TEXAS ADMINISTRATIVE CODE, Title 24, Part 1, Chapter 228, Rule § 228.249.
- (b) Refusal of an owner, manager or employee to allow the authorized representative of the regulatory authority, upon presentation of credentials, to inspect any permitted business or operation therein during normal business hours will result in an immediate suspension of the permit, requiring all permitted activities to abate until after such time as a hearing may be held per section 10-173 of this article.

Sec. 10-170. – Food manager/food handler education.

- (a) Requirements.
 - (1) Each food service establishment shall have at least one person employed in a managerial capacity possessing a current food manager certificate approved by the regulatory authority.
 - (2) Each food service establishment with six or more employees that is required to have certified food managers must have at least one certified manager on site during all operations.
 - (3) Every employee of a food service establishment other than a certified food manager must maintain a valid food handler certification.
 - (4) Food handler certification shall be valid for a period of up to two years as determined by the regulatory authority.
 - (5) Food Manager and Food Handler certification documentation must be maintained in the food service establishment and presented upon request by the regulatory authority.
- (b) Exceptions. Food manager certificates will not be required for the following:

- (1) Food service establishments providing only beverages, popcorn, prepackaged foods or commercially prepared candy or nuts;
 - (2) Nonprofit organizations except those operating schools, day cares, nursing homes, halfway houses or boarding homes; or
 - (3) Temporary or special event food service establishments.
- (c) For the purposes of this section, a nonprofit organization shall mean an organization which has been granted an exemption or is exempt from the payment of federal income taxes.

Sec. 10-171. – Permit suspension.

- (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 subsection (b). 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 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 days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exists.

Sec. 10-172. – Permit revocation.

- (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 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 (10) day period, the revocation of the permit becomes final.

Sec. 10-173. – 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 as shown on their permit application. 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.

Sec. 10-174. – Remedies.

- (a) Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than two-thousand dollars \$2,000.00.
- (b) Each day that a violation of this article occurs constitutes a separate offense.
- (c) The regulatory authority may seek to enjoin violations of these rules pursuant to state law, including, but not limited to TEXAS HEALTH AND SAFETY CODE Section 437.015.

Secs. 10-175—10-199. – Reserved.

SECTION B. MASTER FEE SCHEDULE AMENDMENT

The fees allowed per this ordinance shall be set by the city council and may be amended from time to time by city council. All such fees shall be included in the master fee schedule. The master fee schedule shall include the council approved initial fees as follows:

Permit application fee:	\$ 50.00
Permit renewal fee:	\$ 25.00
Inspection of food establishment plans fee:	\$ 100.00

SECTION C. OPEN MEETINGS COMPLIANCE

That the meeting at which this ordinance was approved was in all things conducted in strict compliance with the TEXAS OPEN MEETINGS ACT, TEXAS GOVERNMENT CODE, Chapter 551.

SECTION D. SEVERABILITY

Should any section, clause, 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. The city council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and/or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and/or phrases be declared unconstitutional or invalid.

SECTION E. REPEALER

All ordinances or parts of ordinances not consistent or conflicting with the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this ordinance. Any cause of action accruing prior to the passage of this ordinance shall continue as if this ordinance was not passed or any other ordinance had not been repealed.

SECTION F. PUBLICATION

The city secretary is hereby directed, if required by law, to post or publish in the official newspaper of the city, the caption, publication clause and effective date clause of this ordinance in one issue of the official newspaper of the city, provided that the official newspaper is a weekly paper, in accordance with Section 52.011 of the TEXAS LOCAL GOVERNMENT CODE. The city secretary is also hereby directed to incorporate the provisions of this ordinance into the CITY OF VENUS CODE OF ORDINANCES by submitting it to www.municode.com for incorporation and online publication.

SECTION G. EFFECTIVE DATE

That this ordinance shall become effective from and after its passage.

SECTION H. CERTIFICATION OF ADOPTION

APPROVED: MAYOR JAMES L. BURGESS

PASSED: MONDAY, MAY 14, 2018

ORDINANCE BECOMES EFFECTIVE: MONDAY, MAY 14, 2018

I, the undersigned, City Secretary do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the City of Venus City Council at a regular meeting duly convened on Monday, May 14, 2018.

ATTEST:



RANA GAMEL – City Secretary

APPROVED AS TO FORM:



CASS CALLAWAY, City Attorney

