CITY OF FRISCO, TEXAS **ORDINANCE NO. 08-09-87**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS REPEALING ORDINANCE NO. 06-10-102, ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES, TEXAS DEPARTMENT OF STATE HEALTH SERVICES, FOOD ESTABLISHMENTS GROUP, 25 TEXAS ADMINISTRATIVE CODE, CHAPTER 229, SECTIONS 161-171 AND 173-175, AS AMENDED, ESTABLISHING REGULATIONS FOR FOOD, FOOD ESTABLISHMENTS, MOBILE FOOD ESTABLISHMENTS, MOBILE FOOD VENDORS, DAY CARE FACILITIES AND TEMPORARY FOOD ESTABLISHMENTS IN THE CITY OF FRISCO; PROVIDING FOR THE PURPOSE OF THESE RULES; PROVIDING FOR DEFINITIONS INCLUDED IN THESE RULES; PROVIDING FOR THE ESTABLISHMENT AND COLLECTION OF FEES; PROVIDING FOR A PROCESS FOR REVIEW OF PLANS; PROVIDING FOR MANAGEMENT AND PERSONNEL DUTIES; PROVIDING FOR WATER, PLUMBING AND WASTE REQUIREMENTS; PROVIDING FOR THE CONSTRUCTION OF PHYSICAL FACILITIES; PROVIDING FOR COMPLIANCE, ENFORCEMENT AND INTERPRETATION; PROVIDING FOR SUSPENSION OF PERMIT; PROVIDING FOR REVOCATION OF PERMIT; PROVIDING FOR AN ADMINISTRATIVE PROCESS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR THE PUBLICATION OF A CAPTION THEREOF; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas ("Frisco") to repeal Frisco Ordinance No. 06-10-102 for the purpose of establishing additional and/or more comprehensive regulations for food, food establishments, mobile food units and temporary food establishments in Frisco, and allowing mobile vendors working within the enclosed venue of outdoor concerts, athletic stadium or fields and entertainment venues annual renewal permits; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of Frisco to adopt the provisions set forth in the Texas Food Establishment Rules adopted by the Texas Department of State Health Services, Food Establishments Group, 25 Texas Administrative Code, Chapter 229, Sections 161-171 and 173-175, adopted and incorporated by reference herein, subject to the following amendments and/or additional restrictions, as set forth below.

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

SECTION 1: Findings Incorporated. The findings set forth above are 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: Repeal of Frisco Ordinance No. 06-10-102 (Health Ordinance). Frisco Ordinance No. 06-10-102 is hereby repealed for the purpose of establishing additional and/or more comprehensive regulations for food, food establishments, mobile food units and temporary food establishments in Frisco. Such repeal shall not abate any pending prosecution for violation of the repealed Ordinance No. 06-10-102, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of Ordinance No. 06-10-102.

SECTION 4: Adoption of the Texas Food Establishment Rules, 25 Texas Administrative Code, Chapter 229, Sections 161-171 AND 173-175. Frisco adopts the provisions set forth in the Texas Department of State Health Services, 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 and/or additional restrictions set forth below (the "Texas Food Establishment Rules"). The Texas Food Establishment Rules, save and except the amendments and/or additional restrictions 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 City Secretary of Frisco being marked and designated as the Texas Food Establishment Rules, published by the Texas Department of State Health Services, Bureau of Food and Drug Safety (Retail Foods Division). Frisco amends the provisions set forth in the Texas Food Establishment Rules as follows:

DEFINITIONS

Section 229.162 is amended to include and/or revise the definitions set forth below. For the purpose of this Ordinance, the following terms, phrases, words and their derivation shall have the meaning given below (regardless of the case used, whether upper or lower case) unless the context clearly indicates otherwise:

(1) BED AND BREAKFAST LIMITED –

(i) an establishment with seven (7) or fewer rooms for rent;

(ii) an establishment that serves breakfast to overnight guests;

(iii) the establishment is not a retail food establishment; and

(iv) the owner or manager shall successfully complete a food manager's certification course accredited by the department, and submit proof of certification to the regulatory authority at time of application for a Food Establishment Permit.

(2) COMMISSARY LETTER – a written and notarized statement, provided by a central preparation facility, that displays the vehicle identification number of the mobile food establishment, and states that the mobile food

establishment receives food, supplies and/or cleaning and servicing from that facility.

(3) CONCESSION STAND – a food establishment operated on a seasonal basis for the purpose of providing food at sporting events associated with an Independent School District, university, community college, non-profit organization, privately owned school or the City of Frisco.

(4) EQUIPMENT –

A. Equipment means an article that is used in the operation of a food establishment such as, but not limited to, a freezer, grinder, hood, ice maker, meat block, microwave, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(5) LAW – any applicable local, state and/or federal law, statute, ordinance, resolution, rule, regulation and/or requirement, as it/they currently exist, may be amended or in the future arising.

(6) LIMITED FOOD ESTABLISHMENT – an operation that is required by any regulatory agency to be inspected by the local regulatory authority, but which does not meet the definition of Food Establishment; or an operation meeting the definition of Bed and Breakfast Limited, as amended.

(7) MISBRANDED – 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, as they exist or may be amended.

(8) MOBILE FOOD VENDOR – any person(s) who operate(s) or sell(s) food from a stationary cart, or trailer mounted on chassis, but without an engine, for period of fifteen (15) days or greater per year. Mobile food vendors, who operate for fourteen (14) days or less, shall be considered temporary food establishments. Mobile Food Vendors shall operate under the guidelines set forth in the City of Frisco Mobile Vendor Ordinance, as it exists or may be amended, in addition to meeting the requirements for food establishments set forth in these rules. Mobile food vendors that are approved to operate within the enclosed venue of outdoor concerts, athletic stadium or fields and entertainment venues are exempt from Section 3(f), (g), (i), (j), and (k) of the City of Frisco Mobile Vendor Ordinance.

(9) REGULATORY AUTHORITY or LOCAL REGULATORY AUTHORITY - the City of Frisco, Texas, or its authorized designee.

(10) FRISCO or CITY OF FRISCO - the City of Frisco, Texas.

(11) RULES, TEXAS FOOD ESTABLISHMENT RULES or "TFER" — the Texas Food Establishment Rules adopted by the Texas Department of State Health Services, Food Establishments Group, 25 Texas Administrative Code, Chapter 229, Sections 161-171 and 173-175, as amended,

MANAGEMENT AND PERSONNEL

Section 229.163 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 present at the food establishment during all hours of operation that is a certified food protection manager, who has shown proficiency of required information through passing a department approved examination. Food establishments that serve, sell, or distribute only prepackaged foods, non-potentially hazardous beverages, foods such as sno-cones or popcorn, and temporary food establishments, are exempt from the food manager's certification course requirement. Concession Stand operators must successfully attend a food safety class taught by the City of Frisco, or a class that educates food service workers which is approved by the regulatory authority, before operating a stand. Proof of successful course completion may be required of establishments having exemptions if judged by the regulatory authority to be capable of causing foodborne illness or increased public health risk.

(p) Hair restraints, effectiveness.

(1) Except as provided in paragraph (2) of this subsection, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles. Methods which only partially restrain hair, such as braids, hair ties, or visors, shall only be used in conjunction with one of the approved methods listed above.

(2) This section does not apply to food employees such as counter staff, who only serve wrapped or packaged foods or beverages, hostesses and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

FOOD

Section 229.164 is amended as follows:

(j) Preventing contamination by consumers:

(1) Food display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards that comply with NSF standards; completely enclosed display cases; or other means approved by the regulatory authority. Letter may be required from fabricator or installer of such food guards stating compliance with NSF standards if visual compliance is not evident through the use of labels or listings posted directly on the food guard by the authority approved to affix such label or listing.

EQUIPMENT, UTENSILS, AND LINENS

Section 229.165 is amended as follows:

(f) Functionality of equipment.

(24) Food equipment certification, classification, acceptability. Food equipment shall display certification label from an ANSI-accredited certification program or obtain approval from the Regulatory Authority for use. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)- accredited certification program will be deemed to comply with subsections (a)-(f) of this section. Letter may be required from fabricator or installer of such equipment stating compliance with ANSI-accredited certification program if visual compliance is not evident through the use of labels posted directly on the equipment by the authority approved to affix such label.

(g) Equipment, numbers and capacities.

(2) Manual warewashing, sink compartment requirements.

(A) At least one (1) sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. If a mechanical, warewashing machine as specified by these rules in this section is provided and approved to accomplish proper washing and sanitizing of equipment and utensils, this does not allow for exemption from the requirement of at least one three compartment sink.

(C) Alternative manual warewashing equipment may be used only in food establishments where a mechanical warewashing machine is provided. If a mechanical warewashing machine is not provided, alternative manual warewashing equipment may not be used as specified in (C)(v) or (C)(vi).

WATER, PLUMBING AND WASTE

Section 229.166 is amended as follows:

(c) Water quantity and availability.

(3) Hot water. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment. Sizing of supply systems shall comply with NSF standards or other engineered designed approved by the regulatory authority

(g) Plumbing, numbers and capacities.

(1) Handwashing Facilities.

(A) Except as specified in subparagraph (B) of this paragraph, at least one (1) handwashing lavatory, a number of handwashing 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 handwashing lavatories required by the Plumbing Code, as it exists or may be amended by the City of Frisco, shall be provided. Lavatories in addition to those defined herein may be required by the regulatory authority.

(2) Toilets and Urinals. At least one (1) toilet shall be provided for employee use and not fewer than the number of toilets otherwise required by law shall be provided. If authorized by law, urinals may be substituted for toilets, which such substitution must be done as specified by law.

(3) Service Sink. At least one (1) curbed cleaning facility, equipped with a floor drain, shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(h) Plumbing, location and placement.

(1) Handwashing facilities. A handwashing facility shall be located:

(A) to allow convenient use by employees in all food preparation, food dispensing and warewashing areas; and

(B) in, or immediately adjacent to, toilet rooms; and

(C) such that at least one (1) shall be on each cook line, for direct use by all employees while working on the cook line; and

(D) within every twenty-five (25) linear feet of unobstructed space in food preparation and utensil washing areas, or as otherwise approved by the regulatory authority.

Any door, wall, partial wall, stairway or other barrier, fixed or moveable, shall be considered an obstruction for the purposes of these rules.

If a handwashing facility is located immediately adjacent to food preparation, serving, or storage areas, an approved splash guard separating the handwashing facility from these areas may be required by the regulatory authority.

(j) Sewage retention, drainage, and delivery.

(3) Grease trap, Grease interceptor.

(A) A grease trap or grease interceptor is required unless otherwise approved by the regulatory authority, and shall be located to be easily accessible for cleaning, operation, and maintenance. Location must be approved by the regulatory authority and shall not be located within an area where food is held, prepared, stored or transferred. Grease traps and grease interceptors shall be sized and installed in compliance with plumbing code as currently adopted by the City of Frisco. All grease traps and interceptors shall also be approved by the regulatory authority prior to installation. Grease separators designed to be serviced manually by food establishment employees are not approved. Grease interceptors or separators located above ground, beneath one (1) fixture, are prohibited unless otherwise approved by the regulatory authority.

(B) Grease traps and grease interceptors shall be serviced within ninety (90) days of the establishment opening, undergoing extensive renovation, or change in ownership, and subsequently at an interval(s) necessary to ensure that sediment and floating materials do not accumulate to impair the efficiency of the grease interceptor or trap; to ensure the discharge of grease into public sewers does not exceed local discharge limits not to exceed 100mg/L; and to ensure no visible grease is observed in discharge. Self-cleaning of grease interceptors by operators is expressly prohibited. Grease traps and grease interceptors shall be completely evacuated a minimum of four times yearly, unless otherwise approved by the regulatory authority, and liquid waste transportation paperwork documenting complete service of the grease interceptor or trap shall be provided to the regulatory authority, or designee having jurisdiction, upon request. Testing of effluent shall be done at the business owner's expense upon request by the regulatory authority for failure to produce requested liquid waste transportation paperwork, or should the

regulatory authority have knowledge of a grease interceptor or trap dysfunction or suspicion of misuse that allows grease to be discharged into the sewer system. Food establishments shall enter into a contract with a waste hauler licensed by the state regulatory authority having jurisdiction over waste haulers, to provide for regularly scheduled servicing. No "will call" or "on call" scheduling shall be permitted for servicing, except for emergency servicing when required to prevent imminent health hazard or the discharge of grease into the sewer system. Liquid waste transportation documentation, as approved by the state regulatory authority including, but not limited to, the Texas Commission on Environmental Quality or the department, shall be kept on file for one (1) year in the food establishment for review by the local regulatory authority.

(l) Storage facilities on the premises.

(2) Outdoor storage surface. An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of concrete and shall be smooth, durable, and sloped to drain.

(3) Outdoor enclosure. An outdoor enclosure for refuse, recyclables, and returnables, constructed to City of Frisco specifications and being comprised of, among other requirements, one hundred percent (100%) masonry, shall be provided, unless otherwise approved by the regulatory authority.

(6) Outside receptacles.

(A) Receptacles and waste handling units for refuse, recyclables, and returnables 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 approved, as solely determined by the local regulatory authority, enclosure as to shield from public view. All outside receptacles and waste handling units shall be approved by the local regulatory authority prior to construction, installation, or use.

(11) Storing refuse, recyclables, and returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents and shielded from public view by an approved, as solely determined by the local regulatory authority, enclosure. Food waste shall be securely bagged prior to placing in receptacle or waste handling unit. All methods of storing and recycling waste shall be approved by the local 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 stored so that it does not create a rodent harborage problem, is shielded from public view by an approved enclosure, and approved by the local regulatory authority.

(16) Maintaining refuse areas and enclosures. A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under §229.167(p)(14) of this title, and obstructions, and shall be clean.

PHYSICAL FACILITIES

Section 229.167 is amended as follows:

(a) Indoor areas, surface characteristics. Materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

(3) nonabsorbent for food preparation areas, areas used for the storage or transportation of open containers of food, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, areas subject to flushing or spray cleaning methods, and any areas subject to moisture.

(b) Outdoor areas, surface characteristics.

(1) Walking and driving areas. The outdoor walking and driving areas shall be surfaced with concrete or other material approved by the regulatory authority.

(c) Floors, walls, and ceilings.

(6) Wall and ceiling coverings and coatings.

(A) Wall and ceiling covering materials shall be attached so that they are easily cleanable. Walls in areas where food is not prepackaged at all times, shall be nonabsorbent, easily cleanable and covering must be approved by the regulatory authority. Wall coatings, including epoxy paint, are not approved as wall coverings in areas where uncovered food is located, stored, transferred, processed, passed, cooked, prepared or sold. Wall coatings, including epoxy paint, may be used in areas where food is prepackaged at all times or in non-food storage areas with approval by the regulatory authority. Ceilings in areas where food is not prepackaged at all times shall be nonabsorbent, easily cleanable and

covering must be approved by the regulatory authority. Ceiling coatings, including epoxy paint, are not approved as ceiling coverings in areas where uncovered food is located, stored, transferred, processed, passed, cooked, prepared or sold, except in areas such as bars, temporary buffet lines and other areas if approved by the regulatory authority.

(B) Concrete, concrete blocks or bricks, when used in areas of a food establishment not open to the general public, shall be used only where non food activities occur such as can washing or outdoor janitorial use or storage areas. Concession stands may use concrete, concrete blocks, or bricks for indoor wall construction if finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface and re-sealed for maintenance in a timely manner or when mandated by the regulatory authority.

(C) Wall surfaces in toilet rooms provided for employee or worker use shall be durable, nonabsorbent and easily cleanable to a minimum height of four (4) feet. Wall coatings including epoxy paint, may only be used above forty-eight (48) inches.

(9) Floor Construction.

(A) Floors and floor coverings of all food preparation and utensil-washing areas, walk-in refrigeration units, dressing rooms, locker rooms; and toilet rooms and toilet room vestibules provided for employee use, shall be constructed of smooth durable material such as terrazzo, ceramic, quarry tile, or equivalent, with a six (6) inch coved tile base installed integral and flush with finished floor, and shall be maintained in good repair. Top-set, square or thin-lip installations of coved base tiles are prohibited. Sealed concrete, sheet vinyl, vinyl products or VCT may not be used in these areas. Epoxy resin and other poured monolithic floors, and other durable seamless flooring systems may be used in these areas installed to a finished product thickness of a minimum of one-quarter (1/4, 0.25) inch when approved by the regulatory authority prior to installation. Poured monolithic floors and seamless flooring systems shall be constructed to a finished product thickness of a minimum of one-quarter (1/4, 0.25) inch with coved base monolithic, integral, and flush with floor. The regulatory authority may impose additional requirements such as, but not limited to, the addition of non-skid additives and may approve alternative minimum thicknesses of floors and base if it is proven in writing that a finished product of different thickness and/or additives render the same or increased standards. Written documentation of compliance with these requirements shall be submitted to the regulatory authority at time of installation and no later than the date of issuance of the Certificate of Occupancy. Durable grades of sheet vinyl or other approved vinyl products may be used in dry storage areas if approved by the

regulatory authority, and shall be maintained in good repair. In dedicated janitorial, laundry, or mechanical areas, sealed concrete may be used in lieu of the above listed materials if approved by the regulatory authority. Food areas within food establishments that are temporarily set up for use during specified hours during each day or one day such as buffet lines or bar service areas may be exempt from this rule. At least one (1) floor drain must be provided, with total number of required drains to be approved by the regulatory authority. 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 shall be provided in all toilet rooms and in food preparation areas in compliance with any and all applicable laws. Floors must be graded to drain properly.

(B) Prohibited floor covering. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is expressly prohibited.

(e) Handwashing lavatories.

(2) Handwashing cleanser, availability. Each handwashing lavatory or group of two (2) adjacent lavatories shall be provided with a supply of hand cleaning liquid or powder provided through a wall mounted dispenser. Bar soap is expressly prohibited.

(k) Handwashing facilities, conveniently located. Handwashing facilities shall be conveniently located as specified under Section 229.166 (h)(1) of this title or as mandated by the regulatory authority.

(n) Distressed merchandise, segregation, location, and marking. Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, expired, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service articles. Such products shall be clearly marked that they are not to be used or served.

MOBILE FOOD ESTABLISHMENTS

Section 229.169 is amended as follows:

(a) Mobile food establishment provisions.

(10) Limited operating area, limited duration of operation. Except when classified as a Mobile Food Vendor and in compliance with the City of Frisco Mobile Food Vendor Ordinance, as it exists or may be amended, a mobile

food establishment shall not operate at one location for a period of time exceeding fifteen (15) minutes. A mobile food establishment shall not operate in any location in which such operation would be prohibited under the City of Frisco Comprehensive Zoning Ordinance or any other ordinance, as they exist or may be amended.

(11) Pushcarts. Pushcarts providing foods other than pre-packaged, non-potentially hazardous foods shall operate only when classified as a Mobile Food Vendor and in compliance with the City of Frisco Mobile Food Vendor Ordinance, as it exists or may be amended.

(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.

(A) Written proof of agreement to receive such services from a central preparation facility, in the form of a commissary letter or other documentation approved by the regulatory authority, shall be submitted to the regulatory authority at the time of application for a Food Establishment Permit. The commissary letter or other approved documentation shall be kept on file and updated with the regulatory authority when changing central preparation facilities, or as the regulatory authority deems necessary.

(B) The central preparation facility shall be inspected for compliance by the regulatory authority having jurisdiction over the location of the facility and proof of such inspection shall be submitted at the time of application for a Food Establishment Permit.

(c) Servicing area and operations.

(1) Protection.

(D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, approved by the regulatory authority, such as concrete, and shall be maintained in good repair, kept clean, and be graded to drain.

(E) Potable water servicing equipment shall be installed in the servicing area, as required by any and all applicable laws, and stored and handled in a way that protects the water and equipment from contamination.

(d) Permit, inspection.

(1) A mobile food establishment may not operate within the limits of the City of Frisco without a valid permit. A completed application, commissary letter or equivalent, proof of valid liability insurance coverage for the mobile food establishment for the duration of the permit being applied for, and the valid driver's license of the owner/operator must be submitted to the regulatory authority at the time of application for a Food Establishment Permit. In addition, the owner/operator of a mobile food establishment on which food is prepared, processed, or reheated must have one (1) person present at the mobile food establishment during all hours of operation that is a certified food protection manager, who has shown proficiency of required information through passing a department approved examination, and shall provide approved documentation to the regulatory authority at time of the application for a food establishment permit. Once all required documentation has been submitted and approved, a mobile food establishment shall be inspected by the regulatory authority. Once compliance with these rules has been met and documented by inspection, fees shall be paid prior to issuance of permit.

(2) The owner/operator of a mobile food establishment shall display a mobile Food Establishment Permit, affixed directly to the mobile food establishment, and shall keep on file in the mobile food establishment the placard for the current valid permit.

(3) The owner/operator of a mobile food establishment shall inform the regulatory authority immediately upon changing or discontinuing use of a central preparation facility and shall immediately cease operations until a commissary letter verifying use of a new central preparation facility has been approved by the regulatory authority. Failure to provide a new commissary letter to the regulatory authority may result in the revocation of the Food Establishment Permit.

TEMPORARY FOOD ESTABLISHMENTS

Section 229.170 is amended as follows:

(c) Ice. Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of these rules. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice for consumption shall be held in their bags until it is dispensed in a way that protects it from contamination. Ice shall not be used as a coolant for potentially hazardous foods at a temporary food establishment operating for more than four (4) hours. Regardless of event duration, ice shall not be used as a coolant for uncooked animal products.

(d) Equipment.

(1) Design and construction. Events less than or equal to four (4) hours long in duration shall have equipment and utensils designed and constructed to be durable and to retain their characteristic qualities under normal use conditions. Events greater than four (4) hours long in duration shall have equipment and utensils in compliance with Section 229.165 unless otherwise approved by the regulatory authority.

(l) Adequate restroom facilities. The regulatory authority may require written proof, by notarized letter or other means, that adequate restroom facilities will be provided for the use of employees of a temporary food establishment.

(m) Protection from contamination by consumers.

(1) Condiments provided for the customer's use, such as relish, sauces, catsup, mustard, etc. shall be shelf stable and shall be dispensed as single serving packets or from squeeze-type containers.

(2) Baked goods shall be portioned and wrapped prior to sale.

(n) Refuse. Covered refuse containers must be provided, made of non-absorbent material, and rodent-proof. Food waste shall be securely bagged. Refuse collection areas and servicing must be approved by the regulatory authority.

COMPLIANCE AND ENFORCEMENT

Section 229.171 is amended as follows:

(h) Inspection frequency, performance-based and risk-based. The regulatory authority should inspect each food establishment at least once every six (6) months, and may inspect as often as necessary to ensure the health and safety of the public. Establishments classified as Limited Food Establishments shall be inspected as needed in order to provide inspection documentation to any requesting regulatory agency. Limited Food Establishments not requiring such documentation shall be reviewed once per year to confirm Limited Food Establishment status and proper food protection manager certification. If the regulatory authority cannot meet these frequencies, inspection frequency shall be prioritized based upon assessment of a food establishment's history of compliance with these rules and the potential for causing foodborne illness by evaluating:

(j) Report of findings.

(5) Public information. Except as specified in subsection (e) of this section, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who provides a

written request to the Office of the City Secretary of the City of Frisco, as required by law.

(l) Critical violations, time frame for corrections.

(2) Verification and documentation of correction.

(C) When the total cumulative demerit value of an establishment exceeds thirty (30) demerits, the establishment shall initiate immediate corrective action on all identified critical violations and shall initiate corrective action on all other violations within forty-eight (48) hours. One (1) or more reinspections shall be conducted at reasonable time intervals to assure correction. There shall be a $50.00 reinspection fee for each reinspection for correction. The reinspection fee shall be paid no later than the business day immediately following each reinspection.

(o) Investigation and control.

(1)(B) requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees. Such laboratory analysis, examinations by a physician, transportation, costs and applicable fees shall be the responsibility of the employee or business suspected.

SECTION 5: Review of Plans. Whenever a food establishment is constructed or extensively remodeled; modifications, additions, or reductions made to areas regulated by these rules; or 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 prior to commencement of work. 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 following whether existing or not: proposed layout; equipment arrangement and schedule including type and model of proposed equipment; finish schedule of all floors, walls and ceilings; manufacturer's equipment specification sheets for all equipment; grease interceptor proposed location; water heater calculations and proposed size; grease waste storage receptacle location; waste receptacle or dumpster enclosure location; and mechanical, electrical and plumbing plans. A menu of all food items offered is also required. Other plan requirements to be submitted where applicable include proof of location of Consumer Advisory and submittal of Bare Hand Contact Policy. The approved plans and specifications must be followed in construction, remodeling, modification and/or conversion. All work must be inspected by the regulatory authority for compliance with these rules. After compliance with these rules is deemed to be met, a Food Establishment Permit may be approved.

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

If a determination is made by the regulatory authority that no Building Permit is required, a plan review fee shall be assessed for any plan review required to ensure compliance with these rules. This fee shall be assessed at a rate of $50.00 per hour, with a minimum charge of one (1) hour.

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

SECTION 6: 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. Applications for temporary food establishments must be received by the regulatory authority ten (10) days prior to the proposed event. An incomplete application will not be accepted. Failure to provide all required information, falsification of required information, or failure to meet the required deadline for submission of a temporary Food Establishment Permit may result in denial or revocation of the permit.

(b) Any person desiring to renew an existing Food Establishment Permit must make written application for renewal of permit on forms provided by the regulatory authority. Renewals of permits are required on an annual basis, except where otherwise stated. An incomplete application for renewal will not be accepted. No Food Establishment Permit renewal shall be issued until all outstanding fees required under this Ordinance, such as fees levied for reinspections for compliance, permit renewal late fees and plan review fees, have been paid.

(c) Prior to the approval of an initial permit, a change of ownership, or upon completion of additions, remodels, or modifications as specified in Section 5, the regulatory authority shall inspect the food establishment to determine compliance with this Ordinance. A food establishment that does not comply with this Ordinance will be denied a Food Establishment Permit. Food establishments with an existing Food Establishment Permit that do not comply with this Section may be denied the renewal of a Food Establishment Permit.

(d) The regulatory authority shall classify each food establishment at time of application, and assess Food Establishment Permit fees, due at the time of plan submittal or at Health Permit application if only change of ownership applies and in no case later than prior to issuance of the Certificate of Occupancy, according to the table below:

PERMIT SUBTYPE	FEE AMOUNT	PERMIT DURATION
Restaurant	$400.00	1 Year
Convenience	$200.00	1 Year

Daycare	$200.00	1 Year
Grocery	$550.00	1 Year
Mobile – Hot	$300.00	1 Year
Mobile – Cold	$200.00	1 Year
Temporary	$50.00	1 Event /14 Day Maximum
Concession	$100.00	Seasonal/Annual (k)
Limited Food Establishment	$50.00	1 Year
Mobile Food Vendor	$300.00	1 Year

(e) Concession stands shall be permitted for a length of time corresponding to the duration of the sporting season for which they are permitted. Concession stands owned, operated, and maintained by a single public entity, such as an Independent School District, university, community college, or the City of Frisco, shall be permitted on an annual basis.

(f) Non-fixed establishments that provide only non-potentially hazardous foods, sold or served in original packaging, shall be required to obtain a Food Establishment Permit of the type "Mobile – Cold" and may not operate in any location for more than fifteen (15) minutes.

(g) Limited Food Establishments must obtain a Food Establishment Permit as specified in paragraphs (a)-(d) of this Section.

(h) Food establishments operated by a public entity, such as an Independent School District, university, community college, or the City of Frisco, may be exempt from paying the Food Establishment Permit fee, if approved by the regulatory authority.

(i) A food establishment that is not permanently permitted by the regulatory authority, but that is a recognized charitable or philanthropic organization, or that has attained 501(c)(3) status from the Internal Revenue Service, may be exempt from paying the temporary food establishment fee for a permit for a temporary event, if approved by the regulatory authority.

(j) Fee exemptions granted under (h) or (i) do not exempt any food establishment from the requirement of applying for, obtaining, and displaying a Food Establishment Permit or from complying with the provisions of this section or any other applicable law.

(k) Except as noted in (e), Food Establishment Permits of the type "Concession" shall expire at the end of the sporting season for which they are permitted, Food Establishment Permits of the type "Temporary" shall expire on the last day of the event for which they are issued, but under no circumstances shall exceed fourteen (14) calendar days. All other Food Establishment Permits shall expire annually on the date one (1) year from the date of issuance. The regulatory authority shall assess a permit renewal late fee of fifty percent (50%) of the Food Establishment Permit fee on any yearly Food Establishment Permit that is renewed within thirty (30) days following expiration. Food Establishment Permit renewals received thirty-one (31) days or greater following the expiration date shall be assessed a permit renewal late fee of one hundred percent (100%) of the yearly permit fee. The assessment of this late fee shall not release a food establishment from any other penalties imposed under this Ordinance.

(l) Permits are not transferable from one person or entity to another or from one location to another location. A valid permit must be posted in or on every food establishment regulated by this Ordinance, in a location conspicuous to the consumer.

SECTION 7: Suspension of Permit/Appeal. 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. The regulatory authority shall post and maintain at the entrance of the food establishment, notice of the conditions therein, or require the owner, operator, or person in charge of the establishment to post and maintain, at the entrance of the establishment, notice that the establishment is closed. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for an appeal 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 an appeal 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 from the date the notice is received.

If no written request for an appeal hearing is filed within ten (10) days, the suspension is sustained until compliance with this Ordinance is met. It is the responsibility of the permit holder to request a reinspection once full compliance with this Ordinance has been met. A reinspection must be performed by the regulatory authority to ensure compliance prior to ending the suspension. Additional reinspections may be required if compliance is not met. The request for each reinspection must be made to the regulatory authority and a reinspection fee of $50.00 shall be paid before each inspection is performed. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist and all fees have been paid.

SECTION 8: Revocation of Permit/Appeal. The regulatory authority may, after providing an opportunity for an appeal hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules 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 an appeal hearing is filed with the regulatory authority by the holder of the permit within such ten (10) day period referred to in the notice.

If no request for an appeal hearing is filed within the ten (10) day period referred to in the notice, the revocation of the permit becomes final.

SECTION 9: 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 via hand-delivery, or when it is sent by registered or certified mail, return receipt requested, or when it is sent via Federal Express or any courier service that provides a return receipt showing the date of actual delivery 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 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.

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

SECTION 11: 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 AND NO/100 DOLLARS ($2000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 12 Savings/Repealing Provision. 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 13: 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. Frisco 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 14: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 15th day of September, 2008.

Mayor Pro Tem

Maher Maso, Mayor

ATTESTED AND CORRECTLY RECORDED:

APPROVED AS TO FORM:

Ron Patterson
Interim City Secretary

Abernathy Roeder Boyd & Joplin P.C.
Claire E. Swann, City Attorneys

Date of Publications: September 19 & 26, 2008, Frisco Enterprise