Ordinance No. 113

AN ORDINANCE OF THE CITY OF PATTISON, TEXAS REPEALING ORDINANCE NO. 93, FOOD ESTABLISHMENT ORDINANCE AND REPLACING SAID ORDINANCE WITH A NEW FOOD ESTABLISHMENT ORDINANCE; PROVIDING FOR PERMITS; PROVIDING A PENALTY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Pattison finds that food services and food preparation which occurs in food establishments and mobile food vendors may affect the health, safety and welfare of individuals who purchase products from such establishments and vendors; and

WHEREAS, the City Council finds that food establishments and mobile food vendors that fail to follow basic sanitation and food preparation guidelines can pose a threat to the health, safety and welfare of the residents and visitors of Pattison; and

WHEREAS, the City Council desires to delegate regulatory authority to the Department of State Health Services, yet retain the right of local officials to take enforcement actions, and to make its food establishment ordinance consistent with state law, rules and regulations as they may be amended in the future.

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

Section 1. All of the above premises are hereby found to be true and correct factual findings of the City council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Ordinance No. 93, of the City of Pattison, Texas, adopted June 14, 2011, is hereby repealed and replaced with this new ordinance regulating Food Establishments and Mobile Food Vendors.

Section 3. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized agent or employee means the employees of the regulatory authority or a designated local enforcement body having jurisdiction over food establishments.

Food establishment means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, or a roadside food vendor.

Mobile food unit means a food service establishment designed to be readily movable.

Regulatory authority means the Texas Department of State Health Services, and or the City of Pattison or appointed designee.

State rules mean the state rules found at 25 Texas Administrative Code, Chapter 228. These rules are known as the Texas Food Establishment Rules.

Section 4. Adoption of Texas Food Establishment Rules.

The City of Pattison adopts by reference the provisions of the current rules or rules as amended by the Executive Commissioner of Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments, retail foods, mobile food units and roadside vendors in this jurisdiction.

Section 5. Permits and Exemptions.

(a) A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferrable from one person to another or from one location to another location, except as otherwise permitted by this ordinance. A valid permit and a copy of the most recent establishment inspection report must be posted in or on every food establishment regulated by this ordinance in a location that is conspicuous to consumers. If the most recent inspection report contains information that meets the criteria specified in law for a trade secret, that information may be redacted from the copy of the report that is posted.

(b) A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this ordinance, but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

Section 6. 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.

Section 7. 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 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 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 ordinance. 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.

Section 8. 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 20 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 exist.

Section 9. 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 day period, the revocation of the permit becomes final.

Section 10. 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. 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.

Section 11. Penalties and other remedies.

Any person who is a permit holder of or otherwise operates a food service establishment that does not comply with the requirements of this ordinance and any agent, or officer of that permit holder who violates any provision of this ordinance shall be issued a citation for violation of this ordinance. Upon conviction thereof in the municipal court, a fine shall be assessed in an amount not to exceed **$2000.00**. Each day a violation continues or is allowed to exist shall constitute a separate offense. In

addition to the regulatory authority, city enforcement personnel and other officials, officers or employees of the City may take any authorized, lawful action to enforce this article. In addition, the City of Pattison or the regulatory authority may seek to enjoin violations of this article."

Section 12. Severability.

In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Pattison, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED and EFFECTIVE on the 3Rd day of April 2018.

ATTEST:

Lynda Fairchild, City Secretary

APPROVED:

Joe Garcia, Mayor