

ORDINANCE NO. 3653

AN ORDINANCE REPEALING AND RE-ENACTING BROKEN ARROW CODE OF ORDINANCES CHAPTER 11-FOOD AND FOOD ESTABLISHMENTS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:

SECTION I. That Broken Arrow Code of Ordinances Chapter 11, Food and Food Establishments, is repealed and re-enacted to read as follows:

Sec. 11-1 – Food Code adopted.

A certain document, three (3) copies of which are on file in the office of the City Clerk, being marked and designated as Title 310, Oklahoma State Department of Health, Chapter 257, Food Establishments (OAC 310:257), as published in the Oklahoma Administrative Code (OAC) and as amended, revised and supplemented by the Tulsa City-County Health Department (TCCHD) is hereby adopted by the City of Broken Arrow, Oklahoma, to set standards for the management of food personnel, operations, equipment and facilities in the City of Broken Arrow. Each and all of the terms, conditions, regulations and provisions of OAC 310:257 are hereby referred to, adopted and made a part of this Code, as if fully set out in this Chapter, with its amendments, as prescribed in Section 11-2 of this Chapter and, as used in this Chapter, may be referred to as the "Food Code".

Sec. 11-2 – Addendum to Food Code; City-County-specific licensing, permitting, compliance and enforcement requirements.

This section enacts as an addendum to Oklahoma Administrative Code, Title 310, Oklahoma State Department of Health, Chapter 257, Food Establishments (OAC 310:257), the following provisions which were adopted by the Tulsa City-County Health Department and are hereby incorporated into the Food Code of the City of Broken Arrow:

A. **Definitions.** The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

1. "Code" shall mean 310:257 of the Food Establishment Regulations of the Oklahoma State Department of Health.
2. "Department" shall mean the duly-appointed representative of the Tulsa City-County Health Department.
3. "Director" shall mean the Director of the Tulsa City-County Health Department or the Director's designated representative.

B. **Establishment licenses.** Food Establishments, as defined in 310:257-1-1 of the Code, operating in the City shall not operate without valid City and State food establishment licenses. It shall be unlawful and a misdemeanor offense for any person to operate a food establishment in the City without a valid City and State food establishment license.

1. **License requirements:**

- a. City license requirements are outlined in Subsections 11-2.B.1 through 11-2.B.7 of this section.
- b. State license requirements are outlined in Section 310:257-15-12, 13, & 14 of the Food Establishment Regulations of the Oklahoma State Department of Health.

2. **Affidavit required.** At the time of application to the Department, an individual owner of a food establishment must submit an affidavit stating legal status in the country.

3. **Issuance of license.** The City shall issue a food establishment license when:

- a. Applicant submits Department original and unaltered application for the license, and
 - b. Pays applicable fee as provided in Subsections 11-2.B.5 or 11-2.B.7 of this section.
4. **Effective dates and renewal of City Food License.**
- a. The food establishment license shall expire on the last day of June each year except for seasonal food establishments as provided for in Subsection 11-2.B.4.c of this section.
 - b. Renewal applications shall be presented by the Department on or before the first day of July each year except for seasonal food establishments provided for in Subsection 11-2.B.4.c of this section. Applicant must meet requirements in Subsection 11-2.B.3 of this section.
 - c. The license for seasonal food establishments shall expire one hundred eighty (180) days from the date of its issuance per year unless canceled or revoked prior to its expiration.
5. **City Food License Fees.**
- a. A processing fee shall be paid in accordance with the amount set forth in the Manual of Fees adopted by Broken Arrow City Council shall be collected for the initial application only. No processing fee shall be collected for renewal of any license.
 - b. The full and non-prorated fee for food establishment licenses, including food processing plants, shall be paid in accordance with the schedule set forth in the Manual of Fees adopted by the Broken Arrow City Council.
 - c. The prorated license fee shall be one-half (½) of the amount set out above if application is made during the period between January first and June thirtieth; otherwise the full and non-prorated fee shall be paid. Seasonal food establishment license fees shall not be prorated.
 - d. Fees paid directly to and collected by the Tulsa City-County Health Department shall be retained by the Tulsa City-County Health Department. All fees relating to food establishments that are paid directly to the City shall have seventy percent (70%) of said fees remitted to the Tulsa City-County Health Department.
 - e. Penalty fees shall be assessed as follows:
 - (1) **New Establishments.** If an application is not presented to the City and license fee paid within thirty (30) days after application is issued by the Department, a penalty of fifty percent (50%) of the fee shall be paid in addition to the license fee.
 - (2) **Existing establishments.** If a renewal application is presented to the City and the license fee is paid after the first day of August, a penalty of fifty percent (50%) of the fee shall be paid in addition to the license fee.
6. The following establishments shall be fee exempt:
- a. Schools with food operations run by school staff. Private companies operating food establishments within a school must pay the license fee.
 - b. Religious and charitable organizations with food operations run by volunteer staff.
 - c. Non-profit concession stands operating seasonally with volunteer staff.
7. The Department shall collect fees and issue the license for the following food operations as outlined.
- a. Ice and water vending machines that meet applicable requirements of this Code:
 - (1) Shall be charged an application, inspection and license fee in accordance with the schedule set forth in the Manual of Fees adopted by the Broken Arrow City Council.
 - (2) Shall expire on the last day of June each year after which license holder must make application and pay fee in Subsection 11-2.B.7.a(1) above for a renewal license.

- (3) The prorated license fee shall be one-half ($\frac{1}{2}$) of the amount set out above if application is made during the period between January first and June thirtieth; otherwise the full and non-prorated fee shall be made.
 - (4) Penalty fees shall apply under Subsection 11-2.B.5.e of this section except that the Department shall collect fees and issue license.
- b. Temporary food establishments:
 - (1) Shall be charged an application, inspection and license fee in accordance with the schedule set forth in the Manual of Fees adopted by the Broken Arrow City Council.
 - (2) Shall expire at the end of the event, grand opening, fair, etc. for which it was issued, unless canceled or revoked prior to its expiration.

C. Certified Food Protection Manager.

1. Required.

- a. Except as provided in Subsection 11-2.C.6 of this section, it shall be unlawful and a misdemeanor offense for any person owning, operating, or managing any food establishment within the City to fail to employ at least one (1) certified food protection manager.
 - (1) Such person shall be in a supervisory position at said establishment and have a valid and current certificate, which satisfies the requirements of Subsection 11-2.C.2 of this section.
 - (2) The certified manager must be an active employee of the licensed establishment who is present a majority of the operating hours and who has the responsibility of directly observing, supervising, and training food establishment personnel in proper food and equipment handling, sanitation, and personal hygiene.
 - (3) In the event the certified manager is temporarily absent, the person in charge shall conform to Section 310:257-3-2 of the Code.
- b. The Department may require additional certified managers in sufficient numbers to ensure all food preparation and service is performed under the direction of certified supervisory personnel. It shall be unlawful and a misdemeanor offense for any person owning, operating, or managing a food establishment to allow the food establishment to be operated with less than the required number of certified managers.
- c. Whenever the person holding the Food Protection Manager Certification terminates employment or is terminated or transferred to another food establishment, the person owning, operating, or managing the food establishment shall be allowed thirty (30) days from the date of termination or transfer of the certificate holder to comply with Subsection 11-2.C.1.a of this section. The Department may grant an extension of time in the event instruction and testing is not available within the thirty (30) day period.

2. Issuance, Expiration and Renewal.

- a. The Department shall issue a Food Protection Manager Certificate when the applicant:
 - (1) Provides documentation of successfully passing an accredited test.
 - (2) Submits an affidavit stating legal status in the country, and
 - (3) Pays the applicable certification fee at the time application is made.
- b. The certification expiration date shall match the expiration date on the ANSI-accredited certification; after which the certification must be renewed.
- c. Renewal requirements shall not be in excess of the initial certification outlined in Subsection 11-2.C.2.a of this section.

3. **Certification Fees.**
 - a. The fee for obtaining a Food Protection Manager Certificate from the Department shall be established by the Department and the fee is non-refundable.
 - b. The same fee will apply for all renewals of the certificate.
 - c. The fee for obtaining a duplicate of a non-expired and non-revoked Food Protection Manager Certificate shall be established by the Department.
 4. **Proof of Certification.** Each certified food protection manager shall display the certificate in a prominent location in the establishment.
 5. **Certification Non-Transferable.** A Food Protection Manager Certificate is not transferable from one (1) person to another person. A certified manager may not act in said capacity in more than one (1) establishment or location at the same time. Unofficial copies of the certificate are not recognized by the Department.
 6. **Exemption from Requirements:**
 - a. Food establishments that serve, sell, or distribute only prepackaged food
 - b. Food establishments that do not serve, sell, or distribute foods that are Time/Temperature Control for Safety (TCS) foods.
 - c. Temporary food establishments, special facilities, and/or events.
- D. **Food Employee Permits.**
1. **Permit Required.**
 - a. It shall be unlawful and a misdemeanor offense for any person to operate a food establishment in the City to employ staff to serve food, prepare food, or handle food utensils without ensuring that they possess a current and unrevoked permit issued by the Department.
 - b. It shall be unlawful and a misdemeanor offense for any person to serve, prepare food, or handle food utensils in a food establishment, who cannot immediately exhibit a current and unrevoked permit issued by the Department.
 - c. Exemptions from requirements. Food establishments and employees of food establishments outlined below are exempt from this requirement:
 - (1) Food establishments that serve, sell, or distribute only prepackaged food.
 - (2) Temporary food establishments, special facilities, and/or events.
 - d. Affidavit Required. At the time of application to the Department, applicant for permits in Subsection 11-2.D.3 of this section must submit an affidavit stating legal status in the country.
 2. **Permit Fees.**
 - a. The fee for obtaining a permit from the Department outlined in subsection 11-2.D.3.a., b., c., or d. of this section shall be established by the Department.
 - b. The same fee will apply for all renewals of the permit.
 - c. The fee for obtaining a duplicate of a non-expired and non-revoked permit shall be established by the Department.
 3. **Permit Types and Requirements.**
 - a. **Food Employee Permit:**

- (1) Is issued by the Department when applicant completes approved training course regarding the practice of sanitary food preparation, food service, and personal hygiene, and passes course test.
 - (2) Applicant must pay the permit fee in Subsection 11-2.D.2.a of this section at the time application is made.
 - (3) Allows the permit holder to work in licensed food establishment with unpackaged food, food equipment or utensils, or food-contact surfaces. This permit may also be used to satisfy the requirements of any of the permit types outlined in Subsection 11-2.D.3.b through Subsection 11-2.D.3.e of this section.
- b. **Food Service Support Staff Permit:**
- (1) Is issued by the Department when an applicant completes a course of instruction outlined in Subsection 11-2.D.3.a(1) of this section, but is unable to pass the course test.
 - (i) This permit will be issued by Department when the applicant attempts to complete approved training at an onsite Department testing location and makes request for support staff permit.
 - (2) Applicant must pay fee outlined in Subsection 11-2.D.2.a of this section.
 - (3) Allows the permit holder to work in a licensed food establishment with the following restrictions:
 - (i) Food Service Support Staff may work only under the direct supervision of a certified manager or a job coach, and
 - (ii) Only in food activities that do not pose a potential health threat.
- c. **Manufacturing Worker Permit:**
- (1) Is issued by the Department when the applicant attends approved training that is provided by a licensed manufacturing facility regarding the type of food processing duties performed in the facility and passes Department test.
 - (2) Applicant must pay fee required in Subsection 11-2.D.2.a of this section.
 - (3) Allows the permit holder to work only in the facility where they successfully completed the training.
- d. **Community Service Worker Permit:**
- (1) Is issued by the Department when the applicant attends Department onsite course of instruction and passes the test as outlined in Subsection 11-2.D.3.a.1.
 - (2) Applicant is not required to pay a fee for the training or permit.
 - (3) Allows permit holder to perform volunteer work for a licensed non-profit organization having year-round full-service food preparation.
- e. **Seasonal Volunteer Permit:**
- (1) Is issued when an applicant attends a one-hour course of instruction provided by the Department or completes the Department's online volunteer training.
 - (2) Applicant is not required to pay a fee for the training or permit.
 - (3) Allows permit holder to perform volunteer work at non-profit seasonally-operated establishments (such as sports and school concession stands, religious organizations, school home room, etc.) that have limited food preparation.
4. **Permits Non-Transferable and Fee Non-Refundable.** Any permit issued as outlined in Subsection 11-2.D.3 of this section is not transferable from one (1) person to another person.

Any fee paid for course of instruction provided by the Department is nonrefundable. Unofficial copies of permits are not recognized by the Department.

5. Expiration and Renewal.

- a. Permits in Subsection 11-2.D.3 of this section shall expire three (3) years from date of issuance by the Department, except:
 - (1) Seasonal Volunteer Permit shall expire one (1) year from the date of issuance.
- b. Permits in Subsection 11-2.D.3 of this section are not renewable. After expiration of permit, holder must meet requirements in one (1) of the items in Subsection 11-2.D.3 of this section.

E. Tulsa Food Advisory Council.

1. Responsibility of Tulsa Food Advisory Council

- a. The Tulsa Food Advisory Council ("TFAC") assists the Tulsa City-County Board of Health in the following: Code revisions; clarifications and interpretations of the Code; interaction between the food industry, the Department, and the consumer; and appeals from determinations made by the Department in the enforcement of the Code.
- b. Any person alleging there is error in any order, requirement, decision, or determination made by the Department in the enforcement of the Code may appeal the decision in accordance with 11-2.G.

1. Creation of Advisory Council. There is hereby created the Tulsa Food Advisory Council (within this section referred to as "Council") to assist the Tulsa City-County Board of Health in the following: Code revisions, clarifications and interpretations of the Code, liaison between the food industry, the Department, and the consumer.

- a. The Council shall consist of fifteen (15) members appointed by the Director and approved by the Board of Health. Membership shall include representation from the following three (3) categories:
 - (1) Five (5) members widely representative of the food industry with due consideration being given to experience and position.
 - (2) Five (5) members with professional training in health matters; e.g., pharmacists, veterinarians, dentists, bacteriologists, physicians, nurses.
 - (3) Five (5) members representing other consumers with due consideration being given to architects, engineers, lawyers and consumers at large.
- b. The Council members shall be appointed to serve a one (1) year term of office, but all members shall hold office until their successor is qualified and appointed.
- c. The Council shall elect annually a Chairperson from among its members. The Council shall hold at least one (1) meeting annually and such additional meetings as the Chairperson or the Director shall deem desirable.

2. The Council shall develop rules, subject to approval by the Board of Health, relating to matters which shall be considered by the Council and procedures for submission of such items to the Council.

F. License Suspension and Revocation. The Department may summarily suspend, permanently revoke, or temporarily suspend a license, permit, or certification for failure of the holder to comply with the requirements of the Code:

1. Summary Suspension.

- a. Notwithstanding other provisions of the Code, if an authorized representative of the Department finds insanitary or other conditions in the operation of a food establishment, which constitute an imminent hazard to the public health (as defined in 310:257-1-2 under "Imminent health hazard"), the establishment may be closed summarily without prior notice or hearing.
- b. If an imminent hazard to the public health is found to exist, the Department shall summarily suspend food operations by issuing a written notice to the license, permit or certificate holder or operator stating specifically the following:
 - (1) The conditions which cause the imminent hazard to the public health;
 - (2) The corrective action that must be taken to abate the hazard;
 - (3) The period of time within which corrective action must be taken;
 - (4) That the license, permit or certification holder has the right to:
 - (i) Request in writing a re-inspection within twenty-four (24) hours, and if the reasons for the suspension no longer exist, request immediate reinstatement of the license or permit, and to have the name, address and telephone number for the license, permit or certification holder to contact to initiate a request for re-inspection, or
 - (ii) Request in writing a hearing within twenty-four (24) hours before the Director of the Department to determine if the summary suspension was warranted. The written request shall be mailed or hand delivered to the Director of the Tulsa City-County Health Department.
 - (iii) Hearings with the Director will be held within five (5) business days after receiving the written request.

2. Revocation and Temporary Suspension.

- a. For serious or repeated violations of any of the requirements of the Code, or for willfully obstructing the Department in the performance of duties, a license, permit or certificate may be revoked permanently or temporarily suspended after opportunity for a hearing.
- b. The Department shall serve upon the license, permit or certificate holder or operator written notice stating specifically:
 - (1) That the license, permit or certificate will be either (1) revoked entirely, or (2) temporarily suspended for a specified number of days.
 - (2) The reasons for which the license, permit or certificate will be revoked or temporarily suspended.
 - (3) That the license, permit or certification holder has the right to:
 - (i) Request in writing a hearing within ten (10) days before the Director of the Department to determine if the revocation or temporary suspension was warranted. The written request shall be mailed or hand delivered to: Director, Tulsa City-County Health Department, 5051 South 129th East Avenue, Tulsa, Oklahoma 74134.
 - (ii) Hearings with the Director will be held within five (5) business days after receiving the written request.
- c. A notice is properly served when it is delivered to the license, permit or certificate holder, or to the person in charge of the food establishment, or if such personal service cannot reasonably be made, when it is sent certified mail, return receipt requested, to the last known address of the license, permit or certificate holder.

G. Appeal Procedures (Civil or Administrative Appeals only).

1. Appeal to the Tulsa Food Advisory Council.

- a. Any person alleging there is error in any order, requirement, decision, or determination made by the Department in the enforcement of this Code, or any person aggrieved by the final determination of the Director may appeal such decision to the Tulsa Food Advisory Council within ten (10) days of receiving the Director's decision.
- b. The appeal shall be in writing and shall specify the reasons for the appeal, and shall be mailed or hand delivered to: Legal Counsel, Tulsa City-County Health Department, 5051 South 129th East Avenue, Tulsa, Oklahoma 74134.
 - (1) The Legal Counsel shall forward the request for appeal along with all documentation from the initial action of the Department and the hearing with the Director to the Tulsa Food Advisory Council.
 - (2) The Tulsa Food Advisory Council shall appoint a three (3) person Hearing Panel which shall consist of one (1) member of the Tulsa City-County Board of Health and two (2) members from the Tulsa Food Advisory Council.
 - (3) The Hearing Panel shall hold a hearing and may reverse, affirm or modify the action of the Department. The decisions of the Hearing Panel are deemed to be those of the Tulsa Food Advisory Council.
- c. This appellate procedure shall not apply to any violation for which a criminal citation has been issued.

2. Appeal to the City Council.

- a. The Department or any aggrieved party may appeal the decision of the Hearing Panel of the Tulsa Food Advisory Council to the City Council.
- b. An appeal to the City Council shall be taken by filing with the City and with the Chairperson of the Tulsa Food Advisory Council within ten (10) days from the date of such action, a notice of appeal, which notice shall specify the grounds of such appeal. Upon filing of the notice of appeal, the Tulsa Food Advisory Council shall forthwith transmit to the City copies of all the papers constituting the record in the case, together with the order, decision or ruling of the Tulsa Food Advisory Council Hearing Panel.
- c. The City Council shall hold a hearing and may reverse, affirm or modify the decision or determination of the Tulsa Food Advisory Council Hearing Panel.

3. Stay on Appeal.

- a. An appeal stays all Department proceedings in furtherance of the action appealed from, unless the Department certifies that by reason of facts stated in the certificate, a stay would cause an imminent hazard to the public health. In such case, proceedings shall not be stayed other than by a restraining order.

H. **Criminal Penalty.** Any person, firm, limited liability company, corporation, association or other entity violating any provision of this Chapter shall be guilty of a class B offense. Each day on which the violation occurs or continues shall be deemed a separate offense.

SECTION II. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION III. An emergency exists for the preservation of the public health, peace and safety and therefore this ordinance shall become effective from the time of its passage and approval.

PASSED AND APPROVED and the emergency clause ruled upon separately, this _____ day of _____, 2020.

MAYOR

ATTEST:

(SEAL) CITY CLERK

APPROVED:

ASSISTANT CITY ATTORNEY