

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Department of Public Health – Administration

AGENDA DATE: CCA Introduction 08/30/11; Public Hearing 09/20/11

CONTACT PERSON/PHONE: Michael Hill, Director (771-5702)

DISTRICT(S) AFFECTED: All

SUBJECT:

An ordinance amending Title 9 (HEALTH AND SAFETY), CHAPTER 9.12 (FOOD AND FOOD HANDLING ESTABLISHMENTS), to allow for the issuance of a food handler certificate rather than a food handler card and a food protection management certificate rather than a food protection management card in all applicable sections; the penalty as provided in SECTION 9.12.890

BACKGROUND / DISCUSSION:

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

AMOUNT AND SOURCE OF FUNDING:

BOARD / COMMISSION ACTION:

N/A

*****AUTHORIZATION*****

DEPARTMENT HEAD: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.12 (FOOD AND FOOD HANDLING ESTABLISHMENTS), TO ALLOW FOR THE ISSUANCE OF A FOOD HANDLER CERTIFICATE RATHER THAN A FOOD HANDLER CARD AND A FOOD PROTECTION MANAGEMENT CERTIFICATE RATHER THAN A FOOD PROTECTION MANAGEMENT CARD IN ALL APPLICABLE SECTIONS; THE PENALTY AS PROVIDED IN SECTION 9.12.890

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 9 (Health and Safety), Article III – Food Handlers Identification Card, Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.130 (Required.) shall be amended to read as follows:

Article III-Food Handler Certificate

9.12.130 – Required.

A. An individual desiring to work in an establishment as a food handler, as defined in Section 9.12.010, must obtain a food handler certificate from the director within thirty days from the date of employment or successfully complete and provide proof of completion of a food handler course approved by the director.

B. A person providing written documentation of prior attendance in a recognized course of instruction on food handling and food safety may opt out of the course described in 9.12.130 (A) by taking the food handler examination in lieu of the full three-hour course and by scoring eighty-five percent proficiency on said examination. The required course registration and fee shall be submitted prior to the examination date. A person who fails to score at least eighty-five percent on said exam must then register and pay the fee to attend a food handler course.

C. Persons providing proof of completion of a food handler course, approved by the director, must present the certificate to the director and pay the fee identified in the adopted budget resolution for that current fiscal year or other appropriately adopted resolution by the city council, prior to receiving an official certificate signifying compliance with this section.

Section 2. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.140 (Application – Contents.) of the El Paso City Code shall be amended to read as follows:

9.12.140 - Application—Contents.

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

To obtain a food handler certificate or to register for a food handler course not provided by the director but that is approved by the director, an individual must register on an application furnished by the director and as part of the application must:

- A. State name, address, sex, date of birth and any other information reasonably required;
- B. Pay the training course fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council;
- C. Sign the application.

Section 3. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), 9.12.150 (Application—Issuance of food handler's receipt—Completion of required course prerequisite to issuance of food handler card.) of the El Paso City Code shall be amended to read as follows:

9.12.150 - Application—Issuance of food handler's receipt—Completion of required course prerequisite to issuance of food handler certificate.

After an applicant complies with Section 9.12.140, the applicant shall be issued a food handler's receipt and be registered to attend the next available course or take the scheduled examination in lieu of the course. The receipt is valid as a food handler's identification only until the applicant attends the approved course or successfully passes the scheduled examination in lieu of the course. The applicant shall be issued a food handler certificate provided the applicant:

- A. Attended all required instruction; and/or
- B. Successfully passed the examination given by the director on the course content.

Section 4. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), 9.12.170 (Term.) of the El Paso City Code shall be amended to read as follows:

9.12.170 - Term.

The food handler certificate is valid for a two-year period from the date of issuance by the director.

Section 5. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), 9.12.180 (Renewal.) of the El Paso City Code shall be amended to read as follows:

9.12.180 - Renewal.

An individual desiring to renew an expired food handler certificate must:

- A. Comply with the provisions of Sections 9.12.140 and 9.12.150

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

B. Register for a food handler course no more than forty-five and no less than thirty days prior to the expiration of the current food handler certificate.

Section 6. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), 9.12.190 (Maintained.) of the El Paso City Code shall be amended to read as follows:

9.12.190 - Maintained.

When the food handler is off premises, the food handler certificate issued by the director is to be maintained in the establishment in a location readily available for inspection and not solely placed in an employee file.

Section 7. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), 9.12.210 (Duplicate Issuance.) of the El Paso City Code shall be amended to read as follows:

9.12.210 - Duplicate issuance.

An individual who has misplaced a valid food handler certificate or who needs more than one certificate must obtain a food handler certificate duplicate from the director by paying the fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council for each certificate.

Section 8. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.220 (Required.) shall be amended to read as follows:

9.12.220 – Required.

Persons desiring to work in an establishment as food protection management personnel, as defined in Section 9.12.010, shall obtain a food protection management certificate from the director within sixty days from the day of his or her employment, or successfully complete and provide proof of completion of a food protection management certification program approved by the director. At least one food protection management person per establishment must be certified. However, if a person left in charge by food protection management personnel can respond correctly during a food inspection to the questions listed in the Texas Food Establishment Rules, under Section 229.163 Management and Personnel, that person need not obtain certification as a food protection manager. The person(s) responsible for food operations within a care facility and whose primary duties include, but are not limited to, supervision of kitchen personnel, food handling, food preparation and storage, is required to obtain a food protection management certificate. Persons providing proof of completion of a food protection management certification program, approved by the director, must present the certificate to the director and pay the fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council.

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

Section 9. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.230 (Issuance – Eligibility - Term.) shall be amended to read as follows:

9.12.230 - Issuance – Eligibility - Term.

A food protection management certificate shall be issued to each person who successfully completes the food protection management certification program conducted by the director. Such certificate is valid for a two-year period and shall be renewed within sixty days of the expiration date to remain valid. Food protection management personnel who fail the food protection management certification test shall be required to retake and successfully pass the food protection management certification test within thirty days, or he or she will be required to retake the food protection management certification course and pay the fee as described in Section 9.12.240(B). A food protection management certificate issued by the director upon completion of a recognized food protection management course not provided by the director but approved by the director will be valid for two years from date of issuance.

Section 10. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.235 (Duplicate Issuance.) shall be amended to read as follows:

9.12.235 – Duplicate Issuance.

An individual who has misplaced a valid food protection management certificate or who needs more than one certificate must obtain a food protection management certificate duplicate from the director for the fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council for each certificate.

Section 11. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.240 (Application - Contents.) shall be amended to read as follows:

9.12.240 - Application - Contents.

To obtain a food protection management certificate or to register a recognized certification not provided by the director but approved by the director, an individual must apply on a form furnished by the director and as part of the application must:

- A. State his or her name, address, phone number, sex and date of birth.
- B. Pay a food protection management certificate fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council for the department food protection management course or examination in lieu of the food protection management course, for proof of completion of a recognized course; and
- C. Sign the application.

ORDINANCE NO. _____

- D. Individuals may opt out of the food protection management course offered by the director upon request if the required food protection management course registration examination is passed with at least an eighty-five percent proficiency and the fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council is submitted. A person who does not pass with at least an eighty-five percent proficiency must then register and pay the city fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council to attend the food protection management certification course.

Section 12. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.250 (Renewal - Fee.) shall be amended to read as follows:

9.12.250 - Renewal - Fee.

A food protection management certificate must be renewed at the end of two years and within sixty days from expiration or the expiration specified on other recognized certification. If no expiration date is specified, the certification shall expire two years from date of issuance.

Section 13. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.260 (Maintained.) shall be amended to read as follows:

9.12.260 - Maintained.

When the owner, manager or person-in-charge is off premises, the food protection management certificate issued by the director is to be maintained in the establishment in a location readily available for inspection and not solely placed in an employee file.

Section 14. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.600 (Handwashing – Lavatory Facilities.) shall be amended to read as follows:

9.12.600 - Handwashing – Lavatory Facilities.

- A. Signs requiring employees to wash hands will be conspicuously posted at all handwashing lavatories;
- B. Signs shall state, "all employees must wash hands and exposed portions of their arms for at least 20 seconds before returning to work."
- C. Sign and lettering size shall be specified by the director.
- D. Dispensers designed for soap and towels shall be provided at all handwashing lavatories.

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

- E. Handwash lavatories in the establishment must be located within twenty-five feet of utensil washing areas, food preparation areas and serving areas. Distance measurement of twenty-five feet is defined as the walking path that an establishment employee must take to access the handwash lavatory. Restroom handwash lavatories are excluded from this consideration and may not be counted as part of the number of hand wash lavatories. The twenty-five foot measurement must be within the room where utensil washing, food preparation and/or food serving takes place except that a handwash lavatory can be located five feet into another room that is not separated by physical doors.
- F. Food handlers and food managers observed not practicing handwashing at prescribed times will receive one written warning prior to being required to attend a food safety course.
- G. For violations of the handwashing requirement occurring subsequent to the warning, a food handler's or food manager's certificate will be confiscated and temporarily suspended at the time the handwashing violation occurs until a food safety course has been completed.
- H. Said food employee can remain on the work schedule until the time of the class. If the class is not attended, the manager or owner must remove the employee from the work schedule.
- I. If said employee is not removed from the work schedule, the manager and owner will be responsible if the employee is allowed to work without a valid food handler or food manager certificate.
- J. A food handler's certificate or food manager's certificate will be revoked for one year for violating handwashing ordinance three times in one year. Upon such revocation, food employees must attend a food safety course, food handler's course or food manager's course as determined by the director prior to returning to work in the food industry.

Section 15. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.810 (Temporary, Recurrent and Seasonal Establishments.) shall be amended to read as follows:

9.12.810 - Temporary, recurrent and seasonal establishments.

A. Compliance required.

- 1. A temporary, seasonal or recurrent establishment shall comply with the requirements of this chapter. At a minimum, temporary establishments will meet the requirements as set forth in the Texas Food Establishment Rules. Temporary, recurrent and seasonal establishments handling potentially hazardous foods must operate from a central preparation facility. A fee for expedited services for

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

temporary establishment applications submitted less than seventy-two hours prior to the start of an event shall be as identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council. The central preparation facility must have all necessary equipment to handle the approved activities. Central preparation facilities shall maintain a score of eighty-five percent or better on the food inspection report rating. A central preparation facility agreement form provided by the director is required and must be signed by the temporary, seasonal or recurrent establishment applicant and central preparation facility owner/operator.

2. All food temperature requirements shall be met as contained in Section 229.164(k)—(n) of the Texas Food Establishment Rules for temporary, seasonal and recurrent establishments.

B. Restricted operations.

1. These provisions are applicable whenever a temporary, seasonal and recurrent establishment is permitted, under the provisions of subsection A. of this section, to operate without complying with all of the requirements of this chapter.
2. Food and food handling.
 - a. All foods for use in temporary, seasonal or recurrent establishments must be prepared in an establishment approved by the director.
 - b. The manager, owner or person in charge of a seasonal or recurrent establishment must acquire a valid food protection management certificate. All other employees in a seasonal or recurrent establishment handling food must obtain a valid food handlers certificate.
 - c. Receipts for all foods used in temporary, seasonal or recurrent establishments must be made available to the director upon request. Foods must be purchased from a source that has been previously inspected and approved by the Director.
 - d. Preparation of potentially hazardous foods in temporary, seasonal or recurrent establishments as close to the time of event as possible is required.
 - e. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this chapter. 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 shall be held in these bags until it is dispensed in a way that protects it from contamination.

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

Section 16. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.840 (Inspection - Access.) shall be amended to read as follows:

9.12.840 - Inspection - Access.

Whenever necessary to inspect, to enforce any of the provisions of this chapter, or whenever the director has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes food handled therein unsafe, dangerous or hazardous, the director or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the director by this chapter; provided, that if such building or premises be occupied, the director shall first present proper credentials and request entry; and if such building or premises be unoccupied, first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the director shall have recourse to every remedy provided by law to secure entry.

When the director first obtains a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the director for the purpose of inspection and examination pursuant to this chapter.

This inspection and examination shall include the establishment's records pertaining to employees and to food and supplies purchased, used and on hand. Food handler and food protection management certificates will be verified against work schedules or time sheets.

Section 17. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.860 (Violation – Correction – Time Limits.) shall be amended to read as follows:

9.12.860 - Violation – Correction – Time Limits.

The completed inspection form shall specify a reasonable period of time for the correction of the violations found; the correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

- A. If imminent health hazards exist the establishment shall immediately cease food operations. Operations shall not be resumed until it is shown on a re-inspection that conditions responsible for the order to cease operations no longer exist.
- B. In the case of temporary, seasonal or recurrent establishments, all violations shall be corrected as soon as possible, not to exceed twenty-four hours. If violations are not corrected within twenty-four hours, the establishment shall immediately cease food operations until authorized to resume by the director.

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

- C. The inspection form shall state that failure to comply with any time limits for corrections may result in suspension or revocation of permit and license, or in cessation of food activities, and that any violation of the provisions of this chapter shall constitute a misdemeanor and be punished by a fine not to exceed two thousand dollars.
- D. The inspection form shall state that the person receiving notice of suspension or revocation of permit and license, or a notice of cessation of food activities, or a notice of violation of this chapter may appeal by following the procedure provided in Section 9.12.100.
- E. An establishment within the city that is licensed, permitted and supervised by the United States Department of Agriculture or by the Texas Department of State Health Services is exempt from in-plant inspections under this chapter; however, such establishments are subject to permit, license, food protection management certificate and food handler certificate requirements. All food product, not on the premises, is subject to applicable requirements of this chapter.

Section 18. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.875 (Violation – Owners and Managers.) shall be amended to read as follows:

9.12.875 - Violation – Owners and Managers.

A person commits an offense if he or she is an owner or manager of an establishment or identifies himself as an owner or manager of an establishment, and:

- A. Permits an individual who does not have a current valid food handler certificate to work in or for the establishment as a food handler for more than thirty days;
- B. Permits an individual who does not have a current valid food handler certificate to work in or for the establishment as a food protection management person for more than sixty days; or
- C. The person or his employees violate the provisions of Section 9.12.800, mobile establishments.

Section 19. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments) of the El Paso City Code shall remain in full force and effect.

(SIGNATURES FOLLOW ON NEXT PAGE)

ORDINANCE NO. _____

#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13

Document Author: JFLO

PASSED AND APPROVED THIS _____ DAY OF _____, 2011.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Michael Hill, Director
Department of Public Health

ORDINANCE NO. _____
#65206 v2 - DOPH/1/ORDINANCE AMENDMENT 9.12.13
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