CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY
☐ Consent ☐ Regular ☐ Statutory

Council Meeting Date:	01/27/14
Department:	ENVIRONMENTAL HEALTH
Department Head	GEOFFREY HEINICKE
Agenda Coordinator (include phone #):	**Doris Callaway, Ext. 7494**

CAPTION

An Ordinance of the City Council of the City of Plano, Texas, amending Ordinance No. 2012-12-16, codified as Chapter 9, Food Code of the Code of Ordinances of the City of Plano to update definitions, update mobile food establishment commissary requirements, and add guidelines for annual temporary food establishment permits; providing a penalty clause, a repealer clause, a severability clause, a savings clause, a publication clause and an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: **2013-14**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): GENERAL

COMMENTS: The revenue impact of the Ordinance changes are unknown at this time.

STRATEGIC PLAN GOAL: Updates to Chapter 9, Food Code of the Code of Ordinances of the City of Plano relate to the City's Goal of a Financially Strong City with Service Excellence and a Safe Large City.

SUMMARY OF ITEM

Amending ordinance to maintain consistency with state and local laws and establish process to expand food service opportunities for local food establishments.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Health Memo	

Memorandum

Date: January 15, 2014

To: Frank Turner
Deputy City Manager

From: Geoffrey Heinicke
Environmental Health Manager

Subject: Revisions to Chapter 9 and Fees Ordinance

The City's Food Code (Chapter 9 of the Code of Ordinances) has been amended. Amendments include definition changes for "commissary" and "cottage food production operations," to conform to recent changes in the City's zoning ordinance and state statutes. Article VIII – "Mobile Food Establishments" and Article IX- "Temporary Food Service" have been amended for consistency throughout Chapter 9. Article XII – "Inspection and Enforcement" has been amended to include an "Annual Temporary Food Permit" category, increasing the number of temporary food permits for food establishments permitted by City of Plano Environmental Health Department. Food establishments from outside the City are still limited to eight (8) per year.

An "annual temporary food permit" fee has been added to the "Health Categories and Fees" ordinance to reflect cost of services associated with this new permit category.

Animal Services has amended the "Health Categories and Fees" ordinance to include expedited processing fee for "animal exhibition" permit applications submitted less than fourteen (14) days prior to an event.

An Ordinance of the City Council of the City of Plano, Texas, amending Ordinance No. 2012-12-16, codified as Chapter 9, Food Code of the Code of Ordinances of the City of Plano to update definitions, update mobile food establishment commissary requirements, and add guidelines for annual temporary food establishment permits; providing a penalty clause, a repealer clause, a severability clause, a savings clause, a publication clause and an effective date.

WHEREAS, on December 18, 2012 the City Council of the City of Plano duly passed Ordinance No. 2012-12-16 codified as Chapter 9, Food Code, of the Code of Ordinances of the City of Plano; and

WHEREAS, upon review of existing ordinances as well as current state laws and regulations governing food and food establishments, staff recommend the amendment of certain provisions in the existing ordinance to be consistent with current state laws and regulations; and

WHEREAS, the City Council of the City of Plano, Texas determines it is necessary to provide regulations for mobile and temporary food establishments within the City of Plano; and

WHEREAS, the City Council of the City of Plano, after consideration of the recommendations of staff and all matters attendant and related thereto, is of the opinion that the recommended changes are in the best interest of the City and its citizens and will promote the health, safety and welfare of the citizens of Plano and the general public.

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

Section I. Ordinance No. 2012-12-16, codified as Chapter 9, Food Code, of the Code of Ordinances of the City of Plano, is hereby amended to read as set forth below:

The definitions in Sec. 9-2 numbered (11) (Commissary) and (16) Cottage food production operation, are replaced as follows; all other definitions remain unchanged:

"Sec. 9-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(11) *Commissary*. Means a food establishment, or any other place serving as an operating base for a mobile food establishment and where food, containers, or supplies are kept, handled, prepared, packaged or stored for use by a mobile food establishment or is a location where a mobile food establishment is stored, parked, serviced, cleaned, supplied and maintained.

(16) *Cottage food production operation*. An individual operating out of the individual's residence, who: (1) produces a baked good that is not a PHF/TCS, as defined by Section 9-1(58), candy, coated and uncoated nuts, unroasted nut butters, fruit butters, a canned jam or jelly, a fruit pie, dehydrated fruit or vegetables, dried beans, popcorn and popcorn snacks, cereal, granola, dry mix,

vinegar, pickles, mustard, roasted coffee or dry tea, or a dried herb or herb mix; and (2) has an annual gross income of $50,000 or less from the sale of food described above; and (3) sells foods produced directly to consumers at the individual's home, a farmers' market, a municipal, county, or nonprofit fair, festival, or event; and (4) delivers products to the consumer at the point of sale or another location designated by the consumer; and (5) is packaged in a manner that prevents contamination, except for food items too large or bulky for conventional packaging; and (6) complies with the labeling requirements as defined by the Executive Commissioner of the Department of State Health Services."

ARTICLE VIII. - MOBILE FOOD ESTABLISHMENTS

Sec. 9-82. Commissary; base of operations, is replaced in its entirety with the following version:

"Sec. 9-82. Commissary; base of operations.

(a) Mobile food establishments shall operate from a commissary and shall report at least daily to such location for supplies and for all cleaning and servicing operations. A notarized letter identifying the mobile food establishment, the commissary and confirming that the mobile food establishment is operating from that commissary is required at the time of permit application and at each renewal of the permit.

(b) The commissary used as a base of operation for mobile food units shall be constructed and operated in compliance with the requirements of this chapter or by the approval of the regulatory authority.

(c) The mobile food establishment shall maintain a log documenting the date and time of each supply, cleaning, or servicing operation at the commissary or other fixed food establishment. The log shall be kept in the mobile food establishment, shall be signed by a responsible person, and shall be made available to the regulatory authority upon request."

ARTICLE IX. - TEMPORARY FOOD SERVICE

Sec. 9-91. General, is replaced in its entirety with the following version:

"Sec. 9-91. General.

(a) A temporary or seasonal food establishment shall comply with the requirements of this chapter except as otherwise provided in this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all potentially hazardous foods/time and temperature control for safety (PHF/TCS), and when no health hazard will result, may waive or modify requirements of this chapter.

(1) The operation of a temporary food establishment may not exceed fourteen (14) consecutive days per event and must be in conjunction with a special event or celebration as approved by the regulatory authority. A limit of eight (8) temporary permits per calendar year per vendor,

group or organization will be enforced. Vendors with multiple booths at a single event will be recorded as participating in one (1) event towards the eight (8) maximum allowed per calendar year.

(2) The operation of a seasonal food establishment is greater than fourteen (14) days but less than forty-five (45) consecutive days per event per vendor. Seasonal permits are limited to three (3) per calendar year per vendor. Fees for all permits are included in a separate fees ordinance as approved by Council.

(b) If the temporary food establishment is outdoors, every food preparation and serving area must have a fire resistant overhead covering that protects the interior of the facility from the weather. Floors must be constructed of concrete, asphalt, tight wood or other similar easily cleanable material, and kept in good repair.

(c) All food shall be prepared in a permitted food establishment or on the premises. No food or beverage stored or prepared in a private home may be offered for sale, sold or given away from a temporary or seasonal food facility.

(d) All food and beverages shall be protected at all times from unnecessary handling and shall be stored, displayed and served so as to be protected from contamination.

(e) The regulatory authority may establish additional structural or operational requirements as necessary to ensure that food is of safe and sanitary quality."

Sec. 9-92. Restricted operations, is replaced in its entirety with the following version:

"Sec. 9-92. Restricted operations.

(a) These provisions are applicable whenever a temporary food establishment is permitted, under the provisions of Section 9-91 of this article, to operate without complying with all the requirements of this rule.

(b) Potentially hazardous foods/time and temperature control for safety (PHF/TCS). Temporary Permits Only.

(1) Only those PHF/TCS requiring limited preparation, such as hamburgers, hot dogs, and sausages that only require seasoning and cooking, shall be prepared or served unless otherwise approved by the regulatory authority. PHF/TCS will be limited to three (3) per food booth. This limit does not apply, however, to any PHF/TCS that has been prepared or packaged under conditions meeting the requirements of this chapter, is packaged in individual servings, is stored at a temperature of forty (40) degrees Fahrenheit (five (5) degrees Celsius) or below, or at a temperature of one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) or above, in facilities that meet the requirements of this chapter, and is served directly in the unopened container in which it was packaged.

(2) Raw seafood and poultry are only allowed under two (2) conditions:

(a) Product must be pre-cut, and frozen, to go from the freezer to the fryer or;

(b) The product must be pre-cooked.

(3) PHF/TCS allowed to be cooked on-site from a raw state are those which are fast cooking such as:

(a) Pre-formed hamburger patties;

(b) Beef/chicken fajitas;

(c) Pre-cooked sausage and hot dogs;

(4) Outdoor grilling during temporary events must adhere to requirements in Chapter 8 of this Code of Ordinances, policies and procedures as outlined in the "Temporary Events Procedures" document and is subject to permitting by the regulatory authority in accordance with § 9-114 of this Chapter. Outdoor grilling for personal or residential use is allowed and outside the scope of this regulation.

(5) Food temperatures. All food temperature requirements shall be met as contained in this chapter.

(c) Seasonal permits. Seasonal permittees may serve non-PHF/TCS products including but are not limited to snow cones, packaged chips, candy, pickles and canned or bottled drinks.

(d) Ice. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of TFER §229.164(c)(6). The ice shall be obtained only in chipped, crushed, or cubed form and in a single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

(e) Equipment.

(1) Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.

(2) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where helpful to prevent contamination, effective shields for such equipment shall be provided.

(f) Single-service articles. All temporary food establishments shall provide only single-service articles for use by the consumer.

(g) Water. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment and for handwashing. A heating facility located on the premises and capable of producing enough hot water for these purposes shall be provided.

(h) Wet storage. The storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

(i) Waste. All sewage, including liquid waste, shall be disposed of according to law. All refuse shall be disposed of in a manner approved by the regulatory authority.

(j) Handwashing. A convenient handwashing facility shall be available for employee handwashing. This facility shall consist of an insulated container with a spigot that can be turned on to allow potable, clean, warm water to flow for handwashing; a wastewater container; soap; disposable towels; and waste receptacle.

(k) Floors. Floors shall be constructed of concrete, asphalt, tight wood or other similar cleanable material, and kept in good repair.

(l) Walls and ceiling of food preparation areas.

(1) Ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects and rodents. Doors of food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors or windows shall be at least sixteen (16) mesh to one (1) inch (16 mesh to 25.4 millimeters); or other effective means."

ARTICLE XII. - INSPECTION AND ENFORCEMENT

Sec. 9-114. Permit, is replaced in its entirety with the following version:

"Sec. 9-114. Permit.

(a) Required; transferability. It shall be unlawful for any person to operate a food establishment, mobile food establishment, farmers' market, or food-processing plant within the City of Plano, who does not possess a valid permit issued by the regulatory authority. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable from a person to another person or location. A valid permit shall be posted in public view at every establishment. Permits for temporary establishments shall be issued for a period of time not to exceed fourteen (14) calendar days. Seasonal permits may be issued for a period not to exceed forty-five (45) calendar days. Farmers' market permits shall be valid for a period of one (1) year from issuance.

(b) Review of plans. A review of plans shall be conducted by the regulatory authority when any of the following events occur: (1) a food establishment, mobile food establishment, farmers' market, or food processing plant is constructed or remodeled to the extent a building permit is required; (2) an existing structure or vehicle is converted to use as a food service operation; or (3) there has been a change in ownership of a food establishment, mobile food establishment, farmers' market, or food processing plant. Properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout,

arrangement, mechanical plans and construction materials of work areas, and the type, model, and capacity, if available, of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this ordinance. No food establishment, mobile food establishment, farmers' market, or food processing plant shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority. A preoperational inspection will be conducted in each food establishment, mobile food establishment, farmers' market, or food processing plant prior to the start of operations to determine compliance with approved plans and with the requirements of this chapter.

(c) Application. Any person desiring to operate a food establishment, mobile food establishment, farmers' market or food processing plant shall make written application and pay the appropriate fee for a permit provided by the regulatory authority. Such application shall include the applicant's full name, business address and whether such applicant is an individual or a business entity, the type of business entity, and if a partnership, the name and address of each partner; the location and type of the proposed establishment; a menu of each food item that the applicant proposes to serve, and the signature of the applicant or applicants.

(1) Temporary permits.

(a) Temporary permit fees shall be reviewed, set, and adopted by action of the City Council.

(b) Application and fees must be submitted at least five (5) working days prior to the event, or fourteen (14) working days prior to the event if five (5) or more booths are permitted for the same event. Applications received after these deadlines will be subject to an additional administrative fee.

(c) Events where vendors have more than one (1) booth will be charged an initial fee for the first booth and subsequent fees for each additional booth. Participation in events by vendors with multiple booths will count as only one (1) permit towards the annual limit of eight (8) temporary permits for the same vendor.

(d) Fees are non-refundable and applications will not be accepted after 4:00 p.m. on Thursday immediately preceding the event.

(e) Establishments with a valid City of Plano health permit must apply for a temporary permit when participating in an event. An administrative fee will apply.

(f) A permit waiver may be obtained if proof of charitable, non-profitable status, i.e. church, school district, charity, government agency, etc. is submitted with application; however, a processing fee will be charged.

(g) Out of town vendors must submit a copy of the current local permit and a copy of the most recent health inspection report conducted by their local regulatory authority.

(h) Food manufacturers must submit a copy of the state manufacturer' license with their application.

(2) Annual temporary food permits.

(a) Annual temporary permit fees shall be reviewed, set and adopted by action of the City Council.

(b) An annual temporary permit may only be issued to a food establishment that hold a valid City of Plano food permit issued under Section 9-114(c)(4) of this Chapter. Only one (1) temporary annual permit shall be issued to a food establishment during the same calendar year.

(c) An annual temporary permit may be used for no more than twenty-five (25) temporary events in one calendar year.

(d) Application and fees for the annual temporary permit must be submitted at least five (5) working days prior to the first event, or fourteen (14) working days prior to the event if five (5) or more booths are permitted for the same event. Applications received after these deadlines will be subject to an additional administrative fee.

(e) Notification of additional events must be submitted at least five (5) working days prior to the event, or fourteen (14) working days prior to the event if five (5) or more booths are permitted for the same event. Notifications received after these deadlines will be subject to an additional administrative fee.

(f) Participation in events where an annual temporary food permit holder has multiple booths will count as only one (1) event toward the annual limit of twenty-five (25) temporary events.

(g) Fees are non-refundable and applications or notifications will not be accepted after 4:00 p.m. on Thursday immediately preceding the event.

(3) Seasonal permits.

(a) Seasonal permit fees shall be reviewed, set, and adopted by action of the City Council.

(b) Seasonal permit applications and fees must be submitted at least five (5) working days prior to the start date. Applications submitted less than five (5) working days prior to the start date will be subject to an administrative fee.

(c) Applications will not be accepted after 4:00 p.m. on Thursday immediately preceding the event.

(d) Vendors with seasonal permits may not operate at the same location for more than forty-five (45) days during the same calendar year.

(4) Annual permits.

(a) Fees. Food establishment annual permit fees shall be reviewed, set, and adopted by action of the City Council.

(b) Inspection; issuance of permit. Upon receipt of such an application, the regulatory authority shall make an inspection of the establishment to determine compliance with the provisions of the article. When inspection reveals that the applicable requirements of this article have been met, a permit shall be issued to the applicant by the regulatory authority.

(5) Farmers' Market permits.

(a) Fees. Farmers' Market permit fees shall be reviewed, set, and adopted by action of the City Council.

(b) Inspection; issuance of permit. Upon receipt of such an application, the regulatory authority shall make an inspection of the establishment to determine compliance with the provisions of the article. When inspection reveals that the applicable requirements of this article have been met, a permit shall be issued to the applicant by the regulatory authority.

(6) Suspension of permits.

(a) Emergency Suspension. If the regulatory authority finds a condition constituting an imminent health hazard as defined in Section 9-2(42), or that a public health nuisance (as that term is defined in Section 341.011 of the Texas Health and Safety Code) that is an immediate and substantial hazard to the public health exists in the operation of an establishment permitted under this section, he or she may issue a summary suspension without prior warning, notice or hearing, if the notice:

(1) states the reasons for the suspension;

(2) states the evidence that the permit holder shall provide in order to demonstrate that the reasons for suspension have been eliminated;

(3) states that the permit holder may request an appeal hearing by submitting a timely request to the regulatory authority, and;

(4) provides the name and the address of the regulatory authority representative to whom a request for appeal hearing may be made.

(b) General Suspension. If the regulatory authority finds a condition constituting a public health nuisance (as that term is defined in Section 341.011 of the Texas Health and Safety Code), but not constituting an immediate and substantial hazard to the public health exists in the operation of an establishment permitted under this section, he or she may issue a written notice ordering abatement of the nuisance to any person responsible for the nuisance. Whenever a permit holder or operator has failed to comply with any notice

issued under the provisions of this division, the permit holder or operator shall be notified in writing that the permit is, upon receipt of the suspension 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 permit holder within five (5) business days.

(c) The issuance of a suspension shall be a remedy in addition to, and not in lieu of, any penalty authorized under subsection (8) of this section, and shall not limit any other rights of the regulatory authority to pursue other actions or remedies to address any violation of the provisions of this article.

(7) Reinstatement of suspended permits. Any person whose permit has been suspended may, not more than sixty (60) days after the date of suspension, make application for a reinspection for the purpose of reinstating the permit. Within ten (10) business days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing the suspension of the permit has been corrected, the regulatory authority shall make a reinspection. If the applicant is complying with the requirements of this article, the permit shall be reinstated.

(8) Revocation. If a permit holder has been issued more than three (3) violation notices or citations pertaining to any of the requirements of this article during a twelve (12) month period, a permit may be permanently revoked after an opportunity for a hearing has been provided by the regulatory authority. Prior to such action, the regulatory authority shall notify the permit holder in writing, stating the reasons that the permit should be permanently revoked. The permit shall be revoked at the end of five (5) business days following service of this notice, unless a request for a hearing is filed with the regulatory authority, by the permit holder within such five-day period."

Section II. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section III. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section IV. The repeal of any Ordinance or part of Ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any Ordinances at the time of passage of this Ordinance.

Section V. Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and, upon conviction in the Municipal Court, shall be subject to a fine not to exceed **TWO THOUSAND AND NO/100 DOLLARS ($2,000.00)** for each offense. Each and every violation shall be deemed to constitute a separate offense.

Section VI. This Ordinance shall become effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this the 27th day of January, 2014.

_____
Harry LaRosiliere, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Paige Mims, CITY ATTORNEY