



**HEALTH AND SANITATION
CHAPTER 58-PALESTINE CODE OF ORDINANCES**

Chapter 58 - HEALTH AND SANITATION

FOOTNOTE(S):

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Cross reference— Designation of health officer, § 2-51; health and sanitation board, § 2-111 et seq.; rabies control, § 14-71 et seq.; air pollution, § 46-106 et seq.; abandoned refrigerators or other air-tight containers, § 74-1; solid waste, ch. 82; discharge of industrial waste, § 98-26 et seq. [\(Back\)](#)

ARTICLE I. - IN GENERAL

Secs. 58-1—58-25. - Reserved.

ARTICLE II. - FOOD AND FOOD ESTABLISHMENTS

FOOTNOTE(S):

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Cross reference— Health and sanitation board, § 2-111 et seq.; possession of open containers of alcoholic beverages in public places, § 10-4; businesses, ch. 26; itinerant vending of food, § 26-173; litter, § 46-81 et seq. [\(Back\)](#)

State Law reference— Food, V.T.C.A., Health and Safety Code § 431.001 et seq. [\(Back\)](#)

DIVISION 1. - GENERALLY

Sec. 58-26. - Definitions.

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

Adulterated means the condition of a food if:

- (1) It bears or contains any poisonous or deleterious substance in a quantity that may render it injurious to health;
- (2) It bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by rule or in excess of such tolerance if one has been established;



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- (3) It consists in whole or in part of any filthy, putrid or decomposed substance or if it is otherwise unfit for human consumption;
- (4) It has been processed, prepared, packed or held under insanitary conditions, whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;
- (5) It is in whole or in part the product of a diseased animal or an animal that has died otherwise than by slaughter; or
- (6) Its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health.

Approved means acceptable to the health authority based on his determination as to conformance with appropriate standards and good public health practice.

Closed means fitted together snugly leaving no openings large enough to permit the entrance of vermin.

Corrosion-resistant material means a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds and sanitizing solutions which may contact it.

Easily cleanable means readily accessible and of such material and finish and so fabricated that residue may be completely removed by normal cleaning methods.

Employee means any person working in a food service establishment or food processing establishment who transports food or food containers, who engages in food preparation or service or who comes in contact with any food utensil or equipment.

Equipment means all stoves, ranges, hoods, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables and similar items, other than utensils, used in the operation of a food service or food processing establishment.

Food means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Food contact surfaces means those surfaces of equipment and utensils with which food normally comes in contact and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

Food processing establishment means a commercial establishment in which food is processed or otherwise prepared and packaged for human consumption.

Food sales establishment means any establishment, fixed or mobile, that offers for sale any packaged or nonpackaged potentially hazardous products.

Food service establishment means any fixed or mobile restaurant; coffeeshop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; private, public or nonprofit organization or institution routinely serving food; catering kitchen; commissary or



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similar place in which food or drink is prepared for sale or for service on the premises or elsewhere and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

Health authority means the person designated in section 2-51.

Health inspector means the city health inspector, who shall have the power and authority of the city police in carrying out inspections and in enforcing all sections of this Code and state law relating to sanitary conditions.

Kitchenware means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

Misbranded means 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 requirements.

Perishable food means any food of such type or in such condition as may spoil.

Potentially hazardous food means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

Safe temperatures, as applied to potentially hazardous food, means temperatures of 45 degrees Fahrenheit or below and 140 degrees Fahrenheit or above.

Sanitize means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the health authority as being effective in destroying microorganisms, including pathogens.

Sealed means free of cracks or other openings which permit the entry or passage of moisture.

Single-service articles means cups, containers, lids or closures; plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping material; and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible materials and which are intended by the manufacturer and generally recognized by the public as for one usage only, then to be discarded.

Tableware means all multiuse eating and drinking utensils, including flatware (knives, forks and spoons).

Temporary food service establishment means any food service establishment which operates at a fixed location for a temporary period of time, not to exceed two weeks, in connection with a fair, carnival, circus, public exhibition or similar transitory gathering.

Utensil means any tableware and kitchenware used in the storage, preparation, conveying or serving of food.



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Wholesome means in sound condition, clean, free from adulteration and otherwise suitable for use as human food.

(Code 1968, § 13-12)

Cross reference— Definitions generally, § 1-2.

Sec. 58-27. - Sanitary maintenance of premises.

It shall be unlawful for any person to conduct or carry on any business for the sale of food or food products in any manner wherein the premises for the operation of the business are not at all times kept in a clean and sanitary condition.

(Code 1968, § 13-1)

Sec. 58-28. - Food.

- (a) *Supplies.* All food in food service establishments shall be from sources approved or considered satisfactory by the health authority and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding and safe for human consumption. No hermetically sealed, nonacid food which has been processed in a place other than a commercial food processing establishment shall be used.
- (b) *Protection.* All food while being stored, prepared, displayed, served or sold at food service establishments or during transportation between such establishments shall be protected from contamination. All perishable foods shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall be maintained at safe temperatures of 45 degrees Fahrenheit or below or 140 degrees Fahrenheit or above, except during necessary periods of preparation and service. Each cold-storage facility shall be provided with an indicating thermometer accurate to plus or minus two degrees Fahrenheit, located in the warmest part of the facility. Raw fruits and vegetables shall be washed before use. Stuffing, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Individual portions of food once served to a customer shall not be served again, provided that wrapped food which has not been unwrapped and which is wholesome may be reserved.
- (c) *Use of poisonous or toxic materials in establishment.* Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in food service establishments. Poisonous and toxic materials shall be identified and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or customers.

(Code 1968, § 13-13)

Sec. 58-29. - Personnel.



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- (a) *Health and disease control.* No person while affected with any disease in a communicable form or while a carrier of such disease or while afflicted with boils, infected wounds, sores or an acute respiratory infection shall work in any area of a food service establishment or a food processing establishment in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other individuals, and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the health authority immediately.
- (b) *Cleanliness.* All employees shall wear clean outer garments, maintain a high degree of personal cleanliness and conform to hygienic practices while on duty. They shall wash their hands thoroughly in an approved handwashing facility before starting work and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his hands.
- (c) *Health card.* No person shall work in any food service establishment, food processing establishment or food sales establishment without a valid health card issued by a licensed physician.

(Code 1968, § 13-14)

Sec. 58-30. - Design, construction and installation of food equipment and utensils.

- (a) All equipment and utensils in food service establishments shall be so designed and of such material and workmanship as to be smooth, easily cleanable and durable, and shall be in good repair. The food contact surfaces of such equipment and utensils shall be, in addition, easily accessible for cleaning, nontoxic, corrosion resistant, and relatively nonabsorbent. When approved by the health authority, exceptions may be made to the material requirements of this subsection for equipment such as cutting boards, blocks and bakers' tables.
- (b) All equipment shall be so installed and maintained as to facilitate the cleaning thereof and of all adjacent areas.
- (c) Equipment in use at the time of adoption of the ordinance from which this section derives which does not meet fully the requirements of subsections (a) and (b) of this section may be continued in use if it is in good repair, capable of being maintained in a sanitary condition and the food contact surfaces are nontoxic.
- (d) Single-service articles shall be made from nontoxic materials.

(Code 1968, § 13-15)

Sec. 58-31. - Cleanliness of food equipment and utensils.

- (a) All eating and drinking utensils in a food service establishment shall be thoroughly cleaned and sanitized after each usage. Where hot water is employed as a sanitizing method, an



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indicating thermometer accurate to plus or minus two degrees Fahrenheit shall be provided convenient to the vat to permit frequent checks of the water temperatures. Where chlorine or any other chemical-sanitizing agent is employed as a sanitizing method, an appropriate test kit, acceptable to the health authority, must be kept and frequently used to determine the concentration of the sanitizing solution.

- (b) All kitchenware and food contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink and all food storage utensils shall be thoroughly cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once a day. All utensils and food contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to each use. Nonfood contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.
- (c) After cleaning and until use, all food contact surfaces of equipment and utensils shall be so stored and handled as to be protected from contamination.
- (d) All single-service articles shall be stored, handled and dispensed in a sanitary manner and shall be used only once.
- (e) Food service establishments which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use single-service articles.

(Code 1968, § 13-16)

Sec. 58-32. - Water supply.

- (a) The water supply for a food service establishment shall be adequate, of a safe, sanitary quality and from an approved source. Hot and cold running water under pressure shall be provided in all areas where food is prepared or equipment, utensils or containers are washed.
- (b) Water, if not piped into the establishment, shall be transported and stored in approved containers and shall be handled and dispensed in a sanitary manner.
- (c) Ice used for any purpose shall be made from water which comes from an approved source and shall be used only if it has been manufactured, stored, transported and handled in a sanitary manner.

(Code 1968, § 13-17)

Sec. 58-33. - Sewage disposal.

All sewage from a food service establishment shall be disposed of in a public sewer system or, in the absence thereof, in a manner approved by the health authority.

(Code 1968, § 13-18)

Sec. 58-34. - Plumbing.



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Plumbing in a food service establishment shall be so sized, installed and maintained:

- (1) To carry adequate quantities of water to required locations throughout the establishment;
- (2) To prevent contamination of the water supply;
- (3) To properly convey sewage and liquid wastes from the establishment to the sewer or sewage disposal system; and
- (4) So that it does not constitute a source of contamination of food, equipment or utensils or create an insanitary condition or nuisance.

(Code 1968, § 13-19)

Sec. 58-35. - Toilet facilities.

Each food service establishment shall be provided with adequate, conveniently located toilet facilities for its employees. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. The doors of all toilet rooms shall be self-closing. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Where the use of non-water-carried sewage disposal facilities have been approved by the health authority, such facilities shall be separate from the establishment. When toilet facilities are provided for patrons, such facilities shall meet the requirements of this section.

(Code 1968, § 13-20)

Sec. 58-36. - Handwashing facilities.

Each food service establishment shall be provided with adequate, conveniently located handwashing facilities for its employees, including a lavatory equipped with hot and cold or tempered running water, handcleansing soap or detergent and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(Code 1968, § 13-21)

Sec. 58-37. - Garbage and rubbish disposal.

In a food service establishment, all garbage and rubbish containing food wastes shall, prior to disposal, be kept in leakproof, nonabsorbent containers which shall be kept covered with tightfitting lids when filled or stored or not in continuous use, provided that such containers need not be covered when stored in a special vermin-proofed room or enclosure or in a food waste refrigerator. All other rubbish shall be stored in containers, rooms or areas in an approved manner. The rooms, enclosures, areas and containers used shall be adequate for the storage of all food waste and rubbish accumulating on the premises. Adequate cleaning facilities shall be provided, and each container, room or area shall be thoroughly cleaned after the emptying or removal of garbage and rubbish. Food waste grinders, if used, shall be installed in compliance



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with state and local standards and shall be of suitable construction. All garbage and rubbish shall be disposed of with sufficient frequency and in such a manner as to prevent a nuisance.

(Code 1968, § 13-22)

Sec. 58-38. - Vermin control.

Effective measures shall be taken to protect against the entrance into the food service establishment and the breeding or presence on the premises of vermin.

(Code 1968, § 13-23)

Sec. 58-39. - Floors, walls and ceilings.

- (a) The floor surfaces in food service establishment kitchens, in all other rooms and areas in which food is stored or prepared and in which utensils are washed and in walk-in refrigerators, dressing or locker rooms and toilet rooms shall be of smooth, nonabsorbent materials and so constructed as to be easily cleanable, provided that the floors of nonrefrigerated, dry-food storage areas need not be nonabsorbent. All floors shall be kept clean and in good repair.
- (b) Floor drains shall be provided in all rooms where floors are subjected to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor. All exterior areas where food is served shall be kept clean and properly drained, and surfaces in such areas shall be finished so as to facilitate maintenance and minimize dust.
- (c) The walls and ceilings of all rooms shall be kept clean and in good repair. All walls of rooms or areas in which food is prepared or utensils or hands are washed shall be easily cleanable, smooth and light-colored and shall have washable surfaces up to the highest level reached by splash or spray.

(Code 1968, § 13-24)

Sec. 58-40. - Lighting.

All areas in a food service establishment in which food is prepared or stored or utensils are washed, handwashing areas, dressing or locker rooms, toilet rooms and garbage and rubbish storage areas shall be well lighted. During all cleanup activities, adequate light shall be provided in the area being cleaned and upon or around equipment being cleaned.

(Code 1968, § 13-25)

Sec. 58-41. - Ventilation.

All food service establishment rooms in which food is prepared or served or utensils are washed, dressing or locker rooms, toilet rooms and garbage and rubbish areas shall be well ventilated. Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food preparation surfaces. Filters, where used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable state



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and local fire prevention requirements and shall, when vented to the outside air, discharge in such manner as not to create a nuisance.

(Code 1968, § 13-26)

Sec. 58-42. - Dressing rooms and lockers.

Adequate facilities shall be provided in a food service establishment for the orderly storage of employees' clothing and personal belongings. Where employees routinely change clothes within the establishment, one or more dressing rooms or designated areas shall be provided for this purpose. Such designated areas shall be located outside of the food preparation, storage and serving areas and the utensil-washing and storage areas, provided that, when approved by the health authority, such an area may be located in a storage room where only completely packaged food is stored. Designated areas shall be equipped with adequate lockers, and lockers or other suitable facilities shall be provided in dressing rooms. Dressing rooms and lockers shall be kept clean.

(Code 1968, § 13-27)

Sec. 58-43. - Housekeeping.

All parts of the food service establishment and its premises shall be kept neat, clean and free of litter and rubbish. Cleaning operations shall be conducted in such a manner as to minimize contamination of food and food contact surfaces. None of the operations connected with a food service establishment shall be conducted in any room used as living or sleeping quarters. Soiled linens, coats and aprons shall be kept in suitable containers until removed for laundering. No live birds or animals shall be allowed in any area used for the conduct of food service establishment operations, provided, that guide dogs accompanying blind persons may be permitted in dining areas.

(Code 1968, § 13-28)

Sec. 58-44. - Temporary establishments.

A temporary food service establishment shall comply with all sections of this article which are applicable to its operation. The health authority may augment such requirements when needed to ensure the service of safe food, may prohibit the sale of certain potentially hazardous food and may modify specific requirements for physical facilities when in his opinion no imminent health hazard will result.

(Code 1968, § 13-29)

Sec. 58-45. - Sale of meat, poultry, fish, shrimp, shellfish.

It shall be unlawful for any person to sell or offer for sale any meat, poultry, fish, shrimp or shellfish from any location within the corporate city limits, unless the product is packaged by an approved source and frozen or sold from a building approved for such purposes by the health authority.



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(Code 1968, § 13-40)

Secs. 58-46—58-55. - Reserved.

DIVISION 2. - INSPECTIONS AND ENFORCEMENT

Sec. 58-56. - Enforcement.

This article shall be enforced by the health authority in accordance with the interpretations thereof contained in the compliance provisions of the 1962 edition of the United States Public Health Service Food-Service Sanitation Ordinance and Code, insofar as such interpretations are applicable and not inconsistent with this article, and a certified copy of such ordinance and code shall be on file in the city secretary's office at all times.

(Code 1968, § 13-39)

Sec. 58-57. - Access to establishment.

The health authority, after proper identification, shall be permitted to enter, at any reasonable time, any food service or food processing establishment or any other establishment handling, storing or selling food, whether required to have a permit under this article or not, within the city or its police jurisdiction, for the purpose of making inspections to determine compliance with this article. He shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or used and persons employed.

(Code 1968, § 13-31)

Sec. 58-58. - Inspection of establishments.

The health authority shall inspect each food service and food processing establishment located in the city or its police jurisdiction a minimum of twice a year and shall make as many additional inspections as are necessary for the enforcement of this article.

(Code 1968, § 13-30)

Sec. 58-59. - Inspection records, demerit values, demerit scores.

Whenever the health authority makes an inspection of a food service or food processing establishment, he shall record his findings on an inspection report form provided for this purpose and shall furnish the original of such inspection report form to the permit holder or operator. Such form shall summarize the requirements of sections 58-28 through 58-44 and shall set forth demerit point values for each such requirement, in accordance with PHS form 4006, which is a part of this section. Upon completion of an inspection, the health authority shall total the demerit point values for all requirements in violation, such total becoming the demerit score for the establishment.

(Code 1968, § 13-32)



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Sec. 58-60. - Issuance of notices.

Whenever the health authority makes an inspection of a food service or food processing establishment and discovers that any of the requirements of sections 58-28 through 58-44 have been violated, he shall notify the permit holder or operator of such violations by means of the inspection report form or other written notice. In such notification, the health authority shall:

- (1) Set forth the specific violations found, together with the demerit score of the establishment.
- (2) Establish a specific and reasonable period of time for the correction of the violation found, in accordance with the following:
 - a. When the demerit score of the establishment is 20 or less, all violations of two or four demerit points must be corrected by the time of the next routine inspection.
 - b. When the demerit score of the establishment is more than 20 but not more than 40, all items of two or four demerit points must be corrected within a period of time not to exceed 30 days.
 - c. When one or more six demerit point items are in violation, regardless of demerit score, such items must be corrected within a period of time not to exceed ten days.
 - d. When the demerit score of the establishment is more than 40, the permit is immediately suspended.
 - e. For temporary food service establishments, violations must be corrected within a specified period of time not to exceed 24 hours. Failure to comply with such notice shall result in immediate suspension of the permit.
- (3) State that failure to comply with any notice issued in accordance with this section may result in immediate suspension of the permit.
- (4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the health authority within the period of time established in the notice for correction.

(Code 1968, § 13-33)

Sec. 58-61. - Service of notices.

Notices provided for under section 58-60 shall be deemed to have been properly served when the original of the inspection form or other notice has been delivered personally to the permit holder or person in charge or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the health authority.

(Code 1968, § 13-34)

Sec. 58-62. - Examination and condemnation of food.



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- (a) Under this article, food may be examined or sampled by the health authority as often as may be necessary to determine freedom from adulteration or misbranding. The health authority may, upon written notice to the owner or person in charge, place a hold order on any food which he determines or has probable cause to believe to be unwholesome or otherwise adulterated or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the health authority, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of or destroyed without permission of the health authority, except on order by a court of competent jurisdiction.
- (b) After the owner or person in charge has had a hearing as provided for in section 58-60(4) and on the basis of evidence produced at such hearing or on the basis of his examination if a written request for a hearing is not received within ten days, the health authority may vacate the hold order or may by written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or to bring it into compliance with this article. Such order of the health authority to denature or destroy such food or bring it into compliance with this article shall be stayed if the order is appealed to a court of competent jurisdiction within three days.

(Code 1968, § 13-35)

Sec. 58-63. - Procedure when employee infection is suspected.

When the health authority has reasonable cause to suspect possibility of disease transmission from any food service or food processing establishment employee, the health authority shall secure a morbidity history of the suspected employee or make such other investigation as may be indicated and take appropriate action. The health authority may require any or all of the following measures:

- (1) The immediate exclusion of the employee from all food service establishments;
- (2) The immediate closure of the food service establishment concerned until, in the opinion of the health authority, no further danger of disease outbreak exists;
- (3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and
- (4) Adequate medical and laboratory examinations of the employee, of other employees and of their body discharges.

(Code 1968, § 13-38)

Sec. 58-64. - Plan review of future construction.

When a food service or food processing establishment is constructed or extensively remodeled or when an existing structure is converted for use as a food service establishment, properly prepared plans and specifications for such construction, remodeling or alteration, showing layout, arrangement and construction materials of work areas and the location, size



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and type of fixed equipment and facilities shall be submitted to the health authority for approval before such work is begun.

(Code 1968, § 13-37)

Sec. 58-65. - Food from establishments outside jurisdiction of health authority.

Food from food service establishments outside the jurisdiction of the health authority may be sold within the city if such food service establishments conform to this article or to substantially equivalent requirements. To determine the extent of compliance with such requirements, the health authority may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

(Code 1968, § 13-36)

Secs. 58-66—58-75. - Reserved.

DIVISION 3. - RULES AND REGULATIONS

FOOTNOTE(S):

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Editor's note— Div. 3, Permits, §§ 58-76—58-84 was deleted as being superseded by Ord. No. O-35-99, §§ 1—8, adopted Dec. 13, 1999. Former Div. 3 was derived from Code 1968, §§ 13-45—13-54, 13-56—13-58; Ord. No. O-30-99, adopted Sept. 27, 1999. In the event of conflict between provisions of Ord. No. O-35-99 and Div. 1 or 2 of this article, it is presumed that the more recent provisions will prevail.

Sec. 58-76. - Adoption of Texas food establishment rules.

(a) The city adopts by reference the provisions of the current rules or rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction.

(b) Definitions.

The words "authorized agent or employee" mean the employees of the regulatory authority.

The words "food establishment" mean a food service establishment, a retail food store, a mobile food unit, and/or a roadside food vendor.

The words "state rules" mean the state rules found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

The words "regulatory authority" mean the City of Palestine.

(Ord. No. O-35-99, § 1, 12-13-99)



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Sec. 58-77. - Permits and exemptions.

- (a) A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this division. A valid permit must be posted in or on every food establishment regulated by this division.
- (b) A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this division, but is not exempt from compliance with state rules.
- (c) The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

(Ord. No. O-35-99, § 2, 12-13-99)

Sec. 58-78. - 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.
- (c) The applicable fee for permits shall be as set forth in the fee schedule adopted by the city council.

(Ord. No. O-35-99, § 3, 12-13-99; Ord. No. O-38A-06, § XVII, 11-13-2006)

Sec. 58-79. - 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 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 division. The approved plans and specifications must be followed in construction, remodeling or conversion.



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

(Ord. No. O-35-99, § 4, 12-13-99)

Sec. 58-80. - Suspension of permit.

- (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 section 58-80(b) of this division. 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.

(Ord. No. O-35-99, § 5, 12-13-99)

Sec. 58-81. - Revocation of permit.

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. If no request for hearing is filed within the ten day period, the revocation of the permit becomes final.

(Ord. No. O-35-99, § 6, 12-13-99)

Sec. 58-82. - 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.



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(Ord. No. O-35-99, § 7, 12-13-99)

Sec. 58-83. - Remedies.

- (a) Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than \$2,000.00.
- (b) The regulatory authority may seek to enjoin violations of these rules.

(Ord. No. O-35-99, § 8, 12-13-99)

Secs. 58-84—58-105. - Reserved.

ARTICLE III. - MOSQUITO CONTROL

FOOTNOTE(S):

--- (4) ---

Cross reference— Health and sanitation board, § 2-111 et seq.; weeds, brush, stagnant water, debris, § 46-51 et seq. [\(Back\)](#)

Sec. 58-106. - 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:

Collection of water means those contained in ditches, pools, natural or artificial ponds, excavations, holes, depressions, open cesspools, privy vaults, fountains, cisterns, tanks, shallow wells, barrels, troughs, except horse troughs in frequent use, urns, cans, boxes, bottles, tubs, buckets, defective house roof gutters, tanks of flush closets or other similar containers.

(Code 1968, § 15-11)

Cross reference— Definitions generally, § 1-2.

Sec. 58-107. - Presumption of violation.

The natural presence of mosquito larvae in standing or running water shall be evidence that mosquitoes are there, and failure to prevent such breeding within three days after notice by the health officer shall be deemed a violation of this article.

(Code 1968, § 15-12)

Sec. 58-108. - Enforcement.



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If the person responsible for the condition giving rise to the breeding of mosquitoes fails or refuses to take necessary measures to prevent the breeding within three days after due notice has been given to him, the city is authorized to do so, and all necessary cost incurred by it for this purpose shall be a charge against the property owner or other person offending, as the case may be.

(Code 1968, § 15-14)

Sec. 58-109. - Health officer's right of entry.

For the purpose of enforcing this article, the health officer or his duly authorized agent may at all reasonable times enter in and upon any premises within his jurisdiction.

(Code 1968, § 15-16)

Sec. 58-110. - Breeding places prohibited.

It shall be unlawful for any person to have, keep, maintain, cause or permit within the city any collection of standing or flowing water in which mosquitoes breed or are likely to breed, unless such collection of water is treated so as to effectually prevent such breeding.

(Code 1968, § 15-15)

Sec. 58-111. - Methods of treatment.

The method of treatment of any collection of water directed toward the prevention of breeding of mosquitoes shall be approved by the health officer and may be one or more of the following:

- (1) Screening with wire netting of at least 16 meshes to the inch each way or with any other material which will effectually prevent the ingress or egress of mosquitoes.
- (2) Complete emptying every seven days of unscreened containers, together with their thorough drying or cleaning.
- (3) Using an approved larvicide applied under the direction of the health officer.
- (4) Covering completely the surface of the water with kerosene, petroleum or paraffin oil once every seven days.
- (5) Cleaning and keeping sufficiently free of vegetable growth and other obstructions and stocking with mosquito destroying fish.
- (6) Proper disposal by the removal or destruction of tin cans, tin boxes, broken or empty bottles and similar articles likely to hold water.
- (7) Effective drainage of all impounded water in ditches, pools, ponds, excavations, holes, depressions and marshes.

(Code 1968, § 15-13)

Secs. 58-112—58-130. - Reserved.



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ARTICLE IV. - RAT CONTROL

FOOTNOTE(S):

--- (5) ---

Cross reference— Health and sanitation board, § 2-111 et seq.; buildings and building regulations, ch. 22; businesses, ch. 26; weeds, brush, stagnant water, debris, § 46-51 et seq.; litter, § 46-81 et seq.; junked vehicles, § 46-186 et seq. ([Back](#))

DIVISION 1. - GENERALLY

Sec. 58-131. - 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:

Business building means any structure, whether public or private, that is adapted for occupancy for transaction of business; for rendering of professional service; for amusement; for the display, sale or storage of goods, wares or merchandise; or for the performance of work or labor; including hotels, apartment buildings, tenement houses, roominghouses, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories and all outhouses, sheds, barns and other structures on premises used for business purposes.

Health officer means the person designated in section 2-51 or his duly authorized representative.

Occupant means the individual, partnership or corporation that uses or occupies any business building or part or fraction thereof, whether the actual owner or tenant. For vacant business buildings or vacant portions thereof, the owner, agent or custodian shall have the responsibility as occupant.

Opening means any opening in the foundation, side or walls of any business building, including roof, chimney eaves, grills, windows, sidewalk grates and sidewalk elevators, through which a rat may pass.

Owner means the actual owner, agent or custodian of the business building, whether individual, partnership or corporation. The lessee shall be construed as the owner for the purpose of this article when business building agreements hold the lessee responsible for maintenance and repairs.

Premises means all business buildings, outhouses, sheds, barns, garages, docks, wharves, piers, grain elevators and abattoirs, whether public or private, and any and all other structures used in connection with the operation of any business building.

Rat eradication means the elimination or extermination of rats within buildings by any or all of the accepted measures, such as poisoning, fumigation, trapping, clubbing, etc.



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Rat harborage means any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside of any structure.

Rat stoppage means an inexpensive form of ratproofing designed to prevent the ingress of rats into business buildings. It is essentially the closing or protecting of all openings in exterior walls and foundations or the grates in a sidewalk of business buildings with ratproof materials installed in such a manner as to prevent rats from gaining entrance.

Ratproofing means a form of construction to prevent the ingress of rats into business buildings from the exterior or from one business building or establishment to another. It consists essentially of treatment with material impervious to rat gnawing of all actual or potential openings in exterior walls, ground or first floors, basements, roofs and foundations that may be reached by rats from the ground by climbing or burrowing.

(Code 1968, § 15-27)

Cross reference— Definitions generally, § 1-2.

Sec. 58-132. - Ratproofing required.

It shall be unlawful for any person to construct within the city limits any business building, curb or farmers' market, unless such construction shall render the business building ratproof in accordance with this article.

(Code 1968, § 15-28)

Sec. 58-133. - Inspection of business buildings.

The health officer is authorized to make frequent and unannounced inspections of business buildings within the city for the purpose of determining any rat infestation and order by written notice either the owner, occupant, agent or any other person in custody of any rat infested business building to protect the business building by rat stoppage, regardless of the need for the remodeling of or repairs to such buildings, and further order that such other rat control methods be employed as may be deemed necessary by the health officer to maintain the business building free from rats. The written notice and order shall specify the time, not less than 30 days, for completion of such work and improvements. Failure to comply with such written notice or order within the time specified shall constitute a violation of this article.

(Code 1968, § 15-29)

Sec. 58-134. - Inspection during construction of buildings.

The health officer is authorized to make inspections during the course of and upon completion of any construction, repair, remodeling or installation of rat control measures to business buildings to ensure compliance with this article, and no person shall interfere with or refuse to permit such inspection.

(Code 1968, § 15-30)



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Sec. 58-135. - Destruction of rats.

- (a) For the purpose of eliminating all rats that may remain in any business building after rat stoppage shall have been carried into effect, all storerooms, warehouses or other business buildings shall be provided by the owner, occupant, agent or any other person in custody of such business building with one or more traps, which shall be kept set and freshly baited at frequent intervals and maintained in good working condition and shall be inspected daily. Any rat caught therein shall be killed, removed daily and disposed of in a manner acceptable to the health officer and such trap reset and rebaited.
- (b) Rats may also be destroyed by poisoning and fumigating in the manner approved by the health officer or by any other authorized agency of the United States Public Health Service or the state board of health and subject to applicable laws relating to poisonous substances and fumigators.

(Code 1968, § 15-31)

Sec. 58-136. - Protection of roof, upper stories from rats.

- (a) In order to protect a business building from what is commonly called the climbing or roof rat, it shall be unlawful to permit fishing poles, ladders or any other object that a rat could climb on in order to reach the roof of any business building to lean against the side of the wall of such business building.
- (b) The owner of a business building shall also protect elevator shafts, fire escapes and guy wires in such manner that rats will not be able to gain ingress into any business building.
- (c) Any person in charge of a business building shall trim the branches of all trees extending over and against any business building, and the branches shall be cut and trimmed and kept trimmed and cut so that no part of any branch or any part of the tree shall be closer than ten feet to any business building. The tops of all trees shall be cut back ten feet from a line extending perpendicularly from any exterior wall of a business building.

(Code 1968, § 15-32)

Sec. 58-137. - Closure of buildings infested with rats.

When the health officer shall find any building, structure or premises so heavily infested with rats resulting in a menace to public health, he shall have authority to close the building, structure or premises or any occupancy or use until rats have been eradicated or while rats are being eradicated.

(Code 1968, § 15-33)

Sec. 58-138. - Creating, maintaining rat harborage.

It shall be unlawful for any person to use or maintain any business building or premises in such manner that a rat harborage is brought into existence or maintained.



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(Code 1968, § 15-34)

Sec. 58-139. - Treatment of exterior rat harborage.

Under this article, rat burrows and other exterior rat harborage shall be treated under methods directed by the health officer.

(Code 1968, § 15-35)

Sec. 58-140. - Accumulation of lumber, boxes and similar materials.

It shall be unlawful for any person to permit any premises, improved or unimproved, or any open lot and alley to accumulate lumber, boxes, barrels, bricks or stones and similar materials that may be permitted to remain thereon and that may be used as a harborage by rats, unless such shall be placed on open racks and elevated not less than 18 inches above the ground, with a clear intervening space underneath to prevent the harborage of rats.

(Code 1968, § 15-36)

Sec. 58-141. - Disposal of waste animal matter.

For the purposes of this article, it shall be unlawful for any person to dump or place on any land or on any water or waterway any dead animals, butchers' offal, seafood or any waste vegetables, animal matter or any food products whatsoever.

(Code 1968, § 15-37)

Sec. 58-142. - Accumulation of wastes prohibited.

No garbage, rubbish, waste or manure shall be placed, left, dumped or permitted to accumulate or remain in any building or premises so that such shall or may afford food for or a harborage or breeding place for rats. Rat burrows and other exterior harborage shall be treated under methods directed by the health officer.

(Code 1968, § 15-38)

Secs. 58-143—58-155. - Reserved.

DIVISION 2. - MINIMUM REQUIREMENTS

Sec. 58-156. - Scope.

For the purpose of obtaining maximum rat stoppage at a minimum cost to the owner or occupant of a business building, this division is set forth as the minimum requirements for applying rat stoppage to business buildings within the city.

(Code 1968, § 15-45)

Sec. 58-157. - Approval of materials.



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All materials used in ratproofing business buildings and the method of installation thereof shall be approved by the health officer.

(Code 1968, § 15-46)

Sec. 58-158. - Protection of sheetmetal.

Solid sheetmetal, expanded metal and wire cloth specified in this division shall have a rust-resisting, protective coating, preferably galvanized.

(Code 1968, § 15-47)

Sec. 58-159. - Foundation wall ventilator openings.

For the purposes of this division, all foundation wall ventilator openings shall be covered for their entire height and width with perforated sheetmetal plates of a thickness not less than 14 gauge or with expanded sheetmetal of a thickness not less than 18 gauge or with cast iron grills or grates or with any other material of sufficient strength and equal rat-resisting properties. The openings therein shall be small enough to prevent the ingress of rats and shall not be larger than one-half inch.

(Code 1968, § 15-48)

Sec. 58-160. - Foundation and exterior wall openings.

Under this division, all foundations and exterior wall openings, including those used for the purpose of ventilation, light, doors and windows, such as those openings around pipes, electric cables, conduits, openings due to deteriorated wall, broken masonry or concrete, shall be protected against the ingress of rats by closing such openings with cement mortar, concrete or masonry or close-fitting sheetmetal or suitable size pipe flanges or other material with equal rat-resisting properties, which shall be securely fastened in place.

(Code 1968, § 15-49)

Sec. 58-161. - Doors.

- (a) Under this division, all exposed edges of the lower eight inches of wooden doors and door jambs, serving as front, rear or side entrances into business buildings, from the ground, basement or cellar floor, and other doors accessible to rats shall be protected against the gnawing of rats by covering such doors and jambs with solid sheetmetal of not less than 24-gauge thickness. The same material shall be used on door sills or thresholds, or such door sills or thresholds may be constructed of cement, stone, steel or cast iron.
- (b) All doors on which metal flashing has been applied shall be properly hinged to provide for free swinging. When closed, doors shall fit snugly so that the maximum clearance between any door jamb and sill shall not be greater than three-eighths inch.



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- (c) Door jambs and sills constructed of metal, concrete masonry, stone or cement mortar or cast iron and steel, when fitting closely to exclude rats, are not required to comply with this section.

(Code 1968, § 15-50)

Sec. 58-162. - Coal chutes and hatchways.

Doors, door jambs and sills of coal chutes and hatchways that are constructed of wood shall be covered with solid sheetmetal of 24 gauge or heavier or they may be replaced with metal chutes of 24 gauge or heavier, installed in such manner as will prevent the ingress of rats.

(Code 1968, § 15-51)

Sec. 58-163. - Windows.

- (a) For purposes of this division, all windows and other openings for the purpose of light or ventilation located in the side or rear of exterior walls and within 30 inches above the existing ground level immediately below such opening shall be covered for their entire height and width, including frame, with wire cloth of 19 gauge or heavier, having a mesh of not larger than one-half inch.
- (b) All windows and other openings for the purpose of light or ventilation in the exterior walls that may be accessible to rats by way of exposed pipes, wires, conduits and other appurtenances shall be covered with guards of wire cloth of 19 gauge or heavier, having a mesh of not larger than one-half inch, or in lieu of wire cloth covering the pipes, wires, conduits and other appurtenances shall be blocked from rat usage by installing sheetmetal guards of 24 gauge or heavier. Such guards when used on horizontal pipes, wires, conduits or other appurtenances shall be placed in a vertical position and shall be snugly fitted around the pipe, wire, conduit or other appurtenance. The guard shall measure not less than 12 inches beyond and on all sides of the pipe, wire, conduit or other appurtenance where the intervening space between the wall and pipe permits and shall extend 30 inches in an upward direction and 12 inches in a downward direction and shall be securely fastened to the pipe, wire, conduit or other appurtenance and also to the adjacent wall wherever practicable so that the guard will remain in a vertical position at all times.
- (c) Such guards when used on vertical pipes, wires, conduits or other appurtenances shall be fitted snugly around the pipe, wire, conduit or other appurtenance; shall be placed in a horizontal position (right angle to pipe, etc.); shall extend horizontally from the pipe, wire, conduit or other appurtenance for a minimum distance of 12 inches beyond and on all sides of the pipe, wire, conduit or other appurtenance, where the intervening space between pipe and wall permits; and shall be securely fastened to the pipe, wire, conduit or other appurtenance and also to the adjacent wall wherever practicable in such manner that the guard will remain in a horizontal position at all times.

(Code 1968, § 15-52)

Sec. 58-164. - Light wells.



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- (a) Light wells with windows in exterior walls that are located below the outside ground level shall be protected from the ingress of rats by one of the following methods:
 - (1) Installing over light wells cast iron or steel grills or steel gratings or other material of equal strength and rat-resisting properties, with openings in grills or gratings not to exceed one-half inch in the shortest dimension.
 - (2) Installing securely to and completely covering metal grills that are broken or have openings larger than one-half inch in the shortest dimension or are otherwise defective with expanded metal of 18 gauge or heavier, having openings not greater than one-half inch in the shortest dimension, or with 16 gauge or heavier wire cloth with one-half inch mesh.
- (b) At the option of the owner the opening in the wall of the building below the grate may be entirely closed with brick or concrete or partially closed and the remaining open space covered with 19 gauge or heavier wire cloth with mesh not to exceed one-half inch.

(Code 1968, § 15-53)

Sec. 58-165. - Buildings constructed on piers.

- (a) A business building constructed on piers having wooden floor sills less than 12 inches above the surface of the ground shall have the intervening space between the floor sill and ground protected against the ingress of rats by installing a solid masonry or concrete wall not less than four inches thick or solid sheetmetal curtain wall of 24 gauge or heavier around the entire perimeter of the business building and extending the curtain wall to a depth of not less than 36 inches below the surface of the ground level and fastening securely to the exterior wall of the business building in such manner as will prevent rats from entering the building.
- (b) In lieu of the installation of curtain walls, all ground floors of wood construction may be replaced with concrete of not less than three inches in thickness with the exterior walls protected for a height of 24 inches above the concrete floor with masonry, concrete or solid sheetmetal of 24 gauge or heavier. Exterior wall protection shall be securely tied into the concrete floor at all points.
- (c) A business building constructed on piers having wooden floor sills greater than 12 inches above the ground level shall have the intervening spaces between the floor sill and ground protected against the ingress of rats by installing curtain walls in accordance with subsection (b) of this section or by protecting the business building against the ingress of rats by installing solid sheetmetal coverage of 24 gauge or heavier snugly around each pipe, cable, wire, conduit or other utility service passing through the wooden ground floor. Such metal coverage shall not be less than eight inches in diameter larger than the diameter of the pipe, cable, wire, conduit or other utility service and shall be securely fastened to the wooden floor. All other openings in wooden ground floors through which rats may gain entrance into double walls or the interior of a business building, such as openings that may exist in floors and double walls above floor sills, shall be closed with 24 gauge or heavier solid sheetmetal or 16 gauge or heavier wire cloth of one-half inch mesh or



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masonry or with concrete. Wood frame constructed business buildings having concrete or masonry foundation walls shall have ventilators in foundation walls protected as provided in section 58-160. All miscellaneous wall openings, doors and windows shall be protected in accordance with this division.

(Code 1968, § 15-54)

Sec. 58-166. - Curb or farmers' markets.

For the purposes of this division, curb or farmers' markets in which fruit or vegetables or any other food products are exposed and offered for sale on racks, stands, platforms and in vehicles outside of business buildings shall have floors paved with concrete or asphalt for the entire surface area of the market. Display racks, stands or platforms on which fruit or vegetables or any other food products are displayed or offered for sale shall be of sufficient height that all such fruits, vegetables or other food products shall be kept at a distance of not less than 18 inches above the floor pavement and shall be so constructed that rats cannot harbor therein or thereunder.

(Code 1968, § 15-55)

Secs. 58-167—58-180. - Reserved.

ARTICLE V. - BAT CONTROL

Sec. 58-181. - 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:

Habitable structure means any building intended to be used by humans to live, work, or play.

(Ord. No. O-51-10, § I, 9-27-2010)

Sec. 58-182. - Roosting places prohibited.

It shall be unlawful for any person to maintain within the city any habitable structure in which bats roost.

(Ord. No. O-51-10, § I, 9-27-2010)

Sec. 58-183. - Enforcement procedure.

- (a) When the health officer has reason to believe that a habitable structure is being used by bats to roost, the health officer shall give to the owner of the structure a written warning of a potential violation of this article. Notice shall be given as required by V.T.C.A., Texas Health and Safety Code, § 342.006.



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- (b) A person responsible for maintaining the structure where bats are roosting who fails to take necessary measures to exclude the bats from the structure within 15 days of receipt of the notice shall be guilty of a misdemeanor and may be fined up to \$2,000.00.
- (c) It is a defense to prosecution under this section that the person has, within 15 days of receiving the notice set out in subsection (a) of this section, attempted in good faith to take reasonable measures, and is continuing to take additional reasonable measures, to exclude the bats from the structure.

(Ord. No. O-51-10, § I, 9-27-2010)

Sec. 58-184. - Health officer's right of entry.

- (a) If the person responsible for maintaining the structure where bats are roosting fails to take necessary measures to exclude the bats from the structure within 30 days after receipt of the notice, the city is authorized to take reasonable and necessary measures to do so. All reasonable and necessary costs incurred by the city for this purpose shall be a charge against the property owner.
- (b) For the purpose of enforcing this article, the health officer or his duly authorized agent may at all reasonable times enter in and upon any premises within his jurisdiction.
- (c) Notice given pursuant to this article may provide that if the owner permits bats to roost in the building again, on or before the first anniversary of the date of the notice, the health officer or his duly authorized agent may, without further notice, correct the violation and assess the expense against the property.

(Ord. No. O-51-10, § I, 9-27-2010)

Sec. 58-185. - Assessment of expenses; lien.

The expenses incurred under this article may be assessed against the property, and a lien obtained against the property, by compliance with the city with the requirements of V.T.C.A., Texas Health and Safety Code, § 342.007.

(Ord. No. O-51-10, § I, 9-27-2010)

Secs. 58-186—58-190. - Reserved.

ARTICLE VI. - ILLEGAL SMOKING PRODUCTS

Sec. 58-191. - Purpose.

The purpose of this article is to prohibit the use, possession, sale, ingestion or smoking of illegal smoking products and ingestion devices hereinafter defined within the city limits of Palestine, Texas.



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(Ord. No. O-52-10, § 1, 10-11-2010)

Sec. 58-192. - 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:]

Person shall mean an individual, group of individuals, proprietorship, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

Illegal smoking product shall mean any substance, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following chemicals:

- (1) *Salvia divinorum* or salvinorin A; all parts of the plant presently classified botanically as *salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts:
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol (also known as CP47, 497) and homologues;
- (3) (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo [c] chormen-1-ol) (also known as HU-211 or Dexanabinol);
- (4) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018); or
- (5) Butyl-3-(1-naphthoyl) indole (also known as JWH—073).
- (6) 1-pentyl-3-(4-methoxynaphthoyl) indole (also known as JWH-081).

Products containing some or all of the above substances are currently being marketed under the following commercial names:

"Spice", "Spice Gold", "Spice Diamond", "Yucatan Fire", "Solar Flare", "Pep Spice", "Fire N' Ice", "Genie", "Dascents", "Zohai", "Sage", "K-2", "K-2 Summit", "K-2 Sex", and "KO Knock-Out 2".

Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this article, regardless of whether they are marketed under alternative names.

Ingestion device shall mean equipment, a product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) A water pipe;
- (3) A carburetion tube or device;



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- (4) A smoking or carburetion mask;
- (5) A chamber pipe;
- (6) A carburetor pipe;
- (7) An electric pipe;
- (8) An air-driven pipe;
- (9) A chillum;
- (10) A bong; or
- (11) An ice pipe or chiller.

(Ord. No. O-52-10, § 1, 10-11-2010)

Sec. 58-193. - Sell, offer, gift, display or possession.

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any illegal smoking material to any person.

(Ord. No. O-52-10, § 1, 10-11-2010)

Sec. 58-194. - Use or possession of illegal smoking material.

It shall be unlawful for any person to possess or to use illegal smoking materials.

(Ord. No. O-52-10, § 1, 10-11-2010)

Sec. 58-195. - Use or possession of illegal smoking paraphernalia.

It shall be unlawful for any person possess any illegal smoking paraphernalia with the intent to use it to smoke, ingest, inhale or otherwise consume illegal smoking material. It is a violation of this section if a person is found in possession of illegal smoking paraphernalia and appropriate forensic testing is done on the paraphernalia showing traces of illegal smoking material are present on the illegal smoking paraphernalia.

(Ord. No. O-52-10, § 1, 10-11-2010)

Sec. 58-196. - Affirmative defense.

It shall be a defense to a violation of this article that any act described in this article is under and pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

(Ord. No. O-52-10, § 1, 10-11-2010)

Sec. 58-197. - Penalty.

A violation of this article shall be punishable by a fine not to exceed \$2,000.00.

(Ord. No. O-52-10, § 1, 10-11-2010)