



City Council Agenda 11/12/2015

Notice is hereby given of a regular meeting of the City Council of City of San Angelo to be held on November 12, 2015 at 9:00 AM at the McNease Convention Center – South Meeting Room, 501 Rio Concho Drive, San Angelo, Texas, for the purpose of considering the following agenda items.

1. Call to Order

2. Prayer and Pledge

3. Proclamations/Recognitions

- a. Recognition of Assistant Director of Human Resources/Risk Management Veronica Sanchez on her selection as one of the Standard-Times' 20 Under 40 young leaders for 2015
- b. Recognition of Fort Concho Curator of History Cory Robinson on his selection as one of the Standard-Times' 20 Under 40 young leaders for 2015
- c. Recognition of Public Arts Commission Chairman Alejandro Castanon on his selection as one of the Standard-Times' 20 Under 40 young leaders for 2015

4. Public Comment

Issues or items that are not on the agenda may be raised by the public at this time. Citizens should speak from the podium, begin by stating their name and limit remarks to less than five minutes. Council members may request that a discussed item be placed on a future agenda. The Council takes public comment on all Regular Agenda items during the discussion of those items.

5. Canvass Agenda

- a. Consider adopting a resolution canvassing the returns and declaring the results proposed City Charter changes of the Special Election held on November 3, 2015 - (Presentation by City Clerk Bryan Kendrick)

6. Consent Agenda

- a. Consider awarding RFB VM-10-15 Half Ton Pickups to Jim Bass Ford (San Angelo, TX) in the amount of \$235,000 per fiscal year, for the purchase of eight (8) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents (R.Kramer)
- b. Consider awarding RFB VM-11-15 Medium Duty Pickup to Jim Bass Ford (San Angelo, TX) in the amount of \$267,000 per fiscal year, for the purchase of eight (8) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents (R.Kramer)

- c. Consider approving a contract with Ener-Tel Services, Inc. for Burglar/Fire Alarm Monitoring and Sprinkler Inspections Services for all City Facilities in the amount of \$82,562.12 annually and authorizing the City Manager to execute all related documents (R.Lewis)
- d. Consideration of approving an amendment to the interlocal agreement with the Concho Valley Transit District for transportation services related to the Goodfellow Express Route (M.Chegwidden)
- e. Consider adopting a resolution ratifying a Department of State Health Services HAZARDS/UNIQUE Grant Application and accepting grant funds in the amount of \$22,960 with the City of San Angelo providing a 10% Match in the amount of \$2,296, currently budgeted in FY16 (S.Villarreal)
- f. Consideration of authorizing the Mayor or City Manager to execute a lease agreement between the City and Mobile Maintenance, LLC, for the building and property on 616 North Washington St. for activities associated with the Boy Scouts of America program (C.White)
- g. Approve and ratify the City of San Angelo Development Corporation's resolution authorizing the Board President or his designee to execute a memorandum of understanding with the City of San Angelo relating to the funding not to exceed \$12,000 for development of a public dog park as part of the Red Arroyo Trail Project (R.Peña)
- h. Approve and ratify the City of San Angelo Development Corporation's approval of a Memorandum of Understanding by and between the City of San Angelo Development Corporation and the City of San Angelo relating to development of a public dog park as part of the Red Arroyo Trail Project (R.Peña)
- i. Consideration of approving a modification to the KSA Engineering contract with COSADC for Phase 3 Certification of the Industrial Park to include a feasibility study and cost estimate to provide sewer services to certain parcels in Phase 2 of the Industrial Park at a cost of \$11,250 (R.Peña)
- j. Consideration of authorizing City Manager to execute a Right-of-Way Easement to Concho Valley Electric Cooperative, Inc. (C.Preas)
- k. Consideration of authorizing the City Manager, or his designee to enter into a new Grazing and Agricultural Lease with Kevin Schniers, d/b/a Kevin Schniers Farms of 251.879 acres out of Sarah R. Robertson Survey 178, and being located adjacent to City Landfill (C.Preas)
- l. Consideration of confirming appointments to MHMR Service for the Concho Valley Board of Trustees recommended by Liaison Representative Committee (B.Kendrick)
- m. Second hearing and consideration of adoption of an ordinance amending Chapter 10 of the Code of Ordinances to reduce the maximum speed limit on US Highway 277 beginning at the exit of US Highway 277 South from US Highway 87 South extending south to the City limits from 60 and 65 mph to 55 mph (P.Frerich)

7. Regular Agenda

- a. First Public Hearing and consideration of approving a request from SAISD to authorize an amendment to the Vision Plan component of the San Angelo Comprehensive Plan to change the Future Land Use designation from Campus/Institutional to Commercial on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street - (Presentation by Planning & Development Services Director Jon James)
- b. First Public Hearing and consideration for Case Z15-08, an Ordinance approving a request from SAISD to authorize a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street (Presentation by Planning & Development Services Director Jon James)
- c. First Public Hearing and consideration for Case SU14-05, an Ordinance approving a request from Darnell Construction LLC to authorize an Amendment to a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials on 8.140 acres located at 4750 South Chadbourne Street - (Presentation by Planning & Development Services Director Jon James)
- d. Consider awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AssetWorks LLC under the purchasing co-op U.S. General Services Administration (GSA) Contract #GS-35F-4731G, in an amount of \$66,730 in initial hardware costs and \$131,602 annual subscription costs thereafter, in substantially attached form, and authorizing City Manager to execute the said contract - (Presentation by Fleet Services Superintendent Ryan Kramer)
- e. First public hearing and consideration of an ordinance amending Chapter 7, Article 7.06, Sec. 7.06.001 Definitions, State rules, by replacing 25 Texas Administrative Code, Chapter 229 with Texas Administrative Code, Chapter 228; amending Sec. 7.06.002 Adoption of state rules, by replacing Texas Food Establishment Rules, Chapter 229 with Chapter 228; and amending Sec. 7.06.005 (a), Mobile food establishments by replacing section 229.169 with section 228.221 of the Texas Food Establishment Rules - (Presentation by Health Services Director Sandra Villarreal)
- f. Consider adopting a resolution setting out number of votes to be cast for nominees for Board of Directors of Tom Green County Appraisal District - (Presentation by City Clerk Bryan Kendrick)
- g. Discussion and consideration of the possibility of issuing rebates of water fees - (Presentation by Budget Manager Morgan Chegwiddden)

8. Closed Session

Executive Session under the provision of Government Code, Title 5. Open Government; Ethics, Subtitle A. Open Government, Chapter 551. Open Meetings, Subchapter D. Exceptions to Requirement that Meetings be Open under the following sections:

- a. Section 551.071(1)(a) consult with attorney when the governmental body seeks the advice of its attorney about pending or contemplated litigation regarding:
 - 1. 2013 Sealcoating Program Contract;
 - 2. Martifer-Hirschfeld Energy Systems, LLC ET. AL. ; and
 - 3. Templeton Construction, Inc.
- b. Section 551.072 to deliberate the purchase, exchange, lease, or value of real property related to drainage

9. Follow Up and Administrative Issues

- a. Consideration of and possible action on matters discussed in Executive/Closed Session, if needed
- b. Announcements and consideration of Future Agenda Items

10. Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board at the City Hall of the City of San Angelo, Texas, on the 6th day of November 2015, at 10:00 a.m.

Bryan Kendrick, City Clerk

All agenda items are subject to action. All contracts/agreements are presented in substantially the attached form. The City Council reserves the right to consider business out of posted order and/or meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

In compliance with the Americans with Disabilities Act, the City of San Angelo will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please contact the City Clerk's Office at 325-657-4405.

City Council meetings are broadcast on Channel 17-Government Access at 10:30 A.M. and 7:00 P.M. every day for two weeks beginning on the Thursday after each meeting.

Recognition

Veronica Sanchez, the City of San Angelo's Assistant Director of Human Resources/Risk Manager, has been honored by the San Angelo Standard-Times as one of its 20 Under 40 young leaders for 2015. This plaudit recognizes Veronica's leadership not only within our municipal government but in the community at large.

Veronica joined the City in 2007 and earned the most recent of her three promotions in April, when she was named the HR department's assistant director. She directs and administers many functions related to our workforce, including employee recruitment, retention, compensation and benefits administration.

Her peers within her profession recognize her as a leader. Veronica has twice been elected to the board of the Texas Municipal Human Resources Association and chaired two committees. She has also served two terms as president of the Concho Valley Society for Human Resource Management, helping the group earn gold and then platinum chapter designation for the first times. Veronica was named the group's 2012 Human Resources Professional of the Year.

Veronica has also contributed to a wide range of charitable efforts for organizations such as Meals for the Elderly, Toys for Tots, the Concho Valley Regional Food Bank, the Concho Valley Home for Girls and the Alcohol & Drug Abuse Council of the Concho Valley. Additionally, she is a devoted parent to two teenage daughters who are active in school, music and athletics. In all settings, Veronica is a model for what we hope our organization to be.

Therefore, I, Dwain Morrison, Mayor of the City of San Angelo, on behalf of the City Council, do hereby recognize and applaud

Veronica Sanchez

for her service and positive determination to make a difference in our community.

In Witness Whereof, I have hereunto set my hand and have caused the Official Seal of the City of San Angelo to be affixed this 12th day of November, 2015.

Dwain Morrison

Mayor of the City of San Angelo

Recognition

Cory Robinson, the Curator of History at Fort Concho, has been honored by the San Angelo Standard-Times as one of its 20 Under 40 young leaders for 2015. This recognition is the result of more than 13 years of consistently important contributions to San Angelo's national historic landmark and our top tourist attraction.

A Bronte native and Angelo State University graduate, Cory has, since joining Fort Concho, resurrected the volunteer guide training program; founded two vintage baseball teams, one for adults and the other for youth; and created the Youth Military Heritage Program.

Additionally, Cory established a relationship with the NRA Foundation that has led to more than \$45,000 in grants to pay for period weaponry; he recreated equipment and uniforms for the Barracks 5 refurbishment; and he created a dozen interpretive banners that tell the stories of the fort's structures and the pioneers who worked and lived in them. He even used a decidedly modern-day advance – the Internet – to discover and to facilitate the purchase of a batch of 35 historic letters written at the fort in 1878.

His efforts resulted in his promotion to his current position in September and to his recognition by the Standard-Times earlier this month.

Therefore, I, Dwain Morrison, Mayor of the City of San Angelo, on behalf of the City Council, do hereby recognize and applaud

Cory Robinson

for his service and positive determination to make a difference in our community.

In Witness Whereof, I have hereunto set my hand and have caused the Official Seal of the City of San Angelo to be affixed this 12th day of November, 2015.

Dwain Morrison
Mayor of the City of San Angelo

Recognition

The chairman of the City of San Angelo's Public Arts Commission, Alejandro Castanon has been honored by the San Angelo Standard-Times as one of its 20 Under 40 young leaders for 2015. This recognition stems from Mr. Castanon's leadership not only within our municipal government but in the arts community and beyond.

An Air Force veteran who served abroad, Mr. Castanon settled in San Angelo and immediately began contributing to the community civically and artistically. His Vino Dipinte art gallery serves not only to showcase local artists' works but to spark an interest in the visual arts through relaxing and accessible painting parties.

Himself a painter with a vibrant and distinctive style, Mr. Castanon has captured on canvas some of San Angelo's most beautiful and distinctive landmarks, including the Cactus Hotel and the Concho River. Several of his works hang in City Hall and other municipal venues. He has donated tens of thousands of dollars of artwork to local charities and earlier this year painted for 24 hours straight, producing 14 pieces for each of the nonprofits that had requested one.

Along with leading our Public Arts Commission, which places works of art on City properties, Mr. Castanon has served on the boards of the San Angelo Schools Foundation, the Laura W. Bush Institute for Women's Health, and the Convention and Visitors Bureau.

Therefore, I, Dwain Morrison, Mayor of the City of San Angelo, on behalf of the City Council, do hereby recognize and applaud

Alejandro Castanon

for his service and positive determination to make a difference in our community.

In Witness Whereof, I have hereunto set my hand and have caused the Official Seal of the City of San Angelo to be affixed this 12th day of November, 2015.

Dwain Morrison
Mayor of the City of San Angelo

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, City Clerk,

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

Consider adopting a resolution canvassing the returns and declaring the results proposed City Charter changes of the Special Election held on November 3, 2015 - (Presentation by City Clerk Bryan Kendrick)

Summary/History:

The draft order, canvass procedure and return reports (early voting and final) are attached. The Elections Administrator and staff worked diligently throughout the election process. Early voting was held on October 19-23, from 8 am to 5 pm, on October 26-28, from 8 am to 5 pm, and October 29-30, from 7 am to 7 pm.

On Election Day, there were no major issues.

Financial Impact:

The expense of this Election will be shared with the County and is estimated to cost approximately \$30,000. The estimated cost was requested to be carried over from the last fiscal year in account 101-0500-411.06-16.

Other Information/Recommendation:

Leading up to the election, Various measures (i.e. Town Hall Meetings, Channel 17, legal notices, website, social media, etc.) were taken to ensure the proper notification and education of the ballot measures.

Staff recommends adoption of the order.

Attachments:

- | | | |
|----|-------------------|--|
| 1. | Resolution | 15-324_CC_SPECIAL_ELEC_NOV_3__CANVASS_RESO2_Final.docx |
| 2. | Cumulative Report | CC Elections Cumulative Unofficial Report.pdf |
| 3. | Canvass Procedure | 2015 OFFICIAL CANVASS PROCEDURE.docx |

Presentation:

verbal

Approvals/Reviews:

Kendrick, Bryan	Created/Initiated
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

A RESOLUTION OF THE CITY OF SAN ANGELO, TEXAS, CANVASSING RETURNS OF THE SPECIAL ELECTION HELD IN SAID CITY ON THE 3RD DAY OF NOVEMBER, 2015, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN ANGELO THE ADOPTION OR REJECTION OF CERTAIN PROPOSITIONS EACH PROVIDING FOR AMENDMENT TO THE HOME RULE CHARTER, AND DECLARING RESULTS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Resolution No. 2015-08-261 of the City of San Angelo, Texas, adopted on the 18th day of August, 2015, a Special Election was duly held on the 3rd day of November, 2015, for the purpose of submitting to the qualified voters of the City of San Angelo eight propositions for City Charter Amendments as set forth in Resolution No. 2015-08-261, **Exhibit "A"** to this Resolution; and,

WHEREAS, said Special Election was held with the solemnities and formalities necessary to make a valid election, all notices having been posted in the manner and for the length of time required by law; and,

WHEREAS, only duly qualified resident voters of the City of San Angelo, Texas, voted at the Special Election called and held on November 3, 2015; and,

WHEREAS, section 67.003 of the Texas Election Code, as amended, generally provides that each local canvassing authority shall not convene for the purpose of canvassing the election results earlier than the later of the third day after the uniform election day in May, or the date on which the early voting ballot board has verified and counted all provisional ballots, if any, or the date on which all timely received ballots cast from addresses outside of the United States are counted, if any; and, not later than the eleventh day after the election day; and,

WHEREAS, section 67.004(a) of the Texas Election Code, as amended, establishes the quorum level required to canvass election results to be two members of the canvassing authority; and,

WHEREAS, a quorum of the City Council met on Thursday, November 12, 2015, and duly canvassed the election returns of the above described Special Election.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANGELO, TEXAS:

Section 1.

The findings set forth above are found and determined to be true, and are incorporated into the body of this resolution for all purposes as if fully set forth herein.

Section 2.

The City Council of the City of San Angelo, having canvassed the returns of said Special Election and all election procedures heretofore occurring, finds that said election was duly and properly ordered; that due and proper notice of said election was given; that said election was in all

respects regularly and lawfully held, and that said returns thereof have been duly and legally made and that the following propositions received the following votes:

PROPOSITION NO. 1	
YES	4,698
NO	2,440
PROPOSITION NO. 2	
YES	4,887
NO	2,230
PROPOSITION NO. 3	
YES	6,381
NO	771
PROPOSITION NO. 4	
YES	6,270
NO	836
PROPOSITION NO. 5	
YES	3,744
NO	3,387
PROPOSITION NO. 6	
YES	6,327
NO	769
PROPOSITION NO. 7	
YES	5,359
NO	1,644
PROPOSITION NO. 8	
YES	1,913
NO	5,268

Section 3.

Pursuant to the applicable provisions of the Texas Local Government Code, Texas Election Code and the City of San Angelo Home Rule Charter, the City Council officially finds, determines, and declares the results of said Special Election to be that:

I.

PROPOSITION NUMBER ONE was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 8 Term of Office, of the Charter of the City of San Angelo be, and the same is hereby, amended so that it shall hereafter read as follows :

SECTION 8. Term of Office:

The Mayor and each Council Member shall serve a term of four (4) years and until his successor is elected and qualified unless sooner removed from office by death, resignation or recall, to become effective in the general election to be held for Mayor and Single Member Districts 2, 4 and 6 in 2017; and, in the general election to be held for Single Member Districts 1, 3 and 5 in 2019, except that Council Members for Single Member Districts 1, 3 and 5 shall be elected for three year terms in the 2016 general election. If a City Council Member ceases to be a resident of the district from which he was elected, he shall be deemed to have automatically resigned from office.”

II.

PROPOSITION NUMBER TWO was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 8 Term of Office, of the Charter of the City of San Angelo be, and the same is hereby, amended to add a provision to read as follows:

SECTION 8: Term of Office: *(Addition of a new subpart)*

No person shall serve as Mayor or Council Member for more than eight consecutive years, excluding service for any partial term.

III.

PROPOSITION NUMBER THREE was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 9 Qualifications, Subpart A. of the Charter of the City of San Angelo be, and the same is hereby, amended so that it shall hereafter read as follows:

SECTION 9 Qualifications:

A. In addition to the requirements prescribed by law, the following qualifications for candidates seeking election to the offices of Council Member or Mayor, and for holding those offices at the time of election are as follows:

1. must be 18 years of age or older;
2. must be a resident of the City (Mayor) and resident of Single Member District (Council Member);
3. must not be an employee of the City;
4. must not hold any other elected office; and
5. must comply with all conflict of interest and conflict disclosure laws.

B. The Mayor or any Council Member who shall cease to possess any of the qualifications herein required shall forfeit his office.

C. Each person elected to City office, as a condition to being administered the oath of office, shall have filed with the City Clerk a signed, sworn statement averring that he or she is in compliance with the above stated qualifications and requirements, which sworn statement shall be updated and filed with the City Clerk annually during the person’s term of office.

IV.

PROPOSITION NUMBER FOUR was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 9 Qualifications of the Charter of the City of San Angelo be, and the same is hereby, amended to add a provision to read as follows:

SECTION 9 Qualifications: *(Addition of a new subpart)*

Any question of City Council regarding conflict of interest of the Mayor or of a Council Member shall be referred to the City Attorney for a legal opinion.

V.

PROPOSITION NUMBER FIVE was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 10 Compensation and Attendance, of the Charter of the City of San Angelo be, and the same is hereby, amended so that it shall hereafter read as follows:

Section 10 Compensation and Attendance:

The annual compensation of the Mayor shall be forty-two hundred dollars (\$4,200.00), and of each Council member shall be thirty-six hundred dollars (\$3,600.00), payable in accordance with current payroll practices, provided however that the Mayor or Council Member shall forfeit ten (\$10.00) dollars of his/her salary if absent from any regular meeting of the Council, unless such absence from the meeting is unavoidably necessitated in the services of such officer on business of the city away from the city at the time the meeting is held.

VI.

PROPOSITION NUMBER SIX was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 14 Vacancies, of the Charter of the City of San Angelo be, and the same is hereby, amended so that it shall hereafter read as follows:

SECTION 14. VACANCIES:

Where a vacancy in any elective office shall occur, except a vacancy created as a result of conditions contained in Section 13, the vacant office shall be filled by a unanimous vote of the remaining Mayor and/or City Council members for the unexpired term. In the event that a unanimous vote cannot be obtained within 30 days from the date of the vacancy, the vacant office shall be filled by a special election for the remainder of the unexpired term in the same manner as provided in this charter for the regular election of such offices. Such election shall be held on the first uniform election date under state

law, no sooner than 30 days after ordering the election; provided however, that where a vacancy occurs within 90 days of the normal expiration date of the office, no special election to fill the vacancy shall be called unless more than two vacancies occur.

VII.

PROPOSITION NUMBER SEVEN was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 47 Initiative and Referendum, Subpart G, of the Charter of the City of San Angelo be, and the same is hereby, amended so that it shall hereafter read as follows:

SECTION 47, Subpart G

If the City Clerk should find that an insufficient number of valid signatures have been submitted, the City Clerk shall immediately notify the committee specifying the deficiency; within ten (10) days following receipt of said notice, the committee may file an amended petition. Within ten (10) days after receipt of the amended petition, the City Clerk shall certify to the Council that the petitions are sufficient or insufficient and, if they are sufficient, shall deliver the same to the Council;

VIII.

PROPOSITION NUMBER EIGHT related to Section 60 Chief of Police was duly rejected by a majority vote of those voting on said proposition at said election.

Section 4.

It is further ordered that said Amendments to the Charter of the City of San Angelo, Texas, are adopted and that the Mayor shall make a certificate to the Secretary of State and the City Clerk shall record such Amendments as provided by V.T.C.A Local Government Code § 9.007.

Section 5.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution, since the same would have been enacted by the City Council without the incorporation of this resolution of any such unconstitutional phrase, clause, sentence, paragraph or section.

The above Resolution was, upon motion made by _____ and seconded by _____, duly passed and adopted by the City Council of the City of San Angelo, Texas on the 12th day of November, 2015.

THE CITY OF SAN ANGELO, TX

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved as to Content:

Approved as to Form:

Bryan Kendrick, City Clerk

Theresa James, City Attorney

A RESOLUTION OF THE CITY OF SAN ANGELO, TEXAS, CANVASSING RETURNS OF THE SPECIAL ELECTION HELD IN SAID CITY ON THE 3RD DAY OF NOVEMBER, 2015, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN ANGELO THE ADOPTION OR REJECTION OF CERTAIN PROPOSITIONS EACH PROVIDING FOR AMENDMENT TO THE HOME RULE CHARTER, AND DECLARING RESULTS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE

EXHIBIT "A"

Resolution No. 2015-08-261

(following pages)

Cumulative Report — Unofficial

TOM GREEN COUNTY — SPECIAL ELECTION — November 03, 2015

Page 1 of 4

11/03/2015 09:02 PM

Total Number of Voters : 8,815 of 60,255 = 14.63%

Precincts Reporting 35 of 35 = 100.00%

Party	Candidate	Early		Election		Total	
Proposition 1, Vote For 1							
	FOR	2,646	87.56%	4,906	86.86%	7,552	87.10%
	Against	376	12.44%	742	13.14%	1,118	12.90%
	Cast Votes:	3,022	97.55%	5,648	98.79%	8,670	98.36%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	76	2.45%	69	1.21%	145	1.64%
Proposition 2, Vote For 1							
	FOR	2,739	90.64%	5,128	91.34%	7,867	91.10%
	AGAINST	283	9.36%	486	8.66%	769	8.90%
	Cast Votes:	3,022	97.55%	5,614	98.20%	8,636	97.97%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	76	2.45%	103	1.80%	179	2.03%
Proposition 3, Vote For 1							
	FOR	1,912	63.97%	3,672	65.61%	5,584	65.04%
	AGAINST	1,077	36.03%	1,925	34.39%	3,002	34.96%
	Cast Votes:	2,989	96.48%	5,597	97.90%	8,586	97.40%
	Over Votes:	1	0.03%	0	0.00%	1	0.01%
	Under Votes:	108	3.49%	120	2.10%	228	2.59%
Proposition 4, Vote For 1							
	FOR	1,923	64.06%	3,823	68.51%	5,746	66.95%
	AGAINST	1,079	35.94%	1,757	31.49%	2,836	33.05%
	Cast Votes:	3,002	96.90%	5,580	97.60%	8,582	97.36%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	96	3.10%	137	2.40%	233	2.64%
Proposition 5, Vote For 1							
	FOR	2,487	82.49%	4,738	84.70%	7,225	83.92%
	AGAINST	528	17.51%	856	15.30%	1,384	16.08%
	Cast Votes:	3,015	97.32%	5,594	97.85%	8,609	97.66%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	83	2.68%	123	2.15%	206	2.34%

Cumulative Report — Unofficial

TOM GREEN COUNTY — SPECIAL ELECTION — November 03, 2015

Page 2 of 4

11/03/2015 09:02 PM

Total Number of Voters : 8,815 of 60,255 = 14.63%

Precincts Reporting 35 of 35 = 100.00%

Party	Candidate	Early		Election		Total	
Proposition 6, Vote For 1							
	FOR	2,599	86.17%	4,840	86.29%	7,439	86.25%
	AGAINST	417	13.83%	769	13.71%	1,186	13.75%
	Cast Votes:	3,016	97.35%	5,609	98.11%	8,625	97.84%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	82	2.65%	108	1.89%	190	2.16%
Proposition 7, Vote For 1							
	FOR	2,585	85.71%	4,802	85.66%	7,387	85.68%
	AGAINST	431	14.29%	804	14.34%	1,235	14.32%
	Cast Votes:	3,016	97.35%	5,606	98.06%	8,622	97.81%
	Over Votes:	1	0.03%	0	0.00%	1	0.01%
	Under Votes:	81	2.61%	111	1.94%	192	2.18%
PROPOSITION NO 1, Vote For 1							
	YES	1,666	63.15%	3,032	67.38%	4,698	65.82%
	NO	972	36.85%	1,468	32.62%	2,440	34.18%
	Cast Votes:	2,638	97.96%	4,500	97.91%	7,138	97.93%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	55	2.04%	96	2.09%	151	2.07%
PROPOSITION NO 2, Vote For 1							
	YES	1,721	65.61%	3,166	70.45%	4,887	68.67%
	NO	902	34.39%	1,328	29.55%	2,230	31.33%
	Cast Votes:	2,623	97.40%	4,494	97.78%	7,117	97.64%
	Over Votes:	1	0.04%	0	0.00%	1	0.01%
	Under Votes:	69	2.56%	102	2.22%	171	2.35%
PROPOSITION NO 3, Vote For 1							
	YES	2,348	88.91%	4,033	89.40%	6,381	89.22%
	NO	293	11.09%	478	10.60%	771	10.78%
	Cast Votes:	2,641	98.07%	4,511	98.15%	7,152	98.12%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	52	1.93%	85	1.85%	137	1.88%

Cumulative Report — Unofficial

TOM GREEN COUNTY — SPECIAL ELECTION — November 03, 2015

Page 3 of 4

11/03/2015 09:02 PM

Total Number of Voters : 8,815 of 60,255 = 14.63%

Precincts Reporting 35 of 35 = 100.00%

Party	Candidate	Early		Election		Total	
PROPOSITION NO 4, Vote For 1							
	YES	2,301	87.56%	3,969	88.63%	6,270	88.24%
	NO	327	12.44%	509	11.37%	836	11.76%
	Cast Votes:	2,628	97.59%	4,478	97.43%	7,106	97.49%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	65	2.41%	118	2.57%	183	2.51%
PROPOSITION NO 5, Vote For 1							
	YES	1,387	52.64%	2,357	52.42%	3,744	52.50%
	NO	1,248	47.36%	2,139	47.58%	3,387	47.50%
	Cast Votes:	2,635	97.85%	4,496	97.82%	7,131	97.83%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	58	2.15%	100	2.18%	158	2.17%
PROPOSITION NO 6, Vote For 1							
	YES	2,331	89.00%	3,996	89.26%	6,327	89.16%
	NO	288	11.00%	481	10.74%	769	10.84%
	Cast Votes:	2,619	97.25%	4,477	97.41%	7,096	97.35%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	74	2.75%	119	2.59%	193	2.65%
PROPOSITION NO 7, Vote For 1							
	YES	1,925	74.53%	3,434	77.69%	5,359	76.52%
	NO	658	25.47%	986	22.31%	1,644	23.48%
	Cast Votes:	2,583	95.92%	4,420	96.17%	7,003	96.08%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	110	4.08%	176	3.83%	286	3.92%
PROPOSITION NO 8, Vote For 1							
	YES	717	27.13%	1,196	26.36%	1,913	26.64%
	NO	1,926	72.87%	3,342	73.64%	5,268	73.36%
	Cast Votes:	2,643	98.14%	4,538	98.74%	7,181	98.52%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	50	1.86%	58	1.26%	108	1.48%

Cumulative Report — Unofficial

TOM GREEN COUNTY — SPECIAL ELECTION — November 03, 2015

Page 4 of 4

11/03/2015 09:02 PM

Total Number of Voters : 8,815 of 60,255 = 14.63%

Precincts Reporting 35 of 35 = 100.00%

Party	Candidate	Early		Election		Total	
Board of Trustees, Vote For 2							
	Kyle Kraatz	3	16.67%	18	30.51%	21	27.27%
	Mark Sklenarik	12	66.67%	25	42.37%	37	48.05%
	Zane Crouch	3	16.67%	16	27.12%	19	24.68%
	Cast Votes:	18	56.25%	59	77.63%	77	71.30%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	14	43.75%	17	22.37%	31	28.70%

2015 OFFICIAL CANVASS PROCEDURE

Mayor Reads the following:

A resolution of the City of San Angelo, Texas, canvassing returns of the Special Election held in said city on the 3rd day of November, 2015, for the purpose of submitting to the qualified voters of the City of San Angelo the adoption or rejection of certain propositions each providing for amendment to the Home Rule Charter, and declaring results; providing a severability clause; and providing for an effective date

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANGELO, TEXAS:

The findings set forth in the proposed resolution are found and determined to be true

The City Council of the City of San Angelo, having canvassed the returns of said Special Election and all election procedures heretofore occurring, finds that said election was duly and properly ordered; that due and proper notice of said election was given; that said election was in all respects regularly and lawfully held, and that said returns thereof have been duly and legally made and that the following propositions received the following votes:

PROPOSITION NO. 1	
YES	4,698
NO	2,440
PROPOSITION NO. 2	
YES	4,887
NO	2,230
PROPOSITION NO. 3	
YES	6,381
NO	771
PROPOSITION NO. 4	
YES	6,270
NO	836
PROPOSITION NO. 5	
YES	3,744
NO	3,387

PROPOSITION NO. 6	
YES	6,327
NO	769
PROPOSITION NO. 7	
YES	5,359
NO	1,644
PROPOSITION NO. 8	
YES	1,913
NO	5,268

Pursuant to the applicable provisions of the Texas Local Government Code, Texas Election Code and the City of San Angelo Home Rule Charter, the City Council officially finds, determines, and declares the results of said Special Election to be that:

PROPOSITION NUMBER ONE was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 8 Term of Office, of the Charter of the City of San Angelo be, and the same is hereby, amended as set forth in Proposition One.

PROPOSITION NUMBER TWO was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 8 Term of Office, of the Charter of the City of San Angelo be, and the same is hereby, amended to add a provision as set forth in Proposition Two.

PROPOSITION NUMBER THREE was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 9 Qualifications, Subpart A. of the Charter of the City of San Angelo be, and the same is hereby, amended as set forth in Proposition Three.

PROPOSITION NUMBER FOUR was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 9 Qualifications of the Charter of the City of San Angelo be, and the same is hereby, amended to add a provision as set forth in Proposition Four.

PROPOSITION NUMBER FIVE was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 10 Compensation and Attendance, of the Charter of the City of San Angelo be, and the same is hereby, amended as set forth in Proposition Five.

PROPOSITION NUMBER SIX was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 14 Vacancies, of the Charter of the City of San Angelo be, and the same is hereby, amended as set forth in Proposition Six.

PROPOSITION NUMBER SEVEN was duly adopted by a majority vote of those voting on said proposition at said election; and BE IT FURTHER ORDERED that Section 47 Initiative and Referendum, Subpart G, of the Charter of the City of San Angelo be, and the same is hereby, amended as set forth in Proposition Seven.

PROPOSITION NUMBER EIGHT related to Section 60 Chief of Police was duly rejected by a majority vote of those voting on said proposition at said election.

It is further ordered that said Amendments to the Charter of the City of San Angelo, Texas, are adopted and that the Mayor shall make a certificate to the Secretary of State and the City Clerk shall record such Amendments as provided by V.T.C.A Local Government Code § 9.007.

After reading the resolution, Mayor asks "May I have a motion to accept the findings and adopt the resolution?"

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Kramer, Fleet Services Superintendent, Fleet Services, (325) 657-4329

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consider awarding RFB VM-10-15 Half Ton Pickups to Jim Bass Ford (San Angelo, TX) in the amount of \$235,000 per fiscal year, for the purchase of eight (8) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents (R.Kramer)

Summary/History:

Bids were requested for Half Ton Pickups for the purpose of replacing units that are past their useful operational life and/or for new requirements. Eight (8) vehicles have been budgeted for FY16, the award amount will cover two (2) additional vehicle purchases if needed due to unforeseen events. Expenditures are budgeted within the General and Water Fund, for various divisions. Bids were received from Caldwell Country Chevrolet and Jim Bass Ford.

Eight (8) units were compared between Caldwell Country and Jim Bass Ford (Attached). Staff analysis reflects that awarding the contract to a local bidder is applicable as the local bid is less than the 5% allowance for purchases under \$500,000 as defined by Texas Local Government Code 271.9051.

Financial Impact:

Staff recommends awarding the contract to Jim Bass Ford for the purchase of Half Ton Pickups in the amount of \$235,000.00 annually.

Other Information/Recommendation:

Staff recommends award to Jim Bass Ford in the amount of \$235,000.

Attachments:

- | | |
|--|-------------------------------------|
| 1. VM-10-15 Half Ton Pickup Bid Tabulation Summary | VM-10-15 Bid Tabulation-Summary.pdf |
| 2. VM-10-15 | VM1015 Bid Tabulation.pdf |

Presentation:

Approvals/Reviews:

Kramer, Ryan	Created/Initiated
Frerich, Patrick	Approved
Kelton, Shane	Approved
James, Theresa	Approved
Carriger, Tina	Approved
Antilley, Julia	Approved
James, Theresa	Approved

Dunn, Becky
Kendrick, Bryan

Approved
Final Approval



CITY OF SAN ANGELO

BID TABULATION * RFB NO: VM-10-15/Half Ton Pickups * October 29, 2015

Local Preference Analysis

1/2 TON REGULAR CAB-GAS					
	No of Units	CALDWELL COUNTRY CHEVY PONTIAC- Caldwell, Texas		JIM BASS FORD, INC. - San Angelo, Texas	
Base Price	3	\$ 20,965.00	\$ 62,895.00	\$ 21,915.00	\$ 65,745.00
Options	Tilt Steering	NC	\$ -	NC	\$ -
		Total Build \$ 62,895.00		\$ 65,745.00	

1/2 TON EXTENDED CAB-GAS					
	No of Units	CALDWELL COUNTRY CHEVY PONTIAC- Caldwell, Texas		JIM BASS FORD, INC. - San Angelo, Texas	
Base Price	2	\$ 22,185.00	\$ 44,370.00	\$ 22,805.00	\$ 45,610.00
Options	Tilt Steering	NC	\$ -	NC	\$ -
	Cruise Control	NC	\$ -	\$ 192.00	\$ 384.00
		Total Build \$ 44,370.00		\$ 45,994.00	

1/2 TON EXTENDED CAB-GAS					
	No of Units	CALDWELL COUNTRY CHEVY PONTIAC- Caldwell, Texas		JIM BASS FORD, INC. - San Angelo, Texas	
Base Price	3	\$ 22,185.00	\$ 66,555.00	\$ 22,805.00	\$ 68,415.00
Options	Tilt Steering	NC	\$ -	NC	\$ -
		Total Build \$ 66,555.00		\$ 68,415.00	

TOTAL ORDER	\$ 173,820.00	\$ 180,154.00
-------------	---------------	---------------

Local Award Option: YES Bid Difference: \$ 6,334.00

(Must be 5% or Less For Purchases Under \$500,000) *Percentage 3.64%



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-10-15/Half Ton Pickups * October 29, 2015

			CALDWELL COUNTRY CHEVY PONTIAC		JIM BASS FORD, INC.	
Item	Unit	Est Qty	Unit Cost	Total Price	Unit Cost	Total Price
1/2 Ton Regular Cab - Make and Model			2016 Chevrolet 1500 Silverado 4x2 Reg Cab LUB CC15903		Ford F150	
Delivery Lead Time	Days		90-120 Days		90-115 Days	
1/2 Ton Regular Cab	EA	1	\$ 20,965.00	\$ 20,965.00	\$ 21,915.00	\$ 21,915.00

Local to Non Resident Percentage Difference in vehicle base price 4.53%

Local Award Option YES-Bid Under 5%

No.	Options	Unit	Est Qty	Unit Cost	Total Price	Unit Cost	Total Price
1	Parts, Service, and Operators Manuals	EA	1	NC	NC	225.00	225.00
2	Delivery	EA	1	NC	NC	NC	NC
3	Extended Warranty	EA	1	1,375.00	1,375.00	1440(2wd) / 1565(4wd)	1,565.00
4	Power Door Locks		1	NC	NC		
5	Power Windows	EA	1	725.00	725.00	827.00	827.00
6	Power Mirrors		1				
7	Steering Wheel Tilt		1	NC	NC	NC	NC
8	Cruise Control		1	NC	NC	192.00	192.00
9	Cloth Seats; 40/Console/40 Type Seating		1	NC	NC	NA	NA
10	Four Wheel Drive		1	2,890.00	2,890.00	4,310.00	4,310.00
11	Hands Free Bluetooth Package	Ea	1	260.00	260.00	358.00	358.00

Piggy Back Availability: No
Payment Discount: None

Yes
None

Bids Mailed To:

All American Chevrolet	San Angelo, TX	
Hill Country Ford	Goldthwaite, TX	
Jim Bass Ford	San Angelo, TX	
Mitchell Buick - GMC	San Angelo, TX	NO BID
Mitchell Buick - Toyota	San Angelo, TX	NO BID
Reliable Chevrolet	Richardson, TX	
Stanley Chrysler Dodge Jeep	Brownwood, TX	



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-10-15/Half Ton Pickups * October 29, 2015

			CALDWELL COUNTRY CHEVY PONTIAC		JIM BASS FORD, INC.	
Item	Unit	Est Qty	Unit Cost	Total Price	Unit Cost	Total Price
1/2 Ton Extended Cab - Make and Model			2016 Chevrolet 1500 Silverado 4x2 Double Cab cc15753		FORD F-150	
Delivery Lead Time	Days		90-120 Days		90-115 Days	
1/2 Ton Extended Cab	EA	6	\$ 22,185.00	133,110.00	\$ 22,805.00	\$ 136,830.00

Local to Non Resident Percentage Difference in vehicle base price 2.79%

Local Award Option YES-Bid Under 5%

No.	Options	Unit	Est Qty	Unit Cost	Total Price	Unit Cost	Total Price
1	Parts, Service, and Operators Manuals	EA	1	N/C	N/C	225.00	225.00
2	Delivery	EA	1	N/C	N/C	NC	NC
3	Extended Warranty	EA	1	1,375.00	1,375.00	1440(2wd) / 1565(4wd)	1,565.00
4	Power Door Locks	EA	1	Incl.	Incl.	998.00	998.00
5	Power Windows	EA	1	Incl.	Incl.		
6	Power Mirrors	EA	1	360.00	360.00		
7	Steering Wheel Tilt	EA	1	Incl.	Incl.	NC	NC
8	Cruise Control	EA	1	Incl.	Incl.	192.00	192.00
9	Four Wheel Drive	EA	1	2,940.00	2,940.00	3,177.00	3,177.00
10	8' Bed	EA	1	Not Available	Not Available	1,030.00	1,030.00
11	Cloth Seats; 40/Console/40 Type Seating	EA	1	N/C	N/C	252.00	252.00
12	Hands Free Bluetooth Package	EA	1	260.00	260.00	358.00	358.00
13	Special Police/Response Pkg	Ea	1	Not Available	Not Available	44.00	44.00
14	Factory Installed Tailer Brake Controller	Ea	1	230.00	230.00	234.00	234.00

Piggy Back Availability: No
Payment Discount: None

Yes
None

Bids Mailed To:

All American Chevrolet	San Angelo, TX	
Hill Country Ford	Goldthwaite, TX	
Jim Bass Ford	San Angelo, TX	
Mitchell Buick - GMC	San Angelo, TX	NO BID
Mitchell Buick - Toyota	San Angelo, TX	NO BID
Reliable Chevrolet	Richardson, TX	
Stanley Chrysler Dodge Jeep	Brownwood, TX	



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-10-15/Half Ton Pickups * October 29, 2015

			CALDWELL COUNTRY CHEVY PONTIAC		JIM BASS FORD, INC.	
Item	Unit	Est Qty	Unit Cost	Total Price	Unit Cost	Total Price
1/2 Ton Crew Cab - Make and Model			2016 Chevrolet 1500 Silverado 4x2 Crew Cab cc15543		FORD F-150	
Delivery Lead Time	Days		90-120 Days		90-115 Days	
1/2 Ton Crew Cab	EA	1	\$ 24,995.00	\$ 24,995.00	\$ 24,953.00	\$ 24,953.00

Local to Non Resident Percentage Difference in vehicle base price NA
Local Award Option NA

No.	Options	Unit	Est Qty	Unit Cost	Total Price	Unit Cost	Total Price
1	Parts, Service, and Operators Manuals	EA	1	NC	NC	225.00	225.00
2	Delivery	EA	1	NC	NC	NC	NC
3	Extended Warranty	EA	1	\$ 1,375.00	\$ 1,375.00	1440(2wd) / 1565(4wd)	1,565.00
4	Power Door Locks	EA	1	NC	NC	998.00	998.00
5	Power Windows	EA	1	NC	NC		
6	Power Mirrors	EA	1	\$ 360.00	\$ 360.00		
7	Steering Wheel Tilt	EA	1	NC	NC	NC	NC
8	Cruise Control	EA	1	NC	NC	192.00	192.00
9	Four Wheel Drive	EA	1	\$ 2,475.00	\$ 2,475.00	4,286.00	4,286.00
10	6.5" Bed	EA	1	\$ 360.00	\$ 360.00	1,030.00	1,030.00
11	Cloth Seats; 40/Console/40 Type Seating	EA	1	NC	NC	252.00	252.00
12	Hands Free Bluetooth Package	EA	1	\$ 260.00	\$ 260.00	358.00	358.00
13	Special Police/Response Pkg	Ea	1	\$ 620.00	\$ 620.00	44.00	44.00
14	Factory Installed Trailer Brake Controller	Ea	1	\$ 230.00	\$ 230.00	234.00	234.00

Piggy Back Availability: No Yes
Payment Discount: None None

Bids Mailed To:

All American Chevrolet	San Angelo, TX	
Hill Country Ford	Goldthwaite, TX	
Jim Bass Ford	San Angelo, TX	
Mitchell Buick - GMC	San Angelo, TX	NO BID
Mitchell Buick - Toyota	San Angelo, TX	NO BID
Reliable Chevrolet	Richardson, TX	
Stanley Chrysler Dodge Jeep	Brownwood, TX	

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Kramer, Fleet Services Superintendent, Fleet Services, (325) 657-4329

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consider awarding RFB VM-11-15 Medium Duty Pickup to Jim Bass Ford (San Angelo, TX) in the amount of \$267,000 per fiscal year, for the purchase of eight (8) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents (R.Kramer)

Summary/History:

Annual bids were requested for Medium Duty Pickups for the purpose of replacing units that are past their useful operational life and/or for new requirements. Eight (8) vehicles have been budgeted for FY16, the award amount will cover two (2) additional vehicle purchases if needed due to unforeseen events. Expenditures are budgeted within the General and Water Fund, for various divisions.

Jim Bass Ford was the only vendor to submit a bid.

Financial Impact:

Staff recommends awarding the contract to Jim Bass Ford for the purchase of Medium Duty Pickups in the amount of \$267,000 annually.

Other Information/Recommendation:

Staff recommends award the Jim Bass Ford in the amount of \$267,000.

Attachments:

- | | |
|--|-----------------------------|
| 1. Bid Tabulation VM-11-15 Medium Duty Pickups | VM-11-15 Bid Tabulation.pdf |
|--|-----------------------------|

Presentation:

Approvals/Reviews:

Kramer, Ryan	Created/Initiated
Frerich, Patrick	Approved
Kelton, Shane	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval



CITY OF SAN ANGELO

BID TABULATION * RFB NO: VM-11-15/ Medium Duty*October 29, 2015

				Jim Bass Ford	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
	3/4 Ton Regular Cab - Make and Model			Ford F250 XL	
	Unit Cost	Days		90-115 Days	
	Ford F250 XL	EA	2	\$ 22,343.00	\$ 44,686.00
1	Parts, Service, and Operators Manuals	EA	1	\$ 225.00	\$ 225.00
2	Delivery	EA	1	NC	NC
3	Extended Warranty	EA	1	\$ 2,410.00	\$ 2,410.00
4	Power Door Locks	Power Group		\$ 808.00	\$ 808.00
5	Power Windows				
6	Power Mirrors				
7	Steering Wheel Tilt		1	NC	NC
8	Cruise Control		1	\$ 212.00	\$ 212.00
9	Four Wheel Drive		1	\$ 2,599.00	\$ 2,599.00
10	Remote Start		1	\$ 868.00	\$ 868.00
11	Hands Free Bluetooth Package	Ea	1	NC	NC
				Total Bid \$ 51,808.00	

Piggy Back Availability: Yes
Payment Discount: None

Bids Mailed To:

All American Chevrolet	San Angelo. TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Mitchell Buick - GMC	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Stanley Chrysler Dodge Jeep	Brownwood, TX



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-11-15/ Medium Duty*October 29, 2015

				Jim Bass Ford	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
	3/4 Ton Extended Cab - Make and Model			Ford F250 Supercab XL	
	Delivery Lead Time	Days		90-115 Days	
	Ford F250 Supercab XL	EA	1	\$ 24,427.00	\$ 24,427.00
1	Parts, Service, and Operators Manuals	EA	1	\$ 225.00	\$ 225.00
2	Delivery	EA	1	NC	NC
3	Extended Warranty	EA	1	\$ 2,410.00	\$ 2,410.00
4	Power Door Locks	Power Group		\$ 808.00	\$ 808.00
5	Power Windows				
6	Power Mirrors				
7	Steering Wheel Tilt	EA	1	NC	NC
8	Cruise Control	EA	1	\$ 212.00	\$ 212.00
9	Four Wheel Drive	EA	1	\$ 2,597.00	\$ 2,597.00
10	Hands Free Bluetooth Package	EA	1	\$ 868.00	\$ 868.00
				Total Bid \$	31,547.00

Piggy Back Availability: Yes
Payment Discount: None

Bids Mailed To:

All American Chevrolet	San Angelo, TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Mitchell Buick - GMC	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Stanley Chrysler Dodge Jeep	Brownwood, TX



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-11-15/ Medium Duty*October 29, 2015

				Jim Bass Ford	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
	3/4 Ton Crew Cab - Make and Model			Ford F250 XL Crew Cab	
	Delivery Lead Time	Days		90-115	
	Ford F250 XL Crew Cab	EA	5	\$ 24,871.00	\$ 124,355.00
1	Parts, Service, and Operators Manuals	EA	1	225.00	225.00
2	Delivery	EA	1	NC	NC
3	Extended Warranty	EA	1	2,410.00	2,410.00
4	Power Door Locks	Power Group		\$ 997.00	\$ 997.00
5	Power Windows				
6	Power Mirrors				
7	Steering Wheel Tilt	EA	1	NC	NC
8	Cruise Control	EA	1	212.00	212.00
9	Four Wheel Drive	EA	1	2,593.00	2,593.00
10	Hands Free Bluetooth Package	EA	1	868.00	868.00
11	8' Bed	EA	1	178.00	178.00
				Total Bid	\$ 131,838.00

Piggy Back Availability: Yes
Payment Discount: None

Bids Mailed To:

All American Chevrolet	San Angelo, TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Mitchell Buick - GMC	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Stanley Chrysler Dodge Jeep	Brownwood, TX



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-11-15/ Medium Duty*October 29, 2015

				Jim Bass Ford	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
	1 Ton DRW Chassis Cab-Crew Cab - Make and Model			Ford F350 XL Crewcab Chassis Cab	
	Delivery Lead Time	Days		90-115 Days	
	Ford F350 XL Crewcab Chassis Cab	EA	1	\$ 27,146.00	\$ 27,146.00
1	Parts, Service, and Operators Manuals	EA	1	\$ 225.00	\$ 225.00
2	Delivery	EA	1	NC	NC
3	Extended Warranty	EA	1	\$ 3,245.00	\$ 3,245.00
4	Power Door Locks	Power Group		\$ 997.00	\$ 997.00
5	Power Windows				
6	Power Mirrors				
7	Steering Wheel Tilt	EA	1	NC	NC
8	Cruise Control	EA	1	\$ 212.00	\$ 212.00
9	Four Wheel Drive	EA	1	\$ 3,202.00	\$ 3,202.00
10	Cab to Axle: 84"	EA	1	NA	NA
11	Limited Slip Differential	EA	1	\$ 317.00	\$ 317.00
				Total Bid	\$ 35,344.00

Piggy Back Availability: Yes
Payment Discount: None

Bids Mailed To:

All American Chevrolet	San Angelo, TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Mitchell Buick - GMC	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Stanley Chrysler Dodge Jeep	Brownwood, TX



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-11-15/ Medium Duty*October 29, 2015

				Jim Bass Ford	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
	1 Ton DRW Pickup-Crew Cab - Make and Model			Ford F350 XL Crew Cab	
	Delivery Lead Time	Days		90-115 Days	
	Ford F350 XL Crew Cab	EA	1	\$ 28,672.00	\$ 28,672.00
1	Parts, Service, and Operators Manuals	EA	1	225.00	\$ 225.00
2	Delivery	EA	1	NC	NC
3	Extended Warranty	EA	1	2,410.00	\$ 2,410.00
4	Power Door Locks	Power Group		\$ 997.00	\$ 997.00
5	Power Windows				
6	Power Mirrors				
7	Steering Wheel Tilt	EA	1	NC	NC
8	Cruise Control	EA	1	212.00	\$ 212.00
9	Four Wheel Drive	EA	1	2,593.00	\$ 2,593.00
10	Diesel Engine	EA	1	8,082.00	\$ 8,082.00
11	Limited Slip Differential	EA	1	317.00	\$ 317.00
12	Factory Gooseneck Hitch	EA	1	1,865.00	\$ 1,865.00
				Total Bid \$	45,373.00

Piggy Back Availability: Yes
Payment Discount: None

Bids Mailed To:

All American Chevrolet	San Angelo, TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Mitchell Buick - GMC	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Stanley Chrysler Dodge Jeep	Brownwood, TX



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-11-15/ Medium Duty*October 29, 2015

				Jim Bass Ford	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
	1 Ton DRW Chassis Cab Reg Cab - Make and Model			Ford F350 XL Reg Cab Chassis Cab	
	Delivery Lead Time	Days		90-115 Days	
	Ford F350 XL Reg Cab Chassis Cab	EA	1	\$ 25,112.00	\$ 25,112.00
1	Parts, Service, and Operators Manuals	EA	1	225.00	\$ 225.00
2	Delivery	EA	1	NC	NC
3	Extended Warranty	EA	1	3,245.00	\$ 3,245.00
4	Power Door Locks	Power Group		\$ 808.00	\$ 808.00
5	Power Windows				
6	Power Mirrors				
7	Steering Wheel Tilt	EA	1	NC	NC
8	Cruise Control	EA	1	212.00	\$ 212.00
9	Four Wheel Drive	EA	1	3,180.00	\$ 3,180.00
10	Cab to Axel: 84"	EA	1	148.00	\$ 148.00
11	Limited Slip Differential	EA	1	317.00	\$ 317.00
				Total Bid	\$ 33,247.00

Piggy Back Availability: Yes
Payment Discount: None

Bids Mailed To:

All American Chevrolet	San Angelo, TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Mitchell Buick - GMC	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Stanley Chrysler Dodge Jeep	Brownwood, TX

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ron Lewis, Facilities Maintenance Manager, Facilities Maintenance, 325-657-4472

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consider approving a contract with Ener-Tel Services, Inc. for Burglar/Fire Alarm Monitoring and Sprinkler Inspections Services for all City Facilities in the amount of \$82,562.12 annually and authorizing the City Manager to execute all related documents (R.Lewis)

Summary/History:

In 2010 Facilities Maintenance staff and Judge Gilbert worked with the Purchasing Department to prepare specifications for organization-wide Security, Fire Alarm and Fire Sprinkler Monitoring and Maintenance. Since 2010 the BuyBoard has many member vendors statewide that provide pricing for various equipment and services for current COSA needs. The same COSA department staff members have provided a description of our equipment and service needs to the BuyBoard and received interest from four vendors. One provider only offered monitoring services. Two providers did not followup and submit proposals. Ener-Tel was the only provider that proposed on all items as requested by COSA. After staff members reviewed the proposal from Ener-Tel, we met with Ener-Tel employees to discuss their proposal and worked on specifics of the proposal. Subsequently, conversations have focused on developing a plan for an orderly transition from the current Provider to Ener-Tel.

Financial Impact:

Estimated Total Cost to COSA annually = \$72,562.12

Detailed breakdown of costs:

Monitoring costs (Burglar and Fire) are estimated to be \$17,849.16 annually (costs may vary due to adding or deleting services and/or facilities) Each department pays their own expenses.

Maintenance Agreement costs are estimated to be \$31,758.96 annually (costs may vary due to adding or deleting services and/of facilities) Each department pays their own expenses.

Fire Alarm Inspections total estimated \$8,924.00 annually.

Kitchen Fire Suppression Vent Hoods are estimated to be \$2,300.00 annually.

Fire Sprinkler Inspections total \$11,730.00 annually.

Equipment to be purchased for new projects or expanding services at existing facilities are priced annually on the BuyBoard website. Other equipment not specifically priced on BuyBoard are purchased from Ener-Tel at cost plus 30% markup. Each department pays their own expenses.

Hourly labor rates for Ener-Tel employees follow the BuyBoard published rates and will be updated on BuyBoard in 2018. Ener-Tel labor rates were discounted to COSA and will remain constant throughout the initial 3-year contract

period (i.e. regular labor rate \$75.00). Ener-Tel will notify COSA by April 15, 2018 prior to Budget preparation if labor rates will change. New rates will take effect October 1, 2018 (Option Period).

Hourly labor rates for Fire Sprinkler repairs will also remain constant throughout the initial 3-year contract period (i.e. regular labor rate \$110.00) and changes will take effect October 1, 2018 (Option Period).

Contingency for Improvements to existing buildings annually = \$10,000

Upcoming Projects will be negotiated under the terms of this contract (Fire Training Center, City Auditorium Renovation/Additions, New/Renovated Police Administration Building, etc.)

Other Information/Recommendation:

We are asking the City Council to allow COSA staff to work with Ener-Tel to develop a comprehensive list of all equipment throughout our many facilities, evaluate the age, condition and service life and make needed improvements.

Attachments:

- | | | |
|----|-------------------------------------|---|
| 1. | BuyBoard Posting 2015 | BuyBoard posting for COSA Fire & Security Maintenance-Monitoring Service 2015.pdf |
| 2. | Terms of Contract for Ener-Tel 2015 | Terms of Contract for Ener-Tel 2015 (1).doc |

Presentation:

None

Approvals/Reviews:

Lewis, Ron

Created/Initiated



City of San Angelo
Burglar/Fire Alarm Monitoring and Sprinkler Inspections Services
RFQ No. CFM-07-15

4.0 INTENT

- 4.1** The intent of these specifications is to describe the minimum requirements necessary to establish contractual services between the City of San Angelo (City) and a qualified Contractor to provide:
- 4.1.1** Burglar (intrusion) and fire alarm monitoring services;
 - 4.1.2** Kantech security equipment and peripherals;
 - 4.1.3** Annual inspection services for fire alarm and sprinkler (fire suppression) system;
 - 4.1.4** Annual inspections for kitchen vent hood fire suppression systems;
 - 4.1.5** Contractor to sub-contract Sprinkler System repairs and installations.

5.0 SCOPE of Work

- 5.1** The City of San Angelo is accepting sealed bids for:
- 5.1.1** Annual fire alarm inspections and/or repairs;
 - 5.1.2** Annual sprinkler/fire suppression system inspections and/or repairs;
 - 5.1.3** Fire alarm monitoring;
 - 5.1.4** Burglar/Intrusion alarm monitoring;
 - 5.1.5** Installation and/or repair of cameras and security systems.
 - 5.1.6** Contractor to provide an equipment maintenance agreement for all locations.
 - 5.1.7** Kantech Building Access Systems (cards, readers, mag-locks, etc.)
 - 5.1.8** Kitchen Hood Suppression System shall be inspected bi-annually.
- 5.2** The successful bidder shall furnish all labor, materials, and equipment for complete inspection services for the above mentioned services, per the following specifications and in accordance with latest editions of the **National Fire Protection Agency (NFPA) Standard #72, Texas Administrative Code, Rules: 34.517 Fire Extinguishers and hood systems, 34.616- Fire Alarm, 34.716- Fire Sprinkler (installation), NFPA 13, NFPA 25- Maintenance of Sprinklers, NFPA 96- Kitchen Hood Systems.**

- 5.3 Contractor shall be responsible for the initial cost, at start of contract, of making any adjustments and/or modifications to the equipment at each facility/location and is also responsible for a complete and fully code compliant, operational system.**
- 5.4** Once installed, all adjustments, modifications and equipment shall become the property of the City of San Angelo unless agreed to otherwise in writing.
- 5.5 If required, monitoring of new or modified systems shall be added to this contract, by Change Order and at the price quoted on the Bid Sheet for “ADD/DELETE FACILITIES”.**
- 5.6** The Contractor shall assign a supervisor or Project Manager to the City's account in order to establish and maintain a consistent working knowledge of key issues and requirements for Records Books (see Section 6.4), monitoring, scheduling of inspections/repairs, and oversight of maintenance agreements.

6.0 GENERAL CONDITIONS:

- 6.1** All inspection services and reporting provided shall comply with all current applicable sections of NFPA #'s: 72, 13, 25, and 96.
- 6.2** The successful contractor shall provide the owner written documentation regarding sprinkler/fire suppression system and fire alarm inspection test results, including but not limited to, the operating condition of alarm systems, recommended corrective action and provide technical assistance to develop plans or specifications, if needed, to assure alarm system(s) conformance with current applicable codes and ordinances.

6.3 Recordkeeping Requirements

6.3.1 Location Records Book:

Within three (3) months after commencement of the contract, the awarded Contractor shall prepare a book of all the locations being serviced. Two copies of the book shall be prepared with separate sections for each location and/or facility. One (1) copy shall be provided to the Construction Facilities Maintenance Manager and one (1) copy shall be maintained at the Contractor's office.

6.3.2 These books shall contain the following information:

- The location, contact person(s) name, telephone and/or cell phone numbers.
- A list and location of all equipment (pads, panels, and type of alarms), including manufacturer, make and model.
- The central monitoring station profile (i.e., location and contact number).

- The central monitoring station notification list.
 - A detailed zone description list for each location/facility.
 - The Contractor shall update both books annually or as services/devices are replaced or modified.
- 6.4** All bidders shall refer to both the **International Fire Code** and the **National Fire Protection Association** along with current applicable tables for the proper inspection of all listed facilities.
- 6.5** City ordinance requires all bidders performing monitoring services to be UL listed and/or certified, and licensed with the State of Texas.
- 6.6** If central monitoring stations are located outside the State of Texas, they shall be UL listed, and licensed by the State of Texas to perform monitoring services within the State of Texas.
- 6.7** All technicians of the successful bidder shall be fully certified and licensed by the State of Texas to perform fire alarm inspections and repairs (if necessary).
- 6.8** The successful bidder may sub-contract the sprinkler/fire suppression system inspection, however the sub-contractor must be licensed and certified by the State of Texas to perform work and inspections.
- 6.9** The successful bidder, if subcontracting the sprinkler/fire suppression system inspection services, must ensure that the sub-contractor performing the inspection and/or repair has the required insurances on file with the City of San Angelo's Risk Management Department (see attached insurance requirements).
- 6.11 Texas Administrative Code**
- 6.11.1 Rule 34.616 (in part):**
- 6.11.1a Monitoring Requirements:**
- A registered firm may not monitor a fire alarm system located in the State of Texas for and unregistered firm.
 - A registered firm may not connect a fire alarm system to a monitoring service unless the monitoring service is registered under or is exempt from the licensing requirements of the Texas Insurance Code Chapter 6001 (fire suppression hood); Chapter 6002 (fire alarm); and so long as the monitoring equipment being used is in compliance with Chapter 6003 (sprinkler system).
 - A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

- A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing such services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.
- A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center, shall provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification and call-back phone number. If requested, the firm shall also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.
- If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, and/or service provider shall notify the owner or owner's representative of the monitored property and the local authority having jurisdiction, a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two-family-dwelling, notification of the local authority having jurisdiction is not required.

7.0 Contractor shall provide:

7.1 Comprehensive, functional testing using specialized tools and instrumentation to detect malfunctions not found by visual inspection alone.

7.2 FIRE ALARM INSPECTION

7.2.1 Testing of all alarm devices for functionality or damage. To include but not limited to the following:

7.2.2 SMOKE DETECTORS

- Test in place to ensure smoking entry into sensor chamber
- Test for zone supervision (trouble)
- Test for zone and remote alarm annunciation
- Clean detector (where applicable)
- Check detector sensitivity (where applicable)

7.2.3 PULL STATIONS

- Test for proper mechanical function
- Test for zone alarm annunciation
- Ensure break glass covers are in place (where applicable)
- Inspect and reset of pull stations

7.2.4 TAMPER SWITCHES

- Test for "supervisor" condition at panel
- Inspect for proper adjustment

- Test for proper zone annunciation

7.2.5 **WATER FLOW SWITCHES**

- Test for "alarm" condition at panel by opening inspector's test connection (sprinkler main drain test).
- Inspect for proper adjustment (30-60 seconds preferred)
- Check for proper zone annunciation

7.2.6 **AUDIBLE/VISUAL ALARMS**

- Bells, horns, strobes, etc.
- Test for proper operation

7.2.7 **BUILDING FIRE ALARM CONTROL PANEL**

- Test all input and output functions, including matrix and automatic phone dialers
- Test all related auxiliary functions, i.e. stairwell pressurization. elevator recall, flashing exits, door locks, etc.(if installed)
- Test battery stand-by using a calibrated battery analyzer
- Replace batteries as required
- The City reserves the right to contract with the required Contractor for software services or allow the Contractor to subcontract where software proprietary ownership is involved. These upgrades will be on a case-by-case basis

7.3 Adjustment and calibration of system control equipment (as necessary).

7.4 System performance evaluation.

7.5 Testing to be performed by certified and licensed technicians.

7.6 Thorough documentation confirming test completion and results.

7.7 Preventative maintenance during annual inspections shall include, but not be limited to:

7.7.1 Equipment analysis to detect potential failures.

7.7.2 Component replacement.

7.7.3 Contractor shall furnish a quote detailing equipment/work needed before work begins (i.e., batteries, control modules, control boards, etc.).

7.8 **Should modification or replacement of control panels, devices, or other components of existing systems be required**, component replacement and associated labor charges shall be invoiced separately from the annual inspection fees.

7.8.1 Hourly rates during these modifications or for scheduled repairs shall be charged as indicated on the bid sheet.

- 7.8.2 Hourly rates for technicians and helpers, as indicated on the bid sheet, shall be at current standards and held firm for the duration of the contract.
- 7.8.3 Hourly rates, as indicated on the bid sheet, to perform, repairs, modifications, additions, and new installations shall begin when technician arrives on-site and end when technician leaves the premises.
- 7.8.4 After hour and emergency calls shall be invoiced at the Overtime Hourly Rate as indicated on the bid sheet.
- 7.8.5 Response to normal, **Non-emergency**, calls shall be made within twenty-four (24) hours. ON-SITE Response to **Emergency** calls shall be made within four (4) hours.
- One (1) hour maximum return, call back from central office and/or dispatcher;
 - Three (3) additional hours maximum for technician to report to the site of the emergency.
- 7.8.6 **Material, Profit and Overhead- (MPO)-**
- Component, material, and equipment costs not listed on the bid sheet shall be charged at Contractor's cost (Material, Profit and Overhead- MPO).
 - The City may, at any time, request a copy of the Contractor's equipment rental and/or material or parts cost in order to audit submitted invoices.
 - If the original replacement component is unavailable or obsolete, a cross-referenced alternate part/component may be used.
- 7.8.7 All replacement parts/components shall be UL listed, new, and of greater or equal quality as of those parts/components being replaced, and shall carry a one year, parts and labor replacement warranty.
- 7.8.8 If applicable, mileage and travel costs shall be charged "ONE-WAY".

8.0 Monitoring

- 8.1 The Contractor shall furnish alarm system monitoring, including all necessary labor, equipment, permits, licenses, insurance and all other costs associated with monitoring systems.
- 8.2 **Hook-up:** Currently, systems are hooked-up (via SuddenLink and/or with cell phone back-up) and programmed to a UL certified central monitoring station.

The Contractor awarded the bid to provide services covered in this Request for Proposal (RFP) shall ensure that all central monitoring station operations, such as but not limited to monitoring, staffing, and notification procedures shall be in accordance with all applicable sections of the most recent edition of the NFPA #72 Fire Code and the Texas Administrative Code (Rule 34.616).

8.3 Contractor shall provide to the City, a list of all UL listed Central Monitoring Stations/Companies used by the Contractor used for the various City facilities. Included on the list shall be the station(s) registration number(s).

8.4 The designated monitoring station shall be able to distinguish between and alarm system trouble, phone line trouble, supervisory system trouble, and alarm.

8.5 The monitoring service shall be provided 24 hours per day, 365 days per year.

8.6 Monitoring may include burglar/intrusion, fire supervisory signals, and alarm signals. Locations for currently monitored facilities are designated on the bid sheets.

8.7 CENTRAL MONITORING STATION

8.7.1 The central monitoring station(s) shall notify the appropriate authority 911, police, fire, etc.

8.7.2 All central monitoring station operations such as, but not limited to monitoring, staffing and notification procedures shall be in accordance with all applicable sections of the most recent edition of the NFPA , 72 Fire Alarm and Signaling Code.

8.7.3 Shall be Underwriter Laboratories listed.

8.7.4 Shall operate and monitor City accounts seven days per week; 24 hours per day.

9.0 Proposal Award:

9.1 This Proposal will be awarded by lowest responsible bid, as the best value to the City. The City reserves the right to accept or reject any or all proposals.

9.2 Firm Pricing

9.2.1 All prices listed on the bid sheet will be held firm for a minimum of sixty days after the proposal bid opening date listed in the specifications in order to allow adequate time for the City to consider each proposal and make an award.

9.2.2 All blanks for unit pricing and total price shall be completed. Any discrepancy between unit and the extended or total price shall be determined by the City taking the lower price.

9.2.3 Upon receipt of the opened proposal, the City will assume that the Contractor is familiar with all aspects of this proposal, including:

- installation sites
- monitored locations
- all specifications contained here within the proposal

9.2.3 The failure or omission to examine any location, equipment, form, instrument or document shall in no way relieve the Contractor from any obligation in respect to this proposal.

10.0 Term:

10.1 The contract shall be for a period not to exceed five (5) years, if acceptable to the City of San Angelo and the selected Contractor.

10.2 The contract shall commence and terminate on the anniversary date when approved by the City Council

10.3 Upon the end of contract, the City reserves the right to extend the agreement on a month-to-month basis for up to one-hundred and eighty (180) days.

10.4 The City shall require a contract be in place between both parties (City and Selected Vendor) prior to any work being performed or services being transferred (if applicable).

11.0 Proposal Opening:

11.1 Quotes for the above products and services will be reviewed by the City of San Angelo and the selected contractor(s) will be contacted for negotiations for a "Best and Final Offer".

12.0 Insurance:

12.1 Contractor shall provide a current Certificate of Insurance reflecting coverage's per the attached insurance requirements. Certificates of insurance shall be on file with the City's Risk Management Department prior to any work being performed. For clarifications or further information regarding insurance contact the City's Risk Management Department 325.657.4359.

12.2 Contractor shall meet all requirements for Insurance as stipulated within the Attached "Contractor's Minimum Insurance" form.

12.3 Contractor shall inact all reporting requirements in writing pursuant to the installation, service and maintenance requirements of the Texas Insurance Code, Chapters 6001, 6002, 6003.

13.0 Facility Inspections:

- 13.1** It is the bidder's responsibility to inspect all facilities and be familiar with working conditions, locations and types of alarms and fire suppression systems within each facility listed in this bid proposal.

14.0 References:

- 14.1** Bidder shall provide the name and contact number of at least three (3) customers where similar services are provided.

15.0 Licensed Contractor

- 15.1** All Contractor's proposing services for the City of San Angelo must provide duplicates of their licenses and/or certificates.

15.1.1 Company Name (or dba): _____

Business Address: _____

Business Contact No.: _____

Business e-mail address: _____

Contractor's License No.: _____

Date of Expiration: _____

Type of License: _____

Description of License: _____

15.1.2 Central Monitoring Station Information:

Address: _____

State License/Certification No.: _____



The City Of

San Angelo, Texas

72 W. College Avenue, Suite 201
San Angelo, TX 76903

Risk Management Department

Phone: 325-657-4359

Fax: 325-657-4530

Insurance Requirements for Contractors Doing Business with the City of San Angelo

The City of San Angelo requires contractors doing business with the City to provide the Risk Management Department with a Certificate of Insurance to confirm that they have insurance coverage in compliance with the City's minimum requirements.

The minimum liability and workers compensation coverage required by the City are as follows:

Commercial General Liability:

Minimum Limits:	\$500,000 Each Occurrence
	\$500,000 Personal and Advertising Injury
	\$500,000 General Aggregate
	\$500,000 Products/Completed Operations Aggregate
	\$ 50,000 Fire Damage

Business Auto Liability for any auto:

Minimum Limits:	\$500,000.00 Combined Single Limits
-----------------	-------------------------------------

Workers Compensation:	WC	Statutory Limits
Minimum Limits:	EL	\$100,000 each accident
	Disease	\$100,000 each employee
	Disease	\$500,000 policy limit

The certificate of insurance should indicate that the City of San Angelo is provided by endorsement a Waiver of Subrogation in favor of the City on all policies.

All insurance policies required herein shall be drawn in the name of Contractor. The City of San Angelo should be shown as an additional insured to include its employees, agents, and Council persons by endorsement on all policies except workers compensation.

Written contracts will contain more detailed information regarding insurance requirements.

Please provide your agent or broker with a copy of these requirements.

If you have any questions concerning compliance with the City's minimum insurance requirements, please call the Risk Management Department at 325-657-4359.

Fire System Description:		Bid Per Unit
Fire Alarm Control Panel- Fire-Lite; Model MS-9200UDLS (or equal)		\$ _____
Notification Appliances System Sensor: Wheelock, Gentex (or equal) :		See Below
	Intelligent, Multi-Sensing Detectors (Photoelectric/ Thermal)	\$ _____
	Intelligent Ionization Smoke Detector: Silen Knight SK-16110	\$ _____
	Intelligent Thermal Detector System Sensor: 5621	\$ _____
	Intelligent Duct smoke Detector System Sensor : D2	\$ _____
	Addressable Dry ContactMonitor Module: Fire Lite MMF300	\$ _____
	Conventional 2-Wire Smoke Detector System Sensor: 2WTAB (or equal)	\$ _____
	Conventional Heat Detector System Sensor: 5601 (or equal)	\$ _____
	Addressable Control Relay Module: Fire Lite MMF300 (or equal)	\$ _____
	6- Output Addressable Control RelayModule: Fire Lite CMF3006 (or equal)	\$ _____
	6- Zone Interface Module (Compatible with 2-wire detectors)	\$ _____
	Door Holder (120 VAC) GE Security 1504	\$ _____
	Door Holder (24 VAC) GE Security 1504	\$ _____
	Projected Addressable Beam Detector system (Projector & Reflector)	\$ _____
	Combination (Photoelectric & Thermal) System Sensor 2WTAB	\$ _____
	Dgital Alarm Communicaot Transmitter: Fire Lite UDACTF (or equal)	\$ _____
	Stand Alone Voice Evacuation Control Panel: Fire Lite ACC2550DZ (or equal)	\$ _____
Amplifier/Speaker- Description:		Bid Per Unit
Optional Distributed Amplifier: Fire Litr ACCAAM25 (or equal)		\$ _____
Speakers (25 VRMS @ 84 dBA) Speco SP6MAT (or equal)		\$ _____
Modules, Printers and Other Devices:		Bid Per Unit
	Addressable Modules: Honeywell 4193SN	\$ _____
	Printer: Fire Lite PRN6F (or equal)	\$ _____
	Programmable Electronic Sounder (24 VDC @ 90 dBA @ 10 Ft.) Flush Mount	\$ _____
	Programmable Electronic Sounder (24 VDC @ 90 dBA @ 10 Ft.) Surface Mount	\$ _____
	Strobe Light Devices System Sensor HR	\$ _____
	Secondary Power Source (24 Hr Battery Backup) [if not included in FACP]	\$ _____
	Addressable (Manual) Pull Station System Sensor: D2	\$ _____
	Waterflow Indicators System Sensor: WFD-40	\$ _____
Sprinkler Equipment:		Bid Per Unit
Sprinkler/Standpipe Supervisor Switches: Potter PCVS1		\$ _____
Zone Expander: Honeywell 4219		\$ _____

Security Equipment- Description:	Bid Per Unit
DVR- 32 Cameras with 16 Audio, High Resolution; Video- Insight (or equal)	\$ _____
Corporate Software	\$ _____
DVR Must: Be capable of digital recording (both video & audio); Video from cameras must be viewable full screen without interruption of recording; Playback options shall include the following, but not be limited to: * fast forward * rewind * fast rewind * still frame * slow motion * video enhancement * download of video via USB for zip drive, CD or DVD burner Be capable of retrieving events by time and date or by logging of motion detection; Allow any number of combinations of camera video to viewed; Must be capable of recording 15 images per second, per camera; Have two (2) terabyte recording units; Include corporate software (or equal)	
Audio microphones- Louroe Verifact A (or equal)	\$ _____
Audio System- Louroe ML-DT- Louroe AP-4 4 channels (or equal)	\$ _____
Audio Switcher- Louroe CE Labs SW204HD (or equal)	\$ _____
Nuvico CD-H39N-L	\$ _____
Interior Cameras must have: * vari-local lens * auto iris for light change compensation * minimum 470 lines of resolution * color * smoke domed- Pelco (or equal)	
JVC-TK-C920U	\$ _____
External cameras must have: * vari-local lens * auto iris for light change compensation * housing with blowers and heater * JVC-TKC920-U (or equal) * Infrared cameras	
IP Camera Licenses	\$ _____
Nuvico SD-Z18N (PT2 Camera)	\$ _____
PT2 Software	\$ _____
Metal Detector- Garrett PD-6500i (or equal)	\$ _____
Panic Alarm- Honeywell 5802 (full wireless system)	\$ _____
Panic Alarm- USP HUB2 (full hard wired system)	\$ _____
Security Equipment System Total \$ _____	

Controlled Access System- Description:	Bid Per Unit
Controlled Access System must Be Kantech- KT 300 Card Reader (proximity reader)	\$ _____
administrative software for Kantech- KT 300	\$ _____
Cards per 100 (must be able to have printed information and picture on cards)	\$ _____
Securitron Magnetic Locks (must have 1,200 lbs. holding force)	\$ _____
Kantech- Expansion Modules	\$ _____
Controlled Access System Total \$ _____	

Burglar Alarm System- Description:	Bid Per Unit
Alarm Panel: FIRST ALERT FA148 (or equal)	\$ _____
Key Pad: First Alert FA220 (or equal)	\$ _____
Door or window contact- Honeywell 7939WGWH	\$ _____
Motion Detector: Hard Wired- Honeywell Aurora Motion (or equal)	\$ _____
Motion Detector: Wireless- Honeywell 5890 Wireless Motion (or equal)	\$ _____
Glass Break Detector: Hard Wired Honeywell FG730 (Flexguard or equal)	\$ _____
Glass Break Detector: Wireless- Honeywell 5853 (Flexguard or equal)	\$ _____
Siren Ademco Wave2	\$ _____
Request to Exit: Button (TS21R)	\$ _____
Request to Exit: Motion (Bosch DS160)	\$ _____
Uninterrupted Power Supply (UPS)	\$ _____
Zone Expander: Honeywell 4219	\$ _____
Burglar Alarm System Total \$ _____	

Monitoring Fees: Per Location (Refer to Contact Information & Locations Sheet)	Monthly Rate	Annual Pay
Fire Alarm	\$ _____	\$ _____
Wireless (i.e., cell phone back-up)	\$ _____	\$ _____
Burglar/Intrusion	\$ _____	\$ _____

Maintenance Agreement:		CCTV System- Service and/or Replacement of DVR/Cameras/Parts/Equipment	
		Monthly Rate	Annual Pay
Civic Events:			
	Convention Center	501 Rio Concho Dr.	\$ _____
	Coliseum	50 E. 43rd St.	\$ _____
	Water Billing & Receipts	122 W. 1st	\$ _____
	City Hall	72 W. College Ave.	\$ _____
	Community Development Building	52 W. College Ave.	\$ _____
	Public Safety	323 E. Beauregard	\$ _____
	Municipal Court	110 S. Emerick	\$ _____
	Airport	8618 Terminal Circle	\$ _____
Police Department:			
	Administration Bldg.	401 E. Beauregard	\$ _____
	Community Services	505 s. Chadbourne	\$ _____
	Training	3329 FM 584	\$ _____
	PD Office Building	Canyon St.	\$ _____
Other: (if applicable)		\$ _____	\$ _____
		\$ _____	\$ _____

Annual Inspection Fees:	Per Location	Annual Pay
Fire Alarm		\$
Sprinkler		\$
Venthood Fire Suppression System (if applicable)		\$
Burglar/Intrusion		\$

Add/Delete: Facilities	Annual Monitoring Fees Cell Phone Back-up	\$
	Annual Inspection Fees (Fire)	\$
	Annual Inspection Fees (Suppression/Sprinkler)	\$
	Annual Monitoring Fees (Fire)	\$
	Annual Monitoring Fees (Burglar)	\$

Cost Plus Percentage Markup (Material, Profit and Overhead- MPO).

% MPO _____ %

Technician Hourly Labor Rates:	Fire & Security:	Installation & Maintenance
Regular-	Mon-Fri: 8 am- 5 pm	\$
Overtime-	Mon-Fri Before or After "Regular" Hours	\$
Overtime-	Sat-Sun	\$
Holiday-		\$

Apprentice Hourly Labor Rates:	Fire & Security:	Installation & Maintenance
Regular-	Mon-Fri: 8 am- 5 pm	\$
Overtime-	Mon-Fri Before or After "Regular" Hours	\$
Overtime-	Sat-Sun	\$
Holiday-		\$

NICET Level III Technician Hourly Labor Rates: Installation, Maintenance and Repair
Regular- Mon-Fri: 8 am- 5 pm \$
Overtime- Mon-Fri Before or After "Regular" Hours \$
Overtime- Sat-Sun \$
Holiday- \$

Pipefitter/Sprinkler Installer- Hourly Labor Rates: Installation, Maintenance and Repair
Regular- Mon-Fri: 8 am- 5 pm \$
Overtime- Mon-Fri Before or After "Regular" Hours \$
Overtime- Sat-Sun \$
Holiday- \$

Sprinkler Apprentice Hourly Labor Rates: Installation, Maintenance and Repair
Regular- Mon-Fri: 8 am- 5 pm \$
Overtime- Mon-Fri Before or After "Regular" Hours \$
Overtime- Sat-Sun \$
Holiday- \$

LOCATIONS & CONTACTS	ADDRESSES	MONITORING					
RECREATION DEPT.- Brent Casey @ 657-4450		Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Santa Fe Crossing	702 S. Chadbourne	Yes	Yes	Yes	Yes	N/A	N/A
Carl Ray Recreation Center	1103 N. Farr	N/A	N/A	N/A	Yes	N/A	N/A
Station 618	618 S. Chadbourne	Yes	Yes	N/A	Yes	N/A	N/A
Southside Recreation Center	2750 Ben Ficklin Rd.	N/A	N/A	N/A	Yes	N/A	N/A
Nature Center	7409 Knickerbocker Rd.	N/A	N/A	N/A	Yes	N/A	N/A
Love Pool	18 E. Ave. A	N/A	N/A	N/A	Yes	N/A	Yes
Municipal Court Judge Allen Gilbert 653-8448		Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Municipal Court	110 S. Emerick	Yes	N/A	Yes	Yes	Yes	Yes
CIVIC EVENTS - Steve Kalnbach @ 653-9577		Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Coliseum	50 E. 43rd St.	Yes	Yes	Yes	Yes	Yes	Yes
Convention Center	501 Rio Concho Dr.	Yes	Yes	Yes	Yes	Yes	Yes
City Auditorium (Estimated Completion Date 2018)	72 W. College	Yes	Yes	Yes	Yes	Yes	Yes
River Stage	16 E. Ave. A	N/A	Yes	N/A	N/A	N/A	N/A
Paseo de Santa Angela Pavilion	20 & 58 E. Ave. D	N/A	Yes	N/A	N/A	N/A	N/A
Blye Indoor Arena	4602 Cuero St.	N/A	N/A	N/A	N/A	N/A	N/A
State Buildings- Dwain Halfmann @ 656-6265		Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Ralph Chase State Services Bldg	622 South Oakes	Yes	Yes	Yes	N/A	N/A	N/A
Texas Workforce Commission	200 Flipper Street	Yes	Yes	Yes	N/A	N/A	N/A
FORT CONCHO- Bob Bluthardt @ 481-2646		Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Barracks 1	630 South Oakes	N/A	Yes	N/A	Yes	N/A	Yes
Barracks 2	630 South Oakes	Yes	Yes	Yes	N/A	N/A	N/A
Barracks 5	630 South Oakes	N/A	N/A	N/A	Yes	N/A	Yes
Barracks 6	630 South Oakes	N/A	N/A	N/A	Yes	N/A	Yes
Bay 3-Stables	208 Flipper Street	Yes	N/A	Yes	N/A	N/A	N/A
Collections	210 Flipper Street	N/A	N/A	N/A	Yes	N/A	Yes
Quartermaster	704 Burgess	N/A	N/A	N/A	Yes	N/A	Yes
Officer's Quarters 6	630 South Oakes	Yes	N/A	N/A	N/A	N/A	Yes
Officer's Quarters 7	213 East Avenue D	N/A	N/A	N/A	Yes	N/A	N/A
Officer's Quarters 4	207 East Avenue D	N/A	N/A	N/A	Yes	N/A	Yes
Officer's Quarters 1	630 South Oakes	Yes	N/A	N/A	N/A	N/A	Yes
Officer's Quarters 9	630 South Oakes	N/A	N/A	N/A	Yes	N/A	Yes
Officer's Quarters 3	630 South Oakes	N/A	N/A	N/A	Yes	N/A	Yes
Officer's Quarters 1	630 South Oakes	N/A	N/A	N/A	Yes	N/A	Yes
Headquarters	630 South Oakes	Yes	N/A	N/A	N/A	N/A	Yes
Ft. Concho Hospital N. Wing	630 South Oakes	N/A	N/A	N/A	Yes	N/A	Yes
Ft. Concho Chapel	630 South Oakes	N/A	N/A	N/A	Yes	N/A	Yes

LOCATIONS & CONTACTS		ADDRESSES		MONITORING					
Parks Division- Mike Hitchcock @ 659-8563				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Kirby Park - North Restrooms				N/A	N/A	N/A	N/A	Yes	Yes
Kirby Park - South Restrooms				N/A	N/A	N/A	N/A	Yes	Yes
Kid's Kingdom - Restrooms				N/A	N/A	N/A	N/A	Yes	Yes
Producer's Park				N/A	N/A	N/A	N/A	Yes	Yes
Texas Bank Sports Complex- Quad 1				Yes	Yes	N/A	N/A	Yes	Yes
Real Estate Division- Cynthia Preas 657-4407				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Santa Fe Train Depot		703 S Chadbourne		Yes	Yes	N/A	N/A	N/A	N/A
Lake Maintenance- James Alley @ 481-2621				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Twin Buttes Dam Gate				N/A	N/A	N/A	Yes	N/A	Yes
				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
				N/A	N/A	N/A	Yes	Yes	Yes
FIRE DEPT - Scott Farris @ 325-657-4355				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
CENTRAL		306 W. 1ST		N/A	N/A	N/A	N/A	N/A	N/A
STATION 2		4702 SOUTHLAND		Yes	Yes	N/A	N/A	N/A	N/A
STATION 3		514 SMITH BLVD		N/A	N/A	N/A	N/A	N/A	N/A
STATION 4		702 E. AVE L		N/A	N/A	N/A	N/A	N/A	N/A
STATION 5		3351 TLC Way		N/A	Yes	N/A	N/A	N/A	N/A
STATION 6		4386 N. CHADBOURNE		N/A	N/A	N/A	N/A	N/A	N/A
STATION 7		3225 Executive Drive		N/A	Yes	N/A	N/A	N/A	N/A
STATION 8		7894 KNICKERBOCKER RD		Yes	Yes	N/A	N/A	N/A	N/A
Fire Training Center		700 E AVE L		N/A	N/A	N/A	N/A	N/A	N/A
Water Billing & Collections- Toni Fox @ 657-657-4323				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Water Billing & Collections		122 W. 1st St.		Yes	N/A	N/A	Yes	Yes	Yes
Fairmount Cemetery- Oscar Mota @ 655-9475				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Cemetery Office		1120 W. Ave N		N/A	N/A	N/A	Yes	Yes	Yes
Cemetery Maintenance Shop		1115 W. Ave N		N/A	N/A	N/A	Yes	Yes	Yes
Vehicle Maintenance - Ryan Kramer @ 657-4329				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
City Shop		1927 St. Ann		N/A	N/A	N/A	N/A	N/A	N/A
Police Department Rodney Black @ 657-4311				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Administration		401 E. Beauregard		N/A	N/A	N/A	N/A	N/A	N/A
Community Services		505 S. Chadbourne		N/A	N/A	N/A	Yes	Yes	Yes
Training		3329 FM 584		N/A	N/A	N/A	N/A	N/A	N/A
PD Office Building		Canyon St.		N/A	N/A	N/A	Yes	Yes	Yes
Animal Services - James Flores @ 657-4224				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Animal Services		3142 Hwy 67 N.		Yes	N/A	N/A	Yes	Yes	Yes
San Angelo Regional Airport- Mitch Sprunger @ 659-6409				Fire	Sprinkler	Venthood	Burglar	Mag-Locks	Cell Phone Back-Up
Terminal (includes Mathis Field Café)		8618 Terminal Cir Ste 101		Yes	Yes	Yes	N/A	N/A	N/A
Sisters		8618 Terminal Cir Ste 111		Yes	Yes	Yes	N/A	N/A	N/A
Traffic Control Tower				N/A	N/A	N/A	Yes	Yes	Yes
L-3 Mathis Field Hangar		8970 Hangar Rd		Yes	Yes	N/A	N/A	N/A	N/A

This electronic "Excel" sheet has been configured to automatically keep running totals once a dollar figure has ben entered.

LOCATIONS & CONTACTS	ADDRESSES	Annual Monitoring & Inspection Fees				Annual Maintenance Agreements	Annual Cost Per Facility
RECREATION DEPT.- Brent Casey @ 657-4450		Fire	Sprinkler	Venthood	Burglar		
Santa Fe Crossing	702 S. Chadbourne	\$	\$	\$	\$	\$	0
Carl Ray Recreation Center	1103 N. Farr				\$		0
Station 618	618 S. Chadbourne	\$	\$		\$		0
Southside Recreation Center	2750 Ben Ficklin Rd.				\$		0
Nature Center	7409 Knickerbocker Rd.				\$		0
Love Pool	18 E. Ave. A				\$		0
					Division Sub-total		0

Municipal Court	Judge Allen Gilbert	653-8448	Fire	Sprinkler	Venthood	Burglar		
Municipal Court		110 S. Emerick	\$	\$		\$	\$	
							Division Sub-total	0

CIVIC EVENTS - Steve Kalnbach @ 653-9577		Fire	Sprinkler	Venthood	Burglar		
Coliseum	50 E. 43rd St.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	0
Convention Center	501 Rio Concho Dr.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	0
City Auditorium (Estimated Completion)	72 W. College	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	0
River Stage	16 E. Ave. A		\$ _____				0
Paseo de Santa Angela Pavilion	20 & 58 E. Ave. D		\$ _____				0
Blye Indoor Arena	4602 Cuero St.						
					Division Sub-total		0

State Buildings- Dwain Halfmann @ 656-6265	Fire	Sprinkler	Venthood	Burglar		
Ralph Chase State Services Bldg	622 South Oaks	\$	\$	\$		0
Texas Workforce Commission	200 Flipper Street	\$	\$	\$		0
					Division Sub-total	0

FORT CONCHO- Bob Bluthardt @ 481-2646		Fire	Sprinkler	Venthood	Burglar		
Barracks 1	630 South Oakes		\$		\$		0
Barracks 2	630 South Oakes	\$	\$	\$			0
Barracks 5	630 South Oakes				\$		0
Barracks 6	630 South Oakes				\$		0
Bay 3-Stables	208 Flipper Street	\$		\$			0
Collections	210 Flipper Street				\$		0
Quartermaster	704 Burgess				\$		0
Officer's Quarters 6	630 South Oakes	\$					0
Officer's Quarters 7	213 East Avenue D				\$		0
Officer's Quarters 4	207 East Avenue D				\$		0
Officer's Quarters 1	630 South Oakes	\$					0
Officer's Quarters 9	630 South Oakes				\$		0
Officer's Quarters 3	630 South Oakes				\$		0
Officer's Quarters 1	630 South Oakes				\$		0
Headquarters	630 South Oakes	\$					0
Ft. Concho Hospital N. Wing	630 South Oakes				\$		0
Ft. Concho Chapel	630 South Oakes				\$		0
					Division Sub-total		0

Terms of Contract for Ener-Tel

1. Initial Contract term to be 3 years.
2. Contract Option Period to extend for one additional 3 year term. (this coincides with Ener-Tel's resubmission to BuyBoard)
3. Monitoring Rates (will be constant for the initial 3 year term)
(during renewal they will likely increase).
4. Monitoring Rates:

Burglar Alarm -	\$18.99 per month per location
Fire Alarm -	\$23.99 per month per location
Wireless(cell Phone / GSM)	\$28.99 per month per location
(reduced during negotiations \$1.00 per system)	
5. Maintenance Agreements: approximately 10% of replacement cost of equipment at current pricing (vary depending on age, condition and useful life of equipment)
6. Labor rates:

Technician (burglar, cameras, access, fire alarms)	\$75.00	Regular
	\$112.50	OT
	\$150.00	Holiday
Apprentice (burglar, cameras, access, fire alarms)	\$50.00	Regular
	\$75.00	OT
	\$100.00	Holiday
Fire Sprinkler Tech	\$110.00	Regular
	\$165.00	OT
	\$200.00	Holiday
Pipefitter / Sprinkler Installer	\$70.00	Regular
	\$105.00	OT
	\$140.00	Holiday
Sprinkler Apprentice	\$50.00	Regular
	\$75.00	OT
	\$100.00	Holiday

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Walt Wilkinson, Budget Analyst Sr., Budget, 325-481-2757

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consideration of approving an amendment to the interlocal agreement with the Concho Valley Transit District for transportation services related to the Goodfellow Express Route (M.Chegwidden)

Summary/History:

This amendment is to extend the length of the City's contract with the Concho Valley Transit District to include the Goodfellow Express Route, a dedicated trolley route to serve students at Goodfellow Air Force Base.

The purpose is to demonstrate to the Department of Defense a successful community partnership with Goodfellow Air Force Base; to provide inexpensive transportation services to the approximately 13,000 students who train at Goodfellow annually; and to positively impact retail sales in San Angelo.

This item was approved by Council for funding in the annual budget during budget discussion on August 21, 2012. It is necessary to amend the Concho Valley Transit District contract for the Goodfellow Express Route.

It is difficult for the Concho Valley Transit District to absorb costs because this route does not mirror other routes. This route is an extension of service in both geographical route and hours of operation.

The Goodfellow Express Route is offered every Friday 6:00 P.M. – Saturday 1:00 A.M. and every Saturday 12:00 P.M. – Sunday 1:00 A.M.

In 2007 the Concho Valley Transit District discontinued the Goodfellow route due to budget constraints.

On a San Angelo Chamber of Commerce-led visit to the Pentagon in May 2011, three former Goodfellow Air Force Base commanders were asked about any weaknesses in the Goodfellow/San Angelo relationship. In anticipation of another Base Realignment and Closure (BRAC) program to be conducted in 2015, the Chamber wished to identify any improvements that could be made to improve Goodfellow's score.

These three former commanders unanimously identified a lack of bus service for students in training, 80% of whom are without personal vehicles on base and were fully dependent on taxi service to access local restaurants, shopping, and entertainment in their free time, as a much needed item. As a result of these conversations, the Chamber spearheaded an effort to coordinate, advocate, obtain funding, run a trial period, and ultimately implement a permanent solution with the Goodfellow Express Route.

On June 1, 2012, the Concho Valley Transit District with support of the San Angelo Chamber of Commerce and the City of San Angelo, launched an eight-week pilot program to test the use of the Goodfellow Express Route. The pilot project was very successful and the positive feedback was tremendous.

Financial Impact:

The cost of operations of this route are:

20 hours per week @ 52 weeks @ \$50 per hour = \$52,000. Operational costs include but are not limited to bus,

maintenance, driver, fuel, insurance, dispatch, customer service, supervisor, parking, and communications.

The City’s portion to fund the Goodfellow Express Route is \$48,000. This is a budgeted item in the General Fund.

The San Angelo Chamber of Commerce contributes the remaining \$4,000 annually.

The approximate amounts of \$10,000 in fare revenue and \$10,000 in advertising revenue collected by the Concho Valley Transit District will be reinvested in infrastructure such as bus stops, including benches and covered shelters; route maps; planning; and ongoing improvements for the newly developed Goodfellow Express Route.

Other Information/Recommendation:

Staff recommends approval of the addendum.

Attachments:

- | | | |
|----|----------------------|--|
| 1. | Interlocal Agreement | CVTD Goodfellow Express Agreement.pdf |
| 2. | 2nd Amendment | CVTD Goodfellow Express 2nd Amendment.docx |

Presentation:

Approvals/Reviews:

Wilkinson, Walt	Created/Initiated
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is entered into this 21st day of August, 2014 (but effective as of October 1, 2013) ("Effective Date") by and between City of San Angelo, Texas, a local government ("City") and Concho Valley Transit District, a local government ("CVTD") (singularly and individually, "Party," and jointly, "Parties"), under the authority of Sections 791.001 – 791.011 of the Texas Government Code.

RECITALS:

A. Parties are authorized to enter into an interlocal agreement to perform a governmental function or service in which Parties are mutually interested and which each Party to the contract is authorized to perform individually.

B. The operation and maintenance of urban transit services to meet the needs of the citizens and communities within Tom Green County, Texas, is a governmental function or service in which Parties are mutually interested and which each Party to the contract is authorized to perform individually.

C. Parties entered into an Interlocal Cooperation Agreement on September 1, 2009, and two subsequent amendments to that agreement, for the provision of urban transit services within City, to expire August 31, 2014 ("Interlocal Cooperation Agreement").

D. Parties have determined that Interlocal Cooperation Agreement did not provide for a dedicated Goodfellow Air Force Base bus route and have identified the need for urban transit services in connection with Goodfellow Air Force Base.

E. Parties tested the feasibility and viability of a dedicated Goodfellow Air Force Base bus route by launching an eight-week pilot program, and determined that such route was both feasible and viable and in the best interest of the citizens and communities within Tom Green County, Texas.

F. Parties desire for CVTD to oversee, direct, operate and maintain a dedicated Goodfellow Air Force Base bus route within the City of San Angelo ("Service"), and for City to pay CVTD a portion of operational and maintenance costs for the performance of the services under this Agreement.

G. CVTD acknowledges that it is required to comply with the Federal Transit Administration Master Agreement, dated October 31, 2013, and all applicable Federal Transit Administration regulations, policies and directives.

H. Parties find that the amount of compensation to be paid by City to CVTD fairly compensates CVTD for the performance of services under this Agreement.

I. Parties intend that this Agreement supplement rather than supersede or supplant the current agreement for urban transit services or any other agreement made by or between City and CVTD.

J. On August 21, 2014, the City Council of the City of San Angelo, Texas, authorized the City Manager to enter into this Agreement with CVTD, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Parties agree as follows:

TERMS:

1. **RECITALS:** The recitals are true and correct and hereby incorporated into and made a part of this Agreement.
2. **TERM:** The term of this Agreement shall be one (1) year commencing on Effective Date.
3. **OPTION TO EXTEND:** Upon mutual agreement of Parties, Parties shall have the option to extend or renew the term hereof for a term of one (1) year, based upon an agreement as to City's contribution to CVTD and on a finding that the exercise of the

option is in the best interest of each Party, subject to the availability and appropriation of funds by City.

4. **CVTD OBLIGATION:**

A. SCOPE OF SERVICE. CVTD shall provide transportation services within the City of San Angelo, Texas to run from the vicinity of Goodfellow AFB (Goodfellow Express public transportation route) to other locations within San Angelo. CVTD shall operate a bus, which shall be capable of comfortably accommodating passengers commensurate with public transportation. The bus shall be maintained by CVTD in a clean, neat and orderly condition and in good working order and condition. The bus shall provide transportation for persons to popular destinations in the City of San Angelo as identified below between the hours of 6:00 PM on Fridays and 1:00 AM on Saturdays and 12:00 PM on Saturdays and 1:00 AM on Sundays. The bus will operate in the following schedule throughout each operating hour of the day:

<u>Locations</u>	<u>Arrival Times</u>
Goodfellow AFB	:00
Chadbourne & Beauregard	:05
Beauregard & Sherwood Way	:10
HEB	:12
Buffalo Wild Wings	:14
Cinemark Tinseltown	:15/:25
Wal-Mart (South)	:19
Hobby Lobby	:26
Sunset Mall	:29
Texas Road House	:34
Midnight Rodeo	:37
Cheddar's	:42
Goodfellow AFB	:50

B. PERSONNEL. CVTD has, or will secure, all personnel required in performing services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with City.

C. SPECIAL CONSIDERATIONS. CVTD holidays are New Year's Eve, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, Christmas Eve and Christmas Day. The Goodfellow Express will not operate on these holidays. CVTD will follow its Bad Weather Policy in the event dangerous weather conditions are forecasted. During these times CVTD bus services, including Goodfellow Express, may be halted.

5. **CITY OBLIGATION:** City agrees to contribute Forty Eight Thousand Dollars (\$48,000.00) toward the operational costs incurred by CVTD under Agreement, including but not limited to, personnel, vehicle, maintenance, fuel, insurance, dispatch, parking and customer service costs, for CVTD's performance of duties under Section 4, CVTD OBLIGATION, above, and to make payment to CVTD within (30) days after receipt of CVTD's invoice.
6. **CONTINGENCY CLAUSE:** The obligation of City to contribute to CVTD under the provisions of this Agreement is expressly made contingent upon the appropriation, budgeting or availability of sufficient funds by City. In the event that such funds are not budgeted, appropriated or otherwise not made available for the purpose of payment under this Agreement at any time after the current fiscal year, then City or CVTD shall have the option of terminating the Agreement under Section 9, TERMINATION, below, except that all services provided to that point shall be compensated at the agreed rate.
7. **INDEPENDENT CONTRACTOR:** Parties shall act at all times under this Agreement as independent contractors. Parties agree that CVTD shall not have and shall not exercise

any control or direction over the manner or method by which City provides its obligations under this Agreement. Parties agree that City shall not have and shall not exercise any control or direction over the manner or method by which CVTD provides its obligations under this Agreement. The provisions set forth herein shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination.

8. **STATUS OF EMPLOYEES:** Each Party shall retain supervision and control of its own employees at all times while performing this Agreement and no employee of one entity shall be considered a borrowed servant of the other entity for Workers' Compensation purposes or for any other reason. The City agrees that all persons employed by it to furnish services hereunder are employees or agents of the City and not of CVTD, and CVTD agrees that all persons employed by it to furnish services hereunder are employees or agents of the CVTD and not of the City. Such employees or agents of either entity are not entitled to benefits conferred on the other entity's employees.
9. **TERMINATION:** This Agreement may be terminated by either Party with or without cause upon sixty (60) days prior written notice to the other Party and shall continue in force and remain binding on Parties until such time as the governing body of either party terminates said Agreement.
10. **EXECUTION:** If the governing body of a Party is required to approve this Agreement, it shall not be entered into until approved by the governing body of that Party. In that event, this Agreement shall be executed by the duly authorized official(s) of the Party as expressed in the approving resolution or order of the governing body of said Party.
11. **ENTIRE AGREEMENT:** This Agreement supersedes any and all other agreements, either oral or in writing, between Parties with respect to Service. No other agreement, statement, or promise relating to the subject matter of this Agreement, which is not

contained herein, shall not be valid or binding on the Parties. In the event of a conflict between Interlocal Cooperation Agreement and Agreement with respect to Service, Agreement will take precedence, and then only to the extent necessary to reconcile the conflict.

12. **CIVIL LIABILITY, HOLD HARMLESS, INDEMNIFICATION, AND INSURANCE**

A. Any civil liability relating to the furnishing of services under this Agreement shall be the responsibility of the culpable party. CVTD shall be responsible for the consequences of its negligence, and City shall be responsible for the consequences of its negligence. CVTD shall be solely responsible for liability arising out of the operation of the Goodfellow Express Bus Route as described under Section 4. CVTD Obligation, Subsection A. Scope of Service and all personnel required under Section 4. CVTD Obligation, Subsection B. Personnel, including negligent injury of people or property.

B. To the extent allowed by law CVTD agrees to indemnify, save, and hold harmless City, its employees, agents, elected officials, and officers from any and all claims, actions, damages, lawsuits, proceedings, judgments, or liabilities, for personal injury; death, or property damage resulting from the acts or omissions of the CVTD or acts or omissions of others under CVTD's supervision or control arising out of the operation of Goodfellow Express. In the event of any cause of action or claim asserted by any third party, City will provide the CVTD timely notice of such claim, dispute or notice. Thereafter, CVTD shall at its own expense, faithfully and completely defend and protect City against any and all liabilities arising from this claim, cause of action or notice. If the CVTD should fail to so successfully defend, City may defend, pay or settle the claim or other cause of action with full rights of recourse against the CVTD for any and all fees, costs, expenses, and payments,

including but not limited to attorney's fees and settlement payments, made or agreed to be paid in order to discharge the claim, cause of action, dispute or litigation, to the extent allowed by law.

C. To the extent allowed by law City agrees to indemnify, save, and hold harmless CVTD, its employees, agents, elected officials, and officers from any and all claims, actions, damages, lawsuits, proceedings, judgments, or liabilities, for personal injury; death, or property damage resulting from the acts or omissions of the City or acts or omissions of others under City's supervision or control arising out of the operation of Goodfellow Express. In the event of any cause of action or claim asserted by any third party, CVTD will provide the City timely notice of such claim, dispute or notice. Thereafter, City shall at its own expense, faithfully and completely defend and protect CVTD against any and all liabilities arising from this claim, cause of action or notice. If the City should fail to so successfully defend, CVTD may defend, pay or settle the claim or other cause of action with full rights of recourse against the City for any and all fees, costs, expenses, and payments, including but not limited to attorney's fees and settlement payments, made or agreed to be paid in order to discharge the claim, cause of action, dispute or litigation, to the extent allowed by law.

D. Nothing contained in this Section or this Agreement shall be construed to create a liability or right of indemnification in any third party.

E. The terms in Section 12. Civil Liability, Hold Harmless, Indemnification and Insurance shall survive the termination or expiration of this Agreement.

F. The CVTD shall ensure that any party driving the Goodfellow Express shall be fully licensed and competent to operate the bus. In addition, the CVTD shall acquire and maintain during the term of this Agreement all appropriate insurance coverage, including but

not limited to, commercial liability insurance with at least \$2 million; worker compensation insurance; commercial auto insurance; and any other insurance a prudent owner and operator of a bus used for public transportation would maintain.

13. **AMENDMENT:** This Agreement may only be amended by the mutual agreement of Parties in a writing signed by a duly authorized representative of each Party.
14. **SEVERABILITY:** In the event that any one or more of the provisions contained in Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions herein, and Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
15. **FORCE MAJEURE:** In the event that either Party shall be prevented from performing its duties under this Agreement by an act of nature, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, flood, or by the occurrence of any other event beyond the control of either Party, it shall not be considered a breach of this Agreement.
16. **NOTICE:** Notice given by one party to the other hereunder shall be in writing and deemed to have been properly given if deposited with the United States Postal Service, registered or Certified mail, return receipt requested, addressed as follows:

CVTD

Concho Valley Transit District
Attn: John Stokes, Executive Director
2801 West Loop 306, Suite A
San Angelo, Texas 76904

CITY

City of San Angelo
Attn: Daniel Valenzuela, City Manager
72 W. College Ave.
San Angelo, Texas 76903

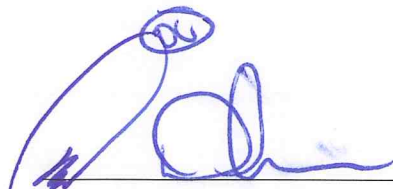
[Signature Page to Follow]

EXECUTED in duplicate originals by City and CVTD the Parties on this the 10th day of September, 2014.

CONCHO VALLEY TRANSIT DISTRICT

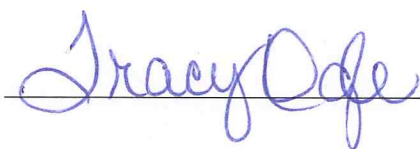
CITY OF SAN ANGELO

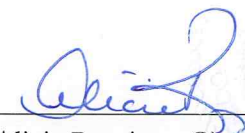
By: 
John Stokes, Executive Director

By: 
Daniel Valenzuela, City Manager

ATTEST:

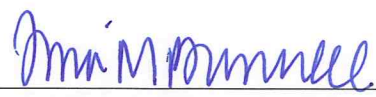
ATTEST:

By: 

By: 
Alicia Ramirez, City Clerk

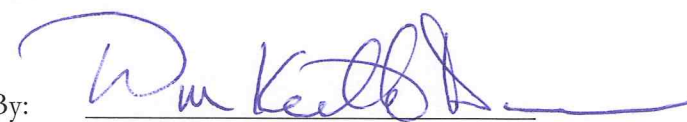
Approved as to content:

Approved as to form:

By: 
Tina Bunnell, Director of Finance

By: 
Lysia H Bowling, City Attorney

Approved as to form:

By: 
Wm. Keith Davis
Counsel to the CVTD

**SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT
BY AND BETWEEN CITY OF SAN ANGELO
AND CONCHO VALLEY TRANSIT DISTRICT**

This Second Amendment to the Interlocal Agreement (Second Amendment) is made and entered into this ____ day of _____, 2015 (but effective as of October 1, 2015 ("Effective Date")), by and between the Concho Valley Transit District, a political subdivision of the State of Texas (CVTD) and the City of San Angelo, a Texas home-rule municipality (City).

WHEREAS, CVTD and City executed an Interlocal Agreement (Original Agreement) on August 21, 2014, a copy of which is attached to this Second Amendment as Attachment "A" hereto, which by this reference is incorporated into and made a part of this Second Amendment; and

WHEREAS, CVTD and City now desire to amend said Original Amendment to extend the term for one (1) additional year, effective beginning October 1, 2015 and ending September 30, 2016, provide consequent compensation for said extended term; and enter hereby into Second Amendment.

NOW THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements of the parties hereinafter set forth, it is hereby agreed between the parties that Second Amendment shall be and the same is hereby amended as follows:

FIRST. 2. TERM The term of the Agreement shall be for a period of one (1) year term, commencing October 1, 2015 and ending September 30, 2016.

SECOND. 5. CITY OBLIGATION. City agrees to contribute Forty Eight Thousand Dollars (\$48,000.00) per year toward the operational costs incurred by CVTD under Agreement, including but not limited to, personnel, vehicle, maintenance, fuel, insurance, dispatch, parking and customer service costs, for CVTD's performance of duties under Section 4, CVTD OBLIGATION, above, and to make payment to CVTD within (30) days after receipt of CVTD's invoice.

THIRD. All remaining terms, conditions, clauses and provisions of Second Amendment to the extent not changed, altered or specifically amended by this instrument, shall remain in full force and effect in all respects and are hereby ratified by the parties hereto.

[Signature Page to Follow]

EXECUTED in duplicate originals on this the ____ day of _____, 2015.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

CVTD

**BOARD OF DIRECTORS
CONCHO VALLEY TRANSIT DISTRICT**

By: _____

Name: _____

Title: _____

ATTEST:

CITY

CITY OF SAN ANGELO, TEXAS

By: _____

Daniel Valenzuela, City Manager

ATTEST:

Bryan Kendrick, City Clerk

**SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT
BY AND BETWEEN CITY OF SAN ANGELO
AND CONCHO VALLEY TRANSIT DISTRICT**

Approved as to Content:

Morgan Chegwidden, Budget Manager

Approved as to Content:

Tina Carriger, Finance Director

Approved as to Form:

Theresa James, City Attorney

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Sandra Villarreal, Director of Health, Health Services, 325.657.4493

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consider adopting a resolution ratifying a Department of State Health Services HAZARDS/UNIQUE Grant Application and accepting grant funds in the amount of \$22,960 with the City of San Angelo providing a 10% Match in the amount of \$2,296, currently budgeted in FY16 (S.Villarreal)

Summary/History:

The San Angelo Health Department has applied for and been awarded HAZARDS (Bioterrorism) funds for the past 13-14 years. DSHS made available an additional amount of grant funds for a One-Time Discretionary Project in FY16 which we applied for and were awarded.

Funds will be used to furnish / stock a cache of hazardous materials suits and N95 Respirators for Fire/EMS/and Public Health Personnel in the event of a biological public health incident such as Ebola, as well as, allow 4 staff members to attend the National Association of City County Health Officials "Public Health Preparedness Summit" in the Spring 2016.

Financial Impact:

The City of San Angelo is required a 10% Cash Match in the amount of \$2,296.00 to apply towards the purchase of the hazardous materials suiting and masks, and Public Health Preparedness Summit attendance by the 4 staff members. All matching funds needed will come from within the Health Administration Budget for FY16.

Other Information/Recommendation:

N/A

Attachments:

1. HD_FY16_HAZARDS_UNIQUE_Contract HD_FY16_HAZARDS_UNIQUE_Contract_11_12_15.pdf
2. HD DSHS PHEP/Unique Grant Resolution HD DSHS ONE TIME HAZARDS UNIQUE GRANT FUNDS Resolution.docx

Presentation:

Approvals/Reviews:

Villarreal, Sandra	Created/Initiated
Weise, Rick	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT 2016-004051-00**



This Contract is entered into by and between the Department of State Health Services (DSHS or the Department), an agency of the State of Texas, and San Angelo-Tom Green County Health Department (Contractor), a Governmental, (collectively, the Parties) entity.

1. Purpose of the Contract: DSHS agrees to purchase, and Contractor agrees to provide, services or goods to the eligible populations.

2. Total Amount: The total amount of this Contract is \$22,960.00.

3. Funding Obligation: This Contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendment to the Appropriations Act, health and human services agency consolidation, or any other disruptions of current appropriated funding for this Contract, DSHS may restrict, reduce, or terminate funding under this Contract.

4. Term of the Contract: This Contract begins on 11/05/2015 and ends on 06/30/2016. DSHS has the option, in its sole discretion, to renew the Contract. DSHS is not responsible for payment under this Contract before both parties have signed the Contract or before the start date of the Contract, whichever is later.

5. Authority: As applicable, DSHS enters into this Contract under the authority of Texas Health and Safety Code Chapters 12 or 1001 or Texas Government Code Chapters 531, 771, 791 or 2155.

6. Program Name: CPS/OT-UNIQUE CPS – One Time Discretionary Unique Contracts

7. Statement of Work:

STATEMENT OF WORK:

A. The Contractor will complete one time funding activities during the term of this Contract that aligns with one or more of the 15 PHEP capabilities by performing activities that support the Public Health Emergency Preparedness Cooperative Agreement (Funding Opportunity Number CDC-RFA-TP12-120104CONT15) from the Centers for Disease Control and Prevention (CDC).

The total amount of this Contract will not exceed \$22,960.00.

Contractor will perform the activities required under this Contract in the Service Area designated in the most recent version of Section 8. "Service Area" of this contract.

CDC's five-year PHEP – Hospital Preparedness Program (HPP) Cooperative Agreement seeks to align PHEP and HPP programs by advancing public health and healthcare preparedness.

B. The Contractor will address the following CDC PHEP Capabilities that are specific to the Funding Award.

1. Capability 1 – Community Preparedness is the ability of communities to prepare for, withstand, and recover – in both the short and long terms – from public health incidents.
2. Capability 2 – Community Recovery is the ability to collaborate with community partners, e.g., healthcare organizations, business, education, and emergency management) to plan and advocate for the rebuilding of public health, medical, and mental/behavioral health systems to at least a level of functioning comparable to pre-incident levels and improved levels where possible.
3. Capability 3 – Emergency Operations Center Coordination is ability to direct and support an event or incident with public health or medical implications by establishing a standardized, scalable system of oversight, organization, and supervision consistent with jurisdictional standards and practices with the National Incident Management System.
4. Capability 4 – Emergency Public Information and Warning is the ability to develop, coordinate, and disseminate information, alerts, warnings, and notifications to the public and incident management responders.
5. Capability 5 – Fatality Management is the ability coordinate with other organizations (e.g., law enforcement, healthcare, emergency management, and medical examiner/coroner) to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death, and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident.
6. Capability 6 – Information Sharing is the ability to conduct multijurisdictional, multidisciplinary exchange of health-related information and situational awareness data among federal, state, local, territorial, and tribal levels of government, and the private sector. This capability includes the routine sharing of information as well as issuing of public health alerts to federal, state, local, territorial, and tribal levels of government and the private sector in preparation for and in response to events or incidents of public health significance.
7. Capability 7 – Mass Care is the ability to coordinate with partner agencies to address the public health, medical, and mental/behavioral health needs of those impacted by an incident at a congregate location.

This capability includes the coordination of ongoing surveillance and assessment to ensure that local health needs to continue to be met as the incident evolves.

8. Capability 8 – Medical Countermeasure Dispensing is the ability to provide medical countermeasures (including vaccines, antiviral drugs, antibiotics, antitoxin, etc.) in support of treatment or prophylaxis (oral or vaccination) to the identified population in accordance with public health guidelines and/or recommendations.

9. Capability 9 – Medical Material Management and Distribution is the ability to acquire, maintain (e.g., cold chain storage or other storage protocol), transport distribute, and track medical material (e.g., pharmaceuticals, gloves, masks, and ventilators) during an incident and to recover and account for unused medical material, as necessary, after an incident.

10. Capability 10 – Medical Surge is the ability to provide adequate medical evaluation and care during events that exceed the limits of the normal medical infrastructure of an affected community. It encompasses the ability of the healthcare system to survive a hazard impact and maintain or rapidly recover operations that were compromised.

11. Capability 11 – Non-Pharmaceutical Interventions is the ability to recommend to the applicable lead agency (if not public health) and implement, if applicable, strategies for disease, injury, and exposure control. Strategies include the following: isolation and quarantine; restrictions on movement and travel advisory/warnings; social distancing; external decontamination; hygiene; and precautionary behaviors.

12. Capability 12 – Public Health Laboratory Testing is the ability to conduct rapid and conventional detection, characterization, confirmatory testing, data reporting, investigative support, and laboratory networking to address actual or potential exposure to all-hazards. Hazards include chemical, radiological, and biological, and biological agents in multiple matrices that may include clinical samples, food, and environmental samples (e.g., water, air, and soil). This capability supports routine surveillance, including pre-event incident and post-exposure activities.

13. Capability 13 – Public Health Surveillance and Epidemiological Investigations is the ability to create, maintain, support and strengthen routine surveillance and detection systems and epidemiological investigation processes, as well as to expand these systems and processes in response to incidents of public health significance.

14. Capability 14 – Responder Safety and Health describes the ability to protect public health agency staff responding to an incident and the ability to support the health and safety needs of hospital and medical facility personnel, if requested.

15. Capability 15 – Volunteer Management is the ability to coordinate the identification, recruitment, registration, credential verification, training and engagement of volunteers to support the jurisdictional public health agency's response to incidents of public health significance.

C. Contractor will not exceed the total amount of this Contract..

D. Contractor will comply with all applicable federal and state laws, rules, and regulations including, but not limited to, the following:

1. Public Law 107-188, Public Health Security and Bioterrorism Preparedness and Response Act of 2002;
2. Public Law 113-05, Pandemic and All-Hazards Preparedness Reauthorization Act; and
3. Texas Health and Safety Code Chapter 81.

E. The Parties have the authority under Texas Government Code Chapter 791 to enter into this Interlocal Cooperation Contract.

F. The following documents and resources are incorporated by reference and made a part of this Contract:

1. DSHS and CDC Public Health Emergency Preparedness Cooperative Agreement, Funding Opportunity Number: CDC-RFA-TP12-120102CONT14;
2. Public Health Preparedness Capabilities: National Standards for State and Local Planning, March 2011:
http://www.cdc.gov/phpr/capabilities/DSLR_capabilities_July.pdf;
3. Presidential Policy Directive 8/PPD-8, March 30, 2011:
<http://www.hlswatch.com/wp-content/uploads/2011/04/PPD-8-Preparedness.pdf>;
4. Homeland Security Exercise and Evaluation Plan (HSEEP) Documents:
https://hseep.dhs.gov/pages/1001_HSEEP7.aspx;
5. Ready or Not? Have a Plan; Surviving Disaster: How Texans Prepare (videos):
<http://www.texasprepares.org/survivingdisaster.htm>; and
6. Preparedness Program Guidance(s) as provided by DSHS and CDC.

G. Funds awarded for this Contract must be matched by costs or third-party contributions that are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching. The non-federal contributions (match) may be provided directly or through donations from public or private entities and may be in cash or in-kind donations, fairly evaluated, including plant, equipment, or services. The costs that the Contractor incurs in fulfilling the matching or cost-sharing requirement are subject to the same requirements, including the cost principles, that are applicable to the use of Federal funds, including prior approval requirements and other rules for allowable costs as described in 45 CFR 74.23 and 45 CFR 92.24.

H. The Contractor is required to provide matching funds for this Contract not less than ten-percent of the allocation amount. Cash match is defined as an expenditure of cash by the contractor on allowable costs of this Contract that are borne by the contractor. In-kind match is defined as the dollar value of non-cash contributions by a third party given in goods, commodities, or services that are used in activities that benefit this Contract's project and that are contributed by non-federal third parties without charge to the contractor. The criteria for match must:

1. Be an allowable cost under the applicable federal cost principle;
2. Be necessary and reasonable for the efficient accomplishment of project or program objectives;
3. Be verifiable within the contractor's (or subcontractor's) records;
4. Be documented, including methods and sources, in the approved budget (applies only to cost reimbursement Contracts);
5. Not be included as contributions toward any other federally-assisted project or program (match can count only once);
6. Not be paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or match;
7. conform to other provisions of governing circulars/statutes/regulations as applicable for the Contract;
8. Be adequately documented;
9. Must follow procedures for generally accepted accounting practices as well as meet audit requirements; and
10. Value the in-kind contributions reported and must be supported by documentation reflecting the use of goods and/or services during the Contract term.

I. In the event of a public health emergency involving a portion of the state, Contractor will mobilize and dispatch staff or equipment purchased with funds from the previous PHEP cooperative agreement and that are not performing critical duties in the jurisdiction served to the affected area of the state upon receipt of a written request from DSHS. This provision is not applicable if the Contractor is an institution of higher education or a poison control center.

J. Contractor will inform DSHS in writing if Contractor will not continue performance under this Contract within thirty days of receipt of an amended standard(s) or guideline(s). DSHS may terminate this Contract immediately or within a reasonable period of time as determined by DSHS.

K. Contractor will develop, implement and maintain a timekeeping system for accurately documenting staff time and salary expenditures for all staff funded through this Contract, including partial full-time employees and temporary staff.

L. DSHS reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. DSHS will monitor Contractor's expenditures on a quarterly basis. If expenditures are below that projected in Contractor's total Contract amount, Contractor's budget may be subject to a decrease for the remainder of the Term of the Contract. If applicable, vacant positions existing after ninety days may result in a decrease in funds.

M. The Contractor will:

1. Submit programmatic reports as directed by DSHS in a format specified by DSHS. Contractor will provide DSHS other reports, including financial reports, and any other reports that DSHS determines necessary to accomplish the objectives of this contract and to monitor compliance; and

2. Submit reports as requested by DSHS to satisfy information-sharing Requirements set forth in Texas Government Code, Sections 421.071 and 421.072 (b) and (c).

If Contractor is legally prohibited from providing such reports, Contractor will immediately notify DSHS in writing.

N. In the event of a local, state, or federal emergency the Contractor has the authority to utilize approximately five percent of the Contractor's staff's time supporting this Contract for response efforts. DSHS will reimburse Contractor up to five percent of this Contract funded by CDC for personnel costs responding to an emergency event. Contractor will maintain records to document the time spent on response efforts for auditing purposes. Allowable activities also include participation of drills and exercises in the pre-event time period. Contractor will notify the Assigned Contract Manager in writing when this provision is implemented.

O. For the purposes of this Contract, the Contractor may not use funds for fundraising activities, lobbying, research, construction, major renovations, and reimbursement of pre-award costs, clinical care, purchase of vehicles of any kind, funding an award to another party or provider who is ineligible, backfilling costs for staff or the purchase of incentive items.

P. Contractor may transfer cumulative budget line items of 25% or less among direct cost categories, other than equipment and indirect without prior approval from DSHS or a written amendment.

PERFORMANCE MEASURES:

A. DSHS will monitor the Contractor's compliance with the requirements in Section 7 and this Contract and failure to meet these requirements may result in withholding a portion of the current PHEP base awards.

BILLING INSTRUCTIONS:

Contractor will request payment using the State of Texas Purchase Voucher (Form B-13) on a monthly basis and acceptable supporting documentation for reimbursement of the required services/deliverables. Additionally, the Contractor will submit the Financial Status Report (FSR-269A) and Match Reimbursement Certification (B-13A) on a quarterly basis. Vouchers, supporting documentation, Financial Status Reports, and Match Reimbursement Certification should be mailed or submitted by fax or email to the addresses/number below.

Claims Processing Unit, MC1940
Texas Department of State Health Services
1100 West 49th Street
PO Box 149347
Austin, TX 78714-9347
Fax: (512) 458-7442

B-13 invoices@dshs.state.tx.us & Php.vouchersupport@dshs.state.tx.us

Support Document: invoices@dshs.state.tx.us & Php.vouchersupport@dshs.state.tx.us

B-13A: invoices@dshs.state.tx.us & Php.vouchersupport@dshs.state.tx.us

FSR: invoices@dshs.state.tx.us & Php.vouchersupport@dshs.state.tx.us & FSRGrants@dshs.state.tx.us

8. Service Area

Tom Green County

This section intentionally left blank.

10. Procurement method:

Non-Competitive

Interagency/Interlocal

GST-2016-Solicitation-00044

RLHS FY16 OT-Unique LHD NEW CONTRACT

11. Renewals:

Number of Renewals Remaining: 0 Date Renewals Expire: 06/30/2016

12. Payment Method:

Cost Reimbursement

13. Source of Funds:

93.069

14. DUNS Number:

078547502

15. Programmatic Reporting Requirements:

Report Name	Frequency	Period Begin	Period End	Due Date
Financial Status Report (FSR)	Quarterly	11-5-2015	12-31-2015	1-31-2016
Financial Status Report (FSR)	Quarterly	1-1-2016	3-31-2016	4-30-2016
Financial Status Report (FSR)	Quarterly	4-1-2016	6-30-2016	8-15-2016

Submission Instructions:

Contractors are required to provide specific information to have an acceptable e-signature. The name and title of the certifying official must be printed in the designated areas at the bottom of the FSR. The e-mail with the FSR attached must then be sent by the certifying official name as stated on that FSR. Anything else will not be accepted.

FSR: invoices@dshs.state.tx.us & Php.vouchersupport@dshs.state.tx.us & FSRGrants@dshs.state.tx.us

16. Special Provisions

SPECIAL PROVISIONS:

The Parties agree to the following changes to DSHS FY 2016 General Provisions (Core/Subrecipient).

A. General Provisions, Compliance and Reporting Article II, Applicable Laws and Regulations Regarding Funding Sources, Section 2.06, is amended by deleting Section 2.06 in its entirety and replacing it with the following:

When applicable, federal statutes, regulations and/or federal grant requirements applicable to funding sources and any updates to such will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars (as codified in Title 2, 200 of the Code of Federal Regulations (CFR) and 45 CFR 75) the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Comptroller of Public Accounts, Texas Procurement and Support Services Division. UGMA and UGMS can be located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §__.14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

B. General Provisions, Final Invoice/Billing Submission, Section 5.03 is modified to provide that Contractor will submit final close-out bill or revisions to previous reimbursement request(s) no later than August 15, 2016.

C. General Provisions, Compliance and Reporting, Article II, Section 2.08(a) is modified by deleting it in its entirety and replacing it with the following language.

a. The following sections or portions of sections of these General Provisions will not apply to interagency or interlocal contracts:

- i. Hold Harmless and Indemnification, Section 14.17;
- ii. Independent Contractor, Section 13.05 (delete the third sentence in its entirety; delete the word "employees" in the fourth sentence; the remainder of the section applies);
- iii. Insurance, Section 14.22;
- iv. Liability Coverage, Section 25.03;
- v. Fidelity Bond, Section 25.02;
- vi. Historically Underutilized Businesses, Section 13.02 (Contractor, however, will comply with HUB requirements of other statutes and rules specifically applicable to that entity);
- vii. Debt to State and Corporate Status, Section 4.01;
- viii. Application of Payment Due, Section 4.02; and
- ix. Article XVI Claims against the Department (This Article is inapplicable to interagency contracts only).

D. General Provisions, Payment Methods and Restrictions, Article V, Section 5.01 is revised to include the following:

Contractor may request a one-time working capital advance not to exceed 12% of the total amount of the Contract funded by DSHS. All advances must be expended by the end of the contract term. Advances not

expended by the end of the contract term must be refunded to DSHS.

Contractors will repay all or part of advance funds at any time during the Contract's term. However, if the advance has not been repaid prior to the last three months of the Contract term, the contractor must deduct at least one-third of the remaining advance from each of the last three months' reimbursement requests. If the advance is not repaid prior to the last three months of the Contract term, DSHS will reduce the reimbursement request by one-third of the remaining balance of the advance.

E. General Provisions, Access and Inspection Article X, Section 10.01 is revised to include the following:

In addition to the site visits authorized by this Article of the General Provisions, Contractor will allow DSHS to conduct on-site quality assurance reviews of Contractor. Contractor will comply with all DSHS documentation requests and on-site visits. Contractor will make available for review all documents related to the Contract, upon request by the DSHS Program staff.

F. General Provisions, Program Equipment and Supplies Article XXII, Section 22.01, is revised as follows: Contractor is required to initiate the purchase of approved equipment no later than June 30, 2016 as documented by issue of a purchase order or written order confirmation from the vendor on or before June 30, 2016. In addition, all equipment and supplies must be received no later than 45 calendar days following the end of the Contract term.

G. General Provisions, General Terms Article XIV, Amendment Section 14.12, is amended to include the following:

Contractor must submit all amendment and revision requests in writing to the Division Contract Management Unit at least 90 days prior to the end of the term of this Contract.

17. Documents Forming Contract. The Contract consists of the following:

- a. Contract (this document) 2016-004051-00
- b. General Provisions 2016 General & Grant Subrecipient Additional Provisions (LHD)
- c. Attachments Budget
- d. Declarations Certification Regarding Lobbying, Fiscal Federal Funding
Accountability and Transparency Act (FFATA) Certification
- e. Exhibits

Any changes made to the Contract, whether by edit or attachment, do not form part of the Contract unless expressly agreed to in writing by DSHS and Contractor and incorporated herein.

18. Conflicting Terms. In the event of conflicting terms among the documents forming this Contract, the order of control is first the Contract, then the General Provisions, then the Solicitation Document, if any, and then Contractor's response to the Solicitation Document, if any.

19. Payee. The Parties agree that the following payee is entitled to receive payment for services rendered by Contractor or goods received under this Contract:

Name: City of San Angelo
Vendor Identification Number: 17560006599

20. Entire Agreement. The Parties acknowledge that this Contract is the entire agreement of the Parties and that there are no agreements or understandings, written or oral, between them with respect to the subject matter of this Contract, other than as set forth in this Contract.

I certify that I am authorized to sign this document and I have read and agree to all parts of the contract,

Department of State Health Services

By: David Gruber
Signature of Authorized Official
10/23/2015
Date

David Gruber Assistant Commissioner
Name and Title
1100 West 49th Street
Address
Austin, TX 78756-4204
City, State, Zip
(512) 776-7825
Telephone Number
david.gruber@dshs.state.tx.us
E-mail Address

San Angelo-Tom Green County Health

Department
By: Daniel Valenzuela
Signature of Authorized Official
10/23/2015
Date

Daniel Valenzuela City Manager
Name and Title
72 West College
Address
San Angelo, Texas 76903
City, State, Zip
(325) 657-4241
Telephone Number
daniel.valenzuela@cosatx.us
E-mail Address

Budget Summary

Organization Name: San Angelo-Tom Green County
Health Department

Program ID: CPS/OT-UNIQUE

Contract Number: 2016-004051-00

Budget Categories

Budget Categories	DSHS Funds Requested	Cash Match	In Kind Match Contributions	Category Total
Personnel	\$0.00	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00	\$0.00
Travel	\$6,230.00	\$1,815.00	\$0.00	\$8,045.00
Equipment	\$0.00	\$0.00	\$0.00	\$0.00
Supplies	\$16,730.00	\$481.00	\$0.00	\$17,211.00
Contractual	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00	\$0.00
Total Direct Costs	\$22,960.00	\$2,296.00	\$0.00	\$25,256.00
Indirect Costs	\$0.00	\$0.00	\$0.00	\$0.00
Totals	\$22,960.00	\$2,296.00	\$0.00	\$25,256.00

CERTIFICATION REGARDING LOBBYING

Organization Name: San Angelo-Tom Green County Health Department

Contract Number: 2016-004051-00

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or an employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit, an officer or employee of congress, or an employee of a member of congress in connection with this Standard Form-11, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less that \$10,000 and not more than \$100,000 for each such failure.

☐ Applicable

☒ Non- Applicable

Signature of Authorized Individual

Daniel Valenzueala

Date:

10/23/2015

Fiscal Federal Funding Accountability and Transparency Act (FFATA) Certification

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why.

Organization Name San Angelo-Tom Green County Health Department

Address 72 West College State Texas

City San Angelo Zip Code (9 digit) 76903

Payee Name City of San Angelo

Address 72 W College Ave State TX

City San Angelo Zip Code (9 digit) 76903-5814

Vendor Identification No. 17560006599 MailCode 013

Payee DUNS No. 078547502

1. Did your organization have a gross income, from all sources, of more than \$300,000 in your previous tax year?

☒ Yes ☐ No

2. Certification Regarding % of Annual Gross from Federal Awards.

Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year?

☐ Yes ☒ No

3. Certification Regarding Amount of Annual Gross from Federal Awards.

Did your organization receive \$25 million or more in annual gross revenues from federal awards in the preceding fiscal year?

☐ Yes ☒ No

4. Certification Regarding Public Access to Compensation Information.

Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

☐

Yes

☐

No

If Yes, where can this information be found?

If No, you must provide the names and total compensation of the top five highly compensated officers.

Example: John Blum:500000;Mary Redd:50000;Eric Gant:400000;Todd Platt:300000;Sally Tom:300000

Identify contact persons for FFATA Correspondence

FFATA Contact Person #1

Name Brandon Sanders
Email brandon.sanders@cosatx.us
Telephone (325) 658-7529

FFATA Contact Person #2

Name Jaime Guerrero
Email jaime.guerrero@cosatx.us
Telephone (325) 481-2149

☒

As the authorized representative of the Organization, I hereby certify that the statements made by me in this certification form are true, complete and correct to the best of my knowledge.

E-Signature

Date

Daniel Valenzueala

10/23/2015

A RESOLUTION BY THE SAN ANGELO CITY COUNCIL RATIFYING THE APPLICATION AND CONTRACT FOR, AND ACCEPTING, A ONE TIME FY2016 TEXAS DEPARTMENT OF STATE HEALTH SERVICES, PUBLIC HEALTH EMERGENCY PREPAREDNESS HAZARDS/UNIQUE GRANT FOR \$22,960.00, TO CARRY OUT THE CENTERS FOR DISEASE CONTROL PUBLIC HEALTH EMERGENCY PREPAREDNESS GOALS AND OBLIGATING THE CITY TO MATCH TEN PERCENT ESTIMATED TO BE IN THE SUM OF \$2,296.00

WHEREAS, the City of San Angelo applied for and has been awarded a One Time FY2016 Texas Department of State Health Services Public Health Emergency Preparedness (PHEP) Hazards/Unique Grant for \$22,960.00, to be used to carry out objectives addressing Centers for Disease Control Public Health Emergency Preparedness Goals; and,

WHEREAS, the grant will permit the City of San Angelo to partner and cooperate with Tom Green County relating to preparedness activities; and,

WHEREAS, funds are available to pay the City's ten percent match in the sum of \$2,296.00:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SAN ANGELO, TEXAS THAT:

That the application and contract for a One Time FY2016 Texas Department of State Health Services Public Health Emergency Preparedness (PHEP) Grant for \$22,960.00, commencing November 2, 2015, and ending on June 30, 2016, to be used to carry out objectives addressing Centers for Disease Control Public Health Emergency Preparedness Goals is hereby ratified and the grant of funds in the sum of \$22,960.00, is hereby accepted, with the City being obligated to pay 10% of grant amount estimated to be in the sum of \$2,296.00. The City Manager or his designee is hereby authorized to execute such documents as may be necessary or desirable to accept the grant funds and provide for their application for the purposes stated.

PASSED and APPROVED THIS 12th DAY OF NOVEMBER, 2015.

CITY OF SAN ANGELO, TEXAS

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

APPROVED AS TO CONTENT

APPROVED AS TO FORM

Sandra Villarreal
Health Services Director

Theresa James, City Attorney

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Carl White, Parks and Recreation Director, Parks and Recreation, 325-657-4450

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consideration of authorizing the Mayor or City Manager to execute a lease agreement between the City and Mobile Maintenance, LLC, for the building and property on 616 North Washington St. for activities associated with the Boy Scouts of America program (C.White)

Summary/History:

Consideration of authorizing the Mayor or City Manager to execute a lease agreement between the City and Mobile Maintenance, LLC, for the building and property on 616 North Washington St. for activities associated with the Boy Scouts of America program.

Staff recommends approval of this lease agreement which is for a 5-year term. The property in question is the building and nearby grounds located at 616 North Washington Street (on City property overlooking the North Concho River near 14th Street).

The City executed a lease agreement with Reece Albert, Inc., for the same property and purpose for a 5-year term at the end of June 2005 and June 2010.

Financial Impact:

There is no cost associated with this lease. The lease requires Mobile Maintenance, LLC, to maintain the property during the term of the lease.

Other Information/Recommendation:

Staff recommends approval.

Attachments:

- | | | |
|----|---|---|
| 1. | Letter from Mobile Maintenance re Lease of Boy Scout Building | Letter from Mobile Maintenance re Lease of Boy Scout Building.pdf |
| 2. | 15-256 Lease COSA MOBILE MAINTENANCE LLC BOY SCOUTS (cp) | 15-256 Lease COSA MOBILE MAINTENANCE LLC BOY SCOUTS (cp).pdf |

Presentation:

Approvals/Reviews:

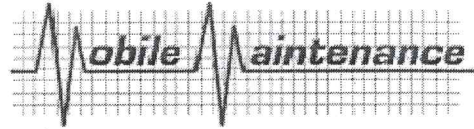
White, Carl
James, Theresa
Carriger, Tina

Created/Initiated
Approved
Approved

James, Theresa
Dunn, Becky
Kendrick, Bryan

Approved
Approved
Final Approval

Mobile Maintenance, LLC
105 W. Washington Drive
San Angelo, TX 76903
Phone: 325-617-2714
Fax: 325-617-2715
www.mobile-maintenance.com



Mr. Carl White,

Mobile Maintenance, LLC would like to assume the building lease for Boy Scout Troop 36.
Please send us a copy of the lease after changing it to our name and address.
Our information is as follows:

Mobile Maintenance, LLC
105 W. Washington Dr
San Angelo, TX 76903

Thank you,

A handwritten signature in black ink, appearing to read "Patrick Bignall". The signature is stylized with a large, sweeping "P" and "B".

Patrick Bignall
Field Operations Manager

LEASE AGREEMENT

THE CITY OF SAN ANGELO, a Texas home rule municipal corporation, hereinafter known as "Lessor", whose address is 72 West College, P.O. Box 1751, San Angelo, Texas 76902, hereby leases, under the following terms and conditions as hereinafter set out, unto MOBILE MAINTENANCE, LLC, a Texas corporation, acting by and through its duly authorized officer, hereinafter known as "Lessee", whose address is _____, San Angelo, Texas 7690__, the following described property:

Lots 11 and 12, Block 59, Angelo Heights Addition, City of San Angelo, Tom Green County, Texas, also known as 616 North Washington Street, San Angelo, Texas 76901 (hereinafter referred to as "Premises" or "Leased Premises").

1. TERM.

- 1.1 The term of this Lease shall be for five (5) years, beginning _____, 2015, and ending on _____, 2020.

2. RENT.

- 2.1 Amount. Rental for the Leased Premises for the entire term shall be paid in advance beginning _____, 2015, and shall be the sum of One Dollar (\$1.00) per year.
- 2.2 Place of Payment. Said payments shall be made to the Water Utilities Department of the City of San Angelo, 122 W. 1st Street, San Angelo, Texas 76903.
- 2.3 Further Consideration. Subject to the terms and conditions herein stated. City hereby grants and leases to Lessee the rights hereinafter specified for activities associated with the Boy Scouts of America program in the City of San Angelo.

3. USE OF LEASED PREMISES.

- 3.1 Use. Lessee shall use leased Premises only for activities associated with the Boy Scouts of America program and for uses normally incident thereto and for no other purpose.
- 3.2 Termination.
- 3.2.1 If at any time the Leased Premises and any improvements thereon shall cease to be used for the purpose specified in Section 3.1, Leased Premises shall be deserted or vacated, or if Lessee defaults in performance of any other term or condition of this Lease Agreement, Lessor shall have the right to terminate this Lease Agreement by giving fifteen (15) days written notice to Lessee during which time Lessee may cure the breach of the Lease Agreement and thereby avoid termination.
- 3.2.2 Lessor shall also have the right to terminate this Lease Agreement for any use deemed more appropriate by the City Council after written notice is given to Lessee and the elapse of sixty (60) days. If termination occurs under this provision, Lessee shall have the right to remove only those improvements placed by Lessee during the current term of this Lease Agreement, provided such improvements can be removed without damage to Lessor's property, but in no event shall Lessor be required to reimburse Lessee for

improvements which remain on the Premises or expenses incurred by Lessee in connection with removal of the improvements.

4. CONDITION OF LEASED PREMISES.

- 4.1 No Warranty. LESSOR GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR ANY IMPROVEMENTS THEREON, INCLUDING WARRANTY OF HABITABILITY OR FITNESS FOR A PARTICULAR USE.
- 4.2 Improvements. It is agreed by the parties that Lessee, subject to the prior approval of the City Council of the City of San Angelo, shall have the right from time to time at its sole cost and expense, to construct on the Leased Premises such buildings and other improvements, and such alterations, additions, and changes therein as is deemed necessary or convenient for the purpose of conducting activities associated with the Boy Scouts of America, the complete direction and control of which shall be the responsibility and prerogative of Lessee.
- 4.3 Permits. If Lessee constructs any building or improvement on the leased property, Lessee shall comply with the terms of this Lease Agreement, with the Building, Electrical, Mechanical, and Plumbing Codes of the City of San Angelo as adopted and amended by ordinance, with other ordinances of the City of San Angelo, and with the laws of the State of Texas, so far as one or more of them may be applicable.
- 4.4 Maintenance. Lessee agrees to keep and maintain any and all structures in place, erected, or caused to be erected or placed on the Leased Premises in good and tenantable condition and appearance, and further agrees to keep said Premises in a neat, clean, and respectable condition by prompt removal of all trash, litter, debris, and junk, and will keep said Premises cleared of all objectionable matter.
- 4.5 Failure to Maintain. In the event Lessee shall fail to keep said Premises maintained as herein required, as determined in the sole discretion of Lessor, then the Lessor, after reasonable notice to Lessee of the default and providing time to comply as herein provided, shall have the power and express authority to cause or require the Premises to be cleaned, cleared, mowed, or repaired, and Lessee expressly authorizes the cost of any such cleaning, clearing, mowing, or repairing to be added to the annual rental payment with interest at the rate of ten(10) percent per annum beginning thirty (30) days from the date on which the work was completed, until such cost is paid in full.

5. LIMITATIONS OF LESSEE IN LEASED PREMISES.

- 5.1 Reservations. Lessor, its agents or assigns, reserves the privilege and right at any time to execute and deliver valid oil, gas, and other mineral leases upon the Premises, valid right-of-way easements for gas, oil, or water pipelines, telephone, cable, electric pole transmission lines, or other utility lines on said Premises, or any part thereof, and in such event this Lease Agreement shall be subject and subordinate to the rights, terms and privileges of any such oil, gas, and other mineral lease or such easements as may have been executed heretofore or hereafter by Lessor, its agents or assigns.
- 5.2 Easements. An easement across the Premises is hereby retained by Lessor for the purpose of laying sewer and water lines and/or for necessary rights-of-way for roads, alleys, or other thoroughways.

- 5.3 No Assignment or Subletting. Lessee will not assign or sublet this Lease Agreement, in whole or in part, without the written consent of Lessor.
- 5.4 No Encumbrances. Lessee shall not have the right to encumber the Leased Premises leased hereunder without the consent of the City Council of the City of San Angelo; provided however, this provision shall not prohibit Lessee from encumbering its personal property which may be removed from the realty without injury to the realty.
- 5.5 Lessor's Right to Enter. At all times during the term of the Lease Agreement, Lessor or its agents shall have the right to enter said Premises during reasonable hours for the purpose of examining and inspecting the same and determining whether Lessee shall have complied with all of its obligations hereunder in respect to all the terms and conditions of this Lease Agreement.

6. DEBTS RELATED TO LEASED PREMISES.

- 6.1 Taxes. Lessee shall pay and discharge all taxes, general and special assessments, and other charges of every description which during the term of this Lease Agreement may be levied on or assessed against the Leased Premises and all interest therein and all improvements and other property thereon, whether belonging to Lessor or Lessee, or to which either of them may become liable. Lessee shall pay all such taxes, charges, and assessments to the public officer charged with the collection thereof not less than fifteen (15) days before the same shall become delinquent, and Lessee agrees to indemnify and save harmless Lessor from all such taxes, charges and assessments. The provisions of this paragraph shall survive the expiration or termination of this agreement for a period of two years.
- 6.2 Incidental Charges. Lessee shall pay or cause to be paid all incidental charges, including, but not limited to, permit fees incurred in connection with its operations and use of the Leased Premises.
- 6.3 Utilities. Lessee shall pay or cause to be paid all charges for water, sewer, gas, electricity, telephone, trash pick-up, cable, and any and all other utilities used on the Leased Premises throughout the term of this Lease Agreement, including any connection fees.

7. COVERAGES.

7.1 INDEMNIFICATION AND INSURANCE.

See Exhibit "A" attached hereto and incorporated herein for all purposes.

8. SURRENDER OF PREMISES.

- 8.1 Restoration. Unless this Lease Agreement is terminated under Section 3.2.2, in which case the provisions of 3.2.2 apply, the Premises and any improvements and fixtures shall remain the property of Lessor. All improvements and fixtures restored to possession of Lessor, regardless of how this Lease Agreement is terminated, shall be in good condition (reasonable wear and tear, acts of nature, or casualties associated with civil disorders or military activities excepted).
- 8.2 Delivery. Lessee agrees to promptly and peacefully deliver possession of the Leased Premises and improvements to Lessor upon termination of this Lease Agreement.
- 8.3 Abandoned Property. All items of personal property, remaining in or on the Leased Premises after the expiration of sixty (60) days following the termination of this Lease Agreement shall be

deemed abandoned by Lessee and shall become the property of Lessor.

9. MISCELLANEOUS.

- 9.1 Invalid or Illegal Provisions. If any clause or provision of this Lease Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease Agreement, then and in that event, it is the intent of the parties that the remainder of this Lease Agreement shall not be affected. It is also the intent of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid, or unenforceable, there are added as a part of this Lease Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible to be legal.
- 9.2 Terms of the Essence. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES HERETO THAT EACH AND EVERY TERM, STIPULATION AND RESTRICTION CONTAINED HEREIN IS OF THE ESSENCE TO THIS LEASE AGREEMENT, THE VIOLATION OF WHICH SHALL ENTITLE LESSOR, AT ITS OPTION, TO TERMINATE THIS LEASE AGREEMENT. FAILURE TO EXERCISE SUCH OPTION AT ANY TIME SHALL NEVER BE CONSTRUED AS A WAIVER OF ANY CONDITION OF THIS LEASE AGREEMENT.
- 9.3 Remedies.
- 9.3.1 Upon Termination. Any termination of this Agreement shall not relieve Lessee from the payment of any sum or sums that then shall be due and payable to Lessor hereunder, or any claim for damages then or theretofore accruing against Lessee hereunder, and any such sum or sums or claim for damages by any remedy provided by law, or from recovering damages from Lessee for any default thereunder.
- 9.3.2 Cumulative Remedies. All rights, options, and remedies of the parties contained in this Lease Agreement or otherwise shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and either party shall have the right to pursue any one or all such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease Agreement. No waiver by Lessor of a breach of any of the covenants, conditions, agreements, or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.
- 9.3.3 Reimbursement of Lessor's Expenses. Lessee shall pay on demand all of Lessor's expenses including, but not limited to, attorney's fees and court costs incurred in enforcing any of Lessee's obligations under this Lease Agreement, which include, but are not limited to, collection of annual rental fees, utility payments, taxes, and other legitimate assessments.

10. Notices. Any notice or demand that either party desires or is required to be given by this Lease Agreement shall be in writing and shall be deemed sufficient if sent by United States certified mail, return receipt requested, postage prepaid to the following:

If to Lessor: City of San Angelo
72 W. College Ave San Angelo, Texas 76903
Attn: Parks & Recreation Director

If to Lessee: Mobile Maintenance, LLC, Inc.

San Angelo, Texas 7690__
Attn: _____

11. Amendments. No modification of this Lease Agreement shall be binding unless it be in writing and executed in due form by all of the parties hereto.
12. Easements and Restrictions. Lessee takes this Lease Agreement and the Leased Premises subject to all recorded easements and restrictions affecting the occupation and use thereof, and subject to all statutes, ordinances, and regulations of competent governmental authority affecting the occupancy and use thereof, and the construction and maintenance of improvements thereof.
13. Relationship of Lessor and Lessee. The relationship between Lessor and Lessee at all times shall remain solely that of Landlord and Tenant and shall not be deemed a partnership or joint venture.
14. Headings. The paragraph headings contained herein are for convenience and reference and are not intended to define, extend, or limit the scope of any provisions of this Lease Agreement.
15. Interpretation/Venue. This Agreement shall be construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tom Green County, Texas.
16. Anti-Discrimination. Lessee agrees that it will not violate any federal, state, civil rights, or discrimination laws. A finding of violation of any such laws by a trial court or appropriate state or federal agency is a material breach of this Agreement which may result in the termination of the Agreement or such other remedy as Lessor may deem appropriate.
17. Compliance with ADA. Lessee agrees to comply fully with the provisions of the Americans with Disabilities Act and to make any and all displays, events, or activities on Leased Premises accessible to individuals with disabilities. Lessee further agrees to provide participants with necessary impairment aids.
18. Hold Over. It is distinctly understood and agreed by and between Lessor and Lessee that any holding over by Lessee of the herein demised Premises after the expiration of this Lease Agreement shall operate and be construed only as a tenancy from month to month, terminable at the will of Lessor.
19. Entire Agreement. The Lease Agreement constitutes the entire agreement between the parties hereto, and Lessor is not bound by any agreement, stipulation, or representation made by any agent, employee, or official of Lessor.

(Signature page to follow)

EXECUTED in duplicate originals on this the ____ day of _____, 2015.

LESSOR
CITY OF SAN ANGELO, Texas

ATTEST: By: _____
Daniel Valenzuela, City Manager

Bryan Kendrick, City Clerk

THE STATE OF TEXAS §
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the ____ day of _____, 2015, by Daniel Valenzuela, City Manager of the CITY OF SAN ANGELO, a Texas home rule municipal corporation on behalf of said corporation.

Notary Public, State of Texas

LESSEE
MOBILE MAINTENANCE, LLC, INC.

By:

THE STATE OF TEXAS §
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the ____ day of _____, 2015, _____ of Mobile Maintenance, LLC, Inc., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

APPROVED AS TO CONTENT

APPROVED AS TO FORM

Carl White, Director of Parks & Rec.

Theresa James, City Attorney

EXHIBIT A

INSURANCE REQUIREMENTS

☒ 1 INDEMNIFICATION.

☒ 1.1 GENERAL INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF CONTRACTOR OR CITY, BY REASON OF DEATH OR INJURY TO PERSONS, OR LOSS OR DAMAGE TO PROPERTY, RESULTING FROM OR ARISING OUT OF, THE VIOLATION OF ANY LAW OR REGULATION OR IN ANY MANNER ATTRIBUTABLE TO ANY ACT OF COMMISSION, OMISSION, NEGLIGENCE OR FAULT OF CONTRACTOR, ITS AGENTS OR EMPLOYEES, OR THE JOINT NEGLIGENCE OF CONTRACTOR AND ANY OTHER ENTITY, AS A CONSEQUENCE OF ITS EXECUTION OR PERFORMANCE OF THIS CONTRACT OR SUSTAINED IN OR UPON THE PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY CONTRACTOR HEREUNDER. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS CONTRACT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY, DEFEND OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

☒ 1.2 ENVIRONMENTAL INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD CITY AND ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ASSERTED BY LOCAL, STATE OR FEDERAL ENVIRONMENTAL AGENCIES OR PRIVATE INDIVIDUALS OR ENTITIES IN CONNECTION WITH OR RESULTING FROM OR ARISING OUT OF CONTRACTOR'S HANDLING, COLLECTION, TRANSPORTATION, STORAGE, DISPOSAL, TREATMENT, RECOVERY, AND/OR REUSE BY ANY PERSON UNDER CONTRACTOR'S DIRECTION OR CONTROL OF WASTE COLLECTED, TRANSPORTED OR LANDFILLED OR ANY CLEANUP ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION, WHETHER SUCH CLEANUP IS OF AIR, SOIL, STRUCTURE, GROUND WATER OR SURFACE WATER CONTAMINATION. CONTRACTOR SPECIFICALLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AGAINST ALL CLAIMS, DAMAGES AND LIABILITIES OF WHATEVER NATURE ASSERTED UNDER CERCLA CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. CONTRACTOR SHALL BE RESPONSIBLE AND LIABLE FOR ANY SPILL, UNDERGROUND POLLUTION OR ANY OTHER ENVIRONMENTAL IMPAIRMENT INCIDENT CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS

DISCOVERED. IT IS THE INTENT OF THE PARTIES THAT THIS SECTION SHALL IN NO WAY LIMIT OTHER COVERAGE HEREIN AS IT MAY RELATE TO ANY ENVIRONMENTAL CLAIM, DAMAGE, LOSS OR LIABILITY OF ANY KIND.

☒ 1.3 **PROSPECTIVE APPLICATION.** ANY AND ALL INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL SURVIVE THE EXPIRATION OF THIS CONTRACT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS CONTRACT BUT THEREAFTER SO LONG AS ANY LIABILITY (INCLUDING BUT NOT LIMITED TO LIABILITY FOR CLOSURE AND POST CLOSURE COSTS) COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF CONTRACTOR IN PERFORMING UNDER THIS CONTRACT.

☒ 1.4 **RETROACTIVE APPLICATION.** THE INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL EXTEND NOT ONLY TO CLAIMS AND ASSESSMENTS OCCURRING DURING THE TERM OF THIS CONTRACT BUT RETROACTIVELY TO CLAIMS AND ASSESSMENTS WHICH MAY HAVE OCCURRED DURING THE TERM OF PREVIOUS AGREEMENTS BETWEEN CITY AND CONTRACTOR.

☒ 1.5 **APPLICATION TO SURROUNDING PROPERTY.** THE INDEMNIFICATION PROVISIONS OF THIS CONTRACT EXTEND TO CLAIMS AND ASSESSMENTS RELATING TO RUNOFF, LEACHATE, OR OTHER INFILTRATION THAT MAY OCCUR OR HAS OCCURRED AT OR NEAR THE SITE OF LANDFILLS, TRANSFER STATIONS, OR OTHER SOLID WASTE FACILITIES AND SURROUNDING AREAS WHICH ARE OR WERE USED BY THE CONTRACTOR, DURING THE TERM OF THIS CONTRACT OR PREVIOUS AGREEMENTS BETWEEN CITY AND CONTRACTOR. THIS SECTION DOES NOT MAKE CONTRACTOR LIABLE FOR ANY SITE IT HAS NEVER USED, CLOSED, MANAGED OR MONITORED.

☒ 2 **Insurance.**

☒ 2.1 **General Conditions.** The following conditions shall apply to all insurance policies obtained by Contractor for the purpose of complying with this Contract.

☒ 2.1.1 **Satisfactory Companies.** Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

☒ 2.1.2 **Named Insureds.** All insurance policies required herein shall be drawn in the name of Contractor, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on Workers' Compensation coverage.

☒ 2.1.3 **Waiver of Subrogation.** Contractor shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

☒ 2.1.4 Certificates of Insurance. At or before the time of execution of this Contract, Contractor shall furnish City's Risk Manager with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days advance notice in writing of cancellation, non-renewal or material change in the policy of insurance. In addition, Contractor and insurance company shall immediately provide written notice to City's Risk Manager upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations or alterations shall be furnished to City's Risk Manager at City Hall, 106 S. Chadbourne or P.O. Box 1751, San Angelo, Texas 76902.

☒ 2.1.5 Contractor's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Contractor's liability or as a full performance on its part of the indemnification provisions of this Contract. Contractor's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

☒ 2.1.6 Sub-Contractors' Insurance. Contractor shall cause each Sub-Contractor and Sub-Sub-Contractor of Contractor to purchase and maintain insurance of the types and in the amounts specified below. Contractor shall require Subcontractors and Sub-subcontractors to furnish copies of certificates of insurance to Contractor's Risk Manager evidencing coverage for each Sub-Contractor and Sub-Sub-Contractor.

☒ 2.2 Types and Amounts of Insurance Required. Contractor shall obtain and continuously maintain in effect at all times during the term hereof, at Contractor's sole expense, insurance coverages as follows with limits not less than those set forth below:

..TYPES OF COVERAGES - Choose as many as applicable and specify limits of liability..

☒ 2.2.1 Commercial General Liability. This policy shall be an occurrence-type policy and shall protect the Contractor and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the Contractor's employees) and damage to property of the City or others arising out of the act or omission of the Contractor or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Contractor under the paragraph of this Contract entitled "Indemnification," including completed operations, products liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors (to remain in force for two years after final payment). Coverage shall not be less than:

\$ 2,000,000.00	General Aggregate
\$ 1,000,000.00	Products- Completed Operations
\$ 1,000,000.00	Personal & Advertising Injury
\$ 1,000,000.00	Each Occurrence

\$ 100,000.00 Fire Damage (any one fire)

- ☒ 2.2.2 Business Automobile Liability. This policy shall be written in comprehensive form and shall protect Contractor and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage shall not be less than:

\$ 500,000.00 Combined Single Limit
or
\$ 250,000.00 Per person
\$ 500,000.00 Per Occurrence
\$ 100,000.00 Property Damage

- ☒ 2.2.3 Workers' Compensation and Employer's Liability. If Contractor hires any employees, Contractor shall maintain Workers' Compensation and Employer's Liability insurance, which shall protect the Contractor against all claims under applicable state workers' compensation laws and employer's liability. The insured shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

Statutory Amount	Workers' Compensation
\$ 100,000.00	Employer's Liability, Each Accident
\$ 100,000.00	Employer's Liability, Disease – Each Employee
\$ 500,000.00	Employer's Liability, Disease - Policy Limit

The foregoing requirement will not be applicable if, and so long as, Contractor qualifies as a self-insurer under the rules and regulations of the commission or agency administering the workers' compensation program in Texas and furnishes evidence of such qualification to Lessor in accordance with the notice provisions of this Contract.

If Contractor uses contract labor, Contractor shall require its contractor to maintain the above referenced coverage and furnish copies of certificates of insurance as required herein.

- ☒ 2.2.4. Builders Risk. This policy shall be an all risk type of insurance covering work performed under this instrument and materials, equipment or other items to be incorporated into the building, while the same are located at the construction site, stored off site or stored at the place of manufacture. The policy shall cover, at a minimum, losses due to fire, flood, explosion, hail, lightening, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke until the date of final acceptance of work. Coverage shall not be less than:

.....Amount of this is usually the value of the building...

\$ Required and the amount to be established if and when Lessee constructs improvements under the foregoing provisions of this lease. _____ Completed Value

- 2.2.5 Professional Liability. This insurance shall include contractual liability in its

coverage, and the coverage under this policy shall survive the term of this Contract as long as any liability could be asserted. Coverage shall not be less than:

\$ - Not Required -

- 2.2.6 Umbrella Liability. This insurance shall be an occurrence-type policy and shall protect Contractor and additional insureds against all claims in excess of the limits provided under all the primary insurance policies. Coverage shall not be less than:

\$ Not Required Combined Single Limit

- 2.2.7 Liquor Liability. This insurance shall be in comprehensive form and shall protect the Contractor and the additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than Contractor's employees) or damage to the property of others, which arises out of the sale or distribution of alcoholic beverages. Coverage shall not be less than:

\$ Not Required Combined Single Limit, each
occurrence

- 2.2.8 Environmental Liability. This insurance shall be maintained in force for the full period of this Contract and cover losses caused by pollution conditions including, but not limited to, any spill, underground pollution or any other environmental impairment. It shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; including, but not limited to, any costs required under CERCLA; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. If coverage is written on a claims made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time the Contract has expired. Coverage shall not be less than:

\$ Not Required Per loss

\$ Not Required Annual aggregate

- 2.2.9 Commercial Property Insurance. This insurance shall be an all-risk, replacement cost, commercial property insurance equal to the value of all buildings on the Premises. It shall be maintained by Contractor as long as Contractor owns such building(s). *Not Required*

“CITY” can also be known as “Lessor”

“CONTRACTOR” can also be known as “Contractor” or “Professional”

“CONTRACT” can also be known as “Agreement” or “Contract”

“PREMISES” can also be known as “Contracted Premises”

☒ Indicates required coverage

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Roland Pena, Economic Development Director, Economic Development, 325.653.7197

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Approve and ratify the City of San Angelo Development Corporation's resolution authorizing the Board President or his designee to execute a memorandum of understanding with the City of San Angelo relating to the funding not to exceed \$12,000 for development of a public dog park as part of the Red Arroyo Trail Project (R.Peña)

Summary/History:

This item is for ratification purposes of a Resolution by the City of San Angelo Development Corporation's (COSADC) to execute a memorandum of understanding with the City of San Angelo relating to the funding not to exceed \$12,000 for development of a public dog park as part of the Red Arroyo Trail Project. The COSADC Board approved the Resolution with a 7-0 vote on October 28, 2015.

On August 26, 2015 the City of San Angelo Development Corporation ("COSADC") approved allocating The City of San Angelo Development Corporation unanimously approved a resolution (5-0) in support of the City Council's approval of the development of a dog park ("Project") for park and recreational use as part of the Red Arroyo Trail Project; continuation of private funding efforts; holding public hearing(s) which was held on the same day ; and, authorizing funding supplemental to private funding for the "Project" in a sum not to exceed \$12,000. Notice and publication of the Project was published on August 8, 2015.

Financial Impact:

The \$12,000 will be used to supplement private funding. This does not include the annual maintenance costs which are estimated to be \$8,000 annually and funded from other sources.

Other Information/Recommendation:

Attachments:

1. Resolution 4d 15-469_COSADC_CITY_DOG_PARK_MOU_RESO.pdf

Presentation:

None

Approvals/Reviews:

Pena, Roland
James, Theresa
Carriger, Tina

Created/Initiated
Approved
Approved

James, Theresa
Dunn, Becky
Kendrick, Bryan

Approved
Approved
Final Approval

A RESOLUTION OF THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION BOARD OF DIRECTORS AUTHORIZING THE BOARD PRESIDENT TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION RELATING TO FUNDING NOT TO EXCEED \$12,000 FOR DEVELOPMENT OF A PUBLIC DOG PARK AS PART OF THE RED ARROYO TRAIL PROJECT

WHEREAS, on March 18, 2014, the City Council approved a proposal for the development of a public dog park, including the use of private community funding alternatives, as part of the new Red Arroyo Trail Project, and

WHEREAS, Private fundraising efforts have raised \$66,000 toward the goal to secure \$75,000 for development of San Angelo's first public dog park and although private funding efforts continue, they may fall short of the additional funds required in the amount of up to \$12,000, and

WHEREAS, on July 22, 2015, the City of San Angelo Development Corporation Board adopted a resolution in support of City Council approval of development of the Dog Park as an authorized Project for COSADC in a sum not to exceed \$12,000; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANGELO THAT:

The President of the City of San Angelo Development Corporation is directed and authorized to execute a Memorandum of Understanding with the City of San Angelo in substantially the attached form relating to funding for the approved Dog Park Project, in a sum not to exceed \$12,000.

PASSED, APPROVED, and ADOPTED on this the 23rd day of September, 2015.

CITY OF SAN ANGELO
DEVELOPMENT CORPORATION

By: _____
John Bariou, President

ATTEST:

By: _____
Bryan Kendrick, Corporation Secretary

APPROVED AS TO FORM

Theresa James, City Attorney

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Roland Pena, Economic Development Director, Economic Development, 325.653.7197

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Approve and ratify the City of San Angelo Development Corporation's approval of a Memorandum of Understanding by and between the City of San Angelo Development Corporation and the City of San Angelo relating to development of a public dog park as part of the Red Arroyo Trail Project (R.Peña)

Summary/History:

This item is for ratification purposes for the City of San Angelo Development Corporation's (COSADC) to execute a Memorandum of Understanding with the City of San Angelo relating to the funding not to exceed \$12,000 for development of a public dog park as part of the Red Arroyo Trail Project. The COSADC Board approved the President to execute the Memorandum of Understanding with a 7-0 vote on October 28, 2015.

On August 26, 2015 the City of San Angelo Development Corporation ("COSADC") approved allocating The City of San Angelo Development Corporation unanimously approved a resolution (5-0) in support of the City Council's approval of the development of a dog park ("Project") for park and recreational use as part of the Red Arroyo Trail Project; continuation of private funding efforts; holding public hearing(s) which was held on the same day ; and, authorizing funding supplemental to private funding for the "Project" in a sum not to exceed \$12,000. Notice and publication of the Project was published on August 8, 2015.

Financial Impact:

The \$12,000 is to supplement private funding. Once approved by City Council a budget amendment will be completed make funds available. This amount does not include the annual maintenance costs which are estimated to be \$8,000 annually and funded from other sources.

Other Information/Recommendation:

Staff recommends approval and ratification.

Attachments:

- | | | |
|----|-----------------------------|--|
| 1. | Memorandum of Understanding | 4c 15-469_COSADC_CITY_DOG_PARK_MOU.pdf |
|----|-----------------------------|--|

Presentation:

Approvals/Reviews:

Pena, Roland
James, Theresa
Carriger, Tina
James, Theresa

Created/Initiated
Approved
Approved
Approved

Dunn, Becky
Kendrick, Bryan

Approved
Final Approval

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION AND THE CITY OF SAN ANGELO RELATING TO DEVELOPMENT OF A PUBLIC DOG PARK AS PART OF THE RED ARROYO TRAIL PROJECT

This Memorandum of Understanding ("MOU") defines certain rights and procedures as agreed to by City of San Angelo Development Corporation ("COSADC") and the City of San Angelo, Texas ("City"), relating to an approved Project for development of a Dog Park being part of the City's Red Arroyo Trail Project.

WHEREAS, on March 18, 2014, the City Council for the City of San Angelo approved a proposal for development of a Dog Park as part of the new Red Arroyo Trail Project, and directed city staff to pursue funding alternatives in addition to private fund raising; and,

WHEREAS, on July 21, 2015 the City Council approved a site for the Dog Park project and recommended that private fundraising efforts continue in an effort to raise \$12,000.00, in additional funds, which is the balance of funding required for development of the Dog Park; and,

WHEREAS, on July 22, 2015 the City of San Angelo Development Corporation board of directors adopted a resolution in support of City Council approval of development of the Dog Park as an authorized Project for COSADC in a sum not to exceed \$12,000.00, for purposes of supplementing private fundraising efforts which are to continue; directing publication of notice of the Project and providing for public hearing; and,

WHEREAS, on August 26, 2015, COSADC held a public hearing on the Dog Park Project as required prior to the expenditure of any funds in support of the Project;

NOW THEREFORE, the Parties hereto cause this MOU to be executed by their duly authorized representatives for the purpose of memorializing the terms expressed herein.

1. The foregoing recitals are true and correct and are adopted by the parties as part of this Memorandum of Understanding.
2. The City shall continue to accept contributions from private fund raising efforts to provide the additional funding goal of \$12,000.00, to be raised from and after July 21, 2015, which funds are required to complete development of the Dog Park.
3. The City shall endeavor to complete the Dog Park within twelve months of the effective date of this resolution.
4. The City shall periodically report progress on the Project to the COSADC board of directors and provide accountings of private funds and COSADC Project funds received and the application of those funds for construction and installation of Dog Park improvements until such time as the Dog Park improvements are substantially completed and maintenance is assumed by the City.

5. COSADC shall supplement funds received by the City from private fundraising efforts to completion of the Dog Park improvements in a sum required for total combined private and Project funding from and after July 21, 2015, of \$12,000.00.

Effective on the _____ day of _____, 2015.

ATTEST:

**CITY OF SAN ANGELO
DEVELOPMENT CORPORATION**

Bryan Kendrick, Secretary / City Clerk

John Bariou, President

Date: _____, 2015

ATTEST:

CITY OF SAN ANGELO

Bryan Kendrick, City Clerk

Daniel Valenzuela, City Manager

Date: _____, 2015

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

Roland Peña, Economic Development
Director

Carl White, Parks & Recreation
Director

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Robert Schneeman, Economic Development Coordinator, Economic Development, 325.653.7197

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consideration of approving a modification to the KSA Engineering contract with COSADC for Phase 3 Certification of the Industrial Park to include a feasibility study and cost estimate to provide sewer services to certain parcels in Phase 2 of the Industrial Park at a cost of \$11,250 (R.Peña)

Summary/History:

COSADC entered into a contract with KSA Engineering effective January 28, 2015 to provide engineering services for analysis and documentation for Phase 3 of the Industrial Park site certification process. The original contract amount was \$134,677.00. COSADC approved an amendment to the contract to provide a feasibility study and cost estimate to provide sewer service to certain parcels in Phase 2 of the Park. The cost for this study is \$11,250.00.

Financial Impact:

A budget amendment is required upon City Council approval of the \$11,250.00.

Other Information/Recommendation:

This study is required to determine the most cost effective means of providing sewer service to Phase 2 of the Industrial Park. Staff recommends approval as submitted.

Attachments:

- | | | |
|----|---------------------------|----------------------|
| 1. | ED-KSA Contract Amendment | ED-KSA Amendment.pdf |
|----|---------------------------|----------------------|

Presentation:

N/A

Approvals/Reviews:

Schneeman, Robert	Created/Initiated
Pena, Roland	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

This is **EXHIBIT K**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 28, 2015.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 1

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: January 28, 2015
- b. Owner: City of San Angelo Development Corporation
- c. Engineer: KSA Engineers, Inc.
- d. Project: City of San Angelo Business and Industrial Park Certification

2. Description of Modifications:

- a. Engineer shall perform or furnish the following Additional Services: See attachment 1
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows: See attachment 1
- c. The responsibilities of Owner are modified as follows: N/A
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: See attachment 1
- e. The schedule for rendering services is modified as follows: See attachment 1
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows: N/A

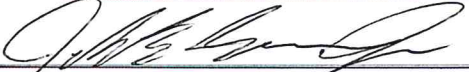
3. Agreement Summary (Reference only)

- a. Original Agreement amount: \$134,677.00
- b. Net change for prior amendments: \$ 0.00
- c. This amendment amount: \$ 11,250.00
- d. Adjusted Agreement amount: \$ 145,927.00

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

City of San Angelo Development
OWNER: Corporation

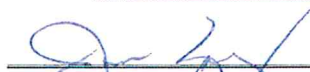
By: 

Name: JOAN E. BARLOW JR.

Title: President

Date
Signed: 11/4/15

ENGINEER: KSA Engineers, Inc.

By: 

Name: Joncie H. Young, P.E.

Title: President

Date Signed: 7/29/15



A·DYNAMIC·PERSPECTIVE

58 Buick Street
San Angelo, TX 76901
325.947.1555

June 25, 2015

Mr. Robert Schneeman
Economic Development Coordinator
City of San Angelo Development Corporation
69 Chadbourne Street
San Angelo, TX 76903

via hand delivery

**Re: San Angelo Business and Industrial Park
Phase II Sanitary Sewer Infrastructure Feasibility Study
Fee Proposal**

Dear Mr. Schneeman:

KSA Engineers, Inc. (KSA) is pleased to provide this proposal for professional engineering services to provide a feasibility study for sanitary sewer infrastructure for Phase II of the San Angelo Business and Industrial Park in San Angelo, Texas. The scope of services is more thoroughly defined below.

Project Understanding

KSA understands the City of San Angelo Development Corporation (COSADC) would like to investigate options to provide sanitary infrastructure to service tracts located north of Venture Drive as depicted on the attachment. The investigation will identify potential options to service these tracts and proposed Phase II development (approximately 350 acres).

Scope of Services

1. Site Survey

- 1.1 KSA will coordinate with the City of San Angelo to assist with locating existing sanitary sewer infrastructure in the area of the Phase II development.
- 1.2 Once infrastructure is located, KSA will collect field data on manhole locations, lift station location, and pipe sizes.

2. Feasibility Study

- 2.1 KSA will utilize site data collected to analyze possible options for new sanitary sewer infrastructure.
- 2.2 As part of the analysis, KSA will evaluate the capacity of the existing sanitary sewer infrastructure and the impacts proposed Phase II development will have on the existing infrastructure.
- 2.3 KSA will prepare cost estimates for new sanitary sewer infrastructure to service the tracts shown in the attachment and also a cost estimate for the entire Phase II infrastructure development (including construction of roads, drainage facilities, water infrastructure, and sanitary sewer infrastructure).
- 2.4 KSA will prepare a report summarizing our findings. This report will be submitted as a draft for review. After a review meeting, the report will be finalized based on comments and input from COSADC staff.

Compensation

We propose to perform the services described above for the following lump sum fee:

Phase II Sanitary Sewer Infrastructure Feasibility Study \$ 11,250.00

Optional Services

Additional work will not be performed without prior written approval from COSADC.

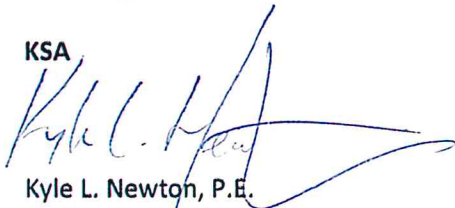
Schedule

KSA will schedule the site survey upon receipt of a Notice to Proceed from COSADC. Once the site survey and existing sanitary sewer infrastructure data is collected, KSA will submit a draft feasibility report for review within 6 weeks.

We appreciate this opportunity to provide these services to the City of San Angelo Development Corporation. If you have any questions regarding this proposal, please do not hesitate to call.

Sincerely,

KSA



Kyle L. Newton, P.E.
Project Engineer



2015 SCHEDULE OF HOURLY FEES

Principal	\$195.00/hour
Senior Environmental Planner	\$190.00/hour
Environmental Planner	\$160.00/hour
Senior Aviation Planner	\$185.00/hour
Aviation Planner	\$160.00/hour
Electrical Engineer	\$170.00/hour
Mechanical Engineer	\$150.00/hour
Senior Project Manager	\$165.00/hour
Project Manager	\$140.00/hour
Senior Project Engineer	\$130.00/hour
Project Engineer	\$120.00/hour
Senior Design Engineer	\$110.00/hour
Design Engineer	\$100.00/hour
Senior Project Architect	\$140.00/hour
Project Architect	\$120.00/hour
Design Architect	\$100.00/hour
GIS Analyst	\$130.00/hour
GIS Specialist	\$110.00/hour
Engineering Technician	\$100.00/hour
Senior Design Technician	\$ 95.00/hour
Design Technician	\$ 90.00/hour
Project Assistant	\$ 85.00/hour
Senior CAD Technician	\$ 85.00/hour
CAD Technician	\$ 75.00/hour
Senior Project Representative	\$ 75.00/hour
Project Representative	\$ 70.00/hour
Graphic Designer	\$ 60.00/hour
Administrative Assistant	\$ 55.00/hour
Secretary	\$ 45.00/hour
Four-Man Survey Crew	\$175.00/hour
Three-Man Survey Crew	\$150.00/hour
Two-Man Survey Crew	\$120.00/hour
Registered Surveyor	\$110.00/hour
Survey Technician	\$ 75.00/hour
Mileage	\$ 0.58/mile
ATV (4-Wheeler)	\$100.00/day

Reimbursable Expenses (Air Travel, Lodging, Copies, Printing)	Actual Cost
--	-------------

Outside Consultants	Cost + 15%
---------------------	------------

*Subject to adjustments on annual basis.

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Cynthia Preas, Real Estate Administrator, Real Estate, 325-657-4212

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consideration of authorizing City Manager to execute a Right-of-Way Easement to Concho Valley Electric Cooperative, Inc. (C.Preas)

Summary/History:

City owns certain lands in JP Lee, 21.240 Acres (Mathis Field) Survey, Tom Green County Texas.

City received a 30' Right-of-Way Easement request from CVEC for constructing, operating and maintaining of an electric distribution system and facilities servicing Seidel Construction.

Right-of-Way Easement will not affect operations at Mathis Field.

Financial Impact:

None

Other Information/Recommendation:

Staff recommends approval

Attachments:

- | | | |
|----|----------------------|---|
| 1. | RE CVEC R/W Esmt map | CVEC Easment (map).pdf |
| 2. | RE CVEC R/W Esmt | Easement 30882 Seidel Construction shop CoSA Easement.pdf |

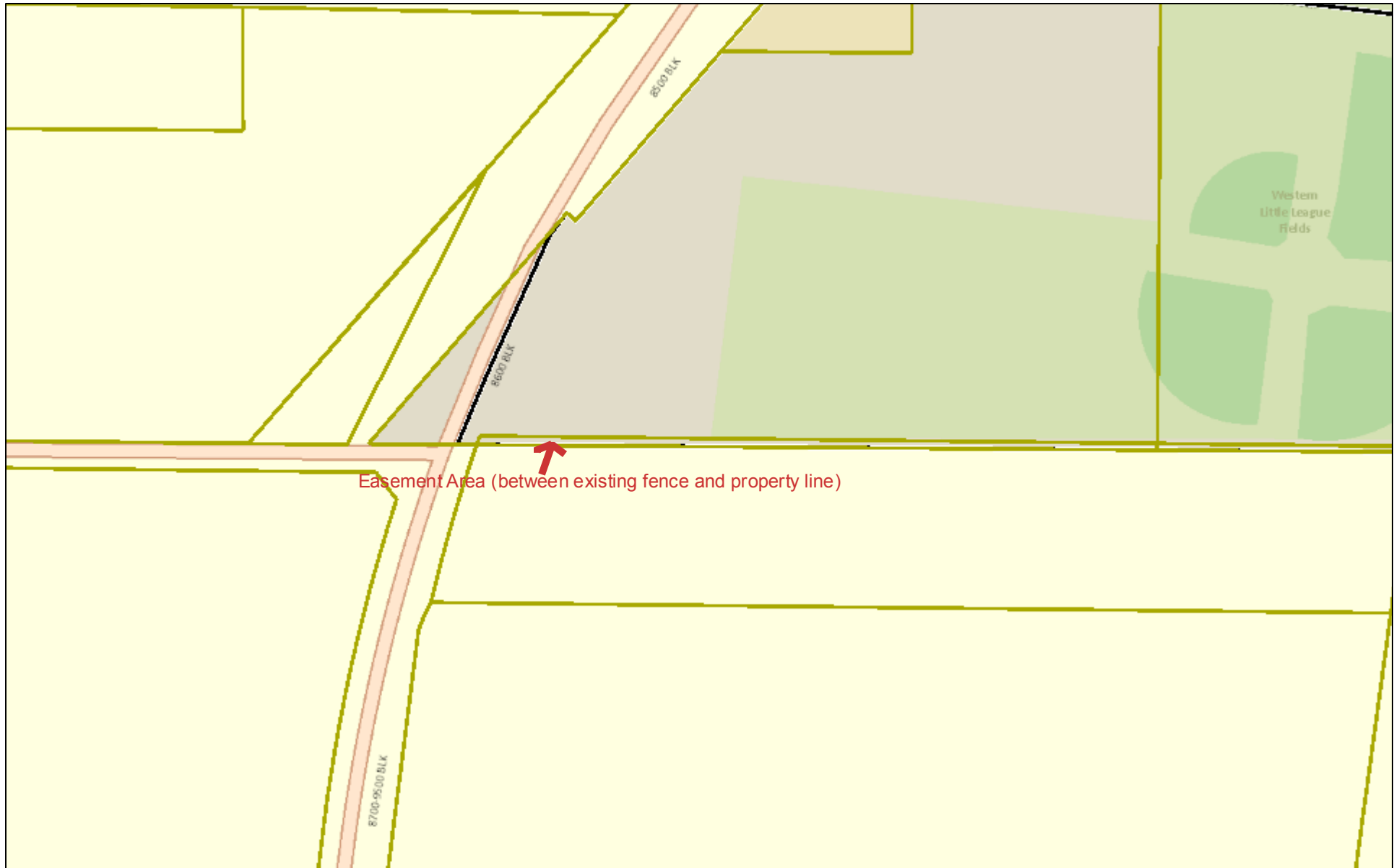
Presentation:

None

Approvals/Reviews:

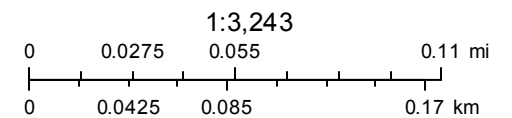
Preas, Cynthia	Created/Initiated
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

CVEC Easement



October 29, 2015

- | | | | | | |
|---|-------------------------|---|---------------------|---|--------------------------|
|  | Parcels |  | Building Setback |  | Emergency Vehicle Access |
|  | Platted Lot Line Labels |  | Encumbrances |  | Encumbrance Releases |
|  | Platted Lot Lines |  | <all other values> |  | Abandonments Approved |



City of San Angelo Copyright 1987-2014
City of San Angelo Copyright 1987-2015

Concho Valley Electric Cooperative, Inc.
Right-of-Way-Easement

THE STATE OF TEXAS

COUNTY OF TOM GREEN

KNOW ALL MEN BY THESE PRESENTS:

THIS grant and conveyance of a right-of-way easement is made by CITY of SAN ANGELO, (hereinafter called "Grantor(s)"), on the date hereinafter shown, unto CONCHO VALLEY ELECTRIC COOPERATIVE, INC., (PO Box 3388, 2530 Pulliam St., San Angelo, TX 76905) a Texas electric cooperative corporation with its principle office located in San Angelo, Tom Green County, Texas, (hereinafter called Cooperative) as described within this instrument.

WITNESSETH:

In consideration of \$10.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor(s) hereby grants and conveys unto Cooperative, its successors and assigns, a perpetual right-of-way easement under, upon, across and over the lands situated in TOM GREEN County, being owned and/or controlled by Grantor(s), and being more particularly described by the following metes and bounds description;

Declares that all survey points gathered as part of this centerline easement were gathered in the North America Datum 1927 State Plane Texas Central FIPS 4203 coordinate system.

Beginning at an anchor located in JP Lee, 21.240 Acres (Mathis Field) Survey, Tom Green County, Texas, whence said point is located at Northing (Y) 614659, Easting (X) 1943902, for the beginning of this centerline easement,

Thence from said point heading 91° azimuth, continuing in an easterly direction for more or less 773 feet to an anchor located at Northing (Y) 614653, Easting (X) 1944674, for the end of this centerline easement,

Said centerline easement is to be thirty (30) feet in total width with fifteen (15) feet falling to either side of the established centerline.

The electric power line to be constructed along this centerline will consist of 4 pole(s) and 2 anchor(s).

This easement shall be for the purposes of constructing, operating and maintaining of an electric distribution system and facilities serving Seidel Construction, according to Work Order number 30882, at a point(s) known to the Cooperative as 41-33-00-20-07.

The Cooperative may, from time to time, deem advisable, including by way of example and not by way of limitation, the right to increase or decrease the number of wires, conduits, poles, cables, handholes, manholes, connections boxes, transformers and transformer enclosures; to cut, trim and control growth of shrubbery, vines, and trees by chemical means, machinery or otherwise to whatever extent may be necessary to keep said electrical distribution system clear and from interfering with the operation and maintenance thereof. Cooperative shall have the right to cut down from time to time all dead, weak, leaning or dangerous trees that are tall enough or otherwise situated so that in falling would contact the electric distribution system. Further, Cooperative shall have the right to keep the easement clear of all buildings, structures, or other obstructions and to license, permit or otherwise agree to the joint use or occupancy of the system and easement by any other person, association or cooperation.

The Cooperative shall have the right to install gates in fences that cross or restrict access

to the right-of-way herein granted.

If at any time during the life of this easement the Cooperative's equipment and facilities become unnecessary and unused for a period of 120 days, the Grantor(s) shall have the option to terminate this easement. Such notice of termination by Grantor(s) shall be made in writing. The Cooperative shall remove said equipment and facilities within 90 days, or within a period of time mutually agreed to by Grantor(s) and Cooperative. Grantor(s) agrees that all poles, wires, transformers and other equipment and facilities, including any main service equipment, installed in, upon, over or under the right-of-way easement at the Cooperative's expense shall remain the property of the Cooperative. Upon removal of said equipment and facilities, this easement will terminate and be of no further force and effect as to the Easement Property or any part thereof, and the Easement Property shall absolutely revert to Grantor(s), its successors or assigns,

It is understood and agreed that the Grantor(s), their successors and assigns may use the land within the easement for any purpose not inconsistent with the rights hereby granted to the Cooperative, provided that such use does not interfere with or endanger the construction, operation or maintenance of the Cooperative's facilities or its employees, contractors or agents.

For the purpose of constructing, operating, inspecting and maintaining the electric distribution system, the Cooperative, its contractors and agents, shall have the right of ingress and egress, when necessary, from and across the easement and the lands of Grantor(s) adjacent thereto, such right to be exercised in such manner as shall occasion the least practical damage and inconvenience to the Grantor(s). Cooperative, its contractors and agents shall exercise due diligence when operating and traversing within said easement.

The undersigned Grantor(s) covenants that they are the owner(s) of the described lands and has the right and authority to convey this easement and that the Cooperative shall have quiet and peaceable enjoyment and use of said easement, except that, if any mortgagee shall hold a lien on the subject property, such covenant of title and right to convey shall be subject to their joining in this grant of easement by signing hereunder.

Witness the hand of Grantor on this the _____ day of _____, 20____.

ATTEST:

CITY OF SAN ANGELO, TEXAS

Bryan Kendrick, City Clerk

By: _____
Daniel Valenzuela, City Manager

STATE OF TEXAS §
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the ____ day of November, 2014, by **DANIEL VALENZUELA**, City Manager, of the **CITY OF SAN ANGELO**, a Texas municipal corporation, on behalf of said corporation by authority of its governing body.

Notary Public, State of Texas

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Cynthia Preas, Real Estate Administrator, Real Estate, 325-657-4212

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consideration of authorizing the City Manager, or his designee to enter into a new Grazing and Agricultural Lease with Kevin Schniers, d/b/a Kevin Schniers Farms of 251.879 acres out of Sarah R. Robertson Survey 178, and being located adjacent to City Landfill (C.Preas)

Summary/History:

Kevin Schniers is the current Tenant of 251.879 acre tract.

The current Lease will end December 31, 2015.

Mr. Schniers desires to enter into a new 10 year lease of the 251.879 acres.

Financial Impact:

Annual lease fee \$13,853.00; rent escalation of 2% annually

Other Information/Recommendation:

Staff recommends approval.

Attachments:

Presentation:

None

Approvals/Reviews:

Preas, Cynthia
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Final Approval

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, City Clerk,

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consideration of confirming appointments to MHMR Service for the Concho Valley Board of Trustees recommended by Liaison Representative Committee (B.Kendrick)

Summary/History:

Councilmember Silvas serves as the Council Representative to the MHMR Liaison Representative Committee which presented the nominations. Term appointments are from November 2015 to October 2017.

A letter from MHMR Services for the Concho Valley Chief Administrative Officer Annette Hernandez is provided as additional background.

Financial Impact:

None at this time.

Other Information/Recommendation:

Recommended Board of Trustees:

Gibson, Jeff -November 1, 2015 through October 31, 2017 (re-appointment)
Kujawski, Linda–November 1, 2014 through October 31, 2017 (re-appointment)
Spieker, Dianna–November 1, 2015 through October 31, 2017 (re-appointment)
Trevino, Pat–November 1, 2015 through October 31, 2017 (re-appointment)
Davenport-Herbst, Tim–November 1, 2015 through October 31, 2017 (new appointment)

Attachments:

1. Letter Letter from Annette Hernandez.doc

Presentation:

None

Approvals/Reviews:

Kendrick, Bryan

Created/Initiated



MHMR SERVICES FOR THE CONCHO VALLEY

"Working Together To Help People Help Themselves"

TO:

Appointing Agencies

Angelo State University- President
City of San Angelo-City Council
San Angelo Independent School District-Board of Trustees
Tom Green County-Commissioners Court

FROM:

Appointing Agencies - Liaison Representatives

Dr. Bradley Petty, Angelo State University
Mr. Johnny Silvas, City of San Angelo
Mr. Aubrey DeCordova, Tom Green County
Mr. Art Hernandez, San Angelo Independent School District

SUBJECT:

Appointments to the Board of Trustees of the MHMR Services for the Concho Valley

DATE:

October 29, 2015

The Liaison Representatives nominates the following persons for re-appointment to the MHMR Services for the Concho Valley Board of Trustees for an unexpired term ending October 31, 2014:

Gibson, Jeff -November 1, 2015 through October 31, 2017 (re-appointment)
Kujawski, Linda–November 1, 2014 through October 31, 2017 (re-appointment)
Spieker, Dianna–November 1, 2015 through October 31, 2017 (re-appointment)
Trevino, Pat–November 1, 2015 through October 31, 2017 (re-appointment)
Davenport-Herbst, Tim–November 1, 2015 through October 31, 2017 (new appointment)

Official appointment of these nominees is requested by the Liaison Representatives to provide a duly constituted Board of Trustees as required by the Texas Laws Relating Mental Health and Mental Retardation. Documentation (notarized meeting minutes where applicable) of the appointments should be sent to the Annette Hernandez, Chief Administrative Officer, MHMR Services for the Concho Valley, 1501 West Beauregard, San Angelo, Texas 76901.

If you have any questions, please feel free to contact Ms. Annette Hernandez at (325) 658-7750 ext. 346.

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Patrick Frerich, Asst. Director of Operations, Operations, (325) 657-4206

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

Second hearing and consideration of adoption of an ordinance amending Chapter 10 of the Code of Ordinances to reduce the maximum speed limit on US Highway 277 beginning at the exit of US Highway 277 South from US Highway 87 South extending south to the City limits from 60 and 65 mph to 55 mph (P.Frerich)

Summary/History:

This Ordinance will substantiate the posted speed limits in the City of San Angelo as appropriate. This Ordinance will subsequently allow one exception found on a portion of US Highway 277 South, beginning at the exit of US Highway 277 and US Highway 87 South and extending south to the City limits near Bass Lane.

Highway 277 South is owned and maintained by the State of Texas, with traffic control regulated by the City of San Angelo Code of Ordinances, Article 10.03 OPERATION OF MOTOR VEHICLES, Division 2. The Manual for Uniform Traffic Control Devices (MUTCD) allows posted speed limits to be within the 85th percentile of actual traffic speeds, with variations below the 85th percentile allowed, if appropriate, in areas where the roadway has high driveway density and/or crash history.

Studies of the roadway specified above reported 85th percentile speeds ranging from 72 to 62 miles per hour. Texas Department of Transportation recommends the speed limits for this roadway be reduced from 65 and 60 mph to 55 mph, respectively, based on the crash history along this segment.

Financial Impact:

The Texas Department of Transportation is responsible for all signage on this roadway, including speed limit signs.

Other Information/Recommendation:

N/A

Attachments:

- | | | |
|----|---|---|
| 1. | 16-013 Amendment to the Ordinance | 16-013 Speed limit ordinance Hwy 277 S..docx |
| 2. | Hwy 277 Speed Limit Change - TxDOT Letter to the City Manager | Hwy 277 Speed Limit - Letter to City Manager .pdf |

Presentation:

US Highway 277 Speed Limit Reduction Presentation - John Dewitt, Director TxDOT Transportation Plann

Approvals/Reviews:

Frerich, Patrick
Kelton, Shane
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Approved
Final Approval

AN ORDINANCE AMENDING CHAPTER 10 “TRAFFIC CONTROL”, ARTICLE 10.03 “OPERATION OF MOTOR VEHICLES”, DIVISION 2 “SPEED LIMITS” OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO, TEXAS, ALTERING THE MAXIMUM SPEED LIMIT ON US HIGHWAY 277 BEGINNING AT THE EXIT OF US HIGHWAY 277 SOUTH FROM US HIGHWAY 87 SOUTH EXTENDING SOUTH TO THE CITY LIMITS, WITH SUCH STREET BEING LOCATED IN THE CITY OF SAN ANGELO, TEXAS; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the regulation of traffic, motor vehicles and conveyances upon public streets, roadways and right-of-ways within the City limits is essential and necessary to protect the traveling public and to preserve and protect the public safety of the City of San Angelo (“City”); and

WHEREAS, the Texas Transportation Code sets the prima facie speed limit for streets in an urban district; and

WHEREAS, the Texas Transportation Code authorizes municipalities to alter speed limits under certain conditions; and

WHEREAS, the City Operations department has reviewed posted speed limits on City of San Angelo streets and find them to be appropriate with one exception; and

WHEREAS, City has conducted a traffic and engineering study that indicated that a speed limit of 65 and 60 miles per hour was unreasonable and unsafe for portions of US Highway 277; and

WHEREAS, City Council affirms the posted speed limits in San Angelo but finds it is necessary for the protection and safety of the citizens of the City of San Angelo to declare a reasonable and safe prima facie speed limit of 55 miles per hour for US Highway 277 beginning at the exit of US Highway 277 South from US Highway 87 South extending south to the City limits; and

WHEREAS, such reasonable and safe prima facie speed limit shall be effective when appropriate signs giving notice thereof are erected giving notice of the new prima facie speed limit.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANGELO:

Section 1) THAT, the findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2) THAT, upon basis of an engineering and traffic investigation heretofore made, and as authorized by the provisions of the Texas Transportation Code, that a prima facie speed limit of 55 miles per

hour for vehicles is hereby determined and declared to be reasonable and safe; and such speed limit is hereby fixed at the rate of speed indicated for vehicles traveling upon the named street or highway, or parts thereof, described as follows:

(A) Along US Highway 277 beginning at the exit of US Highway 277 South from US Highway 87 South extending south to the City limits the prima facie speed limit is hereby set at a maximum of fifty-five (55) miles per hour.

Section 3) THAT, the following severability clause is hereby adopted with this amendment:

SEVERABILITY: That the terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

Section 4) THAT, the following penalty clause is hereby adopted with this amendment:

PENALTY: Any person who violates any provisions of this Article shall be guilty of a Misdemeanor and upon conviction shall be subject to a fine as provided for in Section 1.106 of this Code. Each day of such violation shall constitute a separate offense.

Section 5) THAT, this Ordinance shall be effective on, from and after the date of adoption.

INTRODUCED on the 3rd day of November, 2015, and finally PASSED, APPROVED and ADOPTED on this the 12th day of November, 2015.

CITY OF SAN ANGELO

ATTEST:

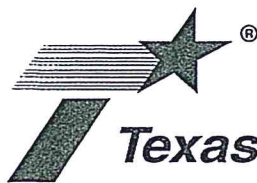
BY:

Dwain Morrison, Mayor

By: Bryan Kendrick City Clerk

Approved as to Form:

Theresa James, City Attorney



4502 KNICKERBOCKER ROAD | SAN ANGELO, TEXAS 76904 | (325) 944-1501 | WWW.TXDOT.GOV

August 6, 2015

Mr. Daniel Valenzuela
City Manager
72 W. College Avenue
San Angelo, TX 76903

Dear Mr. Valenzuela:

We have completed our speed zone study on US 277 south of San Angelo. As discussed in our July 30th meeting, we are proposing to lower the speed limit in this area as shown on the enclosed strip map.

Please execute the enclosed speed zone ordinance and city secretary's certificate and return to this office. We will obtain a TxDOT commission minute for the sections outside city limits. The commission minute is scheduled for August 27. We will make the necessary sign changes once we receive the city ordinance and TxDOT commission minute.

If you should have any questions, please contact Angie Ortegon, District Transportation Operations Engineer in San Angelo at 325-947-9211.

Sincerely,

Tracy D. Cain, P.E.
District Engineer
San Angelo District

Enclosures

cc: Casey McGee, P.E., San Angelo District
Michael McGinnis, San Angelo District

OUR GOALS

MAINTAIN A SAFE SYSTEM ▪ ADDRESS CONGESTION ▪ CONNECT TEXAS COMMUNITIES ▪ BEST IN CLASS STATE AGENCY

An Equal Opportunity Employer

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Rebeca Guerra, Planning Manager, Planning and Development Services, 325-657-4210

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

First Public Hearing and consideration of approving a request from SAISD to authorize an amendment to the Vision Plan component of the San Angelo Comprehensive Plan to change the Future Land Use designation from Campus/Institutional to Commercial on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street - (Presentation by Planning & Development Services Director Jon James)

Summary/History:

On September 18, 2015, the applicant submitted this Comprehensive Plan (aka Vision Plan) Amendment request to change the existing Campus/Institutional designation to a Commercial designation on the 1.761-acre property. The 1.761-acre property is part of a larger 110-acre property owned by the San Angelo Independent School District (SAISD). The subject 1.761-acre property is vacant, and the remaining lands include Glenn Middle School, San Angelo Stadium, the Central Ball Fields, "PAYS" School operated by SAISD, and associated tennis courts.

The full 110 acres, as well as the adjacent 9 acres to the northeast owned by West Texas Rehabilitation Center, were rezoned from Single Family Residence (RS-1) to Office Commercial (CO) on November 16, 2010 (Z10-21).

The applicant believes the Campus/Institutional designation was placed on the property given the land was owned by SAISD, but that this immediate corner is not intended to be used for school purposes. They also indicate that the other three corners of this intersection are developed as a commercial and retail node with high traffic and visibility.

The applicant has submitted an associated Rezoning request and Final Plat for this 1.761-acre property.

Financial Impact:

N/A

Other Information/Recommendation:

Attachments:

- | | | |
|----|-------------------------|------------------------------|
| 1. | Staff Report | PL_VP15-01_Staff Report.docx |
| 2. | PowerPoint Presentation | CC Presentation_2015.pptx |

Presentation:

Approvals/Reviews:

Guerra, Rebeca
James, Jon
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Approved
Final Approval

STAFF REPORT



Meeting Date: November 12, 2015

To: City Council

From: Jon James, AICP
Director of Planning and Development Services

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Case: VP15-01

Request: A request for approval of a Comprehensive Plan (aka Vision Plan) Amendment to change the Future Land Use designation from Campus/Institutional to Commercial, on the following property:

Location: An unaddressed tract, generally located at the northwest intersection of Knickerbocker Road and South Jackson Street

Legal Description: Being 1.761 acres out of and a part of John McNeese Survey 176¼, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94

Size: 1.761 acres

Caption: CONSIDERATION OF APPROVING A REQUEST FROM SAISD TO AUTHORIZE AN AMENDMENT TO THE VISION PLAN COMPONENT OF THE SAN ANGELO COMPREHENSIVE PLAN UPDATE ADOPTED IN 2009, TO CHANGE THE FUTURE LAND USE DESIGNATION FROM CAMPUS/INSTITUTIONAL TO COMMERCIAL, ON 1.761

ACRES LOCATED AT THE NORTHWEST INTERSECTION OF
KNICKERBOCKER ROAD AND SOUTH JACKSON STREET.

General Information

Future Land Use: Campus/Institutional

Current Zoning: Office Commercial (CO)

Existing Land Use: Vacant Land

Surrounding Zoning / Land Use:

North:	Office Commercial (CO)	West Texas Rehabilitation Center
West:	Office Commercial (CO)	Tennis Courts, San Angelo Stadium, PAYS School
South:	Light Industrial (ML)	Taco Bell, retail commercial and office plaza
East:	General Commercial (CG)	Rosa's Café Restaurant, SAISD Administration Building

District: SMD #5 – Elizabeth Grindstaff

Neighborhood: ASU – College Hills

Thoroughfares/Streets:

Knickerbocker Road is defined as an Urban “Major Arterial Road” in the City’s Master Thoroughfare Plan (MTP), and is owned and maintained by TxDOT. Arterial Roads are designed to connect Collector Streets to freeways and other arterials carrying large volumes of traffic at high speeds, and Urban Arterial Roads require a minimum right-of-way width of 80 feet and a minimum paving width of 64 feet. Knickerbocker Road has an existing right-of-way of 110 feet and an existing paving width of 86 feet, in compliance with the MTP.

South Jackson Street is classified as a “Major Collector Street” in the MTP and is designed to carry traffic at moderate speeds to connect arterials to local streets. South Jackson Street requires a right-of-way width of 60 feet and a paving width of 50 feet. The existing right-of-way is 80 feet, in compliance with the MTP. The southern portion of South Jackson Street is 64 feet, more than required per the MTP. However, the northern portion of South Jackson Street facing the property is only 48 feet. The applicant

has applied for a variance from the paving width for the northern portion of South Jackson Street.

History and Background:

On September 18, 2015, the applicant submitted this Comprehensive Plan (aka Vision Plan) Amendment request to change the existing Campus/Institutional designation to a Commercial designation on the 1.761-acre property. The 1.761-acre property is part of a larger 110-acre property owned by the San Angelo Independent School District (SAISD), which is metes-and-bounds surveyed land and has never been platted. The subject 1.761-acre property is vacant, and the remaining lands include Glenn Middle School, San Angelo Stadium, the Central Ball Fields, "PAYS" School operated by SAISD, and associated tennis courts.

The full 110 acres, as well as the adjacent 9 acres to the northeast owned by West Texas Rehabilitation Center, were rezoned from Single Family Residence (RS-1) to Office Commercial (CO) on November 16, 2010 (Z10-21).

The applicant believes the Campus/Institutional designation was placed on the property given the land was owned by SAISD, but that this immediate corner is not intended to be used by the SAISD for school purposes. They also indicate that the other three corners of this intersection are developed as a commercial and retail node with high traffic and visibility. They believe that re-designating this property as Commercial would create an identifiable commercial node, and prevent deterioration of this corridor.

The applicant has submitted an associated Rezoning request and Final Plat for this 1.761-acre property. The Rezoning request is to change from the existing Office Commercial (CO) to General Commercial (CG). Although the applicant has not indicated their plans for the future development of this property, unlike the CO Zoning District, the CG District would allow retail sales and service uses, which include restaurants, retail and personal service establishments.

Analysis:

In 2003, the City of San Angelo adopted its Comprehensive Plan which designated the Future Land Use of the subject property, and the Angelo State University land to the west and north, as "Civic and Institutional." The City's 2009 update to the Comprehensive Plan re-designated these lands as "Campus/Institutional" which includes general and specific policies for how the City wants these lands to develop. The general policies indicate that "Institutional Campuses refer to land owned and controlled by public and private institutions." The general policies indicate that "specific opportunities exist to reach out and create districts with complementary and auxiliary uses that lend themselves to more attractive, pedestrian-friendly, walkable environments." The specific policies state that for Institutional/Public uses in Campus/Institutional designations, there are "coordinated planning efforts with SAISD and the Tom Green County Library System in the future planning and development of public facilities to ensure centrally located and accessible facilities."

Planning Staff believe that had this property been in a central part of the existing school campus, complementary and auxiliary uses would be appropriate. However, given that the property is only 1.761 acres, is separated from the main school campus area to the northwest by tennis courts, and is directly abutting a major commercial intersection at Jackson Street and Knickerbocker Road, Staff agrees with the applicant that a Commercial designation would be appropriate here. SAISD has stated it does not intend to use this corner for a new school or campus, and already has the existing school building, "PAYS" school, with the tennis courts immediately west. Therefore, the subject property could remain vacant in perpetuity without a Comprehensive Plan Amendment to a more viable land use designation.

The "Commercial" Future Land Use designation appears to be appropriate for this property. The City's Comprehensive Plans states that Commercial areas, "are often single-use centers consisting of large retail and office clusters that seek visibility and convenient access offered by frontage onto the major street network."

The subject property conforms to the above Commercial policies in the updated Comprehensive Plan. The property is surrounded by an existing commercial cluster to the east (Rosa's Café), southwest (Taco Bell), and southeast (Citibank). Furthermore, the property immediately abuts South Jackson Street, a Major Collector Street, and Knickerbocker Road, a Major Arterial Street, both of which can accommodate large volumes of traffic. Knickerbocker Road is part of a larger commercial node that services the city, and a future commercial use in this area would be adequately serviced by the existing road network. Planning Staff believe a Commercial designation at this location would facilitate future development and would not be detrimental to the area.

Notification:

On October 9, 2015, 44 notifications were mailed out within a 200-foot radius of the entire 110-acre tract, even those the Vision Plan Amendment only applies to the 1.761-acre tract. The expanded notification area was created to allow more residents and businesses to be informed of the proposed Comprehensive Plan Amendment affecting their neighborhood. Prior to the October 26, 2015 Planning Commission Meeting, there were two (2) responses received in favor and zero (0) responses in opposition of the request. **On October 30, 2015, the same 44 properties within a 200-foot radius were re-notified with the rescheduled City Council Meeting of November 12, 2015. No new responses have been received as of November 4, 2015.**

Staff Recommendation:

Staff's recommendation is for City Council to **APPROVE** the proposed Comprehensive Plan (aka Vision Plan) Amendment VP15-01 to change the Future Land Use designation from Campus/Institutional to **Commercial**.

Planning Commission Recommendation:

On October 26, 2015, the Planning Commission recommended **APPROVAL** of the applicant's request for a Comprehensive Plan (aka Vision Plan) Amendment to change the Future Land Use designation from Campus/Institutional to Commercial by a unanimous 7–0 vote. The following is the complete excerpt of the minutes from the October 26, 2015, meeting for this case:

Jeff Fisher, Planner, outlined the request for a Vision Plan Amendment to change the Future Land Use designation from Campus/Institutional to Commercial on the subject 1.761-acre property. He stated there is an associated Rezoning case for this property which proposes a change from Office Commercial (CO) to General Commercial (CG).

Mr. Fisher indicated Staff's recommendation was to approve the Comprehensive Plan Amendment from Campus/Institutional to Commercial based on several criteria, including that the site is isolated from the school on a commercial corner, and that the Commercial Policies in the Comprehensive Plan would be more applicable to the property.

Commissioner Jackson asked why the notification was circulated to a 200-radius around the entire tract.

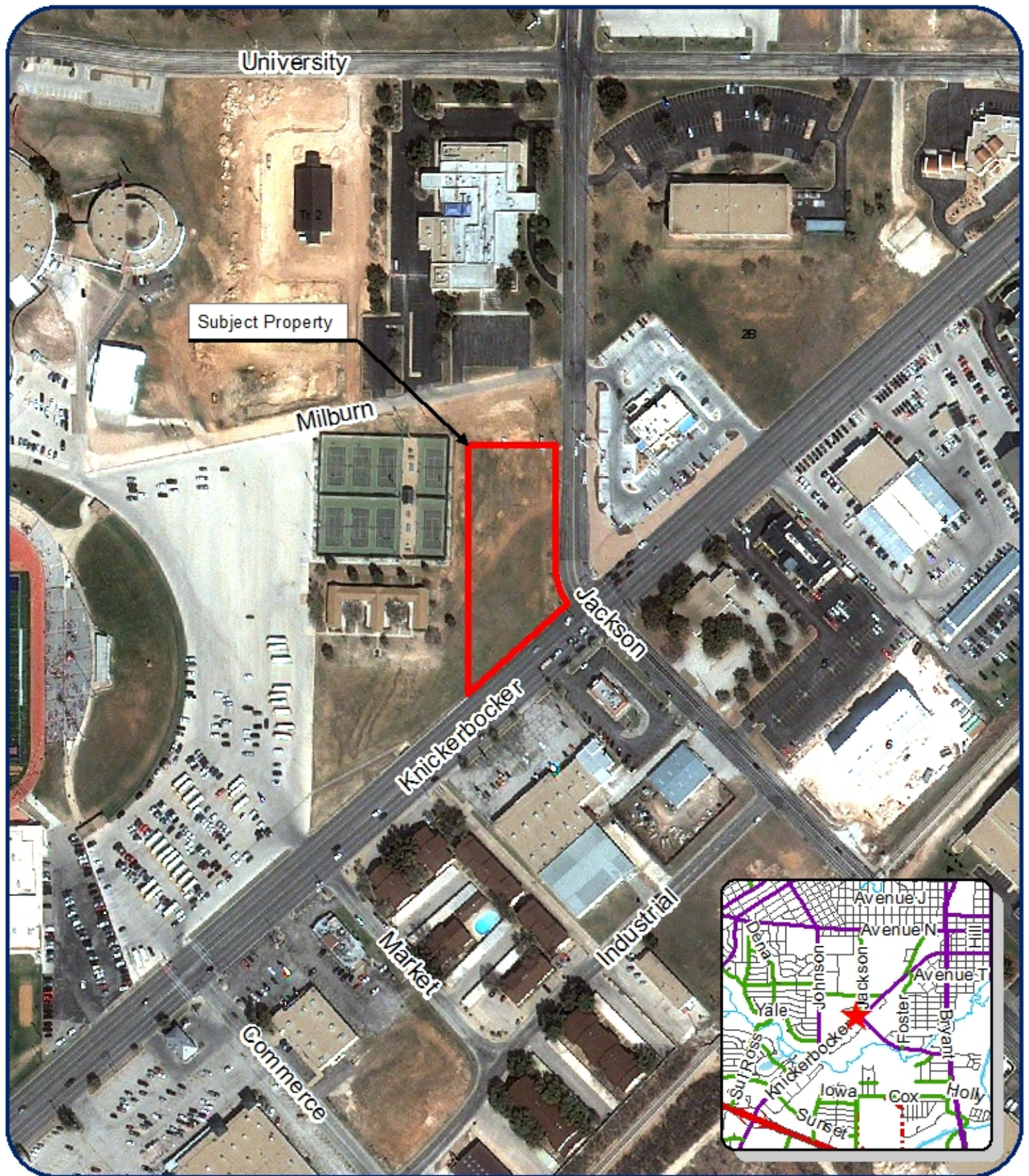
Mr. Fisher explained that even though the application is only for the 1.761-acre property, this property has not been platted yet and is part of a larger 110-acre tract. Notifying a 200-foot radius around the entire 110-acre tract, he explained, would allow more residents the opportunity to receive notification of the request.

Steve Eustis, a real estate agent representing SAISD, stated that designating this property Commercial would create a commercial node at this intersection on all four corners.

A Motion to approve the proposed Comprehensive Plan Amendment to a Commercial designation was made by Commissioner Priess and seconded by Commissioner Crisp. The motion carried unanimously, 7-0.

Attachments:

- Aerial Map
- Future Land Use Map
- Zoning Map
- Major Thoroughfare Map
- Notification Map
- Response Letters
- Applicant's Rationale
- Survey



Vision Plan Amendment

Case VP15-01: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

Current Vision Plan: Campus/Institutional

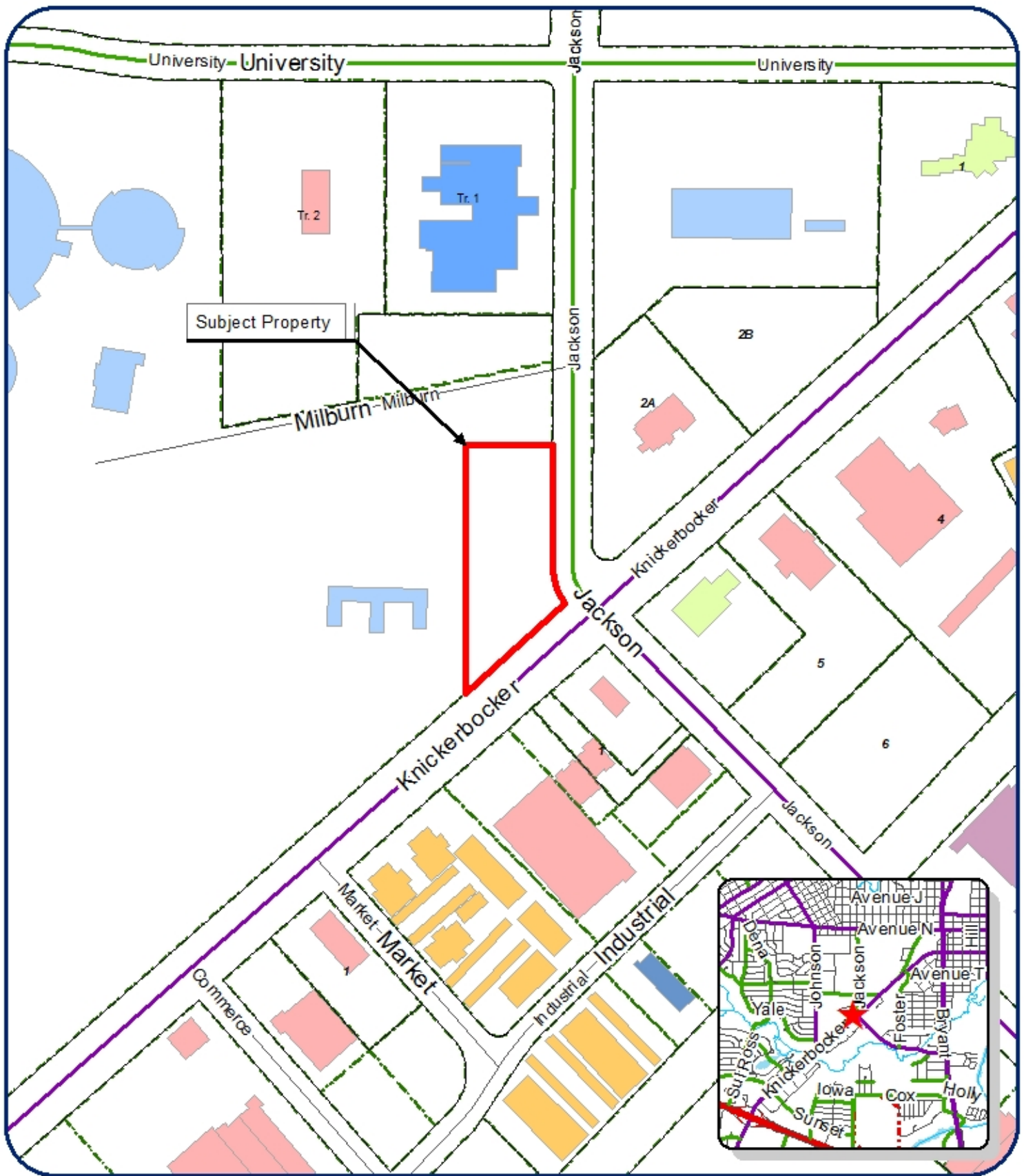
Requested Vision Plan: Commercial

Zoning: Office Commercial (CO)









Vision Plan Amendment

Case VP15-01: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

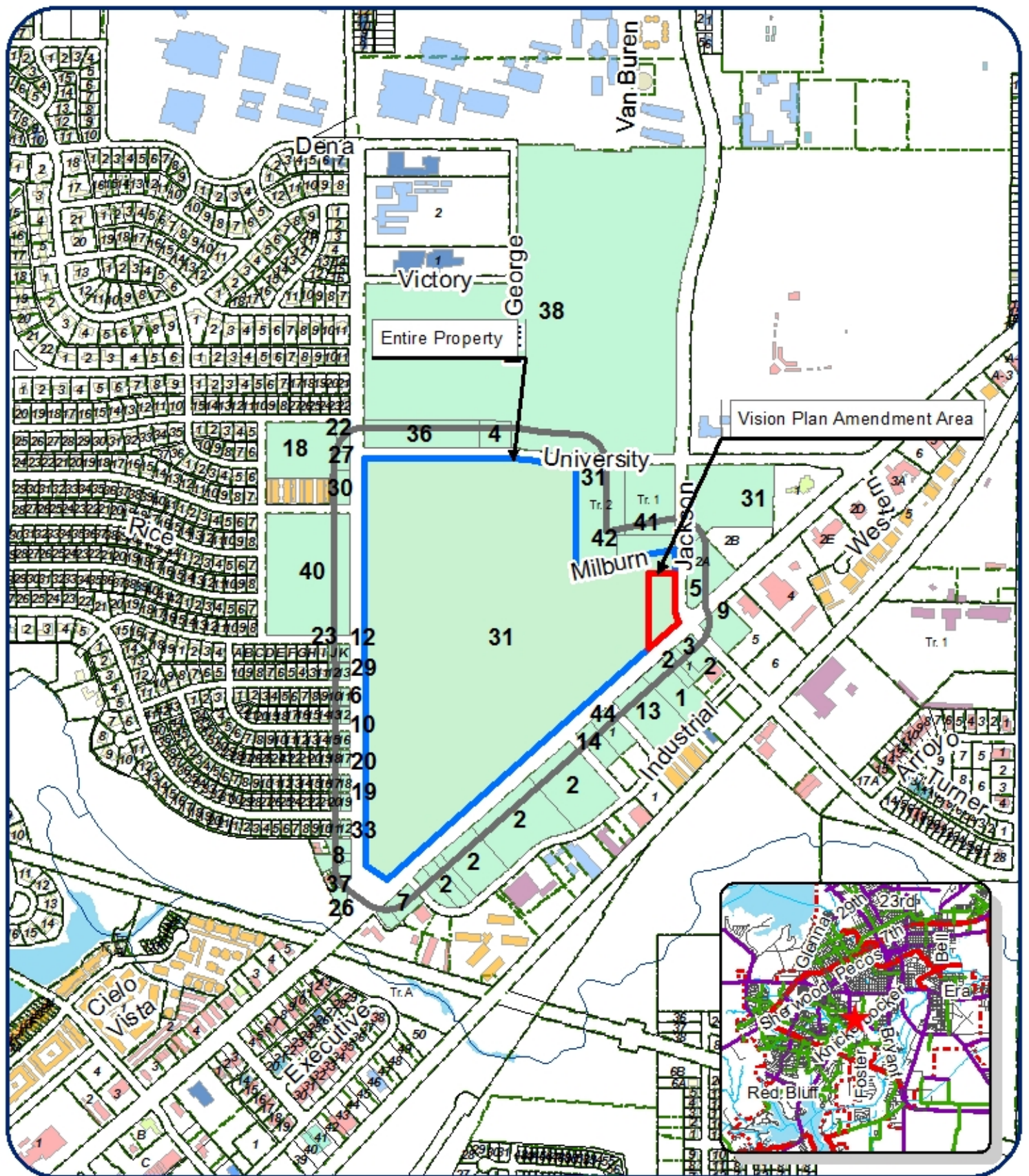
Subject Properties: —

Current Vision Plan: Campus/Institutional

Requested Vision Plan: Commercial

Zoning: Office Commercial (CO)





Vision Plan Amendment

Case VP15-01: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 833 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

Current Vision Plan: Campus/Institutional

Requested Vision Plan: Commercial

Zoning: Office Commercial (CO)



TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-657-4227.

(☒)

IN FAVOR

(☐)

IN OPPOSITION

REASON(S) _____

NAME: Dorothy McDonald

ADDRESS: 3415 S. Johnson

San Angelo Tx 76904

SIGNATURE: Dorothy McDonald

VP15-01 and Z15-08: SAISD

property owner number:

26

If you have any questions about these proceedings, please call Ms. Rebeca Guerra, Planning Manager, with the City of San Angelo's Planning Division at telephone number 325-657-4210. The Planning Division staff may also be reached at fax number 325-657-4227.

TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-657-4227.

(☒)

IN FAVOR

()

IN OPPOSITION

REASON(S) _____

NAME: Brian J. May

ADDRESS: 2601 West Avenue N

San Angelo, TX 76904

SIGNATURE: Brian J. May

VP15-01 and Z15-08: SAISD

property owner number: 38

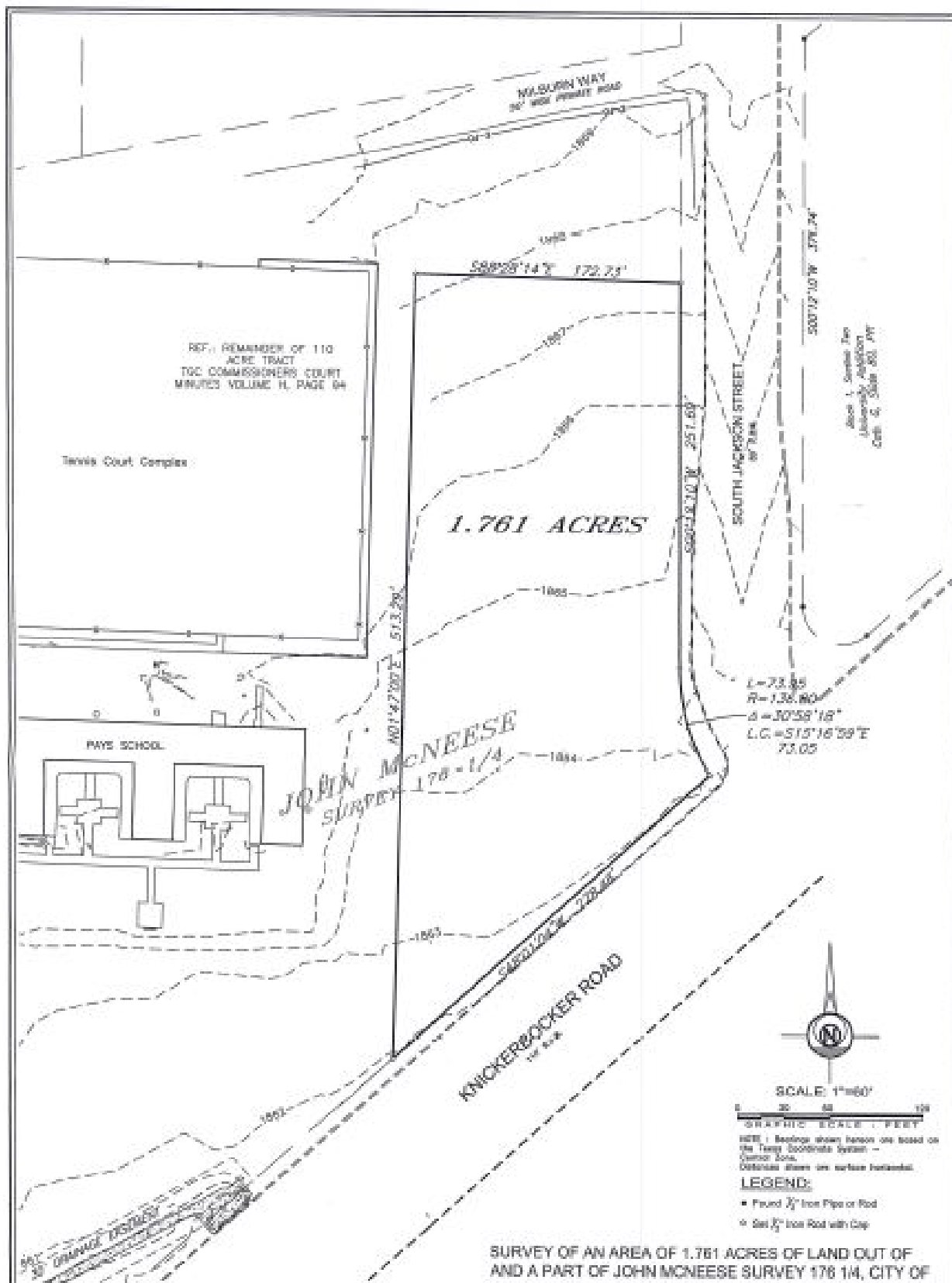
If you have any questions about these proceedings, please call Ms. Rebeca Guerra, Planning Manager, with the City of San Angelo's Planning Division at telephone number 325-657-4210. The Planning Division staff may also be reached at fax number 325-657-4227.

This amendment to the Vision Plan would meet goals set out by the Comprehensive Plan:

Contract retail commercial corridors into series of identifiable nodes or centers.

Ensure long-term viability of commercial sites. Prevent deterioration of commercial corridors such as Bryant, Knickerbocker Road, Beauregard and Chadbourne.

We request the Vision Plan be amended Commercial to conform to the other corners in this commercial node.



SURVEY OF AN AREA OF 1.761 ACRES OF LAND OUT OF AND A PART OF JOHN MCNEESE SURVEY 176 1/4, CITY OF SAN ANGELO, TOM GREEN COUNTY, TEXAS AND SAID 1.761 ACRE TRACT ALSO BEING OUT OF THAT CERTAIN 110 ACRE TRACT TO SAN ANGELO INDEPENDENT SCHOOL DISTRICT DESCRIBED IN TOM GREEN COUNTY COMMISSIONERS COURT MINUTES VOLUME H, PAGE 94.

Certification is hereby made that a survey was made on the ground under my supervision according to the minimum standards of the Professional Land Surveying Practices Act and the General Rules of Procedures and Practices set forth by the Texas Board of Professional Land Surveying. Surveyed on the ground August 5, 2015.

Russell T. Gully
 RUSSELL T. GULLY
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5638

SKG
ENGINEERING, LLC
 SURVEYING • ENVIRONMENTAL • LANDCARE
 705 SOUTH WEE STREET
 SAN ANGELO, TEXAS 76903
 Phone No. 325-650-1200
 Fax No. 325-657-8188
 www.skg.com



City Council

November 12, 2015

Planning Division

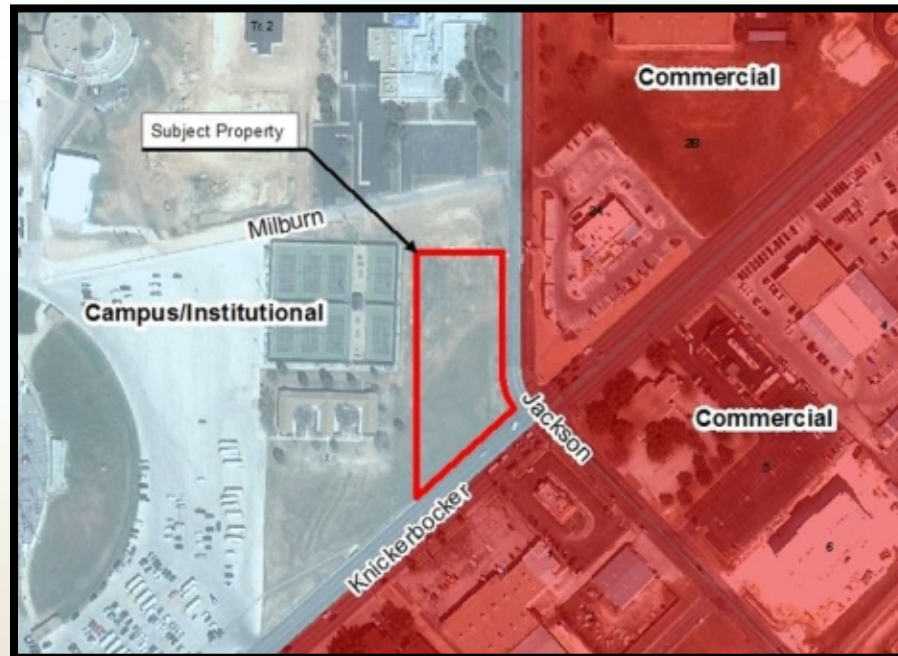
Regular Agenda

VP15-01: SAISD

- 1.761 acres
- NW corner of Knickerbocker Rd. & S. Jackson St.
- SMD #5 – Elizabeth Grindstaff
- ASU - College Hills Neighborhood



Future Land Use Map



Future Land Use
Campus/Institutional to
Commercial

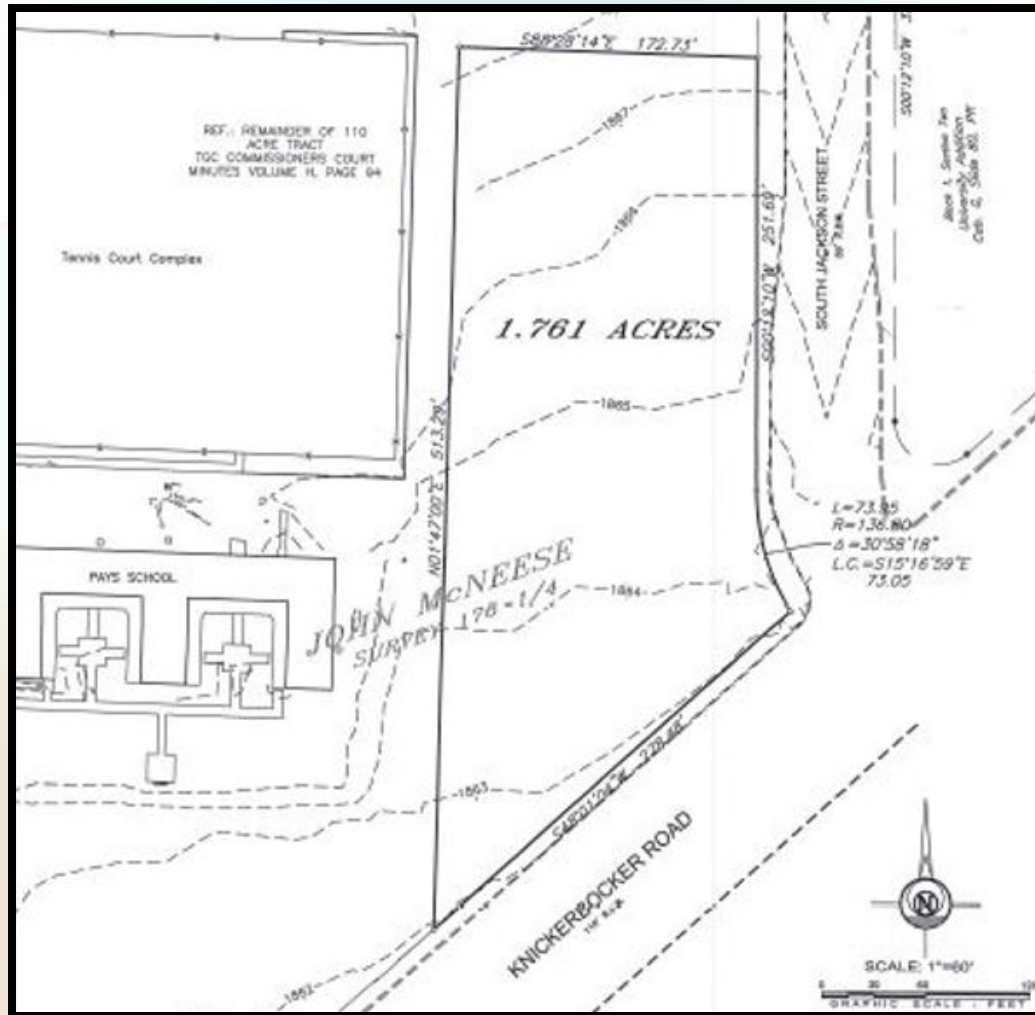
Zoning Map



ZONING

Office Commercial (CO) Zoning District
to
General Commercial (CG) Zoning District **(proposed)**

Survey of Property



Photographs – Surrounding Area



North



East



South



West

Photographs – Subject Property Looking West



Photographs – Subject Property Looking North



Rationale

APPROVAL

Existing Campus/Institutional Policies

- *“Specific opportunities exist to reach out and create districts with complementary and auxiliary uses...”*
- Property is separate from main school campus area
- Surrounded by commercial properties on 3 quadrants
- Located at major intersection Knickerbocker/Jackson
- SAISD has stated no plans to expand in this location
- Existing “PAYS” school already on site, without amendment property could remain vacant in perpetuity

Rationale

APPROVAL

Commercial Policies

- ***“Single Use Centers...of large retail and office clusters that seek visibility and convenient access offered by frontage onto major street network”***
- Fronts Knickerbocker (Arterial) and Jackson (Collector)
- Surrounded by commercial properties – Rosa’s, Taco Bell, Citibank
- Future Land Use Plan designates Knickerbocker corridor as Commercial, subject property consistent with Long Term Land Use Plan

Notifications

- 44 Notifications mailed within 200-foot radius of original property
- 2 Responses in favor
- 0 Responses in opposition



Planning Commission Recommendation

On October 26, 2015, the Planning Commission voted unanimously to recommend

APPROVAL

of an Amendment to change the Future Land Use designation from Campus/Institutional to
Commercial

Staff Recommendation

APPROVE

a Comprehensive Plan (aka Vision Plan)
Amendment to change the Future Land
Use designation
from Campus/Institutional
to
Commercial

The background features a light beige gradient with several large, overlapping circles in shades of light blue, green, and yellow. A thin black grid is overlaid on the image, consisting of a horizontal line near the top and a vertical line on the left side, creating a header and a left margin.

QUESTIONS?

City Council

November 12, 2015

Planning Division

Regular Agenda

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Rebeca Guerra, Planning Manager, Planning and Development Services, 325-657-4210

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

First Public Hearing and consideration for Case Z15-08, an Ordinance approving a request from SAISD to authorize a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street (Presentation by Planning & Development Services Director Jon James)

Summary/History:

On September 18, 2015, the applicant submitted this Rezoning request, along with an associated Comprehensive Plan (aka Vision Plan) Amendment and Subdivision Application on the property. The 1.761-acre property is part of a larger 110-acre property owned by the San Angelo Independent School District (SAISD). The property is currently vacant, and the remaining lands include Glenn Middle School, San Angelo Stadium, the Central Ball Fields, "PAYS" School operated by SAISD, and associated tennis courts.

This Rezoning request would be consistent with the proposed Comprehensive Plan Amendment, which intends to change the Future Land Use (FLU) of this 1.761-acre property from "Campus/Institutional" to a "Commercial." The full 110 acres, as well as the adjacent 9 acres to the northeast owned by West Texas Rehabilitation Center, were rezoned from Single Family Residence (RS-1) to Office Commercial (CO) on November 16, 2010 (Z10-21). The 2010 Rezoning was initiated by the Planning Commission which considered the CO Zone District more complimentary to the area than the existing RS-1 Zoning District, given the existing medical, sports and educational facilities on the property. The intent was to allow for some multi-purpose, mixed-use facilities that would be compatible with the existing medical, sports, and educational facilities already existing on the entire block. SAISD did not oppose the request, and is now initiating requests for a FLU designation of Commercial, and for a CG Zoning District on only this 1.761-acre property at the immediate northwest corner of South Jackson Street and Knickerbocker Road. The remaining 108.24 acres which contain the existing schools, football and baseball stadiums, and the Texas Rehabilitation lands would continue to be designated Campus/Institutional in the Comprehensive Plan, and zoned CO. Unlike the CO Zoning District, the CG Zoning District would allow for a broader range of commercial uses, including retail sales and service uses, restaurants, retail and personal service establishments.

The applicant believes the Campus/Institutional designation was placed on the property given the land was owned by SAISD, but that this immediate corner is not intended to be used for school purposes. They also indicate that the other three corners of this intersection are developed as a commercial and retail node with high traffic and visibility.

Financial Impact:

N/A

Other Information/Recommendation:

Attachments:

- | | | |
|----|-------------------------|-----------------------------|
| 1. | Staff Report | PL_Z15-08_Staff Report.docx |
| 2. | Draft Ordinance | PL_Z15-08_Ordinance.docx |
| 3. | PowerPoint Presentation | CC Presentation_2015.pptx |

Presentation:**Approvals/Reviews:**

Guerra, Rebeca	Created/Initiated
James, Jon	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

STAFF REPORT



Meeting: November 12, 2015

To: City Council

From: Jon James, AICP
Director of Planning and Development Services

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Case: Z15-08

Request: A request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District

Location: An unaddressed tract, generally located at the northwest intersection of Knickerbocker Road and South Jackson Street

Legal Description: Being 1.761 acres out of and a part of John McNeese Survey 176¼, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94

Size: 1.761 acres

Caption: First Public Hearing and consideration for Case Z15-08, an Ordinance approving a request from SAISD to authorize a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street

General Information

Future Land Use: Campus/Institutional (existing)
Commercial (proposed)

Current Zoning: Office Commercial (CO)

Existing Land Use: Vacant Land

Surrounding Zoning / Land Use:

North:	Office Commercial (CO)	West Texas Rehabilitation Center
West:	Office Commercial (CO)	Tennis Courts, San Angelo Stadium, PAYS School
South:	Light Industrial (ML)	Taco Bell, retail commercial and office plaza
East:	General Commercial (CG)	Rosa's Café Restaurant, SAISD Administration Building

District: SMD #5 – Elizabeth Grindstaff

Neighborhood: ASU – College Hills

Thoroughfares/Streets:

Knickerbocker Road is defined as an Urban “Major Arterial Road” in the City’s Master Thoroughfare Plan (MTP), and is owned and maintained by TxDOT. Arterial Roads are designed to connect Collector Streets to freeways and other arterials carrying large volumes of traffic at high speeds, and Urban Arterial Roads require a minimum right-of-way width of 80 feet and a minimum paving width of 64 feet. Knickerbocker Road has an existing right-of-way of 110 feet and an existing paving width of 86 feet, in compliance with the MTP.

South Jackson Street is classified as a “Major Collector Street” in the MTP and is designed to carry traffic at moderate speeds to connect arterials to local streets. South Jackson Street requires a right-of-way width of 60 feet and a paving width of 50 feet. The existing right-of-way is 80 feet, in compliance with the MTP. The southern portion of South Jackson Street is 64 feet, more than required per the MTP. However, the northern portion of South

Jackson Street facing the property is only 48 feet. The applicant has applied for a variance from the paving width for the northern portion of South Jackson Street.

History and Background:

On September 18, 2015, the applicant submitted this Rezoning request, along with an associated Comprehensive Plan (aka Vision Plan) Amendment and Subdivision Application on the property. The 1.761-acre property is part of a larger 110-acre property owned by the San Angelo Independent School District (SAISD), which is metes-and-bounds surveyed land and has never been platted. The property is currently vacant, and the remaining lands include Glenn Middle School, San Angelo Stadium, the Central Ball Fields, "PAYS" School operated by SAISD, and associated tennis courts.

This Rezoning request would be consistent with the proposed Comprehensive Plan Amendment, which intends to change the Future Land Use (FLU) of this 1.761-acre property from "Campus/Institutional" to a "Commercial." The full 110 acres, as well as the adjacent 9 acres to the northeast owned by West Texas Rehabilitation Center, were rezoned from Single Family Residence (RS-1) to Office Commercial (CO) on November 16, 2010 (Z10-21). The 2010 Rezoning was initiated by the Planning Commission which considered the CO Zone District more complimentary to the area than the existing RS-1 Zoning District, given the existing medical, sports and educational facilities on the property. The intent was to allow for some multi-purpose, mixed-use facilities that would be compatible with the existing medical, sports, and educational facilities already existing on the entire block. SAISD did not oppose the request, and is now initiating requests for a FLU designation of Commercial, and for a CG Zoning District on only this 1.761-acre property at the immediate northwest corner of South Jackson Street and Knickerbocker Road. The remaining 108.24 acres which contain the existing schools, football and baseball stadiums, and the Texas Rehabilitation lands would continue to be designated Campus/Institutional in the Comprehensive Plan, and zoned CO. Unlike the CO Zoning District, the CG Zoning District would allow for a broader range of commercial uses, including retail sales and service uses, restaurants, retail and personal service establishments.

In their associated Comprehensive Plan Amendment request, the applicant believes the Campus/Institutional designation was placed on the property given the land was owned by SAISD, but that this immediate corner is not intended to be used by the SAISD for school purposes. They also indicate that the other three corners of this intersection are developed as a commercial and retail node with high traffic and visibility. They believe that re-designating this property as Commercial would create an identifiable commercial node.

Analysis:

Section 212(G) of the Zoning Ordinance requires that the Planning Commission and City Council consider, at minimum, seven (7) factors in determining the appropriateness of any Rezoning request.

1. **Compatible with Plans and Policies.** *Whether the proposed amendment is compatible with the Comprehensive Plan and any other land use policies adopted by the Planning Commission or City Council.*

The proposed Rezoning to General Commercial (CG) would appear to be compatible with a Future Land Use (FLU) designation of “Commercial” in this location. When the 2010 Rezoning to Office Commercial (CO) was approved, it was approved for the entire block, approximately 119 acres. As indicated previously, the intent was to allow for some multi-purpose, mixed-use facilities that would be compatible with the existing medical, sports and educational facilities already existing on this block, consistent with the Campus/Institutional Policies in the Comprehensive Plan supporting such uses. However, SAISD has indicated they have no plans to ever use the subject 1.761-acre property for a school. The site has remained vacant for almost 5 years as Office Commercial (CO) which allows for professional, medical and financial offices, but prohibits retail commercial uses. Now that the property is intended to be designated “Commercial” in the Comprehensive Plan, Planning Staff believe the General Commercial (CG) Zoning District would be an appropriate fit for the property. The Commercial Policies in the Comprehensive Plan support “single-use centers consisting of large retail and office clusters that seek visibility and convenient access offered by frontage onto the major street network.” The property is surrounded by an existing commercial cluster to the east (Rosa’s Café), southwest (Taco Bell), and southeast (Citibank). Furthermore, the property immediately abuts South Jackson Street, a Major Collector Street, and Knickerbocker Road, a Major Arterial Street, both of which can accommodate large volumes of traffic. Knickerbocker Road is also part of a larger commercial node that services the City, and a future commercial use in this area should be adequately serviced by the existing road network.

2. **Consistent with Zoning Ordinance.** *Whether and the extent to which the proposed amendment would conflict with any portion of this Zoning Ordinance.*

Unlike the CO Zoning District, the CG Zoning District allows in addition to office uses, a wide range of retail sales and service uses, including banks, restaurants, grocery and convenience stores. The subject property would comply with all of the provisions of the CG Zoning District. The minimum lot area in the CG District is 6,000 square feet and the property is 1.761 acres. The CG District requires a minimum lot width of 50 feet and a minimum lot depth of 80 feet, and the property

has a lot width of 278.48 feet on Knickerbocker Road and a lot depth of 251.69 feet on its shortest side to the east.

3. **Compatible with Surrounding Area.** *Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zoning district for the land.*

Planning Staff believes the proposed CG Zoning District would be compatible with the surrounding area. As indicated above, the property is surrounded by commercial uses on the other three quadrants of the Knickerbocker Road and South Jackson Street intersection. The West Texas Rehabilitation Center is located immediately north. The only uses in close proximity is the existing PAYS School, owned by SAISD, and the associated tennis courts. There are no other uses or structures immediately adjacent to this property. The school would be 60 feet from the west lot line of this property once platted. The tennis courts would be 30 feet from the west lot line of the property and there is an existing gated fence at least 10 feet tall around the perimeter of the tennis court. The existing parking and drop-off area for the school is located on the west side of the school, over 300 feet from the subject property.

4. **Changed Conditions.** *Whether and the extent to which there are changed conditions that require an amendment.*

As indicated, the property has remained vacant for almost five years since it was rezoned to CO. It does not appear the CO Zoning is the only appropriate Zoning category for the site given that the area is surrounded by retail commercial uses on the three other quadrants of the intersection. The CG Zoning District would appear to be consistent with the associated Comprehensive Plan Amendment of "Commercial" and the surrounding land uses to the east, southeast, and southwest.

5. **Effect on Natural Environment.** *Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment, including but not limited to water and air quality, noise, storm water management, wildlife, vegetation, wetlands and the practical functioning of the natural environment.*

Effects on the natural environment would appear to be minimal. Future commercial development will require building permits which would include a review of grading, drainage, and stormwater runoff to further ensure there are no negative environmental impacts.

6. **Community Need.** *Whether and the extent to which the proposed amendment addresses a demonstrated community need.*

There appears to be a community need for a CG Zoning District given the property's immediate access onto Knickerbocker Road which is a commercial corridor in this area and which can accommodate large volumes of traffic. A retail commercial use in this location would service commercial traffic along Knickerbocker Road, as well as potential customers from the nearby schools, Angelo State University, and surrounding residential neighborhoods further northwest and southeast.

7. **Development Patterns.** *Whether and the extent to which the proposed amendment would result in a logical and orderly pattern of urban development in the community.*

The property is located in a commercial node at the corner of Knickerbocker Road and South Jackson Street. Knickerbocker Road is a Major Arterial Street and South Jackson Street is a Major Collector Street in the City's Master Thoroughfare Plan (MTP). These streets can accommodate large volumes of traffic and would be able to service a future commercial use in this location.

Notification:

On October 9, 2015, 44 notifications were mailed out within a 200-foot radius of the entire 110-acre tract, even though this Rezoning request only applies to the 1.761-acre tract. The expanded notification area was created to allow more residents and businesses to be informed of the proposed Rezoning affecting their neighborhood. Prior to the October 26, 2015 Planning Commission Meeting, there were two (2) responses received in favor and zero (0) responses in opposition of the request. **On October 30, 2015, the same 44 properties within a 200-foot radius were re-notified with the rescheduled City Council Meeting of November 12, 2015. No new responses have been received to date.**

Staff's Recommendation:

Staff's recommendation is for City Council to **APPROVE** Case Z15-08 for a Rezoning from the Office Commercial (CO) Zoning District to the **General Commercial (CG) Zoning District**.

Planning Commission Recommendation:

On October 26, 2015, the Planning Commission recommended **APPROVAL** of the applicant's request for a Rezoning to General Commercial (CG) by a unanimous 7-0 vote. The following is the complete excerpt of the minutes from the October 26, 2015, meeting for this case:

Jeff Fisher, Planner, outlined the request for a Rezoning from Office Commercial (CO) to General Commercial (CG) on the subject 1.761-acre property. He stated the CG Zoning would be consistent with the Planning Commission's approval recommendation today for a Comprehensive Plan amendment for Commercial on the property. Mr. Fisher outlined Staff's rationale to approve the proposed Rezoning to CG. Staff's reasons included that the proposed Rezoning was consistent with several policies of the Comprehensive Plan, that the property was located at a commercial intersection with three quadrants already containing commercial uses, and that it has been zoned Office Commercial (CO) for five years and with no development under this designation.

Mary Jane Steadman, representing El Conquistador Apartments and Alexander Construction, indicated she is not opposed to a commercial development, but is concerned about the safety of children in the area walking across the property. Her main concern was she did not know what type of business would be located on the property if it was zoned CG, and raised concerns about safety of children should a fast food restaurant locate there in the future.

Jeff Bright of the San Angelo Independent School District (SAISD) stated that children from the school could be taught not to cross through the subject property.

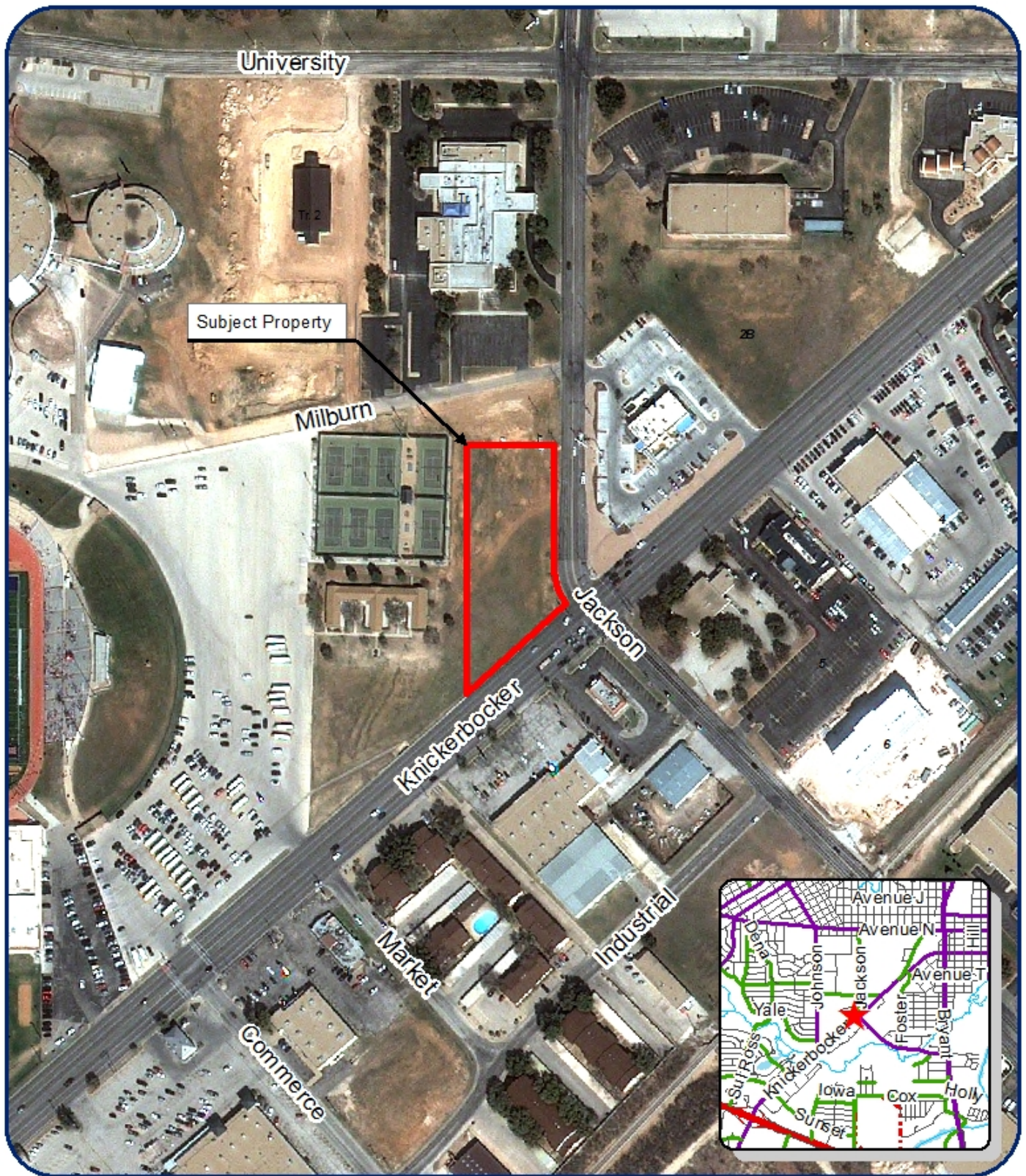
Planning Manager, Rebeca Guerra, reminded the Commission that conditions could not be placed on a straight zoning category, such as the one being proposed. She also reminded the Commission that the associated subdivision plat required that provisions be made for a future sidewalk in order to address safety concerns.

Steve Eustis, a real estate agent representing SAISD, stated that in the contract to purchase the property, a privacy fence could be required separating this property from the adjacent SAISD school property.

A Motion to approve the proposed Rezoning to the General Commercial (CG) Zoning District was made by Commissioner Smith and seconded by Commissioner Crisp. The motion carried unanimously, 7-0.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Major Thoroughfare Map
Notification Map
Response Letters
Survey
Excerpt of CG Permitted Uses and Provisions
Draft Ordinance



Zoning Case File:

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

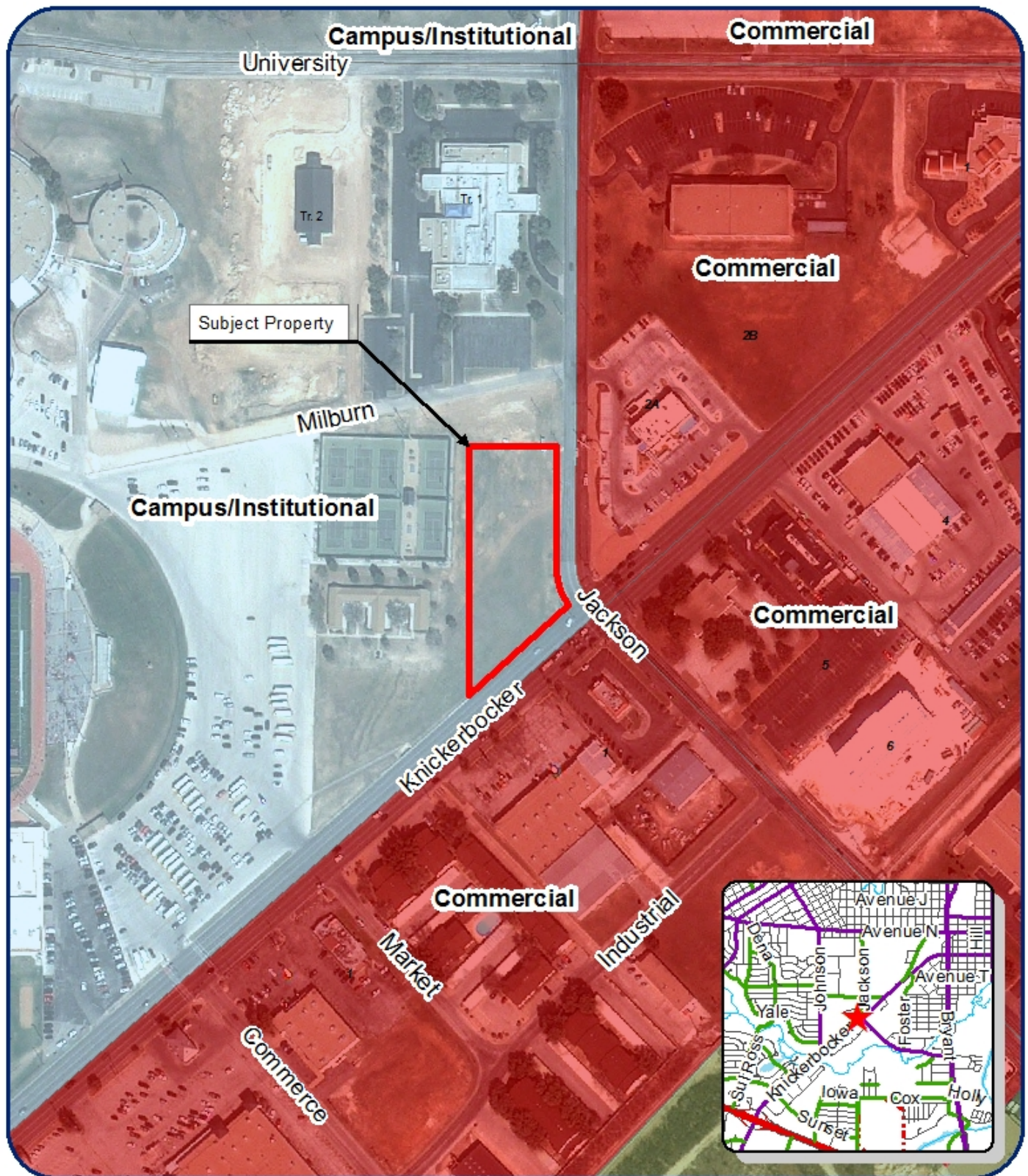
Subject Properties: —

Current Zoning: **Office Commercial (CO)**

Requested Zone Change: **General Commercial (CG)**

Vision: **Campus/Institutional**





Zoning Case File:

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

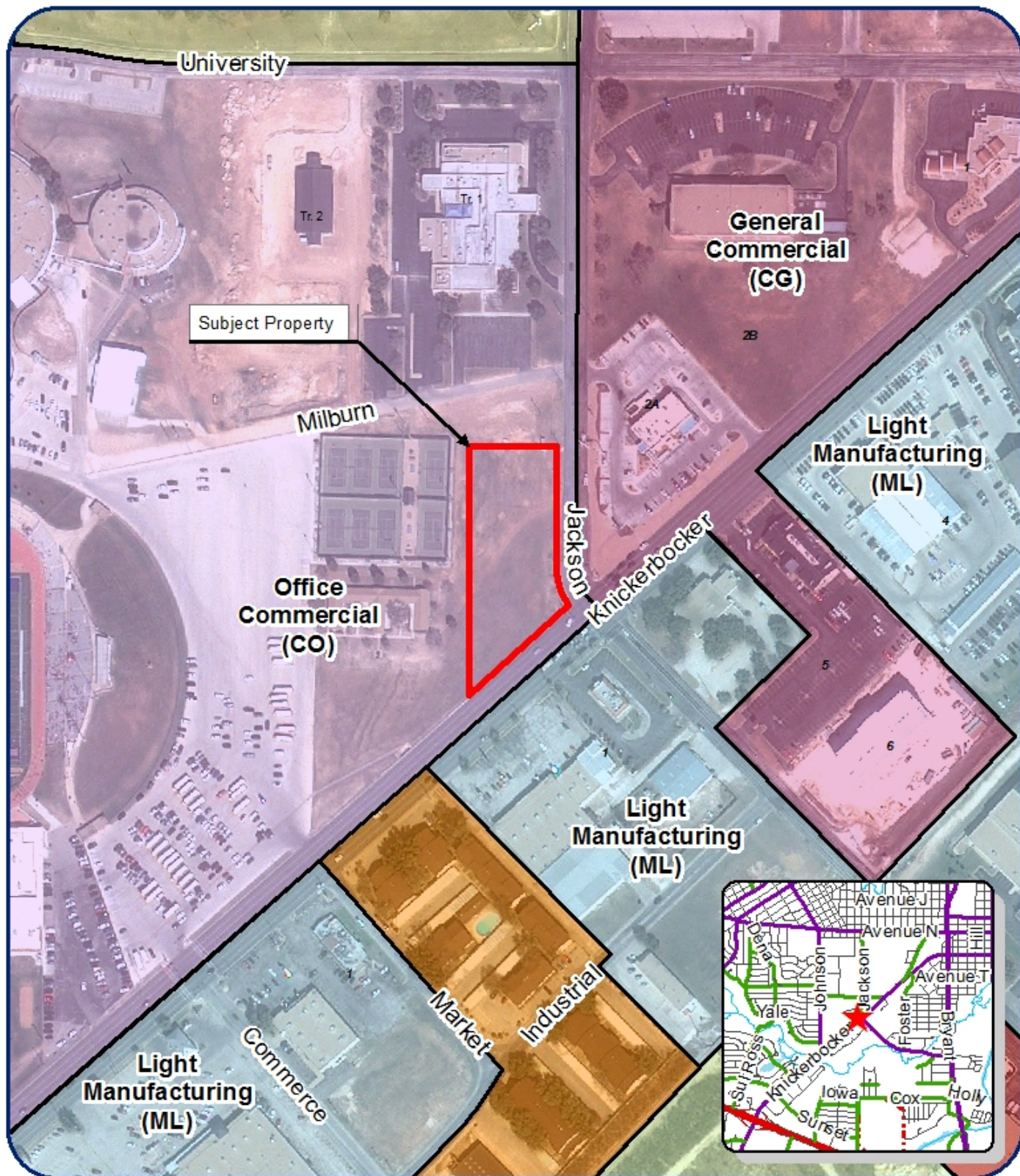
Current Zoning: **Office Commercial (CO)**

Requested Zone Change: **General Commercial (CG)**

Vision: **Campus/Institutional**

N





Zoning Case File:

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

Current Zoning:

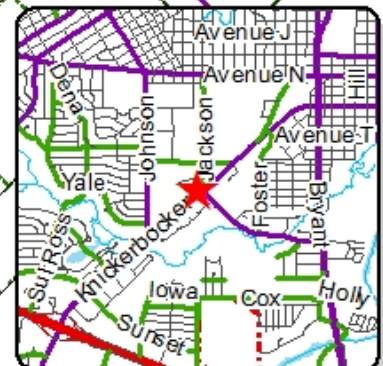
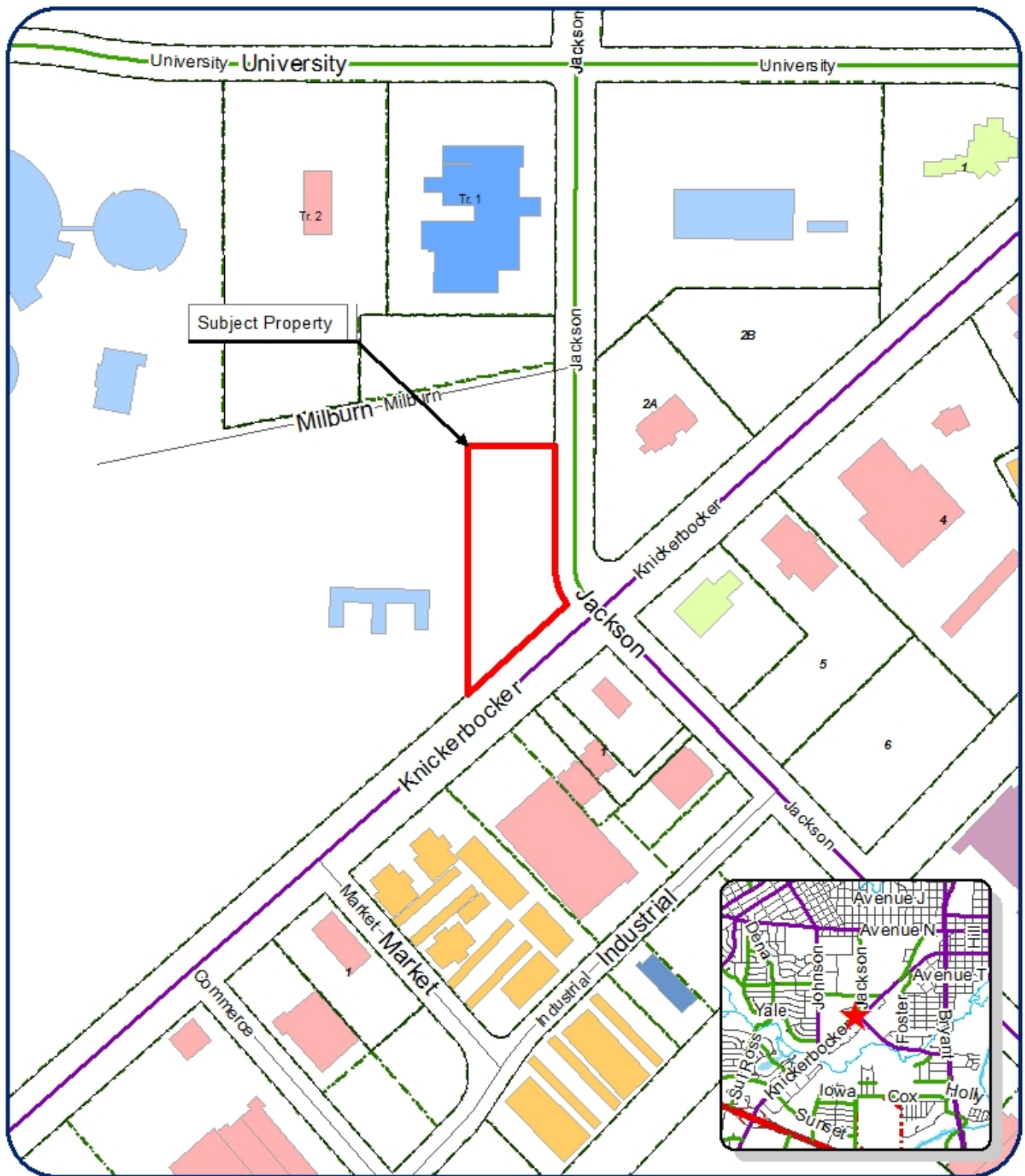
Office Commercial (CO)

Requested Zone Change: **General Commercial (CG)**

Vision: **Campus/Institutional**

N





Zoning Case File:

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

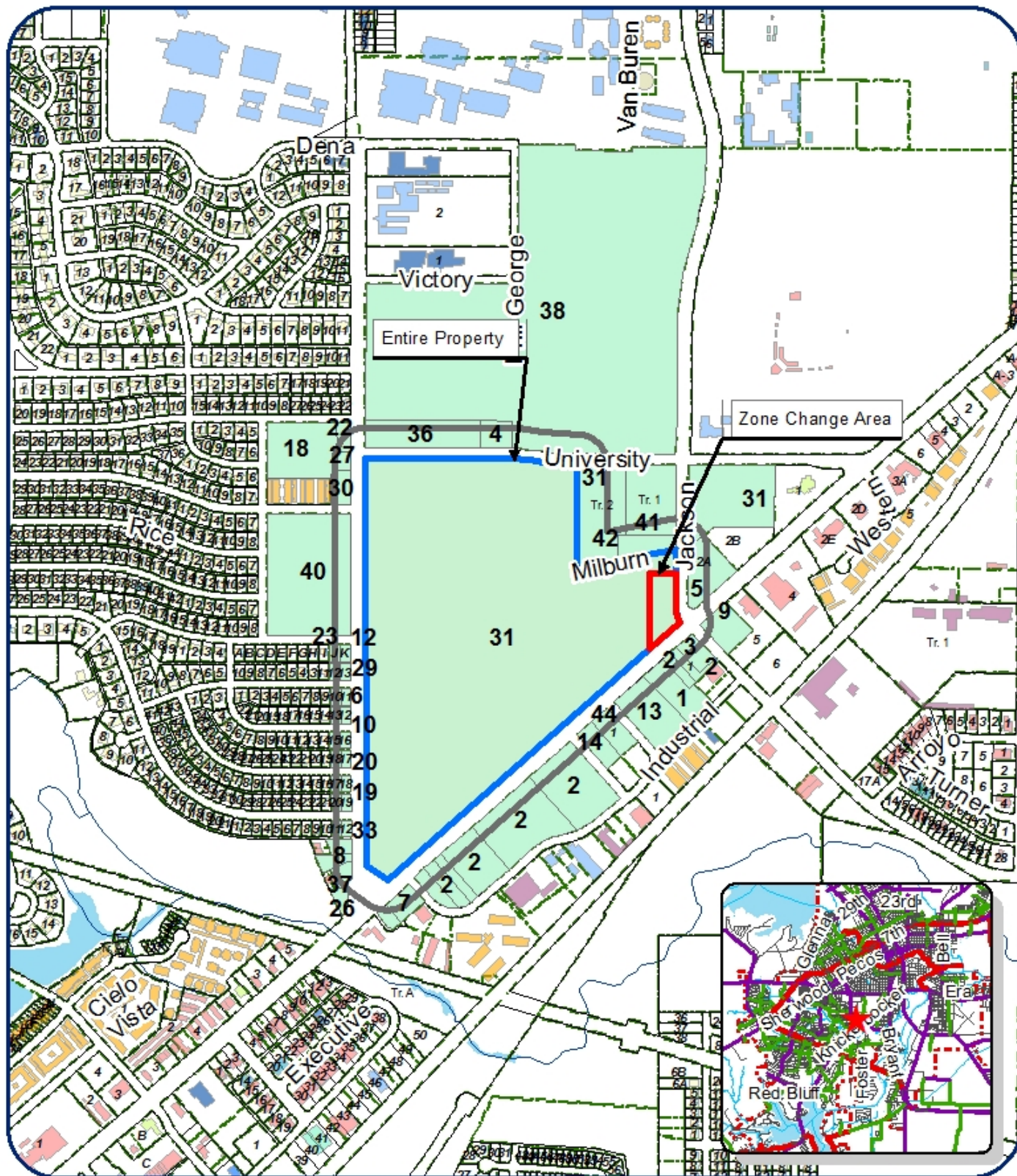
Subject Properties: —

Current Zoning: Office Commercial (CO)

Requested Zone Change: General Commercial (CG)

Vision: Campus/Institutional





Zoning Case File

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 833 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

Current Zoning: Office Commercial (CO)

Requested Zone Change: General Commercial (CG)

Vision: Campus/Institutional



TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-857-4227.

(☒)

IN FAVOR

(☐)

IN OPPOSITION

REASON(S) _____

NAME: Dorothy McDonald

ADDRESS: 3415 S. Johnson
San Angelo Tx 76904

SIGNATURE: Dorothy McDonald

VP15-01 and Z15-08: SAISD

property owner number: 26

If you have any questions about these proceedings, please call Ms. Rebeca Guerra, Planning Manager, with the City of San Angelo's Planning Division at telephone number 325-857-4210. The Planning Division staff may also be reached at fax number 325-857-4227.

TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-657-4227.

($\frac{X}{X}$)

IN FAVOR

()

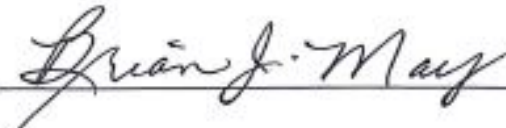
IN OPPOSITION

REASON(S) _____

NAME: Brian J. May

ADDRESS: 2601 West Avenue N

San Angelo, TX 76904

SIGNATURE: 

VP15-01 and Z15-08: SAISD

property owner number: 38

If you have any questions about these proceedings, please call Ms. Rebeca Guerra, Planning Manager, with the City of San Angelo's Planning Division at telephone number 325-657-4210. The Planning Division staff may also be reached at fax number 325-657-4227.



Planning Division
72 W. College Ave.
San Angelo, TX 76903
(325) 657-4210 ph.
(325) 657-4227 fx.
www.sanangelotexas.us

PLANNING DIVISION

GENERAL COMMERCIAL (CG) ZONING DISTRICTS

Allowed Uses:

- Group living
- Alcohol and drug recovery facility
- College
- Public, nonprofit, or charitable uses providing service to the community
- Day care for children or adults
- Meeting areas for religious institutions
- Public safety and emergency services
- Schools
- Auto and boat dealer
- Bed & breakfast
- Business, government, professional, medical or financial offices
- Commercial parking
- Retail sales
- Self-service storage
- Vehicle service (performed while the customer waits)
- Vehicle wash
- Small animal veterinary clinic
- Personal service-oriented business
- Entertainment-oriented business
- Repair-oriented business
- Restaurants
- Manufacturing Craft Work by Artisan

Conditional Uses:

- Hospital
- Alcoholic beverage sales for on-site consumption
- Game hall
- Equipment rental
- Vehicle repair
- Warehouse and freight movement
- Waste-related uses
- Wholesale trade
- Passenger terminals

These uses are allowed with the approval of a "conditional use" by the Planning Commission. Applications for a conditional use may be completed through the Planning Division. The Development handout titled "Conditional Uses" gives a thorough explanation of the process.

Special Uses:

- Detention facilities
- Facilities for golf, including practice areas
- Campground and/or Recreational Vehicle park
- Outdoor and entertainment recreation
- Major entertainment event
- Firearms range
- Any use which the Planning Commission and the City Council deem appropriate as a transition between zoning districts

These uses are allowed with the approval of a "special use" by the Planning Commission and the City Council. Applications for a special use may be completed through the Planning Division. The Development handout titled "Special Uses" gives a thorough explanation of the process.



Planning Division
72 W. College Ave.
San Angelo, TX 76903
(325) 657-4210 ph.
(325) 657-4227 fx.
www.sanangelotexas.us

PLANNING DIVISION

Required Setbacks:

Front Setback: 25 feet

Side Setback: None required

10 feet if abutting a residential district or use

Rear Setback: None required

10 feet if abutting a residential district or use

Setbacks refer to the distance that a structure must be 'set back' off of the appropriate property line. For example, the front setback of 25 feet means that the front wall of the structure must be separated by at least 25 feet from the front property line of the lot. This 25 feet must be open and unobstructed, except for the following exceptions: (1) projection of window sills, belt courses and other ornamental features for a distance of 12 inches or less; (2) projection of chimneys and flues for a distance of 3 ½ feet or less; (3) projection of eaves and awnings for a distance of 2 feet or less; and (4) open or lattice-enclosed fire escapes and fireproof outside stairs, for a distance of 3 ½ feet or less.

Maximum Floor Area Ratio: 2.0

The maximum floor area ratio refers to the gross floor area of all buildings on the lot divided by the total area of the lot.

Minimum Lot Size: 6,000 square feet

Off-Street Parking: Off-street parking requirements are determined by the use of the property, age of the property, and other related factors. For specific calculations, angles, shared parking requirements and other questions, consult with the Planning Division at 657-4210.

Off-Street Loading: A minimum of one space is required
For industrial and commercial uses, one additional space for each additional 40,000 square feet or major fraction thereof
For institutional uses, one additional space for each additional 60,000 square feet or major fraction thereof

Outdoor Storage: Type 2, Limited Outdoor Storage is allowed; Type 2 allows for up to 1,000 square feet or 10% of the total site area, whichever is greater

AN ORDINANCE AMENDING CHAPTER 12, EXHIBIT "A" OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO, TEXAS, WHICH SAID EXHIBIT "A" OF CHAPTER 12 ADOPTS ZONING REGULATIONS, USE DISTRICTS AND A ZONING MAP, IN ACCORDANCE WITH A COMPREHENSIVE PLAN, BY CHANGING THE ZONING AND CLASSIFICATION OF THE FOLLOWING PROPERTY, TO WIT: **An unaddressed tract; generally located at the northwest intersection of Knickerbocker Road and South Jackson Street; more specifically being 1.761 acres out of and a part of John McNeese Survey 176¼, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94, a request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District;** PROVIDING FOR SEVERABILITY AND PROVIDING A PENALTY

RE: Z15-08: SAISD

WHEREAS, the Planning Commission for the City of San Angelo and the governing body for the City of San Angelo, in compliance with the charter and the state law with reference to zoning regulations and a zoning map, have given requisite notice by publication and otherwise, and after holding hearings and affording a full and fair hearing to all property owners and persons interested, generally, and to persons situated in the affected area and in the vicinity thereof, is of the opinion that zoning changes should be made as set out herein; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

SECTION 1: That the basic zoning ordinance for the City of San Angelo, as enacted by the governing body for the City of San Angelo on January 4, 2000 and included within Chapter 12 of the Code of Ordinances for the City of San Angelo, be and the same is hereby amended insofar as the property hereinafter set forth, and said ordinance generally and the zoning map shall be amended insofar as the property hereinafter described:

An unaddressed tract; generally located at the northwest intersection of Knickerbocker Road and South Jackson Street; more specifically being 1.761 acres out of and a part of John McNeese Survey 176¼, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94, a request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, shall henceforth be permanently zoned as follows: General Commercial (CG) Zoning District.

The Director of the Planning & Development Services Department is hereby directed to correct zoning district maps in the office of the Director of the Planning & Development Services Department, to reflect the herein described changes in zoning.

SECTION 2: That in all other respects, the use of the hereinabove described property shall be subject to all applicable regulations contained in Chapter 12 of the Code of Ordinances for the City of San Angelo, as amended.

SECTION 3: That the following severability clause is adopted with this amendment:

SEVERABILITY:

The terms and provisions of this Ordinance shall be deemed to be severable in that, if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

SECTION 4: That the following penalty clause is adopted with this amendment:

PENALTY:

Any person who violates any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine as provided for in Section 1.106 of the Code of Ordinances for the City of San Angelo. Each day of such violation shall constitute a separate offense.

INTRODUCED on the **12th day of November, 2015**, and finally PASSED, APPROVED AND ADOPTED on this the **1st day of December, 2015**.

THE CITY OF SAN ANGELO

Dwain Morrison, Mayor

ATTEST:

Bryan Kendrick, City Clerk

Approved As To Content:

Jon James, AICP
Planning & Development Services Director

Approved As To Form:

Theresa James,
City Attorney

AN ORDINANCE AMENDING CHAPTER 12, EXHIBIT "A" OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO, TEXAS, WHICH SAID EXHIBIT "A" OF CHAPTER 12 ADOPTS ZONING REGULATIONS, USE DISTRICTS AND A ZONING MAP, IN ACCORDANCE WITH A COMPREHENSIVE PLAN, BY CHANGING THE ZONING AND CLASSIFICATION OF THE FOLLOWING PROPERTY, TO WIT: **An unaddressed tract; generally located at the northwest intersection of Knickerbocker Road and South Jackson Street; more specifically being 1.761 acres out of and a part of John McNeese Survey 176 $\frac{1}{4}$, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94, a request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District;** PROVIDING FOR SEVERABILITY AND PROVIDING A PENALTY

RE: Z15-08: SAISD

WHEREAS, the Planning Commission for the City of San Angelo and the governing body for the City of San Angelo, in compliance with the charter and the state law with reference to zoning regulations and a zoning map, have given requisite notice by publication and otherwise, and after holding hearings and affording a full and fair hearing to all property owners and persons interested, generally, and to persons situated in the affected area and in the vicinity thereof, is of the opinion that zoning changes should be made as set out herein; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

SECTION 1: That the basic zoning ordinance for the City of San Angelo, as enacted by the governing body for the City of San Angelo on January 4, 2000 and included within Chapter 12 of the Code of Ordinances for the City of San Angelo, be and the same is hereby amended insofar as the property hereinafter set forth, and said ordinance generally and the zoning map shall be amended insofar as the property hereinafter described:

An unaddressed tract; generally located at the northwest intersection of Knickerbocker Road and South Jackson Street; more specifically being 1.761 acres out of and a part of John McNeese Survey 176 $\frac{1}{4}$, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94, a request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, shall henceforth be permanently zoned as follows: General Commercial (CG) Zoning District.

The Director of the Planning & Development Services Department is hereby directed to correct zoning district maps in the office of the Director of the Planning & Development Services Department, to reflect the herein described changes in zoning.

SECTION 2: That in all other respects, the use of the hereinabove described property shall be subject to all applicable regulations contained in Chapter 12 of the Code of Ordinances for the City of San Angelo, as amended.

SECTION 3: That the following severability clause is adopted with this amendment:

SEVERABILITY:

The terms and provisions of this Ordinance shall be deemed to be severable in that, if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

SECTION 4: That the following penalty clause is adopted with this amendment:

PENALTY:

Any person who violates any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine as provided for in Section 1.106 of the Code of Ordinances for the City of San Angelo. Each day of such violation shall constitute a separate offense.

INTRODUCED on the **12th day of November, 2015**, and finally PASSED, APPROVED AND ADOPTED on this the **1st day of December, 2015**.

THE CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved As To Form:

Theresa James, City Attorney

City Council

November 12, 2015

Planning Division

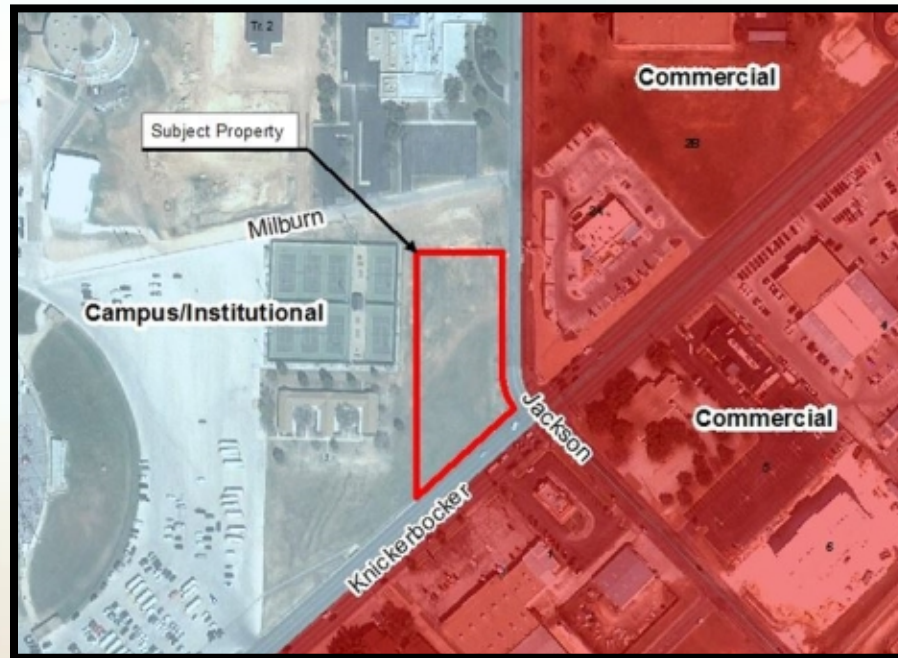
Regular Agenda

Z15-08: SAISD

- 1.761 acres
- NW corner of Knickerbocker Rd. & S. Jackson St.
- SMD #5 – Elizabeth Grindstaff
- ASU - College Hills Neighborhood



Future Land Use Map



Future Land Use

Campus/Institutional to
Commercial **(proposed)**

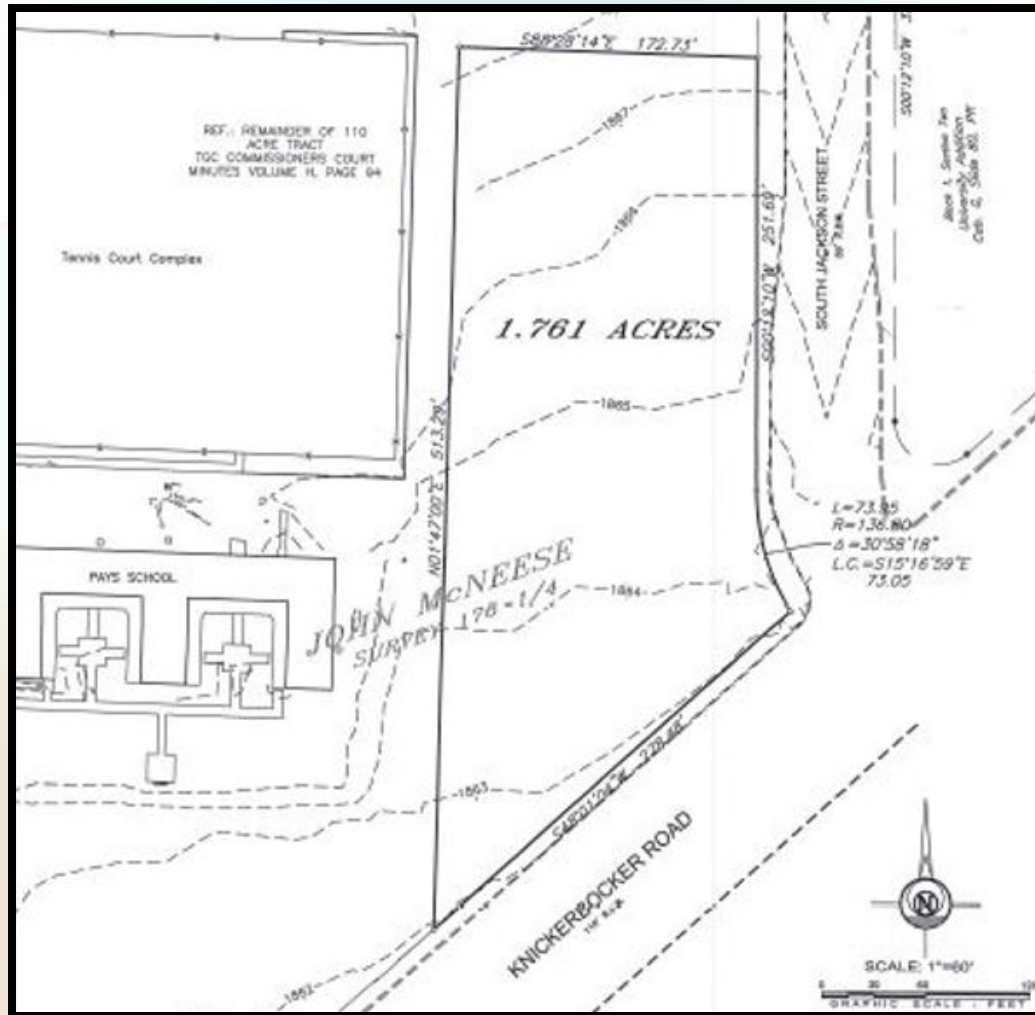
Zoning Map



ZONING

Office Commercial (CO) Zoning District
to
General Commercial (CG) Zoning District

Survey of Property



Rationale

APPROVAL

1. Compatible with Plans and Policies:

- Property consistent with Future Land Use of Commercial adjacent to major intersection and part of commercial node

2. Consistent with Zoning Ordinance:

- Proposed uses will comply with all provisions of CG Zone;

3. Compatible with Surrounding Area:

- Commercial zoning and uses already along Knickerbocker Rd, property would be an extension of commercial development in area

Rationale (cont.)

APPROVAL

4. Changed Conditions:

- Property has remained vacant for 5 years as CO Zone, SAISD stated no plans to develop for school

5. Effect on Natural Environment:

- No adverse affect on natural environment

6. Community Need:

- Within commercial area that serves nearby schools, homes

7. Development Patterns:

- Knickerbocker (Arterial) and Jackson (Collector) can adequately service the development

Notifications

- 44 Notifications mailed within 200-foot radius of original property
- 2 Responses in favor
- 0 Responses in opposition



Planning Commission Recommendation

On October 26, 2015, the Planning
Commission voted unanimously to
recommend

APPROVAL

of a Rezoning from the
Office Commercial (CO) District
to the
General Commercial (CG) District

Staff Recommendation

APPROVE

a Rezoning
from the

Office Commercial (CO) District

to the

General Commercial (CG) District

The background features a light beige gradient with several large, overlapping circles in shades of light blue, green, and yellow. A thin black grid is overlaid on the image, consisting of a horizontal line near the top and a vertical line on the left side, creating a header and a left margin.

QUESTIONS?

City Council

November 12, 2015

Planning Division

Regular Agenda

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Rebeca Guerra, Planning Manager, Planning and Development Services, 325-657-4210

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

First Public Hearing and consideration for Case SU14-05, an Ordinance approving a request from Darnell Construction LLC to authorize an Amendment to a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials on 8.140 acres located at 4750 South Chadbourne Street - (Presentation by Planning & Development Services Director Jon James)

Summary/History:

Situated immediately south of the San Angelo Goodfellow Air Force Base, the site consists of one tract and measures 8.140 acres. It is labeled as "Lot 2" on the Krislynn Subdivision which has been administratively approved by Staff on November 7, 2014. Mostly rural in nature, the area is characterized by ranch and estate homes and some emerging commercial development to the west. The tract has nearby access to South Chadbourne Street. The applicant has proposed to construct a contractor's office on the property. The storage that is proposed with this request will serve to house the applicant's vehicles and materials.

Offices uses are characterized by activities conducted in an office setting and generally focus on business, government, professional, medical, or financial services. The office use category is permissible in the CG zoning district, however, a provision in the Ordinance limits related outdoor storage of materials on-site. If approved, this request will allow for limited outdoor storage under the office use category on the property.

On October 6, 2015, the applicant requested an Amendment to the original request for a Special Use which allowed for limited outdoor storage uses as permitted in the "Office" category. The applicant plans to expand their Special Use to include the additional uses of "repair, fueling and maintenance of equipment, and indoor storage of equipment and materials. None of these uses are permitted in the General Commercial (CG) Zoning District as they are industrial in nature. In their Letter of Intent, the applicant has indicated that "Equipment Repair" would include: brake shoes, replacement of spark plugs, and some electrical wiring on vehicles. "Maintenance of Equipment" would include: oil changes, air and fuel filter, grease machines, and the washing of equipment. A Site Plan was submitted with the applicant's building permit showing an 1,800-square foot office along with an associated 1,200-square foot warehouse building. The equipment repair and maintenance would be conducted inside this building, and the storage of tools for routine maintenance would also be stored inside this building. In addition, the applicant is delineating an outdoor storage area and above ground fuel storage behind a privacy fence, as required by the original Special Use approval. The applicant shall ensure this fence is opaque and at least 6 feet in height, as per Section 509 of the Zoning Ordinance.

Financial Impact:

N/A

Other Information/Recommendation:

Attachments:

1. Staff Report
2. Draft Ordinance
3. PowerPoint Presentation

PL_Amendment to SU14-05_Staff Report.docx
PL_Amendment SU14-05_Ordinance.docx
CC Presentation_2015.pptx

Presentation:**Approvals/Reviews:**

Guerra, Rebeca
James, Jon
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Approved
Final Approval

STAFF REPORT



Meeting: November 12, 2015

To: City Council

From: Jon James, AICP
Director of Planning and Development Services

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Case: Amendment to SU14-05

Request: A request for an Amendment to a Special Use to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use already permitted limited outdoor storage for uses allowed in the "Office" use category, as defined in Section 315.D. of the Zoning Ordinance

Location: 4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765

Legal

Description: 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2

Size: 8.140 acres

Caption: First Public Hearing and consideration for Case SU14-05, an Ordinance approving a request from Darnell Construction LLC to authorize an Amendment to a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special

Use only permitted limited outdoor storage for uses allowed in the "Office" use category, on 8.140 acres located at 4750 South Chadbourne Street

General Information

Future Land Use: Commercial

Zoning: General Commercial (CG)

Existing Land Use: Vacant Commercial Land

Surrounding Zoning / Land Use:

North:	Single-Family Residential (RS-1)	Goodfellow Air Force Base
West:	Ranch & Estate (R&E) and Light Manufacturing (ML)	Mostly vacant land, outdoor storage of equipment
South:	Ranch & Estate (R&E)	Single-family residences and open space
East:	Ranch & Estate (R&E)	Single-family residences and open space

District: SMD# 1 - Rodney Fleming

Neighborhood: Glenmore

Thoroughfares/Streets: Per the Master Thoroughfare Plan (MTP), South Chadbourne Street is identified as an "Arterial Street." An Arterial Street connects Collector Streets to freeways and other arterials carrying large volumes of traffic at high speeds, access is secondary and mobility is the primary function of these streets. Old Eola Road is classified as a "Local Street." A Local Street carries light neighborhood traffic at low speeds. This appears to be consistent with the MTP as no roads are being extended, widened, or proposed for abandonment in the immediate area.

History and Background:

Situated immediately south of the San Angelo Goodfellow Air Force Base, the site consists of one tract and measures 8.140 acres. It is labeled as “Lot 2” on the Krislynn Subdivision which has been administratively approved by Staff on November 7, 2014. Mostly rural in nature, the area is characterized by ranch and estate homes and some emerging commercial development to the west. The tract has nearby access to South Chadbourne Street. The applicant has proposed to construct a contractor’s office on the property. The storage that is proposed with this request will serve to house the applicant’s vehicles and materials.

Offices uses are characterized by activities conducted in an office setting and generally focus on business, government, professional, medical, or financial services. The office use category is permissible in the CG zoning district, however, a provision in the Ordinance limits related outdoor storage of materials on-site. If approved, this request will allow for limited outdoor storage under the office use category on the property.

On October 6, 2015, the applicant requested an Amendment to the original request for a Special Use which allowed for limited outdoor storage uses as permitted in the “Office” category. The applicant plans to expand their Special Use to include the additional uses of “repair, fueling and maintenance of equipment, and indoor storage of equipment and materials. None of these uses are permitted in the General Commercial (CG) Zoning District as they are industrial in nature. In their Letter of Intent, the applicant has indicated that “Equipment Repair” would include: brake shoes, replacement of spark plugs, and some electrical wiring on vehicles. “Maintenance of Equipment” would include: oil changes, air and fuel filter, grease machines, and the washing of equipment. A Site Plan was submitted with the applicant’s building permit showing an 1,800-square foot office along with an associated 1,200-square foot warehouse building. The equipment repair and maintenance would be conducted inside this building, and the storage of tools for routine maintenance would also be stored inside this building. In addition, the applicant is delineating an outdoor storage area and above ground fuel storage behind a privacy fence, as required by the original Special Use approval. The applicant shall ensure this fence is opaque and at least 6 feet in height, as per Section 509 of the Zoning Ordinance.

Analysis:

Section 209(H) of the Zoning Ordinance requires that the Planning Commission and City Council consider, at minimum, seven (7) factors in determining the appropriateness of any Special Use request.

- 1. Impacts Minimized.** *Whether and the extent to which the site plan minimizes adverse affects, including adverse visual impacts, on adjacent properties.*

Currently, the tract is surrounded by large General Commercial-zoned tracts all within the same subdivision. Staff recommends that any outdoor storage be placed behind any proposed buildings so as to provide effective screening of such areas from South Chadbourne Street. The tract is somewhat isolated, which reduces the likelihood of creating a visual nuisance in the area. In addition, the location and large size of the tract provides additional opportunities to effectively screen any outdoor materials. Although there are commercial zoned tracts in the area, the new uses are bringing in industrial practices which could impact the surrounding area which also includes Ranch and Estate (R&E) Zoning with existing single family dwellings. Although the site is not immediately adjacent to residential uses, heavy trucks and equipment repair could create noise, dust, and vibration, negatively impacted the area. As a Condition of Approval, Planning Staff is recommending that all equipment repair and maintenance be fully conducted inside any building(s).

2. Consistent with Zoning Ordinance. *Whether and the extent to which the proposed amendment would conflict with any portion of this Zoning Ordinance.*

Office uses are permissible in the proposed CG zoning district. This category includes uses related to business, government, professional, medical, and financial services, per Section 315.D. of the Zoning Ordinance. The use category explicitly prohibits on-site outdoor storage, per Section 315.D.4.b. This request will provide opportunities for Type 2: Limited Outdoor Storage, as defined in Section 504 of the Zoning Ordinance, and enable a maximum of 1,000 square feet, or 10 percent of the total site, whichever is greater. In order to be consistent with a previous Special Use approval for an adjacent lot, Staff has proposed a Condition of Approval which would limit the amount of storage to 1,000 square feet. The new lot would meet all development standards of the CG Zoning District, with the exception of the outdoor storage of equipment for contractors' offices which is permitted by the original approval for SU14-05, and the new uses which would be permitted by an amendment to SU14-05, if ultimately approved by City Council.

3. Compatible with Surrounding Area. *Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zoning district for the land.*

The surrounding area is characterized by large tracts, many of which remain largely undeveloped. The site is positioned directly south of the San Angelo Goodfellow Air Force Base. Situated immediately to the west is an 83 acre tract, which is partially zoned Light Manufacturing (ML). South of the site remains primarily rural, and is zoned Ranch and Estate (R&E). The area has close proximity to the edge of the City limits, within 1,000 feet at its nearest point. As indicated previously, limiting equipment repair and maintenance to inside any of the building(s) would likely ensure compatibility with the surrounding area.

- 4. Traffic Circulation.** *Whether and the extent to which the proposed special use is likely to result in extraordinarily prolonged or recurrent congestion of surrounding streets, especially minor residential streets.*

South Chadbourne Street is identified as an arterial street in the City's Major Thoroughfare Plan. The applicant has stated that access of vehicular movement to the site will be along South Chadbourne Street, and a driveway is proposed for the property.

- 5. Effect on Natural Environment.** *Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment, including but not limited to water and air quality, noise, storm water management, wildlife, vegetation, wetlands and the practical functioning of the natural environment.*

This request will have limited, to no effect, on the natural environment of surrounding properties. Development of the site will result in the removal of vegetation. Impervious surfaces are generally the preferred ground cover for the placement of outdoor storage which is likely to result in higher instances of stormwater runoffs. Future development on the site will require building permits which would include a review of grading, drainage, and stormwater runoff to further ensure there are no negative environmental impacts

- 6. Community Need.** *Whether and the extent to which the proposed amendment addresses a demonstrated community need.*

The proposed contractor's business is engaged in the creation of infrastructure for the City and the immediate area. As the demand for construction increases, a strong infrastructure becomes ever more essential to the overall quality of the development that results. Therefore, it would appear that allowing for these additional uses on the site would serve a vital community need.

- 7. Development Patterns.** *Whether and the extent to which the proposed amendment would result in a logical and orderly pattern of urban development in the community.*

The nature of this request appears to be consistent with surrounding development trends in the area. Emerging uses in the area are commercial in nature. Moreover, outdoor storage is present and growing – nearby industrial zoning allows for expansion such activities, with no limitations on size. Conditions outlined in this report may serve to ensure some measure of predictable development and provide an effective transition to the adjacent low density residential development. Directly across South Chadbourne Street to the west, there are over seventy acres of Industrially-zoned "Light Manufacturing (ML)" land. Further, there is already a large industrial building on one of the properties. Therefore, the additional uses which

are industrial in nature would appear to follow the development pattern of the immediate area along South Chadbourne Street.

Notification:

On October 9, 2015, four (4) notifications were mailed out within a 200-foot radius of the subject site. As of October 22, 2015, there were zero (0) responses in favor and zero (0) responses in opposition of the request. **On October 30, 2015, the same four (4) properties within a 200-foot radius were re-notified with the rescheduled City Council Meeting of November 12, 2015. One (1) new response was received in favor and zero (0) new responses were received in opposition.**

Staff Recommendation:

The action requested is for City Council to **APPROVE** an Amendment to Case SU14-05, **subject to the following five (5) Conditions of Approval:**

1. Limited Outdoor Storage, as defined in Section 504.B of the Zoning Ordinance, shall be limited to a maximum of 1,000 square feet, and shall be utilized exclusively for uses that are consistent with the "Office" use category.
2. Outdoor storage shall be located behind any proposed office structures. Further, any areas that are visible from a right-of-way shall be screened with 6-foot opaque fence.
3. All exterior lighting shall be shielded and positioned in such a manner so as to not spill over onto any adjacent property.
4. The storage of hazardous materials on the subject property shall be prohibited.
5. All equipment repair and maintenance shall be fully conducted indoors.

Planning Commission Recommendation:

On October 26, 2015, the Planning Commission recommended **APPROVAL** of the applicant's request for an Amendment to a Special Use, subject to five (5) Conditions of Approval, by a unanimous 7–0 vote. The following is the complete excerpt of the minutes from the October 26, 2015, meeting for this case:

Jeff Fisher, Planner, outlined the request for an Amendment to a Special Use to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, whereas the

original Special Use already permitted limited outdoor storage for uses allowed in the "Office" use category. He indicated that the site is 8.140 acres and was already platted. The Future Land Use is Commercial and the property is zoned General Commercial (CG). Mr. Fisher explained that the CG zoning does not allow any storage for a contractor's office, and that the original Special Use SU14-05 permitted outdoor storage for a contractor's yard and not the other uses being requested in this application.

Commissioner Crisp asked if outdoor storage was permitted already.

Mr. Fisher responded this was correct, up to 10% of the property may be used for outside storage for permitted uses in the CG Zoning District.

Mr. Fisher indicated Staff's recommendation was to approve the proposed Amendment to the Special Use, subject to the five conditions of approval outlined in the Staff Report. Staff's rationale included that the property is adjacent to other commercial and light industrial zoned properties, including the ML zone immediately west with a warehouse building on the property, and that South Chadbourne Street would be able to accommodate traffic given it is an Arterial Street.

There was no public comment.

A Motion to approve the proposed Amendment to a Special Use, with the five (5) conditions of approval in the Staff Report, was made by Commissioner Farmer and seconded by Commissioner Priess. The motion carried unanimously, 7-0.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Major Thoroughfare Map
Notification Map
Response Letter
Site Photos
Site Concept Plan
Letter of Intent
Draft Ordinance

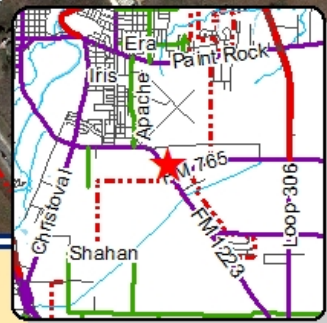


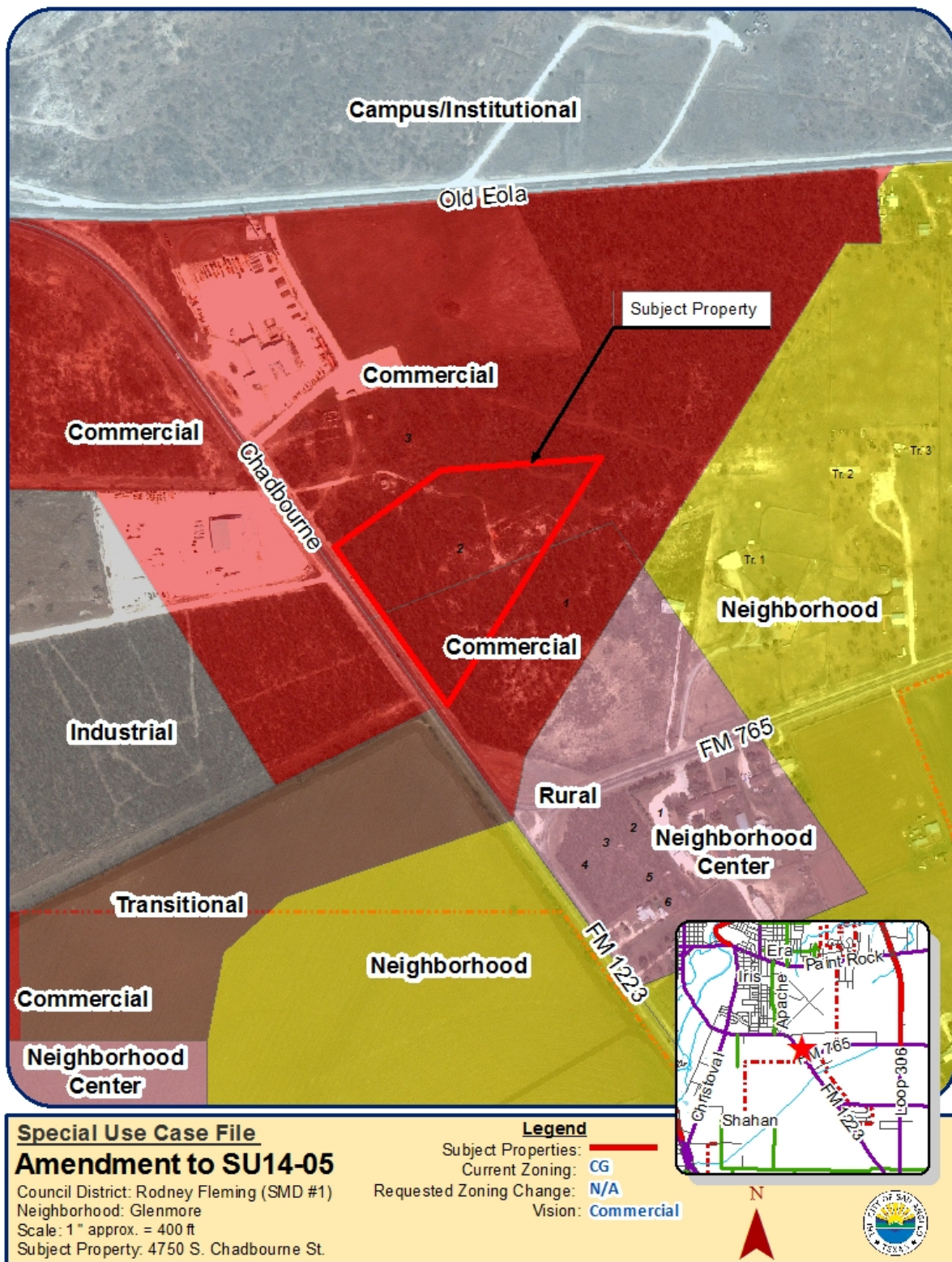
Special Use Case File
Amendment to SU14-05

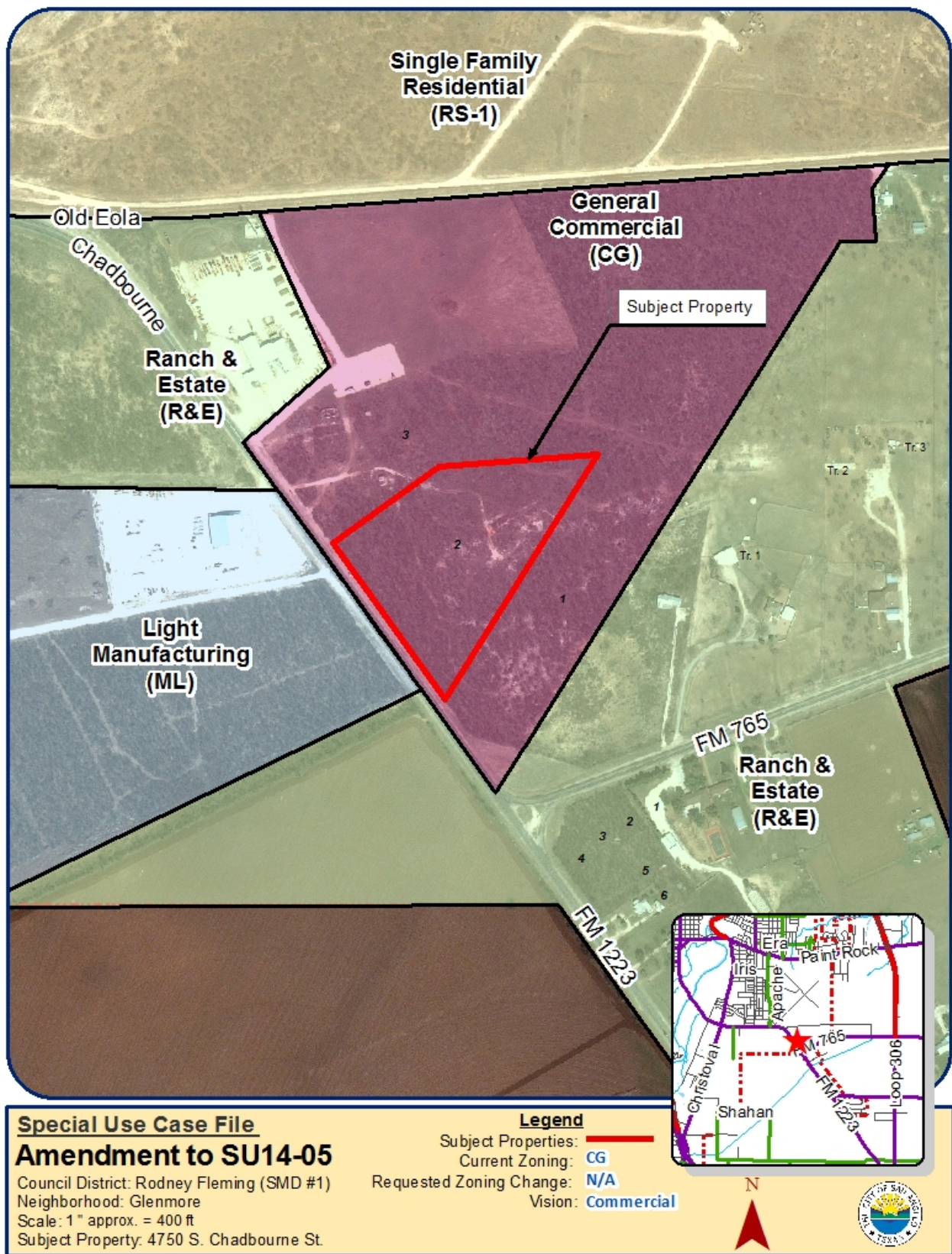
Council District: Rodney Fleming (SMD #1)
 Neighborhood: Glenmore
 Scale: 1" approx. = 400 ft
 Subject Property: 4750 S. Chadbourne St.

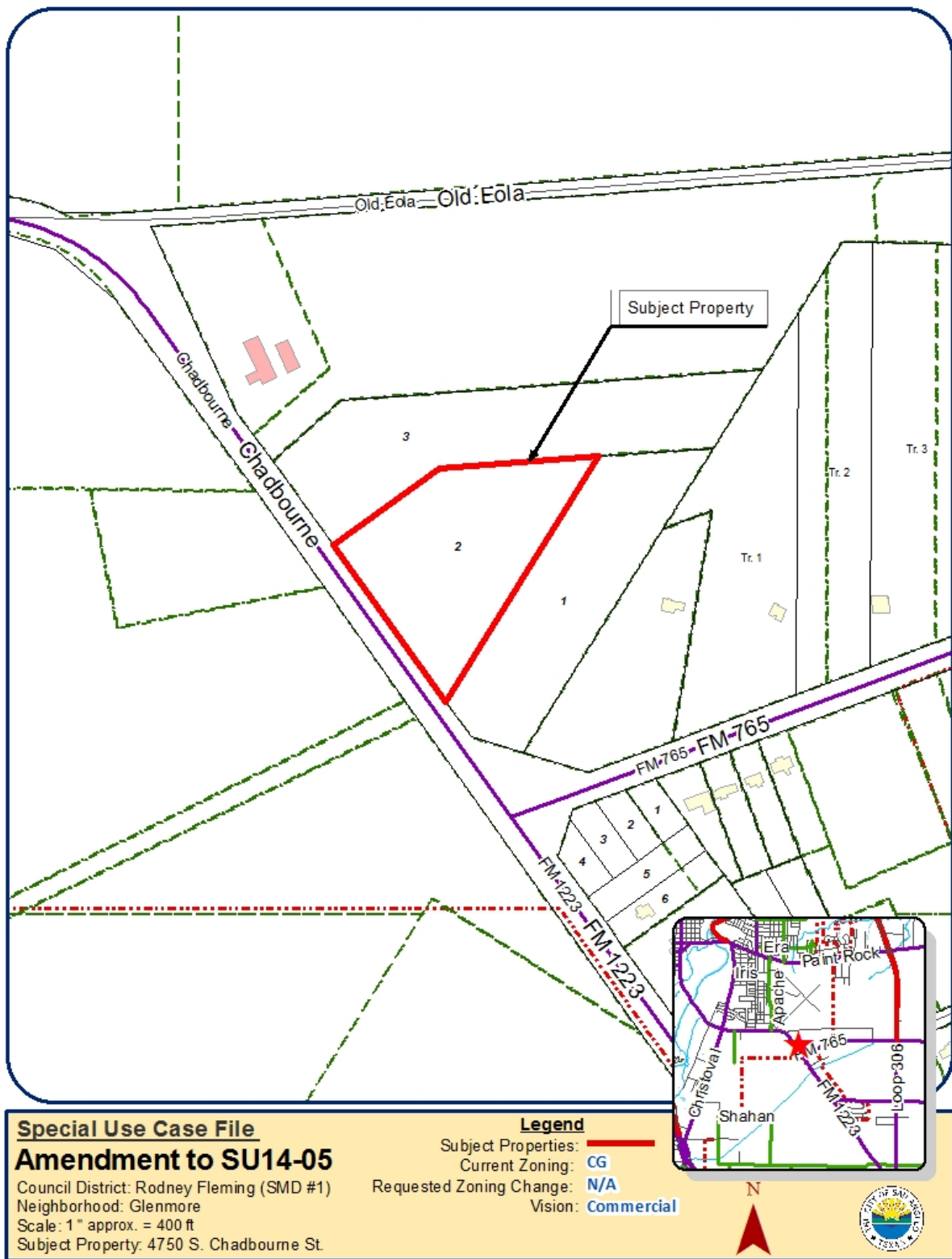
Legend

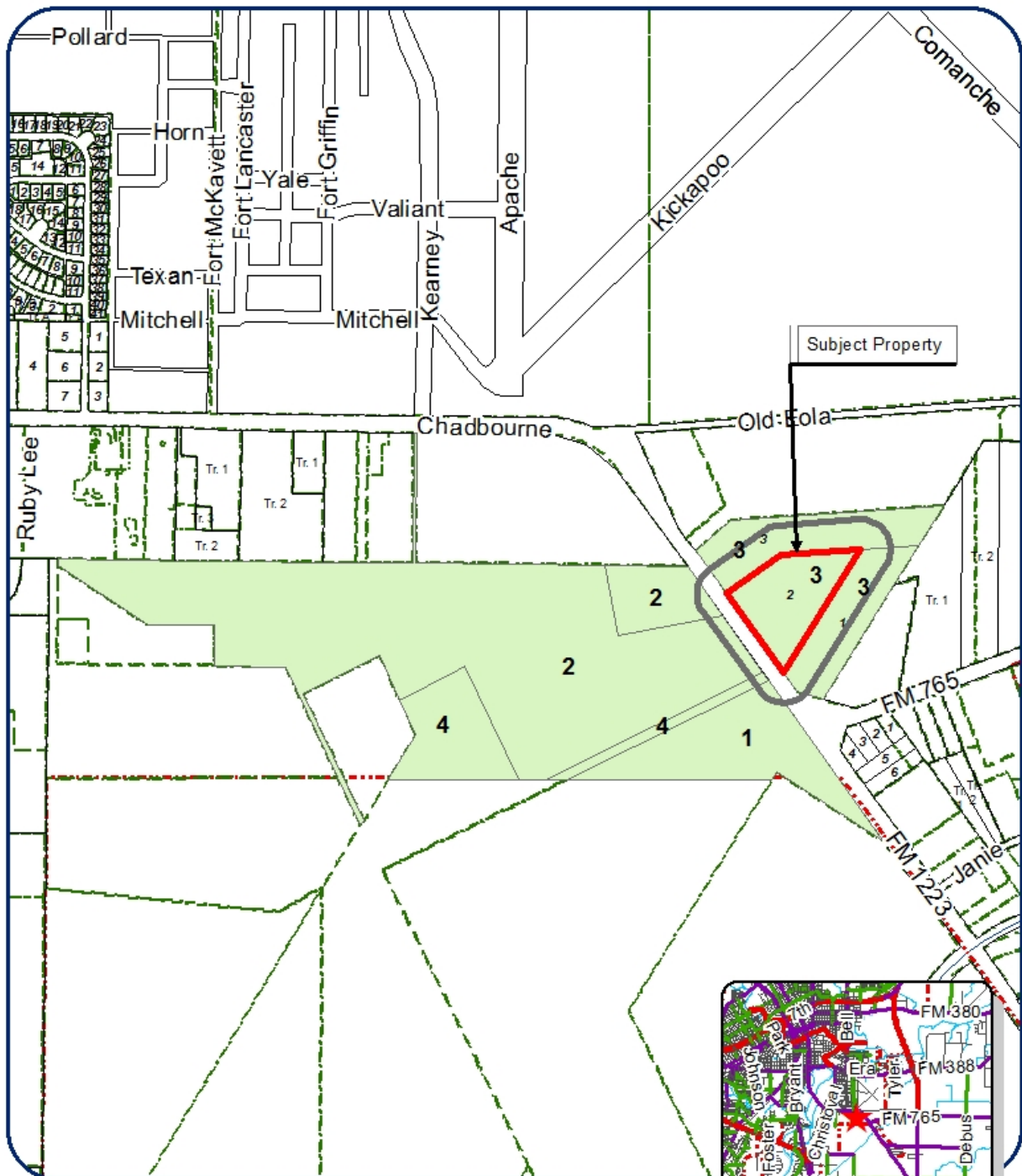
Subject Properties: —
 Current Zoning: CG
 Requested Zoning Change: N/A
 Vision: Commercial











Special Use Case File

Amendment to SU14-05

Council District: Rodney Fleming (SMD #1)

Neighborhood: Glenmore

Scale: 1" approx. = 850 ft

Subject Property: 4750 S. Chadbourne St.

Legend

Subject Properties: —

Current Zoning: CG

Requested Zoning Change: N/A

Vision: Commercial



TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-657-4227.

(X)

IN FAVOR

()

IN OPPOSITION

REASON(S) _____

NAME: Casey A Poynor, CEO/maBP Surface Solutions

ADDRESS: 4705 S. Chadbourne
San Angelo, TX 76904

SIGNATURE: 

Amendment to SU14-05: Darnell Construction

property owner number: 2

If you have any questions about these proceedings, please call Ms. Rebeca Guerra, Planning Manager, with the City of San Angelo's Planning Division at telephone number 325-657-4210. The Planning Division staff may also be reached at fax number 325-657-4227.

Site Photos

West



East at Property



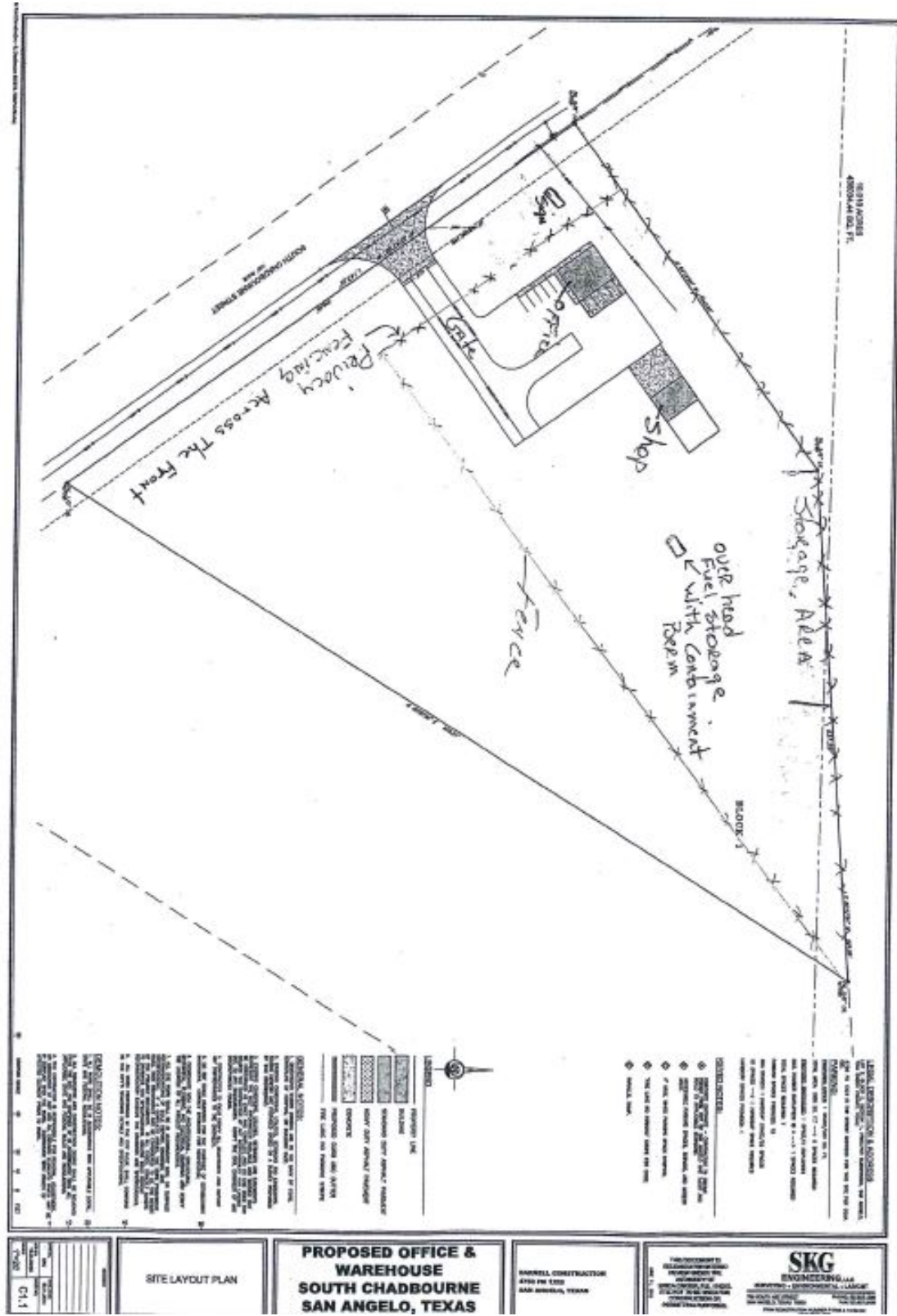
North



South



Afford: Jeff Fisher
 657-4810 ext 1550



Letter of Intent

4750 S. Chadbourne St.

10/6/2015

Equipment Repair

Brake shoes, Replace light bulbs,
SPARK Plugs, Some electrical wiring on
Trailers.

Maintenance of Equipment

Oil Changes, Air filters, Fuel filters, Grease
machines. Wash And Clean equipment

Storage of tools would be for routine
Maintenance as describe above And storage
of specialty tools for utility Trade.

Gas TAMPERS, Sewer laser beam, CHAINS
AND slings. Watermain tapping equipment.
Includes above ground fuel storage. For Fueling
equipment only.

DAVID DARNELL



Amendment to SU 14-05

AN ORDINANCE AMENDING CHAPTER 12, EXHIBIT "A" OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO, TEXAS, WHICH SAID EXHIBIT "A" OF CHAPTER 12 ADOPTS ZONING REGULATIONS, USE DISTRICTS AND A ZONING MAP, IN ACCORDANCE WITH A COMPREHENSIVE PLAN, BY CHANGING THE ZONING AND CLASSIFICATION OF THE FOLLOWING PROPERTY, TO WIT: **4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765; more specifically being 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2, a request for an Amendment to a Special Use to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use already permitted limited outdoor storage for uses allowed in the "Office" use category, as defined in Section 315.D. of the Zoning Ordinance; PROVIDING FOR SEVERABILITY AND PROVIDING A PENALTY**

RE: Amendment to SU14-05: Darnell Construction LLC

WHEREAS, the Planning Commission for the City of San Angelo and the governing body for the City of San Angelo, in compliance with the charter and the state law with reference to zoning regulations and a zoning map, have given requisite notice by publication and otherwise, and after holding hearings and affording a full and fair hearing to all property owners and persons interested, generally, and to persons situated in the affected area and in the vicinity thereof, is of the opinion that zoning changes should be made as set out herein; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

SECTION 1: That the basic zoning ordinance for the City of San Angelo, as enacted by the governing body for the City of San Angelo on January 4, 2000 and included within Chapter 12 of the Code of Ordinances for the City of San Angelo, be and the same is hereby amended insofar as the property hereinafter set forth, and said ordinance generally and the zoning map shall be amended insofar as the property hereinafter described:

4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765; more specifically being 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2, shall have a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use only permitted limited outdoor storage for uses allowed in the "Office" use category. Said special uses shall have no fundamental effect upon its underlying or base zoning classification.

The Director of the Planning & Development Services Department is hereby directed to correct zoning district maps in the office of the Director of the Planning & Development Services Department, to reflect the herein described changes in zoning.

SECTION 2: That in all other respects, the use of the hereinabove described property shall be subject to all applicable regulations contained in Chapter 12 of the Code of Ordinances for the City of San Angelo, as amended.

SECTION 3: That the following severability clause is adopted with this amendment:

SEVERABILITY:

The terms and provisions of this Ordinance shall be deemed to be severable in that, if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

SECTION 4: That the following penalty clause is adopted with this amendment:

PENALTY:

Any person who violates any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine as provided for in Section 1.106 of the Code of Ordinances for the City of San Angelo. Each day of such violation shall constitute a separate offense.

SECTION 5: That the use of this subject property allowed under this Special Use approval shall be subject to the following conditions:

- (1) Construction of any permanent, Limited Outdoor Storage, as defined in Section 504.B of the Zoning Ordinance, shall be limited to a maximum of 1,000 square feet, and shall be utilized exclusively for uses that are consistent with the "Office" use category.
- (2) Outdoor storage shall be located behind any proposed office structures. Further, any areas that are visible from a right-of-way shall be screened with 6-foot opaque fence.
- (3) All exterior lighting shall be shielded and positioned in such a manner so as to not spill over onto any adjacent property.
- (4) The storage of hazardous materials on the subject property shall be prohibited.
- (5) All equipment repair and maintenance shall be fully conducted indoors.

INTRODUCED on the **12th day of November, 2015**, and finally PASSED, APPROVED AND ADOPTED on this the **1st day of December, 2015**.

THE CITY OF SAN ANGELO

Dwain Morrison, Mayor

ATTEST:

Bryan Kendrick, City Clerk

Approved As To Content:

Jon James, AICP
Planning & Development Services Director

Approved As To Form:

Theresa James,
City Attorney

AN ORDINANCE AMENDING CHAPTER 12, EXHIBIT "A" OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO, TEXAS, WHICH SAID EXHIBIT "A" OF CHAPTER 12 ADOPTS ZONING REGULATIONS, USE DISTRICTS AND A ZONING MAP, IN ACCORDANCE WITH A COMPREHENSIVE PLAN, BY CHANGING THE ZONING AND CLASSIFICATION OF THE FOLLOWING PROPERTY, TO WIT: **4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765; more specifically being 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2, a request for an Amendment to a Special Use to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use already permitted limited outdoor storage for uses allowed in the "Office" use category, as defined in Section 315.D. of the Zoning Ordinance; PROVIDING FOR SEVERABILITY AND PROVIDING A PENALTY**

RE: Amendment to SU14-05: Darnell Construction LLC

WHEREAS, the Planning Commission for the City of San Angelo and the governing body for the City of San Angelo, in compliance with the charter and the state law with reference to zoning regulations and a zoning map, have given requisite notice by publication and otherwise, and after holding hearings and affording a full and fair hearing to all property owners and persons interested, generally, and to persons situated in the affected area and in the vicinity thereof, is of the opinion that zoning changes should be made as set out herein; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

SECTION 1: That the basic zoning ordinance for the City of San Angelo, as enacted by the governing body for the City of San Angelo on January 4, 2000 and included within Chapter 12 of the Code of Ordinances for the City of San Angelo, be and the same is hereby amended insofar as the property hereinafter set forth, and said ordinance generally and the zoning map shall be amended insofar as the property hereinafter described:

4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765; more specifically being 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2, shall have a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use only permitted limited outdoor storage for uses allowed in the "Office" use category. Said special uses shall have no fundamental effect upon its underlying or base zoning classification.

The Director of the Planning & Development Services Department is hereby directed to correct zoning district maps in the office of the Director of the Planning & Development Services Department, to reflect the herein described changes in zoning.

SECTION 2: That in all other respects, the use of the hereinabove described property shall be subject to all applicable regulations contained in Chapter 12 of the Code of Ordinances for the City of San Angelo, as amended.

SECTION 3: That the following severability clause is adopted with this amendment:

SEVERABILITY:

The terms and provisions of this Ordinance shall be deemed to be severable in that, if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

SECTION 4: That the following penalty clause is adopted with this amendment:

PENALTY:

Any person who violates any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine as provided for in Section 1.106 of the Code of Ordinances for the City of San Angelo. Each day of such violation shall constitute a separate offense.

SECTION 5: That the use of this subject property allowed under this Special Use approval shall be subject to the following conditions:

- (1) Construction of any permanent, Limited Outdoor Storage, as defined in Section 504.B of the Zoning Ordinance, shall be limited to a maximum of 1,000 square feet, and shall be utilized exclusively for uses that are consistent with the "Office" use category.
- (2) Outdoor storage shall be located behind any proposed office structures. Further, any areas that are visible from a right-of-way shall be screened with 6-foot opaque fence.
- (3) All exterior lighting shall be shielded and positioned in such a manner so as to not spill over onto any adjacent property.
- (4) The storage of hazardous materials on the subject property shall be prohibited.
- (5) All equipment repair and maintenance shall be fully conducted indoors.

INTRODUCED on the **12th day of November, 2015**, and finally PASSED, APPROVED AND ADOPTED on this the **1st day of December, 2015**.

THE CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved As To Form:

Theresa James,
City Attorney

City Council

November 12, 2015

Planning Division

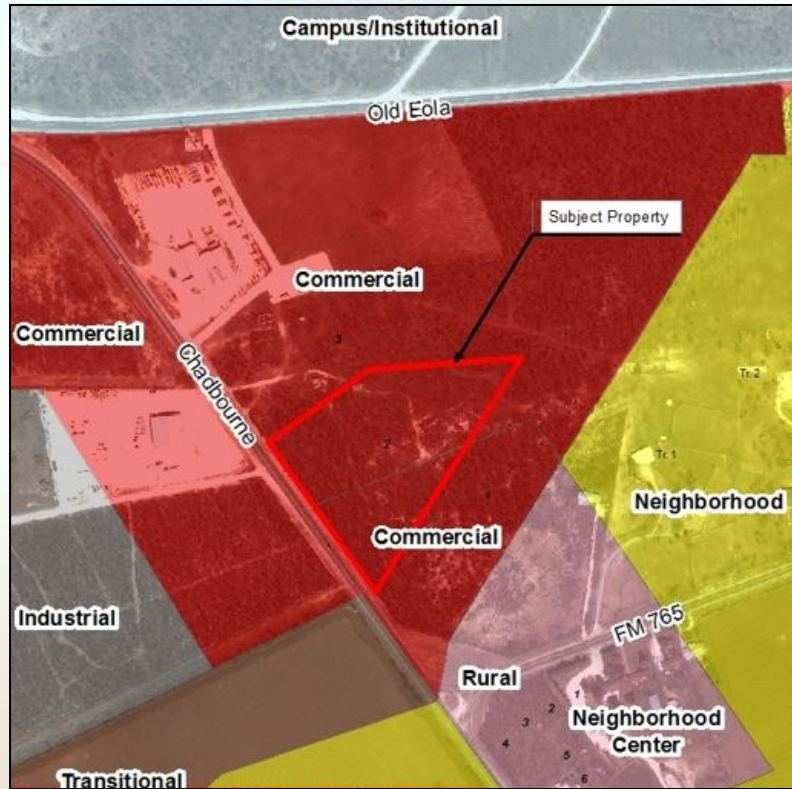
Regular Agenda

Amendment to SU14-05 – Special Use

- 8.140 acres
- Southeast of Old Eola Road and South Chadbourne St.
- SMD#1 – Rodney Fleming
- Glenmore Neighborhood

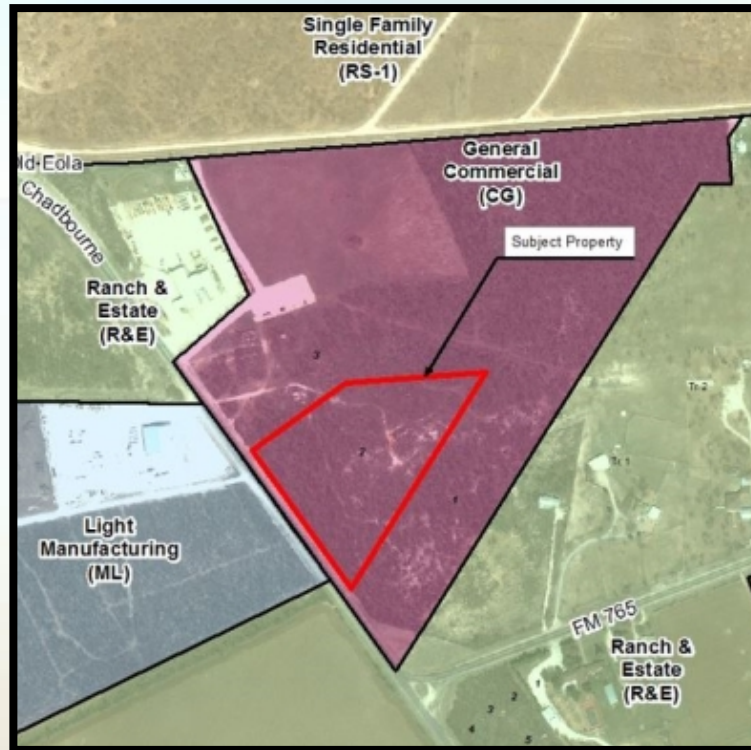


Future Land Use Map



Future Land Use = Commercial

Zoning Map



ZONING: General Commercial (CG)

Photographs – Surrounding Area



North



East

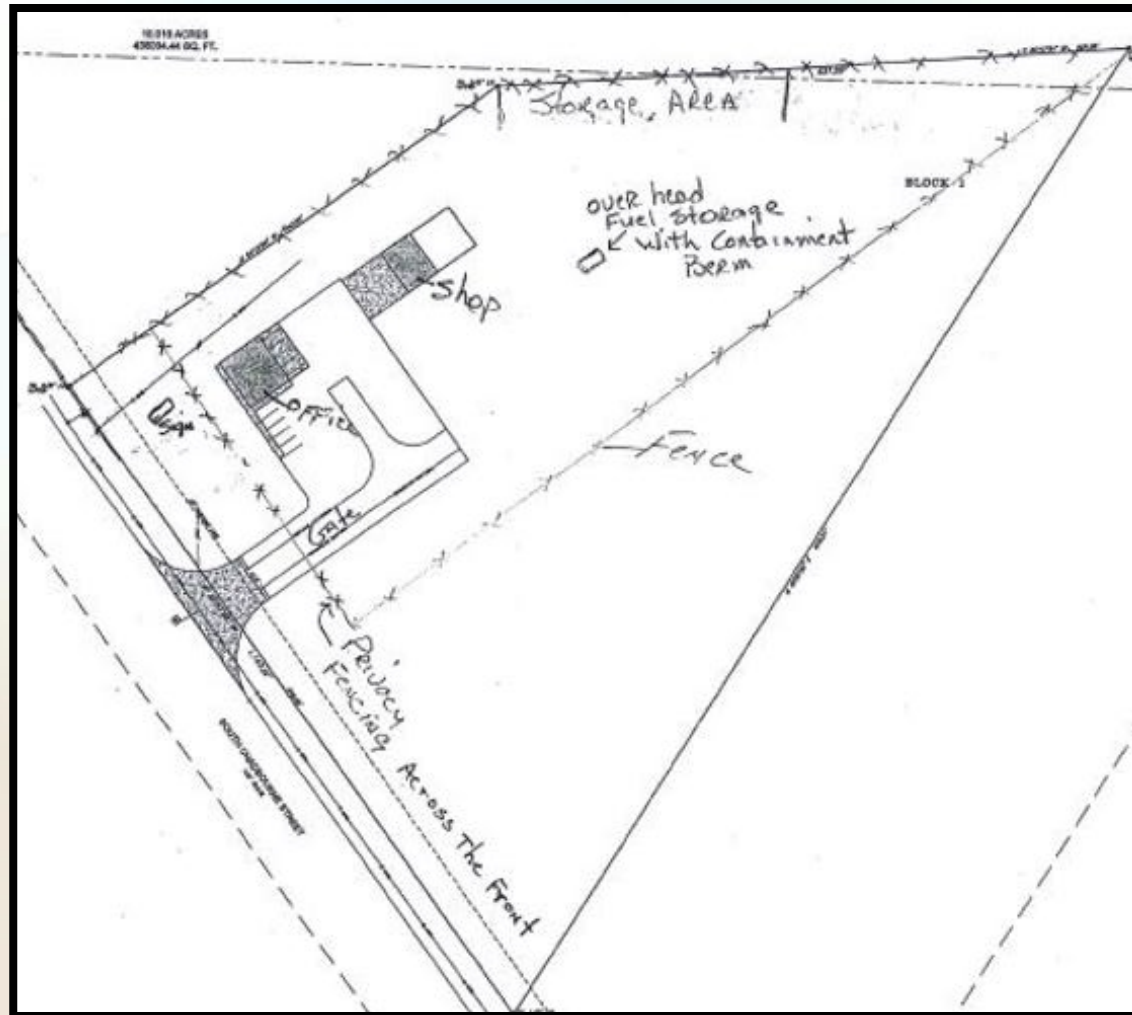


South



West

Site Concept Plan



Rationale

APPROVAL

1. Impacts Minimized:

- Adjacent to other commercial, light industrial properties, condition of approval to restrict repair/maintenance indoors

2. Consistent with Zoning Ordinance:

- Proposed uses will comply with all provisions of CG Zone;

3. Compatible with Surrounding Area:

- ML zoning immediately west, surrounded by CG zoning

Rationale

APPROVAL

4. Traffic Circulation:

- South Chadbourne is an Arterial Road can accommodate large traffic volumes

5. Effect on Natural Environment:

- Permit review will assess grading, drainage and stormwater, appears to have minimal environment impact

6. Community Need:

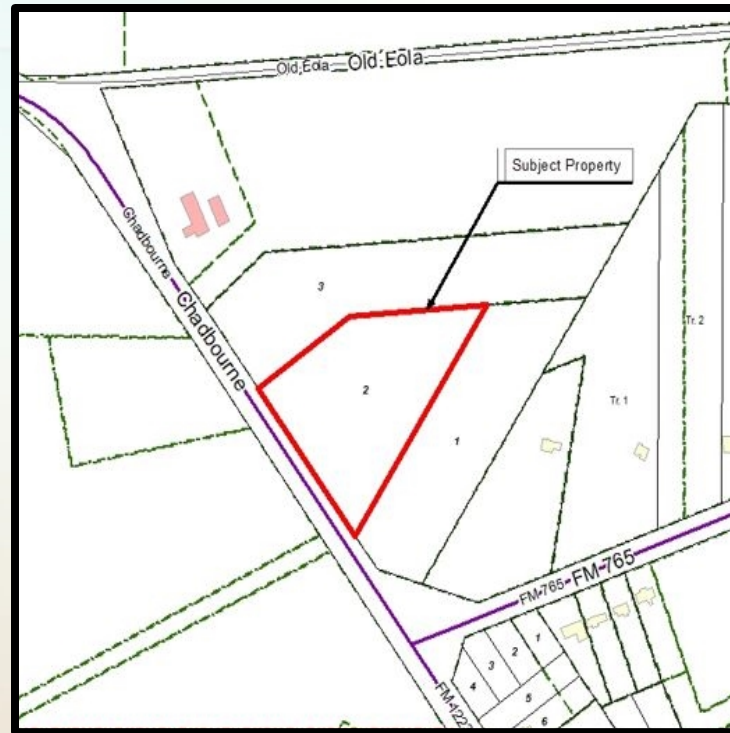
- Contractor's business services construction industry

7. Development Patterns:

- Development consistent with ML and CG –zoned properties

Notifications

- **4 notifications in a 200' radius**
- **0 responses in favor**
- **0 responses in opposition**



Planning Commission Recommendation

On October 26, 2015, the Planning Commission voted unanimously to recommend

APPROVAL

of an Amendment to a Special Use

to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, subject to five (5) Conditions of Approval

Conditions of Approval

- 1) Limited Outdoor Storage, as defined in Section 504.B of the Zoning Ordinance, shall be limited to a maximum of 1,000 square feet, and shall be utilized exclusively for uses that are consistent with the "Office" use category.
- 2) Outdoor storage shall be located behind any proposed office structures. Further, any areas that are visible from a right-of-way shall be screened with 6-foot opaque fence.
- 3) All exterior lighting shall be shielded and positioned in such a manner so as to not spill over onto any adjacent property.

Conditions of Approval (cont.)

- 4) The storage of hazardous materials on the subject property shall be prohibited.
- 5) All equipment repair and maintenance shall be fully conducted indoors.

Staff Recommendation

APPROVE

an Amendment to a Special Use

to allow the additional uses of repair, fueling, & maintenance of equipment, & indoor storage of equipment and materials, whereas the original Special Use already permitted limited outdoor storage for uses allowed in the “Office” Use category, as defined in Section 315.D. of the Zoning Ordinance,
subject to five (5) Conditions of Approval

The background features a light beige gradient with several large, overlapping circles in shades of light blue, green, and yellow. A thin black grid is overlaid on the image, consisting of a horizontal line near the top and a vertical line on the left side, creating a header and a left margin.

QUESTIONS?

City Council

November 12, 2015

Planning Division

Regular Agenda

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Kramer, Fleet Services Superintendent, Fleet Services, (325) 657-4329

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

Consider awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AssetWorks LLC under the purchasing co-op U.S. General Services Administration (GSA) Contract #GS-35F-4731G, in an amount of \$66,730 in initial hardware costs and \$131,602 annual subscription costs thereafter, in substantially attached form, and authorizing City Manager to execute the said contract - (Presentation by Fleet Services Superintendent Ryan Kramer)

Summary/History:

The Fleet Services Division requests Council award of bid VM-07-15 to AssetWorks LLC for the purchase of NetworkFleet Data Monitoring hardware for Fleet units including the authorization to execute a contract to provide monthly service for the devices. These devices will provide real-time data of vehicle and equipment health, meter readings, usage, locations, and productivity of the equipment. In addition, benefits include decreased liabilities, reduced fuel consumption, and increased productivity.

By purchasing these hardware devices from AssetWorks through the GSA contract, the City will have the ability to integrate the information produced by the NetworkFleet devices directly into Fleet Services fleet management software. This aspect will result in streamlined efforts within the Fleet Services Division, accurate and detailed reporting, and more thorough evaluations of individual vehicles or equipment and the Fleet as a whole.

Council recently approved the funding associated with this project by allocating a portion of General Fund dollars and Fleet Services Fund Balance to help fund this improvement in FY16. The hardware devices to be purchased are considered to be a "one-time" purchase. These devices will be transitioned from vehicle to vehicle as vehicles and equipment are purchased and sold. This means that the only time after initial purchase that the devices will have to be re-purchased is when a unit fails, vehicles or equipment are added to the fleet, or a device is lost or stolen.

Recurring expenses associated with this level of Fleet monitoring will be a subscription type fee related to the activation of the devices (similar to a cell phone). This subscription must be an annual contract, but is paid for monthly. Monthly fees are only charged once the device is activated by Fleet Services personnel.

Fleet Services expects to have all planned monitoring devices installed and activated by the end of FY16. As budgeted, approximately 583 devices are planned for purchase. This number is expected to fluctuate with changes in fleet size and need. Installation of the devices will be done by Fleet Services personnel to reduce project implementation expenses.

Financial Impact:

The City recommends awarding the purchase of data monitoring devices and subscription fees to AssetWorks LLC in an amount of \$66,730 for the procurement of the hardware and \$131,602 annually for any required subscription fees. The subscription fees will only be charged to the City as the devices are activated, resulting in a lower first year subscription expense. All scheduled purchases and subscription fees are budgeted in FY16.

Other Information/Recommendation:

Staff Recommends awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AssetWorks LLC

Attachments:

- 1. AssetWorks Standard Agreement VM-07-15 Fleet Data Monitoring Hardware and Service Contract.pdf

Presentation:

Approvals/Reviews:

Kramer, Ryan	Created/Initiated
Frerich, Patrick	Approved
Kelton, Shane	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

HARDWARE PURCHASE, SOFTWARE LICENSE AND SERVICE AGREEMENT

This Hardware Purchase, Software License, and Service Agreement ("Agreement") is made as of the October 1, 2015 ("Effective Date") by and between AssetWorks LLC, a Delaware limited liability corporation with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks") and the City of San Angelo with offices at 1727 Saint Ann Street San Angelo, TX. 76905 ("CUSTOMER"). The parties hereby mutually agree to the following terms and conditions:

1. **Purpose.** As set forth in this Agreement, AssetWorks will be providing CUSTOMER with hardware, software and services for a telematics solution for CUSTOMER to obtain data pursuant to Global Positioning Satellite (GPS) tracking, routing, dispatching, and engine diagnostics for use by CUSTOMER's Fleet Services.
2. **Hardware.** AssetWorks will sell and CUSTOMER will purchase the hardware set forth on Schedule 1 ("Hardware").
 - a. Pricing for the Hardware is set forth in Schedule 1.
 - b. Quantities set forth on Schedule 1 are estimates and actual purchases may vary by 25% of the stated quantity.
 - c. AssetWorks will invoice for the Hardware when shipped. Invoices are due thirty (30) days after date of invoice.
 - d. AssetWorks will pass through the warranty for the Hardware from the third party manufacturer of the Hardware, for the Hardware manufactured by Networkfleet, the hardware warranty is set forth in Schedule 2.
3. **AssetWorks Software.** AssetWorks will provide CUSTOMER the Telematics Module and Networkfleet Connector Module ("AssetWorks Software") for its proprietary software, Fleet Focus.
 - a. AssetWorks grants CUSTOMER a limited license to use the AssetWorks Software as long as the subscription fees for the Networkfleetservice are paid by CUSTOMER. For clarity, the CUSTOMER's license for the AssetWorks Software will terminate upon termination of the Networkfleet Software subscription.
 - b. Except as expressly provided in this provision, CUSTOMER's license will be subject to Software License Agreement under AssetWorks' s GSA contract number GS-35-4137G between CUSTOMER and AssetWorks.
4. **Networkfleet Software.** AssetWorks will provide CUSTOMER with a subscription to Networkfleet software ("Networkfleet Software") as set forth in Schedule 3.
 - a. Networkfleet Software is subject to the terms and conditions set forth in Schedule 2.
 - b. Fees will be invoiced monthly in advance. Invoice are due thirty (30) days after the date of invoice.
5. **Term.** The Term of the Agreement shall commence as of the Effective Date and shall continue for one year ("Initial Term") unless terminated earlier as set forth below. At the end of the Initial Term, the Agreement shall automatically renew for successive one-year terms unless or until either party provides the other party with written notice of non-renewal at least ninety (90) days prior to the end of the then current term.
6. **Termination and Early Termination Fee.**
 - a. During the first year and thereafter, either party may terminate this Agreement for default by the other party upon thirty (30) days written notice of the default and intent to terminate, provided however, that the default is not cured within the thirty (30) day period.
 - b. After the first year, either party may terminate this Agreement by providing at least ninety (90) days prior written notice to the other. Upon termination, all rights and

obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations and any obligations that expressly or by implication are intended to survive termination.

- c. If CUSTOMER terminates this Agreement other than under subsection 6a during the first year, CUSTOMER will pay the balance of fees due for the Networkfleet Software for that twelve month period as an early termination fee.

7. **PROPRIETARY RIGHTS.** AssetWorks and any of its third party licensors will retain exclusive ownership in all deliverables created by AssetWorks hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by AssetWorks under this Agreement. AssetWorks and any of its third party licensors will also retain all intellectual property rights with respect to the tools and/or software that AssetWorks uses to deliver the services. Subject to payment in full for the applicable Services, AssetWorks grants CUSTOMER a perpetual, non-exclusive, non-transferable, royalty-free right to use the deliverables solely for Customer's internal use.

8. **Limitation of liability**

- a. In the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred, limited to the amount of fees for which AssetWorks contracted under the quote that is the subject of the claim provided, the claiming party shall be obliged to take reasonable steps to mitigate its losses or damages.
- b. Irrespective of the basis of the claim, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

Accepted by CUSTOMER:

Accepted by AssetWorks LLC:

Signature

Signature

Name

Name

Title

Title

Date

Date

Schedule 1

Hardware and Hardware Pricing

NetworkFleet Device	Quantity	Each	Total	
Model 5500 Light or Heavy Duty	502	\$ 110.23	\$ 55,335.46	<i>Includes harness</i>
Model 5200 Light or Heavy Duty	81	\$ 110.23	\$ 8,928.63	<i>Includes harness</i>
Sensor harnesses	100	\$ 13.00	\$ 1,300.00	
Shipping and Handling	583		\$ 1,166.00	
Subtotal			\$ 66,730.09	

SCHEDULE 2

NETWORKFLEET STANDARD TERMS AND CONDITIONS

This Schedule is incorporated into and constitutes a material part of the Agreement between CUSTOMER and AssetWorks to which this Schedule is attached. When used in the Schedule, capitalized terms not defined elsewhere in this Schedule have the meanings set forth in Section 13 below.

1. NETWORKFLEET DEVICE AND SERVICES. During the Term and subject to the terms of the Agreement, AssetWorks will (i) sell CUSTOMER the Networkfleet Devices ordered by CUSTOMER, (ii) grant to CUSTOMER a nonexclusive, non-transferable license to use the firmware and software included in the Device solely for use as provided in the Agreement, and (iii) grant to CUSTOMER a non-exclusive, nontransferable license to access and use that portion of the Networkfleet Website designated by Networkfleet for use by CUSTOMER.

2. LIMITATIONS. Without limiting the generality of Section 1, CUSTOMER will not, directly or through others: (i) market, license, distribute, transfer or otherwise commercially exploit the Networkfleet Items; (ii) modify the Networkfleet Items or Networkfleet Website; (iii) disassemble, reverse engineer or decompile the Networkfleet Items or Networkfleet Website or prepare derivative works of the Networkfleet Items or Networkfleet Website or attempt to discover any portion of the source code or trade secrets related to the Networkfleet Items or Networkfleet Website; or (iv) remove, obscure or alter any notice of copyright, trademark or other proprietary right appearing in the Networkfleet Items or Networkfleet Website.

3. DELIVERY AND ACCEPTANCE. AssetWorks will deliver to CUSTOMER the Devices that CUSTOMER order hereunder FCA carrier through a common carrier and the risk of loss for such Devices will pass to CUSTOMER upon delivery to the common carrier. CUSTOMER shall have ten (10) days after delivery to inspect the Devices for any damage during shipping. Any Device not rejected within that period will be deemed accepted by CUSTOMER.

4. INSTALLATION. If included in Schedule 3, Networkfleet, as AssetWorks's subcontractor, will install the purchased Device in the applicable Vehicle in one of the Device installation locations designated by Networkfleet. Upon acceptance of CUSTOMER's order for Device installation services, Networkfleet will use commercially reasonable efforts to coordinate with CUSTOMER to schedule and complete the installation of the Devices during normal working hours within thirty (30) days of the purchase date of the applicable Device. Additional fees may apply for any installation that involves more work than is standard. CUSTOMER acknowledges and agrees that installation of the Device may involve drilling holes, rewiring and other similar alterations to the Vehicle and that Networkfleet nor Buyer has no obligation to restore CUSTOMER's Vehicle after the removal of the Device.

5. LIMITED WARRANTY. AssetWorks will pass through to CUSTOMER Networkfleet's limited warranty. As detailed in that warranty, (a) Networkfleet warrants to CUSTOMER that Devices (other than an Asset Tracker device) which were purchased new from Networkfleet or from AssetWorks by CUSTOMER on or after April 1, 2013 will be free from defects in material and workmanship that prevent the Device from functioning in accordance with its specifications for the entire period of CUSTOMER's ownership of such Device, provided however, Networkfleet will have no obligation with respect to such warranty at any time CUSTOMER has a past due balance for unpaid Fees. Networkfleet warrants to CUSTOMER that Devices which were purchased new from Networkfleet or AssetWorks by CUSTOMER between May 1, 2010 and March 31, 2013 will be free from defects in material and workmanship that prevent the Device from functioning in accordance with its specifications for a period of three (3) years following the initial activation of such Device.

(b) Networkfleet warrants to CUSTOMER that Asset Tracker devices (excluding the battery) which have been purchased new from Networkfleet or AssetWorks by CUSTOMER will be free from defects in material and workmanship that prevent the device from functioning in accordance with its specifications for a period of three (3) years following the initial activation of such device.

(c) Networkfleet warrants to CUSTOMER that all accessories which are purchased new from Networkfleet by Customer will be free from defects in material and workmanship that prevent them from functioning in accordance with their specifications for a period of one (1) year from the date of shipment.

(d) Networkfleet warrants to CUSTOMER that installation services provided by Networkfleet or its authorized subcontractors will be free from defects in workmanship for a period of one (1) year following completion of such installation services. To the extent CUSTOMER purchases an extended installation warranty, Networkfleet warrants to CUSTOMER that any extended warranty installation services shall be free from defects in workmanship for the entire period of CUSTOMER's uninterrupted use of the Device pursuant to this Agreement subject to such installation service, provided however, Networkfleet will have no obligation with respect to such extended installation warranty at any time CUSTOMER has a past due balance for unpaid Fees.

(e) Warranty claims must be made by notifying AssetWorks in writing promptly after Customer learns of the facts supporting a warranty claim. Subject to the Exclusions below and the provisions of Networkfleet's then-current applicable warranty policy, Networkfleet will, at its discretion, either repair or replace any non-complying Device with a Device of equivalent functionality, and, if applicable, remedy any defects in the installation of the Device.

(f) THE REMEDIES IN THIS SECTION ARE NETWORKFLEET'S ONLY OBLIGATION AND CUSTOMER'S ONLY REMEDY FOR BREACH OF ANY WARRANTY.

EXCLUSIONS. The Limited Warranty and Support Services provided by Networkfleet do not include repair, replacement or correction of any defect, damage or malfunctions caused by: (i) for installation not performed by Networkfleet or its authorized subcontractors, failure to properly install the Devices as described in the Networkfleet installation guides; (ii) accident, negligence, theft, vandalism, operator error, misuse or acts of God; (iii) failure of the facilities Customer uses to access the Networkfleet Website or failure to conform to Networkfleet specifications; (iv) modifications, attachments, repairs or unauthorized parts replacements performed by Customer or any third party not authorized by Networkfleet; or (v) use by Customer of hardware or software not provided or approved by Networkfleet. Customer will be responsible for the cost of Support Services provided by Networkfleet caused by any of the foregoing.

DISCLAIMER OF WARRANTIES. EXCEPT FOR THE LIMITED DEVICE AND INSTALLATION WARRANTY SET FORTH IN THIS SECTION, NEITHER ASSETWORKS OR NETWORKFLEET MAKE ANY WARRANTY OR GUARANTEE OF ANY KIND WITH RESPECT TO THE DEVICES AND THE NETWORKFLEET SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, ASSETWORKS AND NETWORKFLEET DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. NEITHER ASSETWORKS NOR NETWORKFLEET WARRANTS THAT THE RECEIPT OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM THE DEVICES WILL BE AVAILABLE AT ALL TIMES, AT ALL GEOGRAPHIC LOCATIONS, UNINTERRUPTED OR ERROR-FREE, OR THAT THE TRANSMISSION OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM NETWORKFLEET TO CUSTOMER OR TO THE CUSTOMER WEBSITE PAGES WILL ALWAYS BE ACCURATE, TIMELY OR COMPLETE.

6. PROPRIETARY RIGHTS. CUSTOMER may not acquire any right or interest in the Marks by virtue of the Agreement. CUSTOMER acknowledge and agree that the Networkfleet Items and the Networkfleet Website include Proprietary Rights and Marks of Networkfleet and its licensors, and that Networkfleet and its licensors retain title to and ownership of those Proprietary Rights and Marks. Without limiting the generality of the foregoing, CUSTOMER acknowledges that the Networkfleet Items and Networkfleet Website may include materials that are proprietary and the subject of copyright protection, database right protection and other intellectual property rights owned by Tele Atlas or its suppliers, that CUSTOMER's use of such material is subject to the terms of the Agreement and the applicable Tele Atlas license agreement and that any unauthorized copying or disclosure of such material may lead to criminal and civil liabilities. Title to and ownership of the Proprietary Rights or Marks in any and all improvements, modifications, fixes or enhancements made by or for us to the Networkfleet Items or the

NetworkfleetWebsite, regardless of whether such items or services are created or suggested by CUSTOMER, remains with Networkfleet and its licensors. CUSTOMER have no property right in any telephone number assigned to CUSTOMER by or through Networkfleet, and understand that any such number can be changed by Networkfleet or its provider from time to time. CUSTOMER will not copy, modify, reverse-engineer, disassemble, or decompile any software or firmware included in any Device or the Networkfleet Website or otherwise provided to CUSTOMER by or on behalf of Networkfleet, and will not disclose such software or provide access to the Devices, such software or any Services to any third party for such a purpose.

7. LIMITATION OF LIABILITY. (a) NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS OR LOST DATA, EVEN IF THAT PARTY IS INFORMED THAT THOSE DAMAGES MAY OCCUR. NETWORKFLEET'S CUMULATIVE LIABILITY UNDER CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY SHALL NOT EXCEED THE AMOUNT PAID TO NETWORKFLEET UNDER THE AGREEMENT DURING THE SIX (6) MONTHS PRIOR TO THE DATE THE LIABILITY ACCRUES FOR A CLAIM. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING UNDER SECTION 7 (PROPRIETARY RIGHTS), SECTION 10 (INDEMNIFICATION), AND SECTION 11 (CONFIDENTIALITY).

(b) NETWORKFLEET IS NOT RESPONSIBLE FOR DELAYS IN DELIVERY, INSTALLATION OR PROVIDING THE SERVICES, NO MATTER WHO CAUSED THE DELAY. CUSTOMER ACKNOWLEDGES THAT THE DEVICE IS A WIRELESS DEVICE AND THAT THE DEVICES AND THE NETWORKFLEET SERVICE ARE DEPENDENT ON THE COVERAGE AREAS AND SERVICE OF WIRELESS NETWORKS OWNED AND OPERATED BY THIRD PARTIES. OPERATION AND THE FUNCTIONALITY OF THE DEVICES AND THE NETWORKFLEET SERVICE DEPEND ON SUCH COVERAGE AND WIRELESS SYSTEM AVAILABILITY AND CAPACITY AND MAY BE ADVERSELY AFFECTED BY TERRAIN, SIGNAL STRENGTH, WEATHER AND ATMOSPHERIC CONDITIONS, ACTS OF GOD, AND OTHER CONDITIONS BEYOND NETWORKFLEET'S REASONABLE CONTROL. CUSTOMER UNDERSTANDS AND AGREES THAT NETWORKFLEET AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND SHALL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO CUSTOMER'S USE OF THE NETWORKFLEET SERVICE. WHILE NETWORKFLEET ENDEAVORS TO PROVIDE ACCURATE, UP-TO-DATE DATA, DATA NETWORKFLEET COLLECTS FROM THE DEVICES INSTALLED IN VEHICLES MAY, AT TIMES, CONTAIN ERRORS, DEFECTS, DEFICIENCIES OR TECHNICAL INACCURACIES, AND MAY BE CHANGED OR UPDATED BY NETWORKFLEET WITHOUT NOTICE.

8. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 5 ABOVE, THE DEVICES AND THE SERVICES ARE PROVIDED BY SELLER AND NETWORKFLEET ON AN "AS-IS" BASIS TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW. NETWORKFLEET AND SELLER DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AS TO THE DEVICES AND THE SERVICES, DATA (INCLUDING ITS ACCURACY AND AVAILABILITY) COLLECTED AS PART OF THE SERVICES. NETWORKFLEET DOES NOT WARRANT THAT THE RECEIPT OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM THE DEVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE TRANSMISSION OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM NETWORKFLEET TO CUSTOMER, OR THE NETWORKFLEET WEBSITE WILL ALWAYS BE TIMELY OR COMPLETE. SELLER AND NETWORKFLEET DO NOT REPRESENT OR WARRANT THAT THE NETWORKFLEET WEBSITE OR ANY SOFTWARE PROVIDED TO CUSTOMER ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; THEREFORE, CUSTOMER SHOULD USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES ARISING FROM THE NETWORKFLEET WEBSITE OR ANY SUCH SOFTWARE.

9. INDEMNIFICATION. (a) CUSTOMER will defend, indemnify and hold harmless Networkfleet and its wireless service carriers, licensors and third party suppliers, and the officers, employees, and agents

of each against any and all third party claims and all associated damages, suits, proceedings, liens, penalties, liabilities award or expense (including reasonable attorney's fees) resulting from (i) CUSTOMER'S breach of the Agreement; (ii) a claim that CUSTOMER or CUSTOMER's personnel violated applicable state or federal laws or regulations in CUSTOMER's possession or use of the Devices, the Networkfleet Service or the Networkfleet Website; or (iii) a claim for any property damage, personal injury or death arising in any way, directly or indirectly, CUSTOMER's use, failure to use, or inability to use the Devices, the Networkfleet Service or the Networkfleet Website except to the extent such claims was caused by Networkfleet's gross negligence or willful misconduct. CUSTOMER will allow Networkfleet to participate with its own counsel in the defense of the claim at Networkfleet's own expense; however nothing herein shall limit the right of CUSTOMER to control the defense. If CUSTOMER fail to defend in a reasonably timely manner with competent counsel reasonably satisfactory to Networkfleet, then Networkfleet shall have the right to defend or settle such claim.

(b) Networkfleet shall defend, indemnify and hold harmless CUSTOMER against any third party claims, and all associated damages, suits, proceedings, liens, penalties, liabilities, awards or expenses, to the extent that such claims allege that Networkfleet Items infringe such third party's intellectual property rights; provided, however, that Networkfleet's obligations hereunder shall not apply if and to the extent that the infringement or alleged infringement is caused by or otherwise results from (i) the use of the Networkfleet Items other than as specifically authorized by Networkfleet, (ii) the combination or use of the Networkfleet Items with non-Networkfleet products or services, including, but not limited to, CUSTOMER's products and services, or (iii) any acts or omissions of CUSTOMER or any other third party; and provided further, that CUSTOMER give Networkfleet written notice of the third party claim within five (5) business days after receiving notice of the claim and permits Networkfleet to control, and cooperates with Networkfleet in, the defense of such claim and any related settlement negotiations. Networkfleet shall permit CUSTOMER to participate with its counsel in the defense of the claim at its own expense; however, nothing herein shall limit Networkfleet's right to control the defense.

10. CONFIDENTIALITY. Each party reserves any and all right, title and interest (including, without limitation, any Proprietary Rights) that it may have in or to any Confidential Information that it may disclose to the other party under the Agreement. The Recipient will protect Confidential Information of the Discloser against any unauthorized use or disclosure to the same extent that the Recipient protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event will use less than a reasonable standard of care to protect such Confidential Information; provided that the Recipient knows or has reason to know that the same is Confidential Information of the Discloser. The Recipient will use any Confidential Information of the Discloser solely for the purposes for which it is provided by the Discloser. This paragraph will not be interpreted or construed to prohibit: (a) any use or disclosure which is necessary or appropriate in connection with the Recipient's performance of its obligations or exercise of its rights under the Agreement or any other agreement between the parties; (b) any use or disclosure required by applicable law (e.g., pursuant to applicable securities laws, the Texas Public Information Act or legal process), provided that the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof (e.g., so as to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure); or (c) any use or disclosure made with the consent of the Discloser. The parties further agree that any obligations to protect Confidential Information set forth herein shall survive termination of the Agreement for a period of three (3) years from the termination of the Agreement, except that as to any Confidential Information deemed a "trade secret" under applicable law, such obligations shall continue for so long as such information is deemed a trade secret.

11. MODIFICATIONS; WEBSITE MAINTENANCE. Networkfleet may alter or modify all or part of the Networkfleet Items and the Networkfleet Website from time to time. Such alterations and modifications, or both, may include, without limitation, the addition or withdrawal of features, information, products, services, software or changes in instructions. In an effort to ensure a responsive and efficient platform and service for its customer base, Networkfleet reserves the right to perform scheduled maintenance for the Networkfleet Service and Networkfleet Website from time to time. This may include application and database maintenance as well as general website maintenance and may or may not involve Networkfleet Website and Networkfleet Service unavailability.

12. DATA. CUSTOMER represents and warrants that CUSTOMER represent and warrant that CUSTOMER, has all rights and authority with respect to the data CUSTOMER acquires and transmits through the Networkfleet Items and Networkfleet Website ("*Business Data*") necessary to grant the rights and approvals set forth in the Agreement and that CUSTOMER approves and grants to AssetWorks to approve and grant to us, the nonexclusive, nonterminable license and right to collect, access, and use Business Data from CUSTOMER's Devices, and to access, copy, and use the Business Data in the course of performing the Services and to analyze, measure, and optimize the performance of Devices and Services and new offerings for CUSTOMER and others and for other purposes of Networkfleet, including the development of data products for sale, licensing and distribution to third parties. Except as may be required under applicable law, Networkfleet will not disclose or distribute Business Data that is CUSTOMER's Confidential Information to a third party in a form that permits identification of CUSTOMER. Please refer to Networkfleet's Privacy Policy for additional information on how it collects, uses and discloses personal information from CUSTOMER.

13. DEFINITIONS. When used in the Agreement and not defined elsewhere herein, the following terms shall have their respective meanings as set forth below:

"*Acceptable Use Policy*" means the terms and conditions governing use of the Networkfleet Service and access to the Networkfleet Website, as such may be amended from time to time by Networkfleet upon thirty (30) days' advance written notice to Reseller. The Acceptable Use Policy in effect as of the date of the Agreement is set forth in www.networkfleet.com.

"*Device*" means the Networkfleet wireless device designed for use with the Networkfleet Service and identified in Attachment B.

"*Discloser*" means a party that discloses any of its Confidential Information to the other party.

"*Fees*" mean the Device purchase prices, Device shipping fees, Device installation fees, the Networkfleet Service fees and the other fees payable by Buyer.

"*Marks*" means the names, trademarks, trade names, drawings, logos and symbols which Networkfleet uses to promote and identify the Devices and which Networkfleet authorizes Reseller to use under the Agreement.

"*Networkfleet Items*" means the Networkfleet Service and Devices.

"*Networkfleet Service*" means the services offered by Networkfleet to: (a) collect diagnostic and/or location information from a Vehicle using a Device which is installed in that Vehicle; (b) analyze, deliver and post the information to the Networkfleet Website; (c) notify the vehicle owner and a designated third party by e-mail of certain events or information; and (d) access and use of the Networkfleet Website, the DataConnect Service and/or any other service offered by Networkfleet.

"*Networkfleet Website*" means web pages within the Networkfleet website currently located at www.networkfleet.com designated by Networkfleet for use by CUSTOMER.

"*Privacy Policy*" means the privacy policy governing Networkfleet's and its personnel's use of the personally identifiable data obtained from its customers and the Networkfleet Website, as such may be amended from time to time by Networkfleet. The Privacy Policy in effect as of the date of the Agreement is set forth in www.networkfleet.com.

"*Proprietary Rights*" means any patent, copyright, trademark, service mark, trade dress, trade name, corporate name, proprietary logo, trade secret or other intellectual property right.

"*Services*" means the Networkfleet Service, Device installation services, the Support Services and the other services provided by Networkfleet to CUSTOMER as a subcontractor of AssetWorks.

"*Support Services*" means the technical support and other services provided by Networkfleet.

"*Vehicle*" means an on-road vehicle, off-road vehicle and/or stationary equipment owned or under the control of CUSTOMER.

14. Technical Assistance. Networkfleet will provide CUSTOMER with reasonable amounts of consultation and technical assistance via telephone or email during normal working hours and assist in diagnosing the problem with the Devices or Networkfleet Service. Networkfleet will use commercially reasonable efforts to correct errors or malfunctions in those Devices or the Networkfleet Service to enable those Devices and those Networkfleet Service to perform the functions described in the applicable Networkfleet operating manuals as soon as practicable after notification of such error or mal function. If a Device CUSTOMER acquired from Networkfleet is diagnosed as non-functioning, Networkfleet will repair or replace non-functioning components. If, in Networkfleet's sole determination, a Device is

deemed unrepairable, then Networkfleet will send a replacement unit to CUSTOMER in accordance with Networkfleet's then-effective policy and procedures. All nonfunctioning Devices replaced by Networkfleet will become the property of Networkfleet.

15. A minimum twelve (12) month service term is required for each Device unit. The monthly service fee is set forth in the pricing.

Schedule 3

Pricing for NetworkfleetService

Monthly Service Fee

Device	Units	Monthly Fee	Total Service Fee
Model 5500 (Networkfleet Monitoring)	502	\$18.95	\$9,512.90
Model 5200 (Networkfleet Monitoring)	81	\$17.95	\$1,453.95
			\$131,602.20
One Year Total			\$ 198,332.29

Pricing for Networkfleet Installation Services

Customer to self-install Networkfleet devices

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Sandra Villarreal, Director of Health, Health Services, 325.657.4493

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

First public hearing and consideration of an ordinance amending Chapter 7, Article 7.06, Sec. 7.06.001 Definitions, State rules, by replacing 25 Texas Administrative Code, Chapter 229 with Texas Administrative Code, Chapter 228; amending Sec. 7.06.002 Adoption of state rules, by replacing Texas Food Establishment Rules, Chapter 229 with Chapter 228; and amending Sec. 7.06.005 (a), Mobile food establishments by replacing section 229.169 with section 228.221 of the Texas Food Establishment Rules - (Presentation by Health Services Director Sandra Villarreal)

Summary/History:

The Texas Legislative Session adopted new Texas Food Establishment Rules (TFER) as part of the Texas Department of State Health Services Division for Regulatory Services, Environmental and Consumer Safety Section, Policy, Standards, and Quality Assurance Unit, Public sanitation and Retail Food Safety Group. The new TFER went into effect October 11, 2015. The TFER had not been updated or amended since 2006; it is designed to mirror the Federal Food Codes.

The City's Health Inspectors perform Retail Food Establishment Inspections are based directly on the rules and procedures outlined in the TFER; we must adopt the new TFER to allow continued retail food inspections. In addition to new rules, a new Retail Food Inspection Report was introduced as part of the TFER.

Financial Impact:

No Fiscal Impact.

Other Information/Recommendation:

Attachments:

- | | | |
|----|--|--|
| 1. | HD TFER Ordinance Amendment | HD TFER Ordinance Amendment.docx |
| 2. | HD Texas Food Establishment Rules 2015 | 2015TFERPrintableVersion10132015.pdf |
| 3. | HD Summary of Changes to 2015 TFER | EXECSUMMARYOFCHANGESTO2015TFER.pdf |
| 4. | HD New Retail Food Establishment Inspection Report | RetailFoodInspectionReport20150924.pdf |

Presentation:

Approvals/Reviews:

Villarreal, Sandra
Weise, Rick
James, Theresa
Carriger, Tina

Created/Initiated
Approved
Approved
Approved

James, Theresa
Dunn, Becky
Kendrick, Bryan

Approved
Approved
Final Approval

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SAN ANGELO, TEXAS BY AMENDING CHAPTER 7, ARTICLE 7.06 “FOOD ESTABLISHMENTS”, SECTION 7.06.001 “DEFINITIONS”, SECTION 7.06.002 “ADOPTION OF STATE RULES”, AND SECTION 7.06.005(a) “MOBILE FOOD ESTABLISHMENTS”; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, The Texas Legislative Session adopted new Texas Food Establishment Rules (TFER) as part of the Texas Department of State Health Services Division for Regulatory Services, Environmental and Consumer Safety Section, Policy, Standards, and Quality Assurance Unit, Public sanitation and Retail Food Safety Group that went into effect on October 11, 2015; and

WHEREAS, City's Health Inspectors retail food establishment inspections are based directly on the rules and procedures outlined in the TFER; and

WHEREAS, the City Council has given due and diligent thought to these concerns and believes it is in the best interest of the City of San Angelo and its citizens to provide for adoption of the Texas Food Establishment Rules.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SAN ANGELO:

Section 1) THAT, Chapter 7, Article 7.06, Sec. 7.06.001 of the Code of Ordinances of the City of San Angelo, Texas is hereby amended to read as follows:

“ Sec. 7.06.001 Definitions

The following definitions, plus those definitions used by the department of state health services in its food establishment rules, shall be applicable for purposes of this article:

Authorized agent or employee. The authorized agent or employee of the regulatory authority.

Director. The director of the San Angelo-Tom Green County health department.

Food establishment. A food service establishment, a retail food store, a mobile food unit, and/or a roadside food vendor.

Regulatory authority. The San Angelo-Tom Green County health department.

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

Section 2) THAT, Chapter 7, Article 7.06, Sec. 7.06.002 of the Code of Ordinances of the City of San Angelo, Texas is hereby amended to read as follows:

“Sec. 7.06.002 Adoption of State Rules

The city hereby adopts by reference the provisions of the current rules, as amended, of the Department of State Health Services found in 25 Texas Administrative Code, Chapter 228 regarding the regulation of food establishments in this jurisdiction.”

Section 3) THAT, Chapter 7, Article 7.06, Sec. 7.06.005(a) of the Code of Ordinances of the City of San Angelo, Texas is hereby amended to read as follows:

“Sec. 7.06.005 Mobile food establishments

(a) A mobile food establishment must comply with all the requirements of Section 228.221 of the Texas Food Establishment Regulations.”

Section 4) THAT, the following severability clause is adopted with this amendment:

SEVERABILITY: That the terms and provision of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

Section 5) THAT, this Ordinance shall be effective on, from and after the date of adoption and publication as required by law.

INTRODUCED on the 12th day of November, 2015 and finally PASSED, APPROVED AND ADOPTED on this the 1st day of December, 2015.

THE CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

APPROVED AS TO FORM

Theresa James, City Attorney

Texas Food Establishment Rules



Texas Department of State Health Services
Division for Regulatory Services
Environmental and Consumer Safety Section
Policy, Standards, and Quality Assurance Unit
Public Sanitation and Retail Food Safety Group

October 2015

Texas Food Establishment Rules

25 TAC §§228

Texas Department of State Health Services
Division for Regulatory Service
Environmental and Consumer Safety Section
Policy Standards and Quality Assurance Unit
Public Sanitation and Retail Food Safety Group
P.O. Box 149347, MC 1987
Austin, TX 78714-9347

Effective Date: October 11, 2015

Table of Contents

Subchapter A. General Provisions	1
§228.1. Purpose.....	1
§228.2. Definitions.....	1
Subchapter B. Management and Personnel	20
§228.31. Responsibility	20
(a) Present.....	20
(b) Person In Charge.....	20
§228.32. Knowledge.	20
§228.33. Certified Food Protection Manager and Food Handler Requirements	22
(a) Certified food protection manager course and pass exam	22
(b) Certified food protection manager certificate posted.....	22
(c) Exception to certified food protection manager.....	22
(d) Accredited food handler course requirement.....	22
(e) Food handler requirement effective September 1, 2016 and certificate	22
(f) Exception to food handler requirement.....	23
§228.34. Duties	23
§228.35. Responsibilities and Reporting Symptoms and Diagnosis	24
(a) Responsibility of person in charge to require reporting by food employees and applicants	24
(b) Notification by person in charge to regulatory authority when an employee has certain medical conditions	26
(c) Responsibility of person in charge to ensure conditional employees report.....	26
(d) Person in charge responsible for reporting, exclusion and restriction	27
(e) Responsibility of a food employee or applicant to report to the person in charge.....	27
(f) Food employee shall comply	27
§228.36. Conditions of Exclusions and Restrictions	27
§228.37. Managing Exclusions and Restrictions	29
§228.38. Hands and Arms	35
(a) Food employees shall keep their hands and exposed portions of their arms clean	35
(b) Cleaning procedure for handwashing	35
(c) Special handwash procedures	36
(d) When to wash.....	36
(e) Where to wash.....	37
(f) Hand antiseptics	37
§228.39. Fingernail Maintenance	38
(a) Food employees shall keep their fingernails trimmed	38
(b) Food employee may not wear fingernail polish or artificial fingernails.....	38
§228.40. Jewelry Prohibition	38

§228.41. Outer Clothing, Clean Condition	38
§228.42. Food Contamination Prevention.	38
(a) Eating, drinking, or using tobacco	38
(b) Discharges from the eyes, nose, and mouth.....	39
§228.43. Hair Restraints	39
(a) Food employees shall wear hair restraints	39
(b) Food employees who are not required to wear hair restraints	39
§228.44. Animals, Handling Prohibitions	39
(a) Food employees may not handle animals that may be present	39
(b) Food employees with assistance animals, fish in aquariums, and display tanks.....	39
§228.45. Contamination Events	39
Subchapter C. Food.....	40
§228.61. Condition Safe, Unadulterated, and Honestly Presented	40
§228.62. Approved Sources.....	40
(a) Compliance with Food Law.....	40
(b) Food in a hermetically sealed container.....	41
(c) Fluid milk and milk products.....	41
(d) Fish.....	41
(e) Molluscan shellfish	41
(f) Wild mushrooms.....	42
(g) Exotic animals and game animals.....	42
§228.63. Specifications for Receiving.....	44
(a) Temperature	44
(b) Additives.....	45
(c) Eggs.....	45
(d) Eggs and milk products, pasteurized	45
(e) Package integrity.....	45
(f) Ice.....	46
(g) Juice treated	46
(h) Shucked shellfish, packaging and identifications	46
(i) Shellstock identification.....	46
(j) Shellstock, condition.....	47
§228.64. Molluscan Shellfish, Original Container and Records	48
(a) Molluscan shellfish may not be removed from original container	48
(b) Shellstock may be removed from the original container for display	48
(c) Shucked shellfish may be removed from container for display.....	48
(d) Shucked shellfish may be repackaged by consumer self-service	48
(e) Shellstock, maintaining identification	48
§228.65. Preventing Contamination by Employees.....	49
(a) Preventing contamination from hands	49
(b) Preventing contamination when tasting.....	51
§228.66. Preventing Food and Ingredient Contamination	52

(a) Packaged and unpackaged food – separation, packaging and segregation	52
(b) Food storage containers, identified with the common name of the food.....	53
(c) Pasteurized eggs, substitute for raw shell eggs for certain recipes	53
(d) Protection from unapproved additives	53
(e) Washing fruits and vegetables	54
§228.67. Preventing Contamination from Ice Used as a Coolant.....	54
(a) Ice used as exterior coolant, prohibited as ingredient.....	54
(b) Storage or display of food in contact with water or ice	54
§228.68. Preventing Contamination from Equipment, Utensils, and Linens	55
(a) Food contact surfaces.....	55
(b) In-use utensils, between-use storage.....	55
(c) Linens and napkins, use limitation.....	56
(d) Wiping cloths, use limitation	56
(e) Gloves, use limitation	56
(f) Using clean tableware for second portions and refills	57
(g) Refilling returnables.....	57
§228.69. Preventing Contamination from the Premises	59
(a) Food storage.....	59
(b) Food storage, prohibited areas	59
(c) Vended time/temperature control for safety food, original container.....	59
(d) Food preparation	60
§228.70. Preventing Contamination by Consumers	60
(a) Food display.....	60
(b) Condiments, protection	60
(c) Consumer self-service operations	60
(d) Returned food and re-service of food	61
(e) Preventing contamination from other sources	61
§228.71. Cooking.....	61
(a) Raw animal foods	61
(b) Microwave cooking. Raw animal foods cooked in a microwave oven	63
(c) Plant food cooking for hot holding	63
(d) Non-continuous cooking of raw animal foods.....	63
§228.72. Freezing.....	65
(a) Parasite destruction	65
(b) Records, creation and retention.....	66
(c) Preparation for immediate service	67
§228.73. Reheating for Hot Holding.....	67
(a) Temperature	66
(b) Microwave	67
(c) Commercially processed and packaged food.....	67
(d) Time	67
(e) Roast	67
§228.74. Juice Packaged in a Food Establishment	67
(a) HACCP	67
(b) Labeling	67

§228.75. Temperature and Time Control.....	68
(a) Frozen food	68
(b) Time/temperature control for safety food, slacking.....	68
(c) Thawing	68
(d) Cooling.....	69
(e) Cooling methods	70
(f) Hot and cold holding.....	70
(g) Ready-to-eat, time/temperature control for safety food, date marking.....	71
(h) Ready-to-eat, time/temperature control for safety food, disposition	73
(i) Time as a public health control	73
§228.76. Specialized Processing Methods, Variance Requirements	75
§228.77 <i>Clostridium Botulinum</i> and <i>Listeria Monocytogenes</i> Controls.....	76
§228.78. Food Identity, Presentation, On-premises Labeling, and Accurate Representation.....	79
(a) Standards of identity	79
(b) Honestly presented.....	79
§228.79. Labeling	80
(a) Food labels	80
(b) Other forms of information	81
§228.80. Consumer Advisory	81
(a) Inform consumers by way of disclosure and reminder	81
(b) Disclosure shall include	81
(c) Reminder shall include asterisking animal-derived foods requiring disclosure to a footnote	81
§228.81. Contaminated Food, Disposition. Discarding or reconditioning unsafe, adulterated, contaminated food	82
§228.82. Additional Safeguards, Special Requirements for Serving Highly Susceptible Population	82
§228.83. Donation of Foods.....	84
(a) Previous service	84
(b) Time/temperature control for safety foods	84
(c) Labeling	85
(d) Shelf life.....	85
(e) Damaged foods	85
(f) Distressed foods	85
Subchapter D. Equipment, Utensils, and Linens	85
§228.101. Multiuse Materials	85
(a) Characteristics.....	85
(b) Cast iron, use limitation	86
(c) Lead, use limitation.....	86
(d) Copper, use limitation.....	86
(e) Galvanized metal, use limitation.....	86
(f) Sponges, use limitation	86
(g) Wood, use limitation.....	87

	(h) Nonstick coatings, use limitation.....	87
	(i) Nonfood-contact surfaces	87
§228.102.	Single-service and Single-use, Characteristics	88
§228.103.	Durability and Strength.....	88
	(a) Equipment and utensils.....	88
	(b) Food temperature measuring devices.....	88
§228.104.	Cleanability	89
	(a) Food-contact surfaces	89
	(b) Exemption	89
	(c) Clean in place (CIP) equipment.....	89
	(d) “V” threads, use limitation.....	89
	(e) Hot oil filtering equipment.....	90
	(f) Can openers.....	90
	(g) Nonfood-contact surfaces	90
	(h) Kick plates, removable.....	90
	(i) Ventilation hood systems, filters.....	90
§228.105.	Accuracy of Temperature Measuring Devices	90
	(a) Food	90
	(b) Ambient air and water.....	90
	(c) Pressure measuring devices, mechanical warewashing equipment	91
§228.106.	Functionality of Equipment	91
	(a) Ventilation hood systems, drip prevention	91
	(b) Equipment openings, closures, and deflectors.....	91
	(c) Dispensing equipment, protection of equipment and food	91
	(d) Vending machine, vending stage closure.....	92
	(e) Bearings and gear boxes, leak proof	92
	(f) Beverage tubing, separation.....	93
	(g) Ice units, separation of drains	93
	(h) Condenser unit, separation.....	93
	(i) Can openers on vending machine	93
	(j) Molluscan shellfish tanks.....	93
	(k) Vending machines, automatic shutoff.....	93
	(l) Temperature measuring devices	94
	(m) Warewashing machine, data plate operating specifications	95
	(n) Warewashing machine, internal baffles.....	95
	(o) Warewashing machine, temperature measuring devices	95
	(p) Manual warewashing equipment, heaters and baskets	95
	(q) Warewashing machines, automatic dispensing of detergents and sanitizers	95
	(r) Warewashing machines, flow pressure device	96
	(s) Warewashing sinks and drainboards, self-draining	96
	(t) Equipment compartments, drainage.....	96
	(u) Vending machines, liquid waste products	96
	(v) Case lot handling equipment, movability	97
	(w) Vending machine doors and openings	97
	(x) Acceptability. Food equipment certification, classification	97

§228.107. Equipment, Numbers and Capacities.....	97
(a) Cooling, heating, and holding capacities	97
(b) Manual warewashing, sink compartment requirements.....	97
(c) Drainboards.....	99
(d) Ventilation hood systems, adequacy.....	99
(e) Clothes washers and dryers.....	99
§228.108. Utensils, Temperature Measuring Devices, and Testing Devices.	99
(a) Utensils, consumer self-service	99
(b) Food temperature measuring devices.....	99
(c) Small-diameter probe.....	99
(d) Manual and mechanical warewashing	99
(e) Sanitizing solutions, testing devices	100
§228.109. Location and Installation, Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.	100
(a) Storage location, may not be located in.....	100
(b) Locker room limitation	100
(c) Clothes washer and dryer location requirements	100
§228.110. Installation.....	100
(a) Fixed equipment, spacing or sealing.....	100
(b) Fixed equipment, elevation or sealing	101
§228.111. Equipment, Maintenance and Operation.....	102
(a) Good repair and proper adjustment.....	102
(b) Cutting surfaces	102
(c) Microwave ovens.....	102
(d) Warewashing equipment, cleaning frequency	102
(e) Warewashing machines, manufacturers' operating instructions	102
(f) Warewashing sinks, use limitation	103
(g) Warewashing equipment, cleaning agents.....	103
(h) Warewashing equipment, clean solutions.....	103
(i) Manual warewashing equipment, wash solution temperature	103
(j) Mechanical warewashing equipment, wash solution temperature.....	103
(k) Manual warewashing equipment, hot water sanitization temperatures	104
(l) Mechanical warewashing equipment, hot water sanitization temperatures...	104
(m) Mechanical warewashing equipment, sanitization pressure	104
(n) Manual and mechanical warewashing equipment, chemical sanitizer temperature, pH, concentration and hardness	104
(o) Manual warewashing equipment, chemical sanitization using detergent- sanitizers	105
(p) Warewashing equipment, determining chemical sanitizer concentration.....	106
§228.112. Utensils and Temperature and Pressure Measuring Devices.	106
(a) Good repair and calibration	106
(b) Single-service and single-use articles, required use	106
(c) Single-service and single-use articles, use limitation	106
(d) Shells, use limitation.....	107
§228.113. Cleaning of Equipment and Utensils	107
§228.114. Frequency of Cleaning.....	107

(a) Food-contact surfaces and utensils	107
(b) Cooking and baking equipment	109
(c) Nonfood-contact surfaces	109
§228.115. Methods of Cleaning.....	110
(a) Dry cleaning.....	110
(b) Precleaning.....	110
(c) Loading of soiled items, warewashing machines	110
(d) Wet cleaning	111
(e) Washing, procedures for alternative manual warewashing equipment	111
(f) Rinsing procedures.....	111
§228.116. Sanitization, Objectives, Food-contact Surfaces and Utensils.....	112
§228.117. Sanitization Frequency, Before Use After cleaning	112
§228.118. Sanitization Methods, Hot Water and Chemicals	112
§228.119. Laundering, Clean Linens.....	113
§228.120. Laundering, Frequency, Specifications.....	113
(a) Frequency.....	113
(b) Cloth gloves	113
(c) Linens and napkins	113
(d) Wet wiping cloths	113
(e) Dry wiping cloths.....	113
§228.121. Laundering Methods	113
(a) Storage of soiled linens.....	113
(b) Mechanical warewashing.....	113
(c) Use of laundry facilities.....	114
§228.122. Drying, Equipment and Utensils.....	114
(a) Equipment and utensils, air-drying required.....	114
(b) Wiping cloths, air-drying location	114
§228.123. Lubricating and Reassembling.....	114
(a) Food-contact surfaces	114
(b) Equipment	115
§228.124. Storage	115
(a) Equipment, utensils, linens and single-service and single-use articles.....	115
(b) Prohibitions	115
§228.125. Preventing Contamination	116
(a) Kitchenware and tableware.....	116
(b) Soiled and clean tableware.....	116
(c) Preset tableware	116
(d) Rinsing equipment and utensils after cleaning and sanitizing.....	117
Subchapter E. Water, Plumbing, and Waste	117
§228.141. Source	117
(a) Approved system	117
(b) System flushing and disinfection.....	117
(c) Bottled drinking water	117
§228.142. Water Quality Standards	117

(a) Public and private water systems	117
(b) Nondrinking water	118
(c) Sampling	118
(d) Sample report	118
§228.143. Water Quantity and Availability	118
(a) Capacity	118
(b) Pressure	118
(c) Hot water	118
§228.144. Water Distribution, Delivery, and Retention Systems	118
(a) Distribution	118
(b) Alternative water supply	119
§228.145. Plumbing Systems, Approved Materials	119
(a) Construction	119
(b) Water filter	119
§228.146. Plumbing Design, Construction, and Installation	119
(a) Approved system and cleanable fixtures	119
(b) Handwashing facility, installation	119
(c) Backflow prevention, air gap	120
(d) Backflow prevention device, design standard	120
(e) Conditioning device, design	120
§228.147. Plumbing, Numbers and Capacities	120
(a) Handwashing facilities	120
(b) Toilets and urinals	120
(c) Service sink	120
(d) Backflow prevention device, when required	121
(e) Backflow prevention device, carbonator	121
§228.148. Plumbing, Location and Placement	121
(a) Handwash facilities	121
(b) Backflow prevention device, location	121
(c) Conditioning device, location	121
§228.149. Plumbing, Operation and Maintenance	121
(a) Using a handwash facility	121
(b) Prohibiting a cross connection	122
(c) Scheduling inspection and service for a water system device	122
(d) Water reservoir of fogging devices, cleaning	122
(e) System maintained in good repair	123
(f) Mobile water tank and Mobile Food Unit water tank	123
§228.150. Sewage Retention, Drainage, and Delivery	125
(a) Mobile holding tank	125
(b) Food establishment drainage systems	125
(c) Backflow prevention	125
(d) Grease trap	126
(e) Conveying sewage	126
(f) Removing Mobile Food Unit wastes	126
(g) Flushing a waste retention tank	126
§228.151. Disposal Facility	126

(a) Approved sewage disposal system.....	126
(b) Other liquid wastes and rainwater.....	126
§228.152. Refuse, Recyclables, and Returnables, Facilities on the Premises	127
(a) Indoor storage area.....	127
(b) Outdoor storage surface	127
(c) Outdoor enclosure	127
(d) Receptacles	127
(e) Receptacles in vending machines	127
(f) Outside receptacles	127
(g) Storage areas, rooms, and receptacles, capacity and availability	127
(h) Toilet room receptacle, covered.....	128
(i) Cleaning implements and supplies.....	128
(j) Storage areas, redeeming machines, receptacles and waste handling units, location.....	128
(k) Storing refuse, recyclables and returnables	128
(l) Areas, enclosures, and receptacles, good repair	128
(m) Outside storage prohibitions	128
(n) Covering receptacles	129
(o) Using drain plugs	129
(p) Maintaining refuse areas and enclosures	129
(q) Cleaning receptacles	129
§228.153. Refuse Removal.....	129
(a) Frequency.....	129
(b) Receptacles or vehicles	130
§228.154. Facilities for Disposal and Recycling, Community or Individual Facility	130
Subchapter F. Physical Facilities	130
§228.171. Indoor Areas, Surface Characteristics.....	130
§228.172. Outdoor Areas, Surface Characteristics.....	130
(a) Walking and driving areas	130
(b) Exterior surfaces	130
(c) Storage areas	131
§228.173. Floors, Walls, and Ceilings.....	131
(a) Cleanability	131
(b) Floors, walls, and ceilings, utility lines.....	131
(c) Floor and wall junctures, coved, and enclosed or sealed.....	131
(d) Floor carpeting, restrictions and installation.....	131
(e) Floor covering, mats and duckboards	132
(f) Wall and ceiling coverings and coatings	132
(g) Walls and ceilings, attachments	132
(h) Walls and ceilings, studs, joists and rafters	132
§228.174. Functionality	132
(a) Light bulbs, protective shielding.....	132
(b) Heating, ventilating, air conditioning system vents.....	133
(c) Insect control devices, design and installation.....	133

(d) Toilet rooms, enclosed	133
(e) Outer openings, protected	133
(f) Exterior walls and roofs, protective barrier	134
(g) Outdoor food vending areas, overhead protection	134
(h) Outdoor servicing areas, overhead protection	134
(i) Outdoor walking and driving surfaces, graded to drain	134
(j) Outdoor refuse areas	135
(k) Private homes and living or sleeping quarters, prohibition	135
(l) Living or sleeping quarters, separation	135
§228.175. Handwashing Sinks	135
(a) Minimum number	135
(b) Cleanser, availability	135
(c) Hand drying provision	135
(d) Handwashing aids and devices, use restrictions	135
(e) Handwashing signage	135
(f) Disposable towels, waste receptacle	136
§228.176. Toilets and Urinals	136
(a) Minimum number	136
(b) Toilet tissue, availability	136
§228.177. Lighting Intensity	136
§228.178. Ventilation, Mechanical	136
§228.179. Dressing Areas and Lockers, Designation.	136
(a) Designation	136
(b) Facilities provided	137
§228.180. Service Sinks, Availability	137
§228.181. Handwashing Sinks, Conveniently Located	137
§228.182. Toilet Rooms, Convenience and Accessibility	137
§228.183. Employee Accommodations, Designated Areas	137
(a) Designated area	137
(b) Facilities provided	137
§228.184. Distressed Merchandise, Segregation and Location	137
§228.185. Receptacles, Waste Handling Units, and Designated Storage Areas	137
§228.186. Premises, Buildings, Systems, Rooms, Fixtures, Equipment, Devices, and Materials	137
(a) Repairing	137
(b) Cleaning frequency and restrictions	138
(c) Cleaning floors, dustless methods	138
(d) Cleaning ventilation systems, nuisance and discharge prohibition	138
(e) Cleaning maintenance tools, preventing contamination	138
(f) Drying mops	138
(g) Absorbent materials on floors, use limitation	138
(h) Cleaning of plumbing fixtures	139
(i) Closing toilet room doors	139
(j) Using dressing rooms and lockers	139
(k) Controlling pests	139
(l) Removing dead or trapped birds, insects, rodents and other pests	139

(m) Storing maintenance tools	139
(n) Maintaining premises, unnecessary items and litter	139
(o) Prohibiting animals	140
Subchapter G. Poisonous or Toxic Materials	141
§228.201. Original Containers, Identifying Information, Prominence	141
§228.202. Working Containers, Common Name	141
§228.203. Storage, Separation	141
§228.204. Presence and Use	141
(a) Restriction	141
(b) Conditions of use. Poisonous or toxic materials	141
§228.205. Container Prohibitions, Poisonous or Toxic Material Containers	142
§228.206. Chemicals	142
(a) Sanitizers, criteria	142
(b) Chemical for washing, treatment, storage, and processing fruits and vegetables, criteria	143
(c) Boiler water additives, criteria	143
(d) Drying agents, criteria	143
§228.207. Lubricants, Incidental Food Contact, Criteria	144
§228.208. Pesticides	144
(a) Restricted use pesticides, criteria	144
(b) Rodent bait stations	144
(c) Tracking powders, pest control and monitoring	144
§228.209. Medicines	144
(a) Restriction and storage	144
(b) Refrigerated medicines, storage	145
§228.210. First Aid Supplies, Availability	145
§228.211. First Aid Supplies, Storage	145
§228.212. Other Personal Care Items, Storage	145
§228.213. Storage and Display, Separation	145
Subchapter H. Requirements Applicable to Certain Establishments	146
§228.221. Mobile Food Units	146
(a) Provisions	146
(b) Central preparation facility	149
(c) Servicing area and operations	149
§228.222. Temporary Food Establishments	149
(a) General	149
(b) Food temperatures	150
(c) Ice	150
(d) Equipment and utensils	150
(e) Single-service articles	150
(f) Water	151
(g) Wet Storage	151

(h) Sewage	151
(i) Handwashing.....	151
(j) Floors	151
(k) Ceilings and outer openings of food preparation areas.....	151
§228.223. Bed and Breakfast	152
(a) General.....	152
(b) Certified food protection manager	152
(c) Food supplies	152
(d) Food preparation and protection	152
(e) Cleaning and sanitizing.....	152
(f) Personal hygiene	153
(g) Employee restrooms.....	153
(h) Equipment and utensil design and construction.....	153
(i) Handsinks.....	153
(j) Food-contact surfaces	153
(k) Insect proof/rodent proof	153
(l) Equipment	153
(m) Garbage receptacles	153
(n) Sewage	153
(o) Water supply	154
§228.224. Outfitter Operations	154
(a) General.....	154
(b) Food supplies	154
(c) Food temperatures.....	154
(d) Food preparation and protection for excursions	154
(e) Warewashing.....	155
(f) Ice usage.....	155
(g) Potable water.....	155
(h) Handwashing.....	155
(i) Equipment	155
(j) Thermometers	155
(k) Garbage receptacles	155
(l) Certified food protection manager	155
(m) Central preparation facility	156
§228.225. Self-Service Food Market.	156
(a) Minimum standards	156
(b) Requirements	156
(c) Pre-packaged food	156
(d) Discard	156
(e) Display units, automatic shut-off.....	156
(f) Temperature requirements	157
(g) Display units for time/temperature control for safety food	157
(h) Signage.....	157
(i) Person in Charge.....	157
Subchapter I. Compliance	157

§228.241. Use for Intended Purpose.....	157
§228.242. Additional Requirements. Preventing health hazards, provision for conditions not addressed.....	158
§228.243. Variances.....	158
(a) Modifications and waivers.....	158
(b) Documentation of proposed variance and justification	158
(c) Conformance with approved procedures	159
§228.244. Facility and Operating Plans	159
(a) When plans are required	159
(b) Contents of plans and specifications.....	159
(c) When a HACCP plan is required.....	160
(d) Contents of a HACCP plan.....	160
§228.245. Confidentiality, Trade Secrets	161
§228.246. Construction Inspection and Approval, Preoperational Inspections.....	161
§228.247. Permit Requirement, Prerequisite for Operation.	162
§228.248. Conditions of Retention, Responsibilities of the Permit Holder.....	162
§228.249. Inspection frequency, Performance-based and Risk Based	163
(a) Inspection rate	163
(b) Prioritization	163
(c) Temporary food establishment	164
§228.250. Competency of Inspectors and Access	164
(a) Registered Professional Sanitarian or Sanitarian-in-Training	164
(b) Access	164
(c) Refusal, notification of right to access.....	164
(d) Refusal, reporting.....	165
(e) Inspection warrant to gain access	165
§228.251. Report of Findings	165
(a) Documenting information and observations	165
(b) Specifying time frame for corrections	166
(c) Issuing report and obtaining acknowledgment of receipt	166
(d) Refusal to sign acknowledgment	166
(e) Public information	167
(f) Inspection reports.....	167
§228.252. Imminent Health Hazard.....	171
(a) Ceasing operations and reporting.....	171
(b) Resumption of operations	171
§228.253. Priority Item/Priority Foundation Item, Time Frame for Correction.....	171
(a) Timely correction.....	171
(b) Verification and documentation of correction	171
§228.254. Core Item Violations, Time Frame for Correction	172
(a) Time frame.....	172
(b) Extension of compliance schedule.....	172
§228.255. Examination and Detention of Food	172
§228.256. Investigation and Control.....	172
(a) Obtaining information.....	172

(b) Restriction or exclusion	173
(c) Restriction or exclusion order	173
(d) Removal of restriction or exclusion	173
§228.257. Reporting of Communicable Diseases	174
(a) Who shall report	174
(b) What to report	174
(c) When to report	174
(d) Where to report	175
(e) Reporting and other duties of local health authorities	175
Subchapter J. Private Water Systems	175
§228.271. Water Supply and Pressure	175
§228.272. Water Quality	175
(a) Bacteriological properties, private water system	175
(b) Chemical properties	176
(c) Minimum and maximum residual concentrations	176
§228.273. Backflow Prevention	178
(a) Air gap	178
(b) Installation	178
§228.274. Disinfection of New or Repaired Water Systems Facilities	178
(a) When repairs are made	178
(b) After chlorination	178
(c) Water sample	179
(d) Supply of disinfectant	179
§228.275. Flushing of Water System Mains	179
§228.276. Collection System Location	179
(a) Sanitary sewers or septic tanks	179
(b) Storm sewers	179
(c) Water lines and sanitary sewers; installation location	179
§228.277. Well logs	179
§228.278. Interconnection	179

(SEE ANNEX FOR NUMERICALLY SEQUENTIAL INDEX BY PARAGRAPH)

TEXAS ADMINISTRATIVE CODE FORMAT

Subchapter A – Subchapter	
228.1 - Section	
(a) Subsection	
(1) Paragraph	
(A) Subparagraph	
(i) Clause	
(I) Subclause	
-a- Item	
-1- Subitem	

TEXAS ADMINISTRATIVE CODE

TITLE 25: HEALTH SERVICES
PART 1: DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 228: TEXAS FOOD ESTABLISHMENT RULES

Subchapter A. General Provisions.

§228.1. Purpose. The purpose of this chapter is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented. The rules in this chapter are based in part upon Code of Federal Regulations, Title 2, Food and Drugs, Parts 1 – 1499 and implement Health and Safety Code, Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Vendors.

§228.2. Definitions. The following definitions apply in the interpretation and application of this Code.

(1) Accredited program--food manager certification program that has been evaluated and listed by the department and conforms to standards set by the department.

(2) Additive--A substance added to food that changes the characteristics of that food.

(3) Adulterated food--A food shall be deemed to be adulterated as specified in the Health and Safety Code §431.081.

(4) Approved--Acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) Asymptomatic--Not showing obvious symptoms, not producing indications of a disease or other medical condition. An individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Symptoms are not shown because the symptoms have been resolved or have subsided, or because the symptoms never manifested.

(6) a_w --Water activity, indicated by the symbol a_w , is a measure of the free moisture in a food. It is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

(7) Balut--is an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

(8) Bare hand contact--Handling food with hands without any barriers as described in Subchapter C of this chapter (pertaining to Food).

§228.2 (9)

§228.2 (19)

(9) Bed and Breakfast Extended--An establishment with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests.

(10) Bed and Breakfast Food Establishment--A Bed and Breakfast that provides food service to other than to its overnight guests.

(11) Bed and Breakfast Limited--An establishment with seven or fewer rooms for rent, serves breakfast to over-night guests, and is not a retail food establishment.

(12) Beverage--A liquid for drinking, including water.

(13) Bottled drinking water--Water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(14) Casing--A tubular container for sausage products made of either natural or artificial (synthetic) material.

(15) Central Preparation Facility-- A facility that is an approved and permitted retail food establishment at which food is prepared, stored, and wrapped; and the Mobile Food Unit is supplied with fresh water and ice; and emptied of waste water into a proper waste disposal system, and cleaned, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in the Mobile Food Unit utensil-washing sink. Use of a private residence as a central preparation facility is prohibited.

(16) Certification number--A unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(17) Cleaned in Place (CIP)--Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. CIP does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(18) *Clostridium botulinum*--The name of a group of rod-shaped bacteria that grow best in low oxygen conditions and cause a serious paralytic illness called botulism. Foodborne botulism is caused by eating foods that contain botulinum toxin.

(19) Code of Federal Regulations (CFR)--Citations to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR §178.1010 refers to Title 21, Part 178, §1010. The compilation of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government which are published annually by

§228.2 (19)

§228.2 (28)

the U.S. Government Printing Office and contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

(20) Color additive--Any material imparting color to a food as defined in the Health and Safety Code §431.002(6).

(21) Commingle--Combine shellstock harvested on different days or from different growing areas as identified on the tag or label or to combine shucked shellfish from containers with different container codes or different shucking dates.

(22) Comminuted--Reduced in size by methods including chopping, flaking, grinding, or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

(23) Common dining area--A central location where people gather to eat. The term does not apply to a kitchenette or dining area located within a resident's private living quarters.

(24) Conditional employee--A potential food employee to whom a job offer is made, conditional upon responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act (ADA) of 1990.

(25) Confirmed disease outbreak--A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates food as the source of the illness.

(26) Consumer--A person, who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(27) Controlled atmosphere packaging--A method of packaging food in which the atmosphere of a package of food is modified such that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, non-respiring food, and impermeable packaging material.

(28) Cook chill packaging--A method of packaging food in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. Bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

§228.2 (29)

(29) Core item--A provision in this chapter that is not designated as a Priority item or a Priority Foundation item and includes an item that usually relates to general sanitation, operational controls, sanitation operating procedures (SSOPs) facilities or structures, equipment design, or general maintenance.

§228.2 (38)

(30) Corrosion-resistant material--A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(31) Counter-mounted equipment--Equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(32) Critical control point--A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(33) Critical limit--The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(34) Cut leafy greens--Fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. This does not include the harvest cut.

(35) Dealer--Person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, re-shipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

(36) Department--The Texas Department Of State Health Services, Division For Regulatory Services, Environmental And Consumer Safety Section, P.O. Box 149347, Mail Code 1987 Austin, Texas 78714-9347, website: www.dshs.state.tx.us.

(37) Disclosure--A written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(38) Drinking water--Water traditionally known as “potable water” and that meets 30 TAC, §§290.101 - 290.114, 290.117 - 290.119, and 290.121 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems). Drinking water includes the term “water” except where the term used connotes that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “wastewater,” and “nondrinking” water.

§228.2 (39)

(39) Dry storage area--A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous time/temperature controlled for safety (TCS) food and dry goods such as single-service items.

(40) Easily cleanable--A characteristic of a surface that allows effective removal of soil by normal cleaning methods, is dependent on the material, design, construction, and installation of the surface, and varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose and use. Easily cleanable includes a tiered application of the criteria that qualifies the surface as easily cleanable as to different situations in which varying degrees of cleanability are required such as:

(A) the appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

(B) the need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

(41) Easily movable--Portable, mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning. Also, having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(42) Egg--Shell egg of an avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. The definition of an egg does not include a balut, shell egg of reptile species such as an alligator, or an egg product.

(43) Egg product--All or portion of the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, and that is intended for human consumption such as dried, frozen, or liquid eggs. Egg product does not include food which contains egg only in a relatively small portion such as cake mixes.

(44) Employee--The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

(45) EPA--U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, telephone (202) 272-0167, website: www.epa.gov.

(46) Equipment--An article used in the operation of a food establishment such as a freezer, grinder, hood, icemaker, meat block, mixer, oven, reach-in-refrigerator, scale, sink,

§228.2 (46)

slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. This term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

§228.2 (55)

(47) Event--A unique public gathering of persons at which food products will be served directly to consumers, such as a festival, bazaar, carnival, circus, fund-raiser, public exhibition, celebration, sporting event, or other public gathering which can be civic, political, public or educational for which an appropriate regulatory authority would grant permission for the operation of the event, whether by permit, license or other official written document.

(48) Exclude--To prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.

(49) Exotic animal--Member of a species of game animals not indigenous to this state including axis deer, Nilgai antelope, red sheep, or other cloven-hoofed ruminant animals. Exotic animals are considered livestock in this chapter and are amenable to inspection under Health and Safety Code, §433.035, referring to Inspection and Other Regulation of Exotic Animals in Interstate Commerce.

(50) FDA--The U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, Maryland 20740, telephone 1-888-723-3366, website www.fda.gov/Food.

(51) Fish--Fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(52) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(53) Food additive--A substance added to food that changes the characteristics of the food as described in Health and Safety Code, §431.002(17).

(54) Foodborne disease outbreak--The occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(55) Food-contact surface--A surface of equipment or a utensil with which food normally comes into contact or a surface of equipment or a utensil from which food may drain, drip, or splash into a food or onto a surface normally in contact with food.

§228.2 (56)

(56) Food employee--An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

§228.2 (60)

(57) Food establishment--A food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

(A) a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, (machine), self-service food market, conveyance used to transport people, institution, or food bank;

(B) an establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers; and

(C) includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(D) food establishment does not include an establishment that offers only prepackaged foods that are not time / temperature controlled for safety food, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold or offered for human consumption, a Bed and Breakfast Limited facility as defined in this chapter, or a private home that receives catered or home-delivered food.

(58) Food processing plant--A commercial operation that manufactures, packages, labels, or store foods for human consumption and does not provide food directly to a consumer, and a food establishment as defined under paragraph (57) of this section.

(59) Food Protection Manager Certification--A document obtained by a person in charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of food Protection Manager Certification Programs.

(60) Game animal--An animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule or other equines as in 9 CFR 301, Definitions, as poultry in 9 CFR 381, Poultry Products Inspection Regulations; or as fish as defined under paragraph (51) of this section. Includes mammals such as reindeer, elk, deer, antelope, water buffalo; bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and non-aquatic reptiles such as land snakes. A game animal does not include ratites.

§228.2 (61)

(61) General use pesticide--A pesticide that is not classified by EPA for restricted use as specified in 40 CFR §152.175 or is not limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(62) Grade ‘A’ standards--The requirements of the United States Public Health Service/FDA “Grade A Pasteurized Milk Ordinance” with which certain fluid and dry milk and milk products comply.

(63) Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term care facility.

(64) HACCP plan--A written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(65) Handwashing sink--A lavatory, trough, basin, or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed only for the washing of hands. It includes an automatic handwashing facility.

(66) Hazard--A biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(67) Health practitioner--A physician licensed to practice medicine, or if allowed by law, an advanced registered practice nurse, physician assistant, or similar medical professional.

(68) Hermetically sealed container--A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(69) Highly susceptible population--Persons who are more likely than other people in the general population to experience foodborne disease because they are immunocompromised, preschool aged children, or older adults and are obtaining food at a facility that provides services such as custodial care, health care, or assisted living. Examples of custodial or health care facilities or of assisted living facilities include but are not limited to child or adult day care centers, kidney dialysis centers, hospitals, nursing homes, or senior centers providing nutritional or socialization services.

(70) Imminent health hazard--A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operations to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

§228.2 (71)

§228.2 (81)

(71) Injected--Manipulating meat to which a solution has been introduced into its interior by processes that are referred to as “injecting,” “pump marinating,” or “stitch pumping.”

(72) Juice--The aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. For purposes of HACCP it does not include liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

(73) Kitchenware--Food preparation and storage utensils.

(74) Law--Applicable local, state, and federal statutes, regulations, and ordinances.

(75) Leafy greens--Includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce, escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. This term does not include herbs such as cilantro or parsley.

(76) License--The document issued by the regulatory authority that authorizes a person to operate a food establishment. Can also be referred to as a permit as defined under paragraph (92) of this section.

(77) License holder--The entity that is legally responsible for the operation of the food establishment such as the owner, the owner’s agent, or other person and possesses a valid permit to operate a food establishment. Can also be referred to as a permit holder as defined under paragraph (93) of this section.

(78) Linens--Fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.

(79) *Listeria monocytogenes*--A rod-shaped bacteria that can be found in soil and water. Animals can carry the bacterium without appearing to be ill and can contaminate foods of animal origin. A serious infection called Listeriosis is usually caused by eating food contaminated with the bacterium *Listeria monocytogenes*.

(80) Livestock--Cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, and domesticated birds. Livestock are amenable to inspection.

(81) Major Food Allergen--A food allergen is a food protein that causes an adverse immune response. The 8 specific foods that are known as major food allergens include dairy, eggs, wheat, soy, peanuts, tree nuts, fish and shellfish or any food ingredients that contain protein derived from these foods. This does not include any highly refined oil derived from a food specified in this paragraph or any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

§228.2 (82)

(82) Meat--The flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish as defined under paragraph (51) of this section, poultry as defined under paragraph (103) of this section, and game animals as defined under paragraph (60) of this section that are offered for human consumption.

(83) Mechanically tenderized--Manipulating meat with deep penetration by processes which may be referred to as “blade tenderizing,” “jaccarding,” “pinning,” “needling,” or using blades, pins, needled or any mechanical device. It does not include processes by which solutions are injected into the meat.

(84) mg/L--Milligrams per liter, which is the metric equivalent of parts per million (ppm).

(85) Mobile Food Unit (MFU)--A vehicle mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. Mobile units must completely retain their mobility at all times. A Mobile Food Unit does not mean a stand or a booth. A roadside food vendor is classified as a MFU.

(86) Modified atmosphere packaging--A method of packaging food in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes: reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen.

(87) Molluscan shellfish--Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(88) Non-Continuous cooking--The cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. It does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

(89) Non-Time/Temperature Controlled for Safety (TCS) food (NTCS)--(formerly non-Potentially Hazardous Food (non-PHF)) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable *salmonella*. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution. A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a NTCS food in Figure A and Figure B in §228.2(144). A food that is designated as Product Assessment Required (PA) in Figure A and Figure B in §228.2(144) and has

§228.2 (89)

undergone a PA showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to either:

(A) intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;

(B) extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use;

(C) a combination of intrinsic and extrinsic factors; or

(D) a food that does not support the growth of or toxin formation of pathogenic microorganisms in accordance with one or more of the conditions above in this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(90) Outfitter operation--Any operation such as but not limited to trail rides, bus tours, harbor cruises or river raft trips where food is offered to patrons and which operates out of a central preparation location or food establishment.

(91) Packaged--Bottled, canned, cartoned, bagged, or wrapped, whether in a food establishment or in a food processing plant. Does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer by a food employee upon consumer request.

(92) Permit--The document issued by the regulatory authority that authorizes a person to operate a food establishment. Can also be referred to as a license as per paragraph (76) of this section.

(93) Permit holder--The entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person who possesses a valid permit to operate a food establishment. Can also be referred to as a license holder as per paragraph (77) of this section.

(94) Person--An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(95) Person in charge (PIC)--The individual present at a food establishment who is responsible for the operation at the time of inspection.

(96) Personal care items--Items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

§228.2 (96)

Includes but is not limited to medicines, first aid supplies, cosmetics, and toiletries such as tooth paste and mouthwash.

§228.2 (102)(D)

(97) pH--The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(98) Physical facilities--The structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(99) Plumbing code--The International Plumbing Code, 2009 edition, including appendices C, E, F, and G, published by the International Code Council as amended by 16 TAC §70.101, Amendments to Mandatory Building Codes, or a Plumbing Code adopted by a local regulatory authority, whichever is more stringent.

(100) Plumbing fixture--A receptacle or device that is either temporarily or permanently connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(101) Plumbing system--The water supply and distribution pipes; plumbing fixtures and traps, soil, waste, and vent pipes, sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

(102) Poisonous or toxic materials--Substances that are not intended for ingestion and are in the following four categories:

(A) cleaners and sanitizers including but not limited to cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) pesticides including substances such as insecticides and rodenticides;

(C) substances necessary for the operation and maintenance of the establishment including but not limited to nonfood grade lubricants and personal care items that may be deleterious to health; and

(D) substances not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

§228.2 (103)

(103) Poultry--Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites or squabs), whether alive or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry and in Health and Safety Code, §433.003, referring to Texas Meat and Poultry Inspection Act, and any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR 362.1 Voluntary Poultry Inspection Regulations Definitions, and in Health and Safety Code, §433.003.

(104) Premises--The physical facility, its contents, and the contiguous land or property under the control of the permit holder or the physical facility, its contents and the land or property not described previously if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of the larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(105) Primal cut--A basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

(106) Priority item--Application of a provision from this chapter that contributes directly to the elimination, prevention, or reduction of hazards associated with food borne illness or injury to an acceptable level to an acceptable level. There is no other provision that more directly controls the hazard. Includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, and handwashing. It is denoted in this chapter with a superscript P (^P).

(107) Priority Foundation Item--A provision in this chapter whose application supports, facilitates, or enables one or more priority items. Includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury, for example: personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling. It is denoted in this chapter with a super script Pf (^{Pf}).

(108) Private Water System--A drinking water system that is not connected to a public water system and not regulated by the Texas Commission on Environmental Quality.

(109) Psychrotrophic organisms--Organisms or bacteria that are capable of surviving or even thriving in a cold environment. They are responsible for spoiling refrigerated foods.

(110) Public water system--A drinking water system that complies with 30 Texas Administrative Code (TAC), §§290.101 - 290.121 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

§228.2 (111)

(111) Pushcart--A non-self-propelled Mobile Food Unit limited to serving foods requiring a limited amount of preparation as authorized by the regulatory authority and is readily movable by one or two persons. A pushcart is classified as a Mobile Food Unit. A pushcart does not include non-self-propelled units owned and operated within a retail food store. This type of mobile unit requires the support of a Central Preparation Facility.

(112) Ratite--Diverse group of large flightless birds that includes emus, ostrich, rhea or kiwis.

(113) Ready-to-eat (RTE) food--Food in a form that is edible without additional preparation to achieve food safety, as specified under §§228.71(a)(1)-(3), or (b) of these rules, referring to food. RTE food can be raw or partially cooked animal food and the consumer is advised as specified under §§228.71(a)(4)(A) and (B) of this title referring to food. RTE food is food that is prepared in accordance with a variance that is granted as specified under §228.71(a)(4)(A) and (C). RTE food may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes. RTE food includes the following:

(A) raw animal food that is cooked as specified under §§228.71(a)(1) or §(a)(2), or frozen as specified under §228.72(a)(1) of this title;

(B) raw fruits and vegetables that are washed as specified under §228.66(e) of this title;

(C) fruits and vegetables that are cooked for hot holding, as specified under §228.71(a)(3) of this title;

(D) all time/temperature controlled food that is cooked to the temperature and time required for the specific food under §228.71(a) of this title, and cooled as specified in §228.75(d) of this title;

(E) plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;

(F) substances derived from plants such as spices, seasonings, and sugar;

(G) a bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

(H) the following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

§228.2 (113)(I)

§228.2 (124)

(I) foods manufactured according to 21 CFR 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(114) Reduced oxygen packaging (ROP)--The reduction of the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level). It is a process that involves a food for which the hazards of *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form. ROP includes cook chill packaging, controlled atmosphere packaging, modified atmosphere packaging, Sous vide packaging, and vacuum packaging.

(115) Refuse--Solid waste not carried by water through the sewage system

(116) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(117) Reminder--A written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

(118) Re-service--The transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer to another person.

(119) Restrict--To limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens; and unwrapped single-service or single-use articles.

(120) Restricted egg--Any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR 590.

(121) Restricted use pesticide--A pesticide product that contains the active ingredients specified in 40 CFR §152.175. Pesticides classified for restricted use, and that are limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(122) Risk--The likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

(123) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as a Mobile Food Unit.

(124) Safe Material--An article manufactured from or composed of materials that may not reasonably be expected to result either directly or indirectly in their becoming a component

§228.2 (124)

of or otherwise affecting the characteristics of any food. An additive that is used as specified in the Health and Safety Code, Chapter 431, or other materials that are not additives and that are used in conformity with applicable regulations of the FDA.

(125) Sanitization--The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(126) Sealed--Free of cracks or other openings that allow the entry or passage of moisture.

(127) Self-Service Food Market--a market that is unstaffed and offers prepackaged non-time/temperature controlled for safety food and prepackaged refrigerated or frozen time/temperature controlled for safety food that is stored and displayed in equipment that complies with §228.225 of this title.

(128) Service animal--a canine that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability as per Health and Safety Code, §437.023.

(129) Servicing area--A base location to which a Mobile Food Unit or transportation vehicle returns regularly for such things as vehicle cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food. No food preparation, service or utensil/warewashing is conducted at a Servicing Area.

(130) Sewage--Liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(131) Shellfish control authority--A state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

(132) Shellstock--Raw, in-shell molluscan shellfish.

(133) Shiga toxin-producing *Escherichia coli* (STEC)--Any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or “Shiga-like” toxins). STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild non-bloody diarrhea to hemorrhagic colitis (i.e., bloody diarrhea), to hemolytic uremic syndrome (HUS – a type of kidney failure). Examples of serotypes of STEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; and *E. coli* O111:NM. STEC are sometimes referred to as VTEC, verocytotoxigenic *E. coli*, or as EHEC, Enterohemorrhagic *E. coli*. EHEC are a subset of STEC which can cause hemorrhagic colitis or HUS.

§228.2 (134)

(134) Shucked shellfish--Molluscan shellfish that have one or both shells removed.

(135) Single-service articles--Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

(136) Single-use articles--Utensils and bulk food containers designed and constructed to be used once and discarded. Includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under Subchapter D (pertaining to Equipment, Utensils, and Linens).

(137) Slacking--The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23 degrees Celsius (-10 degrees Fahrenheit) to -4 degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

(138) Smooth--A food-contact surface having a surface free of pits and inclusions with cleanability equal to or exceeding that of (100 grit) number 3 stainless steel. A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale. A floor, wall, or ceiling having an even or level surface with no roughness or projections that causes it to be difficult to clean.

(139) Sous vide packaging--A method of packaging food in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(140) Specialized processing method--A method of preparing certain foods that includes but is not limited to smoking food as a method of food preservation not as a method of flavor enhancement, curing food, using food additives or adding components to preserve and / or render a food so it is not a time / temperature controlled for safety food such as sushi rice, packaging food using a reduced oxygen method, operating a Molluscan shellfish life-support system display tank to store and display shellfish offered for human consumption, custom processing animals for personal use as food only such as indigenous deer processing, preparing food by a method determined by the regulatory authority as requiring a variance, or sprouting seeds or beans in a retail food establishment such as alfalfa or wheat grass.

(141) Tableware--Eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, tumblers, and plates.

(142) Temperature measuring device--A thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

§228.2 (143)

(143) Temporary food establishment--A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(144) Time/Temperature Controlled for Safety (TCS) food (TCS)--(formerly Potentially Hazardous Food (PHF)) A food that requires time/temperature controlled for safety to limit pathogenic microorganism growth or toxin formation. An animal food that is raw or heat-treated. A plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixture of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation. Except as specified in Tables A and B of this definition, a food that because of the interaction of A_w and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Figure: 25 TAC §228.2(144)

(145) USDA--The United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, DC 20250, phone: (202) 720-2791, website: www.usda.gov.

(146) Utensil--A food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

(147) Vacuum packaging--A method of packaging food in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package.

(148) Variance--A written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

(149) Vending machine--A self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(150) Vending machine location--The room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines. This does not include Self-Service Food Markets.

(151) Warewashing--The cleaning and sanitizing of utensils and food-contact surfaces of equipment.

§228.2 (152)**§228.2 (152)**

(152) Whole-muscle, intact beef--Whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

Figure: 25 TAC §228.2(144)

Table A. Interaction of PH and A_w for control of spores in FOOD heat-treated to destroy vegetative cells and subsequently PACKAGED

A _w values	pH: 4.6 or less	pH: > 4.6 - 5.6	pH: > 5.6
<0.92	NTCS FOOD*	NTCS FOOD	NTCS FOOD
> 0.92 - 0.95	NTCS FOOD	NTCS FOOD	PA**
> 0.95	NTCS FOOD	PA	PA

* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY (TCS) FOOD

** PA means Product Assessment required

Table B. Interaction of PH and A_w for control of vegetative cells and spores in FOOD not heat-treated or heat-treated but not PACKAGED

A _w values	pH: < 4.2	pH: 4.2 - 4.6	pH: > 4.6 - 5.0	pH: > 5.0
< 0.88	NTCS food*	NTCS food	NTCS food	NTCS food
0.88 – 0.90	NTCS food	NTCS food	NTCS food	PA**
> 0.90 – 0.92	NTCS food	NTCS food	PA	PA
> 0.92	NTCS food	PA	PA	PA

* TCS FOOD means TIME/TEMPERATURE CONTROLLED FOR SAFETY (TCS) FOOD

** PA means Product Assessment required

§228.31

§228.32 (3)(D)

Subchapter B. Management and Personnel.

§228.31. Responsibility.

(a) Except as specified in subsection (b) of this section, the permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.^{Pf}

(b) In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder that are located on the same premises, the permit holder may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separate permitted food establishment on the premises.^{Pf}

§228.32. Knowledge.

Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this rule. The person in charge shall demonstrate this knowledge by:

(1) complying with this chapter by having no priority items during the current inspection;^{Pf}

(2) being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an Accredited Program;^{Pf} or

(3) responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(A) describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;^{Pf}

(B) explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;^{Pf}

(C) describing the symptoms associated with the diseases that are transmissible through food;^{Pf}

(D) explaining the significance of the relationship between maintaining the time and temperature of time/temperature controlled for safety (TCS) Food and the prevention of foodborne illness;^{Pf}

§228.32 (3)(E)

(E) explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish; ^{Pf}

(F) stating the required food temperatures and times for safe cooking of Time/Temperature Controlled For Safety (TCS) Food including meat, poultry, eggs, and fish; ^{Pf}

(G) stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of time/temperature controlled for safety (TCS) Food; ^{Pf}

(H) describing the relationship between the prevention of foodborne illness and the management and control of the following:

(i) cross contamination; ^{Pf}

(ii) hand contact with ready-to-eat foods; ^{Pf}

(iii) handwashing; ^{Pf} and

(iv) maintaining the food establishment in a clean condition and in good repair; ^{Pf}

(I) describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction. ^{Pf}

(J) explaining the relationship between food safety and providing equipment that is:

(i) sufficient in number and capacity; ^{Pf} and

(ii) properly designed, constructed, located, installed, operated, maintained, and cleaned; ^{Pf}

(K) explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment; ^{Pf}

(L) identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections; ^{Pf}

(M) identifying poisonous and toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law; ^{Pf}

§228.32 (3)(N)

§228.33 (e)

(N) identifying critical control points/priority items in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this rule;^{Pf}

(O) explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, these rules, or an agreement between the regulatory authority and the establishment;^{Pf}

(P) explaining the responsibilities, rights, and authorities assigned by these rules to the:

(i) food employee;^{Pf}

(ii) conditional employee;^{Pf}

(iii) person in charge;^{Pf}

(iv) regulatory authority;^{Pf} and

(Q) explaining how the person in charge, food employees comply with reporting responsibilities and exclusion or restriction of food employees.^{Pf}

§228.33. Certified Food Protection Manager and Food Handler Requirements.

(a) At least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.^{Pf}

(b) The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

(c) Except in a temporary food establishment, at least one certified food protection manager must be employed by each food establishment.^{Pf}

(d) Except in a temporary food establishment and the certified food manager, all food employees shall successfully complete an accredited food handler training course, within 60 days of employment.^{Pf}

(e) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee. The requirement to complete a food handler training course shall be effective September 1, 2016.

§228.33 (f)

§228.34 (7)

(f) This section does not apply to certain types of food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illnesses based on the nature of the operation and extent of food preparation.

§228.34 Duties.

The person in charge shall ensure that:

(1) food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under Subchapter F of these rules (pertaining to Physical Facilities);^{Pf}

(2) persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;^{Pf}

(3) employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with these rules;^{Pf}

(4) employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;^{Pf}

(5) employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;^{Pf}

(6) employees are verifying that foods delivered to the food establishment during non-operating hours are from approved sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unadulterated and accurately presented;^{Pf}

(7) employees are properly cooking time/temperature controlled for safety (TCS) food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under §228.105(a) and §228.112(a)(2) of this title (relating to Equipment, Utensils, and Linens);^{Pf}

§228.34 (8)

(8) employees are using proper methods to rapidly cool time/temperature controlled for safety (TCS) food, that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;^{Pf}

(9) consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under §228.80 of this title (relating to Food) that the food is not cooked sufficiently to ensure its safety;^{Pf}

(10) employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;^{Pf}

(11) consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under §228.68(f) of this title;^{Pf}

(12) except when otherwise approved as specified in §228.65(a)(4) of this title, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;^{Pf}

(13) employees are properly trained in food safety including food allergy awareness as it relates to their assigned duties.^{Pf}

(14) food employees and conditional employees are informed in a verifiable manner of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under §228.32(3)(P) of this title;^{Pf} and

(15) written procedures and plans, where specified by these rules and as developed by the food establishment, are maintained and implemented as required.^{Pf}

§228.35. Responsibilities and Reporting Symptoms and Diagnosis.

(a) Responsibility of Permit Holder, Person in Charge, and Conditional Employees. The permit holder shall require food employees and conditional employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, such as the date of onset of symptoms and an illness, or of a diagnosis-if the food employee or conditional employee:

§228.35 (a)(1)

§228.35 (a)(4)

(1) Has any of the following symptoms:

(A) vomiting; ^P

(B) diarrhea; ^P

(C) jaundice; ^P

(D) sore throat with fever; ^P or

(E) a lesion containing pus such as a boil or infected wound that is open or draining and is:

(i) on the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover; ^P

(ii) on exposed portions of the arms, unless the lesion is protected by an impermeable cover; ^P or

(iii) on other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; ^P

(2) Has an illness diagnosed by a Health Practitioner due to:

(A) Norovirus; ^P

(B) Hepatitis A virus; ^P

(C) *Shigella* spp.; ^P

(D) Shiga toxin-producing *Escherichia coli*; ^P

(E) *Salmonella typhi*; ^P or

(F) non-typhoidal *salmonella*. ^P

(3) Had a previous illness, diagnosed by a Health Practitioner, within the past 3 months due to *Salmonella typhi*, without having received antibiotic therapy, as determined by a Health Practitioner; ^P

(4) Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:

§228.35 (a)(4)(A)

§228.35 (c)(2)

(A) norovirus within the past 48 hours of the last exposure, ^P

(B) Shiga Toxin-Producing *Escherichia coli* or *Shigella* spp. within the past 3 days of the last exposure, ^P

(C) *Salmonella typhi* within the past 14 days of the last exposure, ^P or

(D) hepatitis A virus within the past 30 days of the last exposure ^P; or

(5) Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual diagnosed with an illness caused by:

(A) norovirus within the past 48 hours of the last exposure, ^P

(B) Shiga Toxin-Producing *Escherichia coli* or *Shigella* spp. within the past 3 days of the last exposure, ^P

(C) *Salmonella typhi* within the past 14 days of the last exposure, ^P or

(D) hepatitis A virus within the past 30 days of the last exposure. ^P

(b) The person in charge shall notify the regulatory authority when a food employee is:

(1) jaundiced; ^P or

(2) diagnosed with an illness due to a pathogen as specified under subsection (a)(2)(A) - (F) of this section. ^P

(c) The person in charge shall ensure that a conditional employee:

(1) who exhibits or reports a symptom, or who reports diagnosed illness as specified under subsection (a)(1) - (3) of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under §228.37 of this title; ^P and

(2) who will work as a food employee in a food establishment that serves as a highly susceptible population and reports a history of exposure as specified under subsection (a)(4) - (5), is prohibited from becoming a food employee until the conditional employee meets the criteria as specified under §228.37(10) of this title. ^P

§228.35 (d)

(d) The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure as specified under subsection (a)(1) - (5) of this section is:

(1) excluded as specified under §228.36(1) - (3), and paragraphs (4)(A), (5)(A), (6)(A), (7) or (8)(A) and in compliance with the provisions specified under §228.37(1) - (8);^P or

(2) restricted as specified under §228.36(4)(B), (5)(B), (6)(B), (8)(B), or §228.37(9) or (10) and in compliance with the provisions specified under §228.37(4)-(10).^P

(e) A food employee or conditional employee shall report to the person in charge the information as specified under (a) of this section.^P

(f) A food employee shall:

(1) comply with an exclusion as specified under §228.36(1)-(3) and (4)(A), (5)(A), (6)(A), (7), or (8)(A) and with the provisions specified under §228.37(1) - (8);^P or

(2) comply with a restriction as specified under §228.36(4)(B), (5)(B), (6)(B), (7), (8)(B), or §228.36 (8), (9), or (10) and comply with the provisions specified under §228.37(4) - (10).^P

§228.36. Conditions of Exclusions and Restrictions.

The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

(1) Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:

(A) symptomatic with vomiting or diarrhea;^P or

(B) symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, *Shigella* spp., non-typhoidal *salmonella*, or shiga toxin-producing *E. coli*.^P

(2) Exclude a food employee who is:

(A) jaundiced and the onset occurred within the last 7 calendar days, unless the food employee provides to the person in charge written medical documentation from a Health Practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal-orally transmitted infection;^P

§228.36 (2)(B)

§228.36 (8)

(B) diagnosed with an infection from hepatitis A virus within 14 calendar days from the onset of any illness symptoms, or within 7 calendar days of the onset of jaundice or diagnosed with an infection from hepatitis A virus without developing symptoms.^P

(3) Exclude a food employee who is diagnosed with an infection from salmonella typhi, or reports a previous infection with *Salmonella* typhi within the past 3 months as specified under §228.35(a)(3) of this title.^P

(4) If a food employee is diagnosed with an infection from norovirus and is asymptomatic:

(A) exclude the food employee who works in a food establishment serving a highly susceptible population;^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population.^P

(5) If a food employee is diagnosed with an infection from *Shigella* spp. and is asymptomatic:

(A) exclude the food employee who works in a food establishment serving a highly susceptible population;^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population.^P

(6) If a food employee is diagnosed with an infection from shiga toxin-producing *E. coli*, and is asymptomatic:

(A) exclude the food employee who works in a food establishment serving a highly susceptible population;^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population.^P

(7) If a food employee is diagnosed with an infection from non-typhoidal *salmonella* and is asymptomatic, restrict the food employee who works in a food establishment serving a highly susceptible population or in a food establishment not serving a highly susceptible population.^P

(8) If a food employee is ill with symptoms of acute onset of sore throat with fever:

§228.36 (8)(A)

(A) exclude the food employee who works in a food establishment serving a highly susceptible population; ^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population. ^P

(9) if a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under §228.35(a)(1)(E), restrict the food employee. ^P

(10) if a food employee is exposed to a foodborne pathogen as specified under sections §228.35(a)(4)(A-D) or (a)(5)(A-D), restrict the food employee who works in a food establishment serving a highly susceptible population. ^P

§228.37. Managing Exclusions and Restrictions.

The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

(1) Except when a food employee is diagnosed with an infection from hepatitis A virus or *Salmonella typhi*:

(A) reinstate a food employee who was excluded as specified under section §228.36(1)(A) if the food employee:

(i) is asymptomatic for at least 24 hours; ^P or

(ii) provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition. ^P

(B) If a food employee was diagnosed with an infection from norovirus and excluded as specified under §228.36(1) (B):

(i) restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under paragraph (4)(A) or (B) of this section are met; ^P
or

(ii) retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under paragraph (4)(A) or (B) of this section are met. ^P

§228.37 (1)(C)

§228.37 (2)(A)

(C) If a food employee was diagnosed with an infection from *Shigella* spp. and excluded as specified under §228.36(1) (B):

(i) restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subsection (5)(A) or (B) of this section are met; ^P or

(ii) retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections (5)(A) or (B) , or (5)(A) and (C) of this section are met. ^P

(D) If a food employee was diagnosed with an infection from shiga toxin-producing *Escherichia coli* and excluded as specified under §228.36(2):

(i) restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subsections (6)(A) or (B) of this section are met; ^P or

(ii) retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections (6)(A) or (B) are met. ^P

(E) If a food employee was diagnosed with an infection from non-typhoidal *Salmonella* and excluded as specified under §228.36(2):

(i) restrict the food employee, who is asymptomatic for at least 30 days until conditions for reinstatement as specified under subsection (7)(A) or (B) of this section are met; ^P

(ii) retain the exclusion for the food employee who is symptomatic, until conditions for reinstatement as specified under subsection (7)(A) or (B) of this section are met. ^P

(2) reinstate a food employee who was excluded as specified under §228.36(2) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met;

(A) the food employee has been jaundiced for more than 7 calendar days;^P

§228.37 (2)(B)

(B) the anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days; ^P or

(C) the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Hepatitis A virus infection. ^P

(3) reinstate a food employee who was excluded as specified under §228.36(3) if:

(A) the person in charge obtains approval from the regulatory authority; ^P
and

(B) the food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from *S. typhi* infection. ^P

(4) reinstate a food employee who was excluded as specified under §228.36(1)(B) or (4)(A) who was restricted under §228.36(4)(B) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a norovirus infection; ^P

(B) the food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 48 hours have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed. ^P

(5) reinstate a food employee who was excluded as specified under §228.36(2) or (5)(A) or who was restricted under section §228.36(5)(B) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a *Shigella* spp. infection based on test results showing 2 consecutive negative stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics, ^P
and

(ii) at least 24 hours apart; ^P

§228.37 (5)(B)

(B) the food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 7 calendar days have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 7 calendar days have passed since the food employee was diagnosed. ^P

(6) reinstate a food employee who was excluded or restricted as specified under §228.36(2) or (6)(A) or who was restricted under §228.36(6)(B) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from shiga toxin-producing *Escherichia coli* based on test results that show 2 consecutive negative stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics; ^P
and

(ii) at least 24 hours apart; ^P

(B) the food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than 7 calendar days have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 7 days have passed since the food employee was diagnosed. ^P

(7) reinstate a food employee who was excluded as specified under §228.36(2) or who was restricted as specified under §228.36(7) if the person in charge obtains approval from the regulatory authority ^P and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a non-typhoidal *salmonella* infection based on test results showing 2 consecutive negative stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics, ^P
and

(ii) at least 24 hours apart; ^P

§228.37 (7)(B)

(B) the food employee was restricted after symptoms of vomiting or diarrhea resolved, and more than 30 days have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 30 days have passed since the food employee was diagnosed. ^P

(8) reinstate a food employee who was excluded or restricted as specified under §228.36(8)(A) or (B) if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:

(A) has received antibiotic therapy for *Streptococcus pyogenes* infection for more than 24 hours; ^P

(B) has at least one negative throat specimen culture for *Streptococcus pyogenes* infection; ^P or

(C) is otherwise determined by a health practitioner to be free of a *Streptococcus pyogenes* infection. ^P

(9) reinstate a food employee who was restricted as specified under §228.36(9) if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:

(A) an impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist; ^P

(B) an impermeable cover on the arm if the infected wound or pustular boil is on the arm; ^P or

(C) a dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body. ^P

(10) reinstate a food employee who was restricted as specified under §228.36(10) and was exposed to one of the following pathogens as specified under §228.35(a)(4)(A-D) or §228.35 (a)(5)(A-D):

(A) norovirus and one of the following conditions is met:

(i) more than 48 hours have passed since the last day the food employee was potentially exposed; ^P or

§228.37 (10)(A)(ii)

(ii) more than 48 hours have passed since the food employee's household contact became asymptomatic.^P

§228.37 (10)(D)(vi)

(B) *Shigella* spp. or shiga toxin-producing *Escherichia coli* and one of the following conditions is met:

(i) more than 3 calendar days have passed since the last day the food employee was potentially exposed;^P or

(ii) more than 3 calendar days have passed since the food employee's household contact became asymptomatic.^P

(C) *S. typhi* and one of the following conditions is met:

(i) more than 14 calendar days have passed since the last day the food employee was potentially exposed;^P or

(ii) more than 14 calendar days have passed since the food employee's household contact became asymptomatic.^P

(D) hepatitis A virus and one of the following conditions is met:

(i) the food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A;^P

(ii) the food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A;^P

(iii) the food employee is immune to hepatitis A virus infection because of IgG administration;^P

(iv) more than 30 calendar days have passed since the last day the food employee was potentially exposed;^P

(v) more than 30 calendar days have passed since the food employee's household contact became jaundiced;^P or

(vi) the food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in subsection (10)(D)(iv) and (v) of this section, and the food employee receives additional training about:

§228.37 (10)(D)(vi)(I)

§228.38 (b)(2)(E)

of infection,^P

(I) hepatitis A symptoms and preventing the transmission

(II) proper handwashing procedures,^P and

(III) protecting ready-to-eat food from contamination

introduced by bare hand contact.^P

§228.38. Hands and Arms.

(a) Clean Condition. Food employees shall keep their hands and exposed portions of their arms clean.^P

(b) Cleaning Procedure.

(1) except as specified in subsection (d) of this section, food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a handwashing sink that is equipped as specified under §228.146 and §228.175.^P

(2) food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

(A) rinse under clean, running warm water;^P

(B) apply an amount of cleaning compound recommended by the cleaning compound manufacturer;^P

(C) rub together vigorously for at least 10 to 15 seconds while:

(i) paying particular attention to removing soil from underneath the fingernails during the cleaning procedure,^P and

(ii) creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;^P

(D) thoroughly rinse under clean, running warm water;^P and

(E) immediately follow the cleaning procedure with thorough drying using a method as specified under §228.175(c).^P

§228.38 (b)(3)

(3) to avoid re-contaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.^{Pf}

§228.38 (d)(9)

(4) if approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands or surrogate prosthetic devices.^{Pf}

(c) Special Handwash Procedures. Employees not utilizing suitable utensils or single-use gloves when handling ready-to-eat foods shall wash hands using the cleaning procedures specified in subsection (b)(2) of this section and follow the approved procedures specified in §228.65(a)(5) of this title.

(d) When to Wash. Food employees shall clean their hands and exposed portions of their arms as specified under subsection (b) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles^P and:

(1) after touching bare human body parts other than clean hands and clean, exposed portions of arms;^P

(2) after using the toilet room;^P

(3) after caring for or handling service animals or aquatic animals as specified in §228.44(2);^P

(4) except as specified in §228.42(b) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;^P

(5) after handling soiled equipment or utensils;^P

(6) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;^P

(7) when switching between working with raw food and working with ready-to-eat food;^P

(8) before donning gloves to initiate a task that involves working with food;^P and

(9) after engaging in other activities that contaminate the hands.^P

§228.38 (e)

(e) Where to Wash. Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.^{Pf}

§228.38 (f)(1)(B)(v)

(f) Hand Antiseptics.

(1) a hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(A) comply with one of the following:

(i) be an approved drug that is listed in the FDA publication Approved Drug Products With Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness;^{Pf} or

(ii) have active antimicrobial ingredients that are listed in the FDA monograph for OTC health-care antiseptic drug products as an antiseptic handwash,^{Pf} and

(B) consist only of components which the intended use of each complies with one of the following:

(i) a threshold of regulation exemption under 21 CFR 170.39 - threshold of regulation for substances used in food-contact articles;^{Pf} or

(ii) 21 CFR 178 - indirect food additives: adjuvants, production aids, and sanitizers as regulated for use as a food additive with conditions of safe use,^{Pf} or

(iii) a determination of generally recognized as safe (GRAS). partial listings of substances with food uses that are GRAS may be found in 21 CFR 182 – substances generally recognized as safe, 21 CFR 184 - direct food substances affirmed as generally recognized as safe, or 21 CFR 186 – indirect food substances affirmed as generally recognized as safe for use in contact with food, and in FDA's Inventory of GRAS Notices,^{Pf} or

(iv) a prior sanction listed under 21 CFR 181 – prior sanctioned food ingredients,^{Pf} or

(v) a Food Contact Notification that is effective,^{Pf} and

§228.38 (f)(1)(C)

§228.42 (a)(2)

(C) be applied only to hands that are cleaned as specified under §228.38(b).^{Pf}

(2) if a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified under paragraph (1)(B) of this subsection, use shall be:

(A) followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves;^{Pf} or

(B) limited to situations that involve no direct contact with food by the bare hands.^{Pf}

(3) a hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.^{Pf}

§228.39. Fingernail Maintenance.

(a) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.^{Pf}

(b) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.^{Pf}

§228.40. Jewelry Prohibition. Except for a plain ring such as a wedding band, while preparing food, food employees may not wear jewelry including medical information jewelry on their arms and hands.

§228.41. Outer Clothing, Clean Condition. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single- service and single-use articles.

§228.42. Food Contamination Prevention.

(a) Eating, Drinking, or Using Tobacco.

(1) except as specified in paragraph (2) of this subsection, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

(2) a food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

§228.42 (a)(2)(A)

§228.45

(A) the employee's hands;

(B) the container; and

(C) exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) Discharges from the Eyes, Nose, and Mouth. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.^P

§228.43. Hair Restraints.

(a) Except as provided in subsection (b) of this section, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

§228.44. Animals, Handling Prohibitions.

(a) Except as specified in subsection (b) of this section, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in §228.186(o)(2)(B)-(E) of this title.^{Pf}

(b) Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under §228.38(b) and (d)(3) of this title.

§228.45. Contamination Events.

Clean-up of Vomit and Diarrheal Events. A food establishment shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food establishment the procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.^{Pf}

§228.61

§228.62 (a)(5)(C)

Subchapter C. Food.

§228.61. Condition Safe, Unadulterated, and Honestly Presented. Food shall be safe, unadulterated, and, as specified under §228.78(b) of this title, honestly presented.^P

§228.62. Approved Sources.

(a) Compliance with Food Law.

(1) Food shall be obtained from sources that comply with applicable laws and are licensed by the state regulatory authority having jurisdiction over the processing and distribution of the food.^P

(2) Food prepared in a private home, except as allowed in §228.223 of this title, or from an unlicensed food manufacturer or wholesaler, is considered to be from an unapproved source and may not be used or offered for human consumption in a food establishment.^P

(3) Packaged food shall be labeled as specified in law, including 21 CFR 101, Food Labeling, 9 CFR 317, Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N, Labeling and Containers, and as specified under §228.63(h) and (i) of this title.^P

(4) Fish, other than those specified in §228.72(a)(2) of this title, that are intended for consumption in their raw form and allowed as specified under §228.71(a)(4) of this title may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under section §228.72(a)(1) of this title; or frozen on the premises as specified under §228.72(a)(1) of this title and records are retained as specified under §228.72(b) of this subchapter.

(5) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in section §228.71(a)(3) of this title shall be:

(A) obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef;^{Pf} or

(B) deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef;^{Pf} and

(C) if individually cut in a food establishment:

§228.62 (a)(5)(C)(i)

§228.62 (e)(1)

(i) cut from whole-muscle intact beef that is labeled by a food processing plant as specified in subparagraph (A) of this paragraph or identified as specified in subparagraph (B) of this paragraph;^{Pf}

(ii) prepared so they remain intact;^{Pf} and

(iii) if packaged for undercooking in a food establishment, labeled as specified in subparagraph (A) of this paragraph or identified as specified in subparagraph (B) of this paragraph.^{Pf}

(6) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR §317.2(l) and 9 CFR §381.125(b).

(7) Eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in law, including 21 CFR §101.17(h).

(b) Food in a hermetically sealed container. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.^P

(c) Fluid milk and milk products. Fluid milk and milk products shall be obtained from sources that comply with Grade A standards in accordance with 25 TAC, §217.24.^P

(d) Fish.

(1) Fish that are received for sale or service shall be:

(A) commercially and legally caught or harvested;^P or

(B) approved for sale or service.^P

(2) Molluscan shellfish that are recreationally caught may not be received for sale or service.^P

(e) Molluscan shellfish.

(1) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.^P

§228.62 (e)(2)

(2) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.^P

(f) Wild mushrooms.

(1) Except as specified in paragraph (2) of this subsection, mushroom species picked in the wild shall not be offered for sale or service by a food establishment unless the food establishment has been approved to do so.^P

(2) This section does not apply to:

(A) cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or

(B) wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(g) Exotic animals and game animals.

(1) If exotic animals are received for sale or service, they shall:

(A) be commercially raised for food^P and;

(i) raised, slaughtered, processed, and deemed to be “inspected and approved” under an inspection program administered by USDA in accordance with 9 CFR 352, Exotic Animals; Voluntary Inspection;^P or

(ii) raised, slaughtered, processed, and deemed to be “inspected and passed” under a meat and poultry inspection program administered by the department or any other state meat inspection program deemed equal to USDA inspection;^P

(B) as allowed by law, for exotic animals that are live caught, be slaughtered and processed as required in paragraph (1)(A)(i) or (ii) of this subsection;^P and

(C) as allowed by law, for exotic animals that are field dressed:

(i) receive an antemortem and postmortem examination by the appropriate inspection personnel as described in paragraph (1)(A)(i) or (ii) of this subsection;^P and

§228.62 (g)(1)(C)(ii)

(ii) be field dressed, transported, and processed according to the requirements specified by the appropriate regulatory authority as described in paragraph (1)(A)(i) or (ii) of this subsection.^P

(2) If game animals are received for sale or service they shall be:

(A) commercially raised for food^P and:

(i) raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction;^P or

(ii) under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction;^P and

(iii) raised, slaughtered, and processed according to:

(I) laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program;^P and

(II) requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for ante mortem and postmortem examination by an approved veterinarian or veterinarian's designee;^P

(B) under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352, Exotic Animals; Voluntary Inspection or rabbits that are "inspected and certified" in accordance with 9 CFR 354, Voluntary Inspection of Rabbits and Edible Products Thereof;^P

(C) as allowed by law, for wild game animals that are live-caught:

(i) under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction;^P and

(ii) slaughtered and processed according to:

(I) laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program;^P and

(II) requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with

§228.62 (g)(2)(C)(ii)(II)

§228.63 (a)(5)

consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;^P or

(D) as allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:

(i) receive a postmortem examination by an approved veterinarian or veterinarian's designee;^P or

(ii) are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program;^P and

(iii) are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.^P

(3) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17, Endangered and Threatened Wildlife and Plants.

§228.63. Specifications for Receiving.

(a) Temperature.

(1) Except as specified in paragraph (2) of this subsection, refrigerated, time/temperature controlled for safety food shall be at a temperature of 5 degrees Celsius (41 degrees Fahrenheit) or below when received.^P

(2) If a temperature other than 5 degrees Celsius (41 degrees Fahrenheit) for a time/temperature controlled for safety (TCS) food is specified in law governing its distribution the food may be received at the specified temperature.

(3) Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less.^P

(4) Grade A Milk shall be received in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. Texas Milk and Dairy Rules, 25 TAC §217.28(1).^P

(5) Molluscan shellfish shall be received in refrigerated equipment or on ice that maintains a temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. Texas Molluscan Shellfish Rules, 25 TAC §241.61(a).^P

§228.63 (a)(6)

§228.63 (e)

(6) Time/temperature controlled for safety (TCS) food that is cooked to a temperature and for a time specified under section §228.71 of this subchapter and received hot shall be at a temperature of 57 degrees Celsius (135 degrees Fahrenheit) or above. ^P

(7) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen. ^P

(8) Upon receipt, time/temperature controlled for safety food shall be free of evidence of previous temperature abuse, such as but not limited to odors, ice crystals, frost or discoloration. ^P

(b) Additives. Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR Subpart C, §424.21(b), food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 180, Tolerances and Exemptions From Tolerances for Pesticide Chemicals in Food. ^P

(c) Eggs. Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR 56, Voluntary Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs, and 9 CFR 590, Inspection of Eggs and Egg Products. ^P

(d) Eggs and milk products, pasteurized.

(1) Egg products shall be obtained pasteurized. ^P

(2) Fluid and dry milk and milk products shall:

(A) be obtained pasteurized; ^P and

(B) comply with grade A standards as specified in law. ^P

(3) Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with the Texas Frozen Desserts Manufacturing Licensing Act, Health and Safety Code, Chapter 440. ^P

(4) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133, Cheeses and Related Cheese Products, for curing certain cheese varieties. ^P

(e) Package integrity. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants. ^{Pf}

§228.63 (f)

§228.63 (i)(1)(A)(iii)

(f) Ice. Ice for use as a food or a cooling medium shall be made from drinking water.^P

(g) Juice treated. Pre-packaged juice shall:

(1) be obtained from a processor with a HACCP system as specified in 21 CFR 120 Hazard Analysis and Critical Control (HACCP) Systems;^P

(2) be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR §120.24 Process Controls.^P

(h) Shucked shellfish, packaging and identification.

(1) Raw shucked shellfish, including individual quick frozen oysters, shall be obtained in nonreturnable packages which bear a legible label that identifies the:^{Pf}

(A) name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish;^{Pf} and

(B) the “sell by” or “best if used by” date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more.^{Pf}

(2) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under paragraph (1) of this subsection, shall be subject to detention as provided in Health and Safety Code, Chapter 436.

(i) Shellstock identification.

(1) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the Texas Molluscan Shellfish Rules, 25 TAC §§241.50 - 241.71, and that list:^{Pf}

(A) except as specified under paragraph (3) of this subsection, on the harvester's tag or label, the following information in the following order:^{Pf}

(i) the harvester's identification number that is assigned by the shellfish control authority;^{Pf}

(ii) the date of harvesting;^{Pf}

(iii) the most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in

§228.63 (i)(1)(A)(iii)

§228.63 (i)

use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested; ^{Pf}

(iv) the type and quantity of shellfish; ^{Pf} and

(v) the following statement in bold, capitalized type: “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS”; ^{Pf} and

(B) except as specified in paragraph (3) of this subsection, on each dealer’s tag or label, the following information in the following order: ^{Pf}

(i) the dealer’s name and address, and the certification number assigned by the shellfish control authority; ^{Pf}

(ii) the original shipper’s certification number including the abbreviation of the name of the state or country in which the shellfish are harvested; ^{Pf}

(iii) the same information as specified for a harvester’s tag under subparagraph (A)(ii)-(iv) of this paragraph; ^{Pf}

(iv) the following statement in bold, capitalized type: “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS”. ^{Pf}

(2) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under paragraph (1) of this subsection shall be subject to detention as provided in Health and Safety Code, Chapter 436.

(3) If a place is provided on the harvester’s tag or label for a dealer’s name, address, and certification number, the dealer’s information shall be listed first.

(4) If the harvester’s tag or label is designed to accommodate each dealer’s identification as specified under paragraph (1)(B)(i) and (ii) of this subsection individual dealer tags or labels need not be provided.

(j) Shellstock, condition. When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

§228.64

§228.64 (e)

§228.64. Molluscan Shellfish, Original Container and Records.

(a) Except as specified in subsections (b) - (d) of this section, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(b) For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container maintained at 41 degrees Fahrenheit, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(1) the source of the shellstock on display is identified as specified under sections §228.63(i) and §228.64(e) of this title; and

(2) the shellstock are protected from contamination.

(c) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

(1) the labeling information for the shellfish on display as specified under §228.63(h) of this title is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(2) the shellfish are protected from contamination.

(d) Shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers where allowed by law if:

(1) the labeling information for the shellfish is on each container as specified under §228.63(h) and §228.79(a)(1) and (2)(A) - (E) of this title; and

(2) the labeling information as specified under subsection §228.63(h) of this title is retained which correlates with the date when, or dates during which, the shellfish are sold or served;

(3) the labeling information and dates specified under subsection (d)(2) of this section are maintained for 90 days; and

(4) the shellfish are protected from contamination.

(e) Shellstock, maintaining identification.

§228.64 (e)(1)

(1) Except as specified under paragraph (3)(B) of this subsection, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.^{Pf}

(2) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label.^{Pf}

(3) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date that is recorded on the tag or label, as specified under paragraph (2) of this subsection, by:^{Pf}

(A) using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under paragraph (2) of this subsection;^{Pf} and

(B) if shellstock are removed from their tagged or labeled container:

(i) preserving source identification by using a record keeping system as specified under paragraph (3)(A) of this subsection;^{Pf} and

(ii) ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer.^{Pf}

§228.65. Preventing Contamination by Employees.

(a) Preventing contamination from hands.

(1) Food employees shall wash their hands as specified under §228.38 of this title (relating to Management and Personnel).

(2) Except when washing fruits and vegetables as specified under section §228.66(f) of this title or as specified in paragraphs (4) and (5) of this subsection, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.^P

(3) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.^P

(4) paragraph (2) of this section does not apply to a food employee that contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that:

§228.65 (a)(4)(A)

(A) contains a raw animal food and is to be cooked in the food establishment to heat all parts of the food to the minimum temperatures specified in §228.71(a)(1)-(2) or (b) of this title; or

(B) does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 63 degrees Celsius (145 degrees Fahrenheit).

(5) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

(A) the permit holder has obtained approval from the regulatory authority and maintains proof of the approval at the facility for review during inspection.^P

(B) written procedures are maintained in the food establishment and made available to the regulatory authority upon request that include for each bare hand contact procedure, a listing of the specific ready-to-eat foods and food additives that are touched by bare hands,^P

(C) a written employee health policy that details how the food establishment complies with §§228.35, 228.36, and 228.37 of this title including:^P

(i) documentation that food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under §228.35(a) of this title;^P

(ii) documentation that food employees and conditional employees acknowledge their responsibilities as specified under §228.35(e) and (f) of this title;^P and

(iii) documentation that the person in charge acknowledges the responsibilities as specified under §228.35(b), (c) and (d), and §228.36 and §228.37 of this title;^P

(D) documentation is maintained at the food establishment that food employees acknowledge that they have received training in:

(i) the risks of contacting the specific ready-to-eat foods with bare hands;^P

(ii) proper handwashing as specified under §228.38 of this title;^P

(iii) when to wash their hands as specified under §228.38(d) of this title;^P

§228.65 (a)(5)(D)(iv)

§228.65 (b)

(iv) where to wash their hands as specified under §228.38(e) of this title; ^P

(v) proper fingernail maintenance as specified under §228.39 of this title; ^P

(vi) prohibition of jewelry as specified under §228.40 of this title; ^P

(vii) good hygienic practices as related to §228.42(a) and (b) of this title; ^P and

(viii) employee health policies that detail how the food establishment complies with §228.35, 228.36, and 228.37 of this title; ^P

(E) documentation that hands are washed before food preparation and as necessary to prevent cross contamination by food employees as specified under §228.38(a) - (b) and subsections (d) - (e) during all hours of operation when the specific ready-to-eat foods are prepared; ^P

(F) documentation is maintained at the food establishment that food employees contacting ready-to-eat foods with bare hands utilize two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

(i) double handwashing; ^P

(ii) nail brushes; ^P

(iii) a hand sanitizer after handwashing as specified under §228.38(f) of this title; ^P

(iv) incentive programs that assist or encourage food employees not to work when they are ill such as paid sick leave; ^P

(v) other control measures approved by the regulatory authority; ^P
and

(G) documentation is maintained at the food establishment that corrective actions are taken when paragraph (5)(A)-(E) of this subsection are not followed. ^P

(b) Preventing contamination when tasting. A food employee may not use a utensil more than once to taste food that is to be sold or served. ^P

§228.66

§228.66 (a)(1)(F)

§228.66. Preventing Food and Ingredient Contamination.

(a) Packaged and unpackaged food - separation, packaging, and segregation.

(1) Food shall be protected from cross contamination by:

(A) except as specified in subparagraph (A)(iii) of this paragraph, separating raw animal foods during storage, preparation, holding, and display from:

(i) raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables;^P and

(ii) cooked ready-to-eat food;^P

(iii) frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food.

(B) except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(i) using separate equipment for each type;^P or

(ii) arranging each type of food in equipment so that cross contamination of one type with another is prevented;^P and

(iii) preparing each type of food at different times or in separate areas;^P

(C) cleaning equipment and utensils as specified under §228.114(a) of this title (relating to Equipment, Utensils, and Linens), and sanitizing as specified under §228.118 of this title;

(D) except as specified in §228.75(e)(2)(b) of this title and paragraph (2) of this subsection, storing the food in packages, covered containers, or wrappings;

(E) cleaning hermetically sealed containers of food of visible soil before opening;

(F) protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

§228.66 (a)(1)(G)

(G) storing damaged, spoiled, or recalled food being held in the food establishment as specified under §228.184 of this title; and

(H) separating fruits and vegetables, before they are washed as specified under subsection (f) of this section from ready-to-eat food.

(2) paragraph (1)(D) of this subsection does not apply to:

(A) whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(B) primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(C) whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

(D) food being cooled as specified under section §228.75(e)(2)(B) of this title; or

(E) shellstock.

(b) Food storage containers, identified with common name of food. Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

(c) Pasteurized eggs, substitute for raw shell eggs for certain recipes. Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not: ^P

(1) cooked as specified under §228.71(a)(1)(A)(i)-(ii) of this title; ^P or

(2) included under §228.71(a)(4) of this title. ^P

(d) Protection from unapproved additives.

(1) Food shall be protected from contamination that may result from the addition of, as specified in §228.63(b) of this title:

(A) unsafe or unapproved food or color additives; ^P and

§228.66 (d)(1)(A)

§228.66 (d)(1)(B)

228.67 (b)(3)

(B) unsafe or unapproved levels of approved food and color additives.^P

(2) A food employee may not:

(A) apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁;^P or

(B) except for grapes, serve or sell food specified under subparagraph (A) of this paragraph that is treated with sulfiting agents before receipt by the food establishment.^P

(e) Washing fruits and vegetables.

(1) Except as specified in paragraph (2) of this subsection and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

(2) Fruits and vegetables may be washed by using chemicals as specified under §228.206(b) of this title.

(3) Devices used for on-site generation of chemicals meeting the requirements specified in 21 CFR 173.315, chemicals used in the washing or to assist in the peeling of fruits and vegetables, for the washing of raw, whole fruits and vegetables shall be used in accordance with the manufacturer's instructions.^{Pf}

§228.67. Preventing Contamination From Ice Used as a Coolant.

(a) Ice used as exterior coolant, prohibited as ingredient. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.^P

(b) Storage or display of food in contact with water or ice.

(1) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(2) Except as specified in paragraphs (3) and (4) of this subsection, unpackaged food may not be stored in direct contact with undrained ice.

(3) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

§228.67 (b)(4)

(4) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

§228.68 (b)(6)

§228.68. Preventing Contamination From Equipment, Utensils, and Linens.

(a) Food shall only contact surfaces of:

(1) equipment and utensils that are cleaned as specified under §§228.113, 228.114 and 228.115 of this title and sanitized as specified under §§228.116, 228.117 and 228.118 of this title;^P

(2) single-service and single-use articles;^P

(3) linens, such as cloth napkins, as specified under subsection (c) that are laundered as specified under part §228.119 of this title.^P

(b) In-use utensils, between-use storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(1) except as specified under subsection (a) of this section, in the food with their handles above the top of the food and the container;

(2) in food that is not time/temperature controlled for safety with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(3) on a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under §228.114 and §228.117 of this title;

(4) in running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

(5) in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not time/temperature controlled for safety; or

(6) in a container of water if the water is maintained at a temperature of at least 57 degrees Celsius (135 degrees Fahrenheit) and the container is cleaned at a frequency specified under §228.114(a)(4)(G) of this title.

§228.68 (c)

(c) Linens and napkins, use limitation. Linens, such as cloth napkins, may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

(d) Wiping cloths, use limitation.

(1) cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

(A) maintained dry; and

(B) used for no other purpose.

(2) cloths in-use for wiping counters and other equipment surfaces shall be:

(A) held between uses in a chemical sanitizer solution at a concentration specified under §228.111(n) of this title; and

(B) laundered daily as specified under §228.120(d) of this title.

(3) cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(4) dry wiping cloths and the chemical sanitizing solutions specified in paragraph (2)(A) of this subsection in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(5) containers of chemical sanitizing solutions specified in paragraph (2)(A) of this subsection in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

(6) single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

(e) Gloves, use limitation.

(1) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.^P

(2) Except as specified in paragraph (3) of this subsection, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct

§228.68 (e)(2)

contact only with food that is subsequently cooked as specified under section §228.71 of this title such as frozen food or a primal cut of meat.^P

(3) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.^P

(4) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under section §228.71 of this title such as frozen food or a primal cut of meat.^P

(f) Using clean tableware for second portions and refills.

(1) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.

(2) Except as specified in paragraph (3) of this subsection, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment. A card, sign or other effective means of notification shall be displayed to notify consumers that clean tableware is to be used upon return to self-service areas such as salad bars and buffets.^{Pf}

(3) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under §228.106(1), (2), and (4) of this title.

(g) Refilling returnables.

(1) Except as specified in paragraphs (2) - (5) of this subsection, empty containers returned to a food establishment for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.^P

(2) A take-home food container returned to a food establishment may be refilled at the food establishment with food if the food container is:

(A) designed and constructed for reuse as specified in subchapter D of this chapter;^P

(B) one that was initially provided by the food establishment to the consumer, either empty or filled with food by the food establishment, for the purpose of being returned for reuse;^P

§228.68 (g)(2)(C)

§228.69 (g)(5)

(C) returned to the food establishment by the consumer after use;^P

(D) subject to the following steps before being refilled with food:

(i) cleaned as specified in §§228.113, 228.114 and 228.115 of this title.^P

(ii) sanitized as specified under §§228.116, 228.117, and 228.118 of this title;^P

(iii) visually inspected by the food establishment to verify that the container, as returned, as specified in subchapter D of this chapter.^P

(3) A take-home food container returned to a food establishment may be refilled at a food establishment with beverage if:

(A) the beverage is not a time/temperature controlled for safety (TCS) food;

(B) the design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

(C) facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(D) the consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

(E) the container is refilled by:

(i) an employee of the food establishment, or

(ii) the owner of the container if the beverage system includes a contamination-free transfer process as specified under §228.106(c)(1), (2), and (4) of this title that cannot be bypassed by the container owner.

(4) consumer-owned, personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under §228.106(c)(1), (2), and (4) of this title.

(5) consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

§228.69

§228.69 (c)

§228.69. Preventing Contamination From the Premises.

(a) Food storage.

(1) Except as specified in paragraphs (2) and (3) of this subsection, food shall be protected from contamination by storing the food:

(A) in a clean, dry location;

(B) where it is not exposed to splash, dust, or other contamination; and

(C) at least 15 cm (6 inches) above the floor.

(2) Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment as specified in §228.106(v) of this title.

(3) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(b) Food storage, prohibited areas. Food may not be stored:

(1) in locker rooms;

(2) in toilet rooms;

(3) in dressing rooms;

(4) in garbage rooms;

(5) in mechanical rooms;

(6) under sewer lines that are not shielded to intercept potential drips;

(7) under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

(8) under open stairwells; or

(9) under other sources of contamination.

(c) Vended time/temperature controlled for safety (TCS) food, original container. Time/temperature controlled for safety food dispensed through a vending machine shall be in the

§228.69 (c)

§228.70 (c)(3)

package in which it was placed at the food establishment or food processing plant at which it was prepared.^P

(d) Food preparation. During preparation, unpackaged food shall be protected from environmental sources of contamination.

§228.70. Preventing Contamination by Consumers.

(a) Food display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.^P

(b) Condiments, protection.

(1) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(2) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

(c) Consumer self-service operations.

(1) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service.^P This paragraph does not apply to:

(A) consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;

(B) ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or

(C) raw, frozen, shell-on shrimp or lobster.

(2) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.^P

(3) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.^{Pf}

§228.70 (d)

§228.71 (a)(1)(B)

(d) Returned food and re-service of food.

(1) Except as specified in paragraph (2) of this subsection, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.^P

(2) Except as specified under §228.82(7) of this title, a container of food that is not time/temperature controlled for safety may be re-served from one consumer to another if:

(A) the food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(B) the food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

(e) Preventing contamination from other sources. Miscellaneous sources of Contamination. Food shall be protected from contamination that may result from a factor or source not specified in §§228.65 - 228.70 of this title.

§228.71. Cooking.

(a) Raw animal foods.

(1) Except as specified under paragraphs (2) - (4) of this subsection, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(A) 63 degrees Celsius (145 degrees Fahrenheit) or above for 15 seconds for:^P

(i) raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service;^P and

(ii) except as specified under paragraph (1)(B) and (C) of this subsection, and paragraphs (2) and (3) of this subsection, fish, meat, and pork including game animals and exotic and game animals commercially raised for food as specified under §228.62(g)(1)(A) and (g)(2)(A) of this title and game animals under a voluntary inspection program as specified under §228.62(g)(2)(B) of this title;^P

(B) 68 degrees Celsius (155 degrees Fahrenheit) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals and exotic

§228.71 (a)(1)(B)

§228.71 (a)(4)

animals commercially raised for food as specified under sections §228.62(g)(1)(A) and (g)(2)(A) of this title and game animals and exotic animals under a voluntary inspection program as specified under section §228.62(g)(2)(B) of this title; and raw eggs that are not prepared as specified under subparagraph (A)(i) of this paragraph;^P or

Figure: 25 TAC §228.71(a)(1)(B)

(C) 74 degrees Celsius (165 degrees Fahrenheit) or above for 15 seconds for poultry, baluts, wild game animals and exotic animals as specified under sections §228.62(g)(1)(C) and (g)(2)(C) and (D) of this title, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.^P

(2) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham, shall be cooked:

(A) in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature;^{Pf} and

Figure: 25 TAC §228.71(a)(2)(A)

(B) as specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature.^P

Figure: 25 TAC §228.71(a)(2)(B)

(3) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

(A) the food establishment serves a population that is not a highly susceptible population;

(B) the steak is labeled to indicate that it meets the definition of “whole-muscle, intact beef” as specified under section §228.62 (a)(5) of this title; and

(C) the steak is cooked on both the top and bottom to a surface temperature of 63 degrees Celsius (145 degrees Fahrenheit) or above and a cooked color change is achieved on all external surfaces.^P

(4) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subparagraph (C) of this paragraph, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:

§228.71 (a)(4)(A)

§228.71 (d)(1)

(A) as specified under subsection §228.82(3)(A) and (B) of this title, the food establishment serves a population that is not a highly susceptible population; and

(B) the food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat;^P and

(C) the consumer is informed as specified under section §228.80 of this title that to ensure its safety, the food should be cooked as specified under paragraph (1) or (2) of this subsection; or

(D) the regulatory authority grants a variance from paragraph (1) or (2) of this subsection as specified in §228.243(a) of this title (relating to Compliance) based on a HACCP plan that:

(i) is submitted by the permit holder and approved as specified under §228.243(b) of this title;

(ii) documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and

(iii) verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

(b) Microwave cooking. Raw animal foods cooked in a microwave oven shall be:

(1) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(2) covered to retain surface moisture;

(3) heated to a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food;^P and

(4) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(c) Plant food cooking for hot holding. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 57 degrees Celsius (135 degrees Fahrenheit).^P

(d) Non-continuous cooking of raw animal foods. Raw animal foods that are cooked using non-continuous cooking process shall be:

(1) subject to an initial heating process that is no longer than sixty minutes in duration;^P

§228.71 (d)(2)

§228.71 (d)(6)(E)

(2) immediately after initial heating, cooled as specified in §228.75(d) of this title;^P

(3) after cooling, held frozen or cold, as specified for time/temperature controlled for safety (TCS) food under §228.75(f)(1)(B) of this title;^P

(4) prior to sale or service, cooked using a process that heats all parts of the food to a temperature and for a time as specified under §228.71(1)-(3) of this title;^P

(5) cooled according to the time and temperature parameters specified for cooked time /temperature controlled for safety food under §228.75(d)(1) if not either hot held as specified under §228.75(f)(1) of this title, served immediately, or held using time as a public health controlled as specified under §228.75(i) of this title after complete cooking;^P

(6) prepared and stored according to written procedures that:

(A) have obtained prior approval from the regulatory authority;^{Pf}

(B) are maintained in the food establishment and are available to the regulatory authority upon request;^{Pf}

(C) describe how the requirements specified under §228.71(d)(1)-(5) of this title are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;^{Pf}

(D) describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under paragraph (4) of this subsection prior to being offered for sale or service;^{Pf} and

(E) describe how the foods, after initial heating but prior to cooking as specified under (4) of this section, are to be separated from ready-to-eat foods as specified under §228.66 of this title.^{Pf}

Figure: 25 TAC §228.71(a)(1)(B)

Cooking Raw Animal Foods

Alternatives to the 155 Degree Fahrenheit/15 Second Requirement

Minimum Temperature °C (°F)	Minimum Time
63 (145)	3 minutes
66 (150)	1 minute
70 (158)	< 1 second (instantaneous)

§228.71 (d)(6)(E)**§228.72 (a)(1)(B)**Figure: 25 TAC §228.71(a)(2)(A)

Cooking Whole Beef or Corned Beef Roasts
Oven Preheating/Holding Requirements Per Weight

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs.)	4.5 kg (10 lbs.) or More
Still Dry	177° C (350° F) or more	121° C (250° F) or more
Convection	121° C (250° F) or more	121° C (250° F) or more
High Humidity ¹	121° C (250° F) or more	121° C (250° F) or more
¹ Relative humidity greater than 90% for at least 1 hour as measures in the cooking chamber or exit of the oven ; or in a moisture-impermeable bag that provides 100% humidity.		

Figure: 25 TAC §228.71(a)(2)(B)

Cooking Whole Beef or Corned Beef Roasts
Heating Temperatures and Holding Times

Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Seconds
54.4 (130)	112	63.9 (147)	134
55.0 (131)	89	65.0 (149)	85
56.1 (133)	56	66.1 (151)	54
57.2 (135)	36	67.2 (153)	34
57.8 (136)	28	68.3 (155)	22
58.9 (138)	18	69.4 (157)	14
60.0 (140)	12	70.0 (158)	0
61.1 (142)	8		
62.2 (144)	5		
62.8 (145)	4		
¹ Holding time may include postoven heat rise.			

§228.72. Freezing.

(a) Parasite destruction.

(1) Except as specified in paragraph (2) of this subsection, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than Molluscan shellfish shall be:

(A) frozen and stored at a temperature of -20 degrees Celsius (-4 degrees Fahrenheit) or below for 168 hours (7 days) in a freezer; ^P

(B) frozen at -35 degrees Celsius (-31 degrees Fahrenheit) or below until solid and stored at -35 degrees Celsius (-31 degrees Fahrenheit) for 15 hours; ^P or

§228.72 (a)(1)(C)

§228.72 (b)(3)

(C) frozen at -35 degree Celsius (-31 degrees Fahrenheit) or below until solid and stored at -20 degree Celsius (-4 degrees Fahrenheit) or below for a minimum of 24 hours.^P

(2) paragraph (1) of this subsection does not apply to:

(A) molluscan shellfish;

(B) a scallop product consisting only of the shucked adductor muscle;

(C) tuna of the species *thunnus alalunga*, *thunnus albacares* (yellowfin tuna), *thunnus atlanticus*, *thunnus maccoyii* (bluefin tuna, southern), *thunnus obesus* (bigeye tuna), or *thunnus thynnus* (bluefin tuna, northern); or

(D) aquacultured fish, such as but not limited to salmon, carp, channel catfish, trout, and tilapia, that:

(i) if raised in open water, are raised in net-pens, or

(ii) are raised in land-based operations such as ponds or tanks, and

(iii) are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.

(E) fish eggs that have been removed from the skein and rinsed.

(b) Records, creation and retention.

(1) Except as specified in subsection (a)(2) of this section and paragraph (2) of this subsection, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain and have accessible the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.^{Pf}

(2) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under subsection (a)(1) of this section, may substitute for the records specified under paragraph (1) of this subsection.

(3) if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in subsection (a)(2)(C) of this section, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in subsection (a)(2)(D) of this section shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.^{Pf}

§228.72 (c)

§228.74 (b)(1)

(c) Preparation for immediate service. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as roast beef sandwich au jus, may be served at any temperature.

§228.73. Reheating for Hot Holding.

(a) Except as specified under paragraphs (2), (3) and in (5) of this subsection, time/temperature controlled for safety food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) for 15 seconds.^P

(b) Except as specified under paragraph (3) of this subsection, time/temperature controlled for safety food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.^P

(c) Ready-to-eat time/temperature controlled for safety (TCS) food that has been commercially processed and packaged in a food processing plant that is inspected by the regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 57 degrees Celsius (135 degrees Fahrenheit) when being reheated for hot holding.^P

(d) Reheating for hot holding as specified under paragraphs (1)-(3) of this subsection shall be done rapidly and the time the food is between 5 degrees Celsius (41 degrees Fahrenheit) and the temperatures specified under paragraphs (1)-(3) of this subsection may not exceed 2 hours.^P

(e) Remaining unsliced portions of meat roasts that are cooked as specified under subsection §228.71(a)(2) of this title, may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under subsection §228.71(a)(2) of this title.^P

§228.74. Juice Packaged in a Food Establishment.

(a) Juice treated under a HACCP plan as specified in §228.244(d)(2)-(5) of this title (relating to Compliance) to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance;^P or

(b) Juice labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:^{Pf}

(1) as specified under section §228.79 of this title;^{Pf} and

§228.74 (b)(2)

(2) as specified in 21 CFR §101.17(g) food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, “WARNING: THIS PRODUCT HAS NOT BEEN PASTEURIZED AND, THEREFORE, MAY CONTAIN HARMFUL BACTERIA THAT CAN CAUSE SERIOUS ILLNESS IN CHILDREN, THE ELDERLY, AND PERSONS WITH WEAKENED IMMUNE SYSTEMS.”^{Pf}

§228.75 (c)(2)(D)(i)

§228.75. Temperature and Time Control.

(a) Frozen food. Stored frozen foods shall be maintained frozen.

(b) Time/temperature controlled for safety food, slacking. Frozen time/temperature controlled for safety food that is slacked to moderate the temperature shall be held:

(1) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(2) at any temperature if the food remains frozen.

(c) Thawing. Except as specified in paragraph (4) of this subsection, time/temperature controlled for safety (TCS) food shall be thawed:

(1) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(2) completely submerged under running water:

(A) at a water temperature of 21 degrees Celsius (70 degrees Fahrenheit) or below;

(B) with sufficient water velocity to agitate and float off loose particles in an overflow; and

(C) for a period of time that does not allow thawed portions of ready-to-eat food to rise above 5 degrees Celsius (41 degrees Fahrenheit), or

(D) for a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified in section §228.71(a)(1) or (2) of this title to be above 5 degrees Celsius (41 degrees Fahrenheit), for more than 4 hours including:

(i) the time the food is exposed to the running water and the time needed for preparation for cooking; or

§228.75 (c)(2)(D)(ii)

§228.75 (d)(3)

(ii) the time it takes under refrigeration to lower the food temperature to 5 degrees Celsius (41 degrees Fahrenheit);

(3) as part of a cooking process if the food that is frozen is:

(A) cooked as specified in sections §228.71(a)(1) - (2) or (b) of this title;

or

(B) thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(4) using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

(5) reduced oxygen packaged fish that bears a label indicating that it is to be kept frozen until time of use shall be removed from the reduced oxygen environment:

(A) prior to its thawing under refrigeration as specified in paragraph (1) of this subsection; or

(B) prior to, or immediately upon completion of, its thawing using procedures specified in paragraph (2) of this subsection.

(d) Cooling.

(1) Cooked time/temperature controlled for safety food shall be cooled:

(A) within two hours, from 57 degrees Celsius (135 degrees Fahrenheit) to 21 degrees C (70 degrees Fahrenheit);^P and

(B) within a total of six hours, from 57 degrees Celsius (135 degrees Fahrenheit) to 5 degrees Celsius (41 degrees Fahrenheit) or less.^P

(2) Time/temperature controlled for safety food shall be cooled within four hours to 5 degrees Celsius (41 degrees Fahrenheit) or less, if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.^P

(3) Except as specified in paragraph (4) of this subsection, a time/temperature controlled for safety food received in compliance with laws allowing a temperature above 5 degrees Celsius (41 degrees Fahrenheit) during shipment from the supplier as specified in section §228.63(a)(2) of this title, shall be cooled within four hours to 5 degrees Celsius (41 degrees Fahrenheit) or less.^P

§228.75 (d)(4)

(4) Raw shell eggs shall be received as specified under section §228.63(a)(3) of this title and immediately placed in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. ^P

§228.75 (f)(1)(A)

(e) Cooling methods.

(1) Cooling shall be accomplished in accordance with the time and temperature criteria specified under subsection (d) of this section by using one or more of the following methods based on the type of food being cooled:

- (A) placing the food in shallow pans; ^{Pf}
- (B) separating the food into smaller or thinner portions; ^{Pf}
- (C) using rapid cooling equipment; ^{Pf}
- (D) stirring the food in a container placed in an ice water bath; ^{Pf}
- (E) using containers that facilitate heat transfer; ^{Pf}
- (F) adding ice as an ingredient; ^{Pf} or
- (G) other effective methods. ^{Pf}

(2) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

- (A) arranged in the equipment to provide maximum heat transfer through the container walls; and
- (B) loosely covered, or uncovered if protected from overhead contamination as specified under subsection §228.69(a)(1)(B) of this title, during the cooling period to facilitate heat transfer from the surface of the food.

(f) Time/temperature controlled for safety food, hot and cold holding.

(1) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under subsection (i) of this section, and except as specified in paragraphs (2) and (3) of this subsection, time/temperature controlled for safety food shall be maintained:

- (A) at 57 degrees Celsius (135 degrees Fahrenheit) or above, except that roasts cooked to a temperature and for a time specified in subsection §228.71(a)(2) of this title or

§228.75 (f)(1)(A)

reheated as specified in subsection §228.73(a)(5) of this title may be held at a temperature of 54 degrees Celsius (130 degrees Fahrenheit) or above; ^P or

(B) 5 degrees Celsius (41 degrees Fahrenheit) or less; ^P

(2) Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. ^P

(3) Time/Temperature Controlled for Safety (TCS) food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under paragraph (1) of this subsection, while contained within specially designed equipment that complies with the design and construction requirements as specified under §228.106(c)(5) of this title.

(g) Ready-to-eat, time/temperature controlled for safety food, date marking.

(1) Except when packaging food using a reduced oxygen packaging method as specified under §228.77 of this title, and except as specified in paragraphs (5) and (6) of this subsection, refrigerated, ready-to-eat, time/temperature controlled for safety (TCS) food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 5 degrees Celsius (41 degrees Fahrenheit) or less for a maximum of 7 days. The day of preparation shall be counted as day 1. ^{Pf}

(2) Except as specified in paragraphs (5) - (7) of this subsection, refrigerated, ready-to-eat, time/temperature controlled for safety food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and held at a temperature of 41 degrees Fahrenheit (5 degrees Celsius) or less if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in paragraph (1) of this paragraph: ^{Pf}

(A) the day the original container is opened in the food establishment shall be counted as Day 1; ^{Pf} and

(B) the day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety. ^{Pf}

(3) A refrigerated, ready-to-eat time/temperature controlled for safety (TCS) food ingredient or a portion of a refrigerated, ready-to-eat, time/temperature controlled for safety (TCS)

§228.75 (g)(3)

§228.75 (g)(7)(C)

food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first- prepared ingredient.^{Pf}

(4) A date marking system that meets the criteria stated in paragraphs (1) and (2) of this subsection may include:

(A) using a method approved by the regulatory authority for refrigerated, ready-to-eat time/temperature controlled for safety (TCS) food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(B) marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under paragraph (1) of this subsection;

(C) marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under paragraph (2) of this subsection; or

(D) using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.

(5) paragraphs (1) and (2) of this subsection do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(6) paragraphs (1) and (2) of this subsection do not apply to shellstock.

(7) paragraph (2) of this subsection does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

(A) deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 current good manufacturing practice in manufacturing, packing, or holding human food;

(B) hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;

(C) semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;

§228.75 (g)(7)(D)

(D) cultured dairy products as defined in 21 CFR 131 milk and cream, such as yogurt, sour cream, and buttermilk;

(E) preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 acidified foods;

(F) shelf stable, dry fermented sausages, such as pepperoni and genoa; and

(G) shelf stable salt-cured products such as prosciutto and parma (ham).

(h) Ready-to-eat, time/temperature controlled for safety food, disposition.

(1) A food specified in subsection (g) (1) or (2) of this section shall be discarded if it:

(A) exceeds either of the temperature and time combinations specified in subsection (g)(1) of this section, except time that the product is frozen; ^P

(B) is in a container or package that does not bear a date or day; ^P or

(C) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subsection (g)(1) of this subsection. ^P

(2) Refrigerated, ready-to-eat, time/temperature controlled for safety food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in subsection (g)(1) of this section. ^P

(i) Time as a public health control.

(1) Except as specified under paragraph (4) of this subsection if time without temperature control is used as the public health control for a working supply of time/temperature controlled for safety food before cooking, or for ready-to-eat time/temperature controlled for safety food that is displayed or held for sale or service. Written procedures shall be prepared in advance, maintained in the food establishment and made available to the regulatory authority upon request that specify: ^P

(A) methods of compliance with paragraphs (2)(A)-(C) or (3)(A)-(E) of this subsection; ^P and

(B) methods of compliance with subsection (d) of this section for food that is prepared, cooked, and refrigerated before time is used as a public health control. ^P

§228.75 (i)(2)

(2) If time without temperature control is used as the public health control up to a maximum of 4 hours:

(A) the food shall have an initial temperature of 5 degrees Celsius (41 degrees Fahrenheit) or less when removed from cold holding temperature control, or 57 degrees Celsius (135 degrees Fahrenheit) or greater when removed from hot holding temperature control;^P

(B) the food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;^P

(C) the food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control;^P and

(D) the food in unmarked containers or packages, or marked to exceed a 4-hour limit shall be discarded.^P

(3) If time without temperature control is used as the public health control up to a maximum of 6 hours:

(A) the food shall have an initial temperature of 5 degrees Celsius (41 degrees Fahrenheit) or less when removed from temperature control and the food temperature may not exceed 21 degrees Celsius (70 degrees Fahrenheit) within a maximum time period of 6 hours;^P

(B) the food shall be monitored to ensure the warmest portion of the food does not exceed 21 degrees Celsius (70 degrees Fahrenheit) during the 6-hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 21 degrees Celsius (70 degrees Fahrenheit) during the 6-hour holding period;^P

(C) the food shall be marked or otherwise identified to indicate:^P

(i) the time when the food is removed from 5 degrees Celsius (41 degrees Fahrenheit) or less cold holding temperature control;^P and

(ii) the time that is 6 hours past the point in time when the food is removed from cold holding temperature control;^P

(D) the food shall be:

(i) discarded if the temperature of the food exceeds 21 degrees Celsius (70 degrees Fahrenheit),^P or

§228.75 (i)(3)(D)(i)

§228.75 (i)(3)(D)(ii)

§228.76 (8)

(ii) cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of 6 hours from the point in time when the food is removed from 5 degrees Celsius (41 degrees Fahrenheit) or less cold holding temperature control; ^P and

(E) the food in unmarked containers or packages, or marked with a time that exceeds the 6-hour limit shall be discarded. ^P

(4) A food establishment that serves a highly susceptible population may not use time as specified under paragraphs (1), (2) or (3) of this subsection as the public health control for raw eggs.

§228.76. Specialized Processing Methods, Variance Requirement.

A food establishment shall obtain a variance from the regulatory authority as specified in section §228.243(a) and (b) of this title before: ^{Pf}

(1) smoking food as a method of food preservation rather than as a method of flavor enhancement; ^{Pf}

(2) curing food; ^{Pf}

(3) using food additives or adding components such as vinegar: ^{Pf}

(A) as a method of food preservation rather than as a method of flavor enhancement; ^{Pf} or

(B) to render a food so that it is not time/temperature controlled for safety; ^{Pf}

(4) packaging time/temperature controlled for safety (TCS) food using a reduced oxygen packaging method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under §228.77 of this title; ^{Pf}

(5) operating a Molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption; ^{Pf}

(6) custom processing animals that are for personal use as food and not for sale or service in a food establishment, such as indigenous deer processing; ^{Pf}

(7) preparing food by another method that is determined by the regulatory authority to require a variance; ^{Pf} or

(8) sprouting seeds or beans, such as wheat grass and alfalfa sprouts. ^{Pf}

§228.77

§228.77 (2)(C)(ii)

§228.77. *Clostridium Botulinum* and *Listeria Monocytogenes* Controls.

Reduced oxygen packaging criteria.

(1) Except for a food establishment that obtains a variance as specified under §228.76 of this title, a food establishment that packages time/temperature controlled for safety food using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.^P

(2) Except as specified under paragraph (6) of this section, a food establishment that packages Time/Temperature Controlled for Safety (TCS) food using a reduced oxygen packaging method shall implement a HACCP plan that contains the information specified under §228.244(d)(2) and (4) of this title and that:^{Pf}

(A) identifies the food to be packaged;^{Pf}

(B) except as specified under paragraphs (3) - (6) of this section, requires that the packaged food shall be maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less and meet at least one of the following criteria:^{Pf}

(i) has an a_w of 0.91 or less;^{Pf}

(ii) has a pH of 4.6 or less;^{Pf}

(iii) is a meat or poultry product cured at a food processing plant regulated by the USDA or the department using substances specified in 9 CFR §424.21, use of food ingredients and sources of radiation, and is received in an intact package;^{Pf} or

(iv) is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables;^{Pf}

(C) describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:^{Pf}

(i) maintain the food at 5 degrees Celsius (41 degrees Fahrenheit) or below;^{Pf} and

(ii) discard the food if within 30 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;^{Pf}

§228.77 (2)(D)

§228.77 (4)(B)

(D) limits the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;^P

(E) includes operational procedures that:

(i) prohibit contacting ready-to-eat food with bare hands as specified under §228.65(a)(2) of this title;^{Pf}

(ii) identify a designated area and the method by which:^{Pf}

(I) physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination;^{Pf} and

(II) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation;^{Pf} and

(iii) delineate cleaning and sanitization procedures for food-contact surfaces;^{Pf} and

(F) describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:^{Pf}

(i) concepts required for a safe operation;^{Pf}

(ii) equipment and facilities;^{Pf} and

(iii) procedures specified under paragraph (2)(E) of this subsection and §228.244(d)(2) and (4) of this title.^{Pf}

(G) is provided to the regulatory authority prior to implementation as specified under §228.244(c)(3) of this title.^{Pf}

(3) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.^P

(4) Cook-Chill or Sous Vide. Except as specified under paragraphs (3) and (6) of this subsection, a food establishment that packages time/temperature controlled for safety food using cook-chill or sous vide process shall:

(A) provide to the regulatory authority prior to implementation, a HACCP plan that contains the information specified under §228.244(d)(2) and (4) of this title;^{Pf}

(B) ensure the food is:

§228.77 (4)(B)(i)

(i) prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer;^{Pf}

(ii) cooked and heat all parts of the food to a temperature and time as specified in §228.71(a)(1), (2) and (3) of this title;^P

(iii) protected from contamination before and after cooking as specified under §§228.65 - 228.74 of the this title;^P

(iv) placed in package with oxygen barrier and sealed before cooking, or placed in package and sealed immediately after cooking and before reaching an internal temperature below 57 degrees Celsius (135 degrees Fahrenheit);^P

(v) cooled to 5 degrees Celsius (41 degrees Fahrenheit) in the sealed package or bag as specified under §228.75(d)^P

(I) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of packaging;^P

(II) Held at 5°C (41°F) or less for no more than 7 days, at which time the food must be consumed or discarded;^P or

(III) Held frozen with no shelf life restriction while frozen until consumed or used.^P

(vi) held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily,^{Pf}

(vii) if transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation,^{Pf} and

(viii) labeled with the product name and the date packaged;^{Pf} and

(C) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:

(i) make such records available to the regulatory authority upon request,^{Pf} and

(ii) hold such records for at least 6 months;^{Pf} and

§228.77 (4)(D)

§228.78 (B)(1)

(D) Implement written operational procedures as specified under paragraph (2)(E) of this section and a training program as specified under paragraph (2)(F) of this section.^{Pf}

(5) Cheese. Except as specified under paragraph (6) of this section, a food establishment that packages cheese using a ROP method shall:

(A) limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses;^P

(B) have a HACCP plan that contains the information specified under §228.244(d)(2) and (4) of these title and as specified under paragraph (2)(A), (2)(C)(i), (2)(E) and (2)(F) of this section;^{Pf}

(C) labels the package on the principal display panel with a “use by” date that does not exceed 30 days from its packaging or the original manufacturer’s “sell by” or “use by” date, whichever occurs first;^{Pf} and

(D) discards the reduced oxygen packaging cheese if it is not sold for off premises consumption or consumed within 30 calendar days of its packaging.^{Pf}

(6) A HACCP Plan is not required when a food establishment uses a reduce oxygen packaging method to package TCS food that is always:

(A) labeled with the production time and date,

(B) held at 5°C (41°F) or less during refrigerated storage, and

(C) removed from its package in the food establishment within 48 hours after packaging.

§228.78. Food Identity, Presentation, On-premises Labeling, and Accurate Representation.

(a) Standards of identity. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169, and 9 CFR 319, Definitions and Standards of Identity or Composition, and the general requirements in 21 CFR 130, Food Standards: General, and 9 CFR 319, Subpart A, General.

(b) Honestly presented.

(1) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

§228.78 (b)(2)

§228.79 (a)(3)(A)

(2) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

§228.79. Labeling.

(a) Food labels.

(1) Food packaged in a food establishment, shall be labeled as specified in law, including 21 CFR 101, Food Labeling, 9 CFR 317, Labeling, Marking Devices, and Containers, and 9 CFR 381, Subpart N, Labeling and Containers.^{Pf}

(2) Label information shall include:

(A) the common name of the food, or absent a common name, an adequately descriptive identity statement;^{Pf}

(B) if made from two or more ingredients, a list of ingredients and sub-ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;^{Pf}

(C) an accurate declaration of the quantity of contents;^{Pf}

(D) the name and place of business of the manufacturer, packer, or distributor;^{Pf} and

(E) the name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.^{Pf}

(F) except as exempted in the Federal Food, Drug, and Cosmetic Act §403(g)(3)-(5), nutrition labeling as specified in 21 CFR 101, Food Labeling, and 9 CFR 317, Subpart B, Nutrition Labeling;^{Pf} and

(G) for any salmonid fish containing canthaxanthin or astaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin or astaxanthin.

(3) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

(A) the manufacturer's or processor's label that was provided with the food; or

§228.79 (a)(3)(B)

§228.80 (c)

(B) a card, sign, or other method of notification that includes the information specified under paragraph (2)(A), (B), and (F) of this subsection.

(4) Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:

(A) a health, nutrient content, or other claim is not made;

(B) the food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

(b) Other forms of information.

(1) If required by law, consumer warnings shall be provided. ^{Pf}

(2) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

§228.80. Consumer Advisory.

(a) Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens. Except as specified in section §228.71(a)(3) and (a)(4)(D) and under §228.82(3) of this title, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections (b) and (c) of this section, using brochures, deli case or menu advisories, label statements, tabletents, placards, or other effective written means. ^{Pf}

(b) Disclosure shall include:

(1) a description of the animal-derived foods, such as “oysters on the half shell (raw oysters),” “raw-egg Caesar salad,” and “hamburgers (can be cooked to order),” ^{Pf} or

(2) identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients. ^{Pf}

(c) Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

§228.80 (c)(1)

(1) regarding the safety of these items, written information is available upon request; ^{Pf}

(2) consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; ^{Pf} or

(3) consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions. ^{Pf}

§228.81. Contaminated Food, Disposition. Discarding or reconditioning unsafe, adulterated, contaminated food.

(1) A food that is unsafe, adulterated, or not honestly presented as specified under §228.61 of this title shall be reconditioned according to an approved procedure or discarded. ^P

(2) Food that is not from an approved source as specified under §228.62(a)-(g) of this title shall be discarded. ^P

(3) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under §228.36 of this title (relating to Management and Personnel) shall be discarded. ^P

(4) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded. ^P

§228.82. Additional Safeguards, Special Requirements for Serving Highly Susceptible Populations.

Pasteurized foods and prohibited re-service, and prohibited food. In a food establishment that serves a highly susceptible population:

(1) The following criteria shall apply to juice:

(A) for the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting or similar facility that provides custodial care are included as highly susceptible populations;

(B) prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR §101.17(g), Food Labeling, warning, notice, and safe handling requirements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified under §228.74(b) of this title may not be served or offered for sale; ^P and

§228.82 (1)(C)

(C) unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in §228.244(d)(2)-(5) of this title, and as specified under 21 CFR 120, Hazard Analysis And Critical Control Point (HACCP) Systems, §120.24, Process Controls; ^P

(2) pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of: ^P

(A) foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages; ^P and

(B) except as specified in paragraph (6) of this subsection, recipes in which more than one egg is broken and the eggs are combined; ^P

(3) the following foods may not be served or offered for sale in a ready-to-eat form: ^P

(A) raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartar; ^P

(B) a partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; ^P and

(C) raw seed sprouts; ^P

(4) food employees may not contact ready-to-eat food as specified under §228.65(a)(2) and (5) of this title; ^P

(5) time only, as the public health control as specified under §228.75(i)(4) of this title, may not be used for raw eggs; ^P

(6) paragraph (2)(B) of this subsection does not apply if:

(A) the raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under §228.71(a)(1)(A) of this title, and served immediately, such as an omelet, soufflé, or scrambled eggs;

(B) the raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

(C) the preparation of the food is conducted under a HACCP plan that:

(i) identifies the food to be prepared;

§228.82 (6)(C)(i)

§228.82 (6)(C)(ii)

§228.83 (b)

(ii) prohibits contacting ready-to-eat food with bare hands;

(iii) includes specifications and practices that ensure:

(I) *Salmonella enteritidis* growth is controlled before and after cooking; and

(II) *Salmonella enteritidis* is destroyed by cooking the eggs according to the temperature and time specified in section §228.71(a)(1)(B) of this subchapter;

(iv) contains the information specified under §228.244(d)(4) of this title (relating to Compliance) including procedures that:

(I) control cross contamination of ready-to-eat food with raw eggs; and

(II) delineate cleaning and sanitization procedures for food-contact surfaces; and

(v) describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used;

(7) except as specified in paragraph (8) of this subsection, food may be re-served as specified under §228.70(d)(2)(A) and (B) of this title; and

(8) food may not be re-served under the following conditions:

(A) any food served to patients or clients who are under contact precautions in medical isolation or quarantine, protective environmental isolation may not be reserved to others outside.

(B) packages of food from any patients, client, or other consumers should not be re-served to persons in protective environment isolation.

§228.83. Donation of Foods.

(a) Previous service. Foods which have been previously served to a consumer may not be donated.^P

(b) Time/temperature controlled for safety foods. A time/temperature controlled for safety food may be donated if:

§228.83 (b)(1)

§228.101 (a)(4)

(1) the food has been kept at or above 57 degrees Celsius (135 degree Fahrenheit) during hot holding and service, and subsequently refrigerated to meet the time and temperature requirements under §228.75(d) and (e) of this title; ^P

(2) the donor can substantiate that the food recipient has the facilities to meet the transportation, storage, and reheating requirements of these rules; ^P

(3) the temperature of the food is at or below 5 degrees Celsius (41 degrees Fahrenheit) at the time of donation, and is protected from contamination; ^P and

(4) if the food is to be transported by the recipient directly to a consumer, the recipient need meet only the transportation requirements, including holding temperatures, under these rules. ^P

(c) Labeling. Donated foods shall be labeled with the name of the food, the source of the food, and the date of preparation. ^P

(d) Shelf life. Donated time/temperature controlled for safety foods may not exceed the shelf life for leftover foods outlined in these rules. ^P

(e) Damaged foods. Heavily rim or seam-dented canned foods, or packaged foods without the manufacturer's complete labeling, shall not be donated. ^P

(f) Distressed foods. Foods which are considered distressed, such as foods which have been subjected to fire, flooding, excessive heat, smoke, radiation, other environmental contamination, or prolonged storage shall not be directly donated for consumption by the consumer. Such foods may be sold or donated to a licensed food salvage establishment if permitted under the provisions of the Health and Safety Code, Chapter 432. ^P

Subchapter D. Equipment, Utensils, and Linens.

§228.101. Multiuse Materials.

(a) Characteristics. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be: ^P

(1) safe; ^P

(2) durable, corrosion-resistant, and nonabsorbent; ^{Pf}

(3) sufficient in weight and thickness to withstand repeated warewashing; ^{Pf}

(4) finished to have a smooth, easily cleanable surface; ^{Pf} and

§228.101 (a)(5)

§228.101 (f)

(5) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.^{Pf}

(b) Cast iron, use limitation.

(1) Except as specified in paragraphs (2) and (3) of this subsection, cast iron may not be used for utensils or food-contact surfaces of equipment.^{Pf}

(2) Cast iron may be used as a surface for cooking.

(3) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(c) Lead use limitation.

(1) Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits in the following table:^P

Figure: 25 TAC §228.101(c)(1)

(2) Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.^P

(3) Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

(d) Copper, use limitation.

(1) Except as specified in paragraph (2) of this subsection, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.^P

(2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

(e) Galvanized metal, use limitation. Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.^P

(f) Sponges, use limitation. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.^{Pf}

§228.101 (g)

(g) Wood, use limitation.

(1) Except as specified in paragraphs (2) - (4) of this subsection, wood and wood wicker may not be used as a food-contact surface.^{Pf}

(2) Hard close-grained wood; such as but not limited to maple, walnut, mahogany, bamboo, and pecan; may be used for:

(A) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, chopsticks and wooden-skewers; and

(B) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees Celsius (230 degrees Fahrenheit) or above.

(3) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(4) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(A) untreated wood containers; or

(B) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR §178.3800, Preservatives for Wood.

(h) Nonstick coatings use limitation. Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

(i) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

§228.101 (i)

§228.101 (i)**§228.103 (b)**

Figure: 25 TAC §228.101(c)(1)

Utensil Category	Description	Maximum Lead mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls greater than or equal to 1.1 L (1.16 QT)	1
Small Hollowware (excluding cups and mugs)	Bowls < 1.1 L (1.16 QT)	2.0
Flat Utensils & Tableware	Plates, Saucers	3.0

§228.102. Single-service and Single-use, Characteristics.

Materials that are used to make single-service and single-use articles:

(1) may not:

(A) allow the migration of deleterious substances;^P or

(B) impart colors, odors, or tastes to food;^P and

(2) shall be:

(A) safe;^P and

(B) clean.

§228.103. Durability and Strength.

(a) Equipment and utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.^{Pf}

(b) Food temperature measuring devices. Food temperature measuring device may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.^{Pf}

§228.104

§228.104 (d)

§228.104. Cleanability.

(a) Food-contact surfaces. Multiuse food-contact surfaces shall be:

- (1) smooth;^{Pf}
- (2) free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;^{Pf}
- (3) free of sharp internal angles, corners, and crevices;^{Pf}
- (4) finished to have smooth welds and joints;^{Pf} and
- (5) except as specified in subsection (b) of this section, accessible for cleaning and inspection by one of the following methods:

(A) without being disassembled;^{Pf}

(B) by disassembling without the use of tools;^{Pf} or

(C) by easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.^{Pf}

(b) Subsection (a)(5) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.

(c) Cleaned in place (CIP) equipment.

(1) CIP equipment shall meet the characteristics specified under subsection (a) of this section and shall be designed and constructed so that:

(A) cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces;^{Pf} and

(B) the system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(2) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

(d) “V” threads, use limitation. Except for hot oil cooking or filtering equipment, “V” type threads may not be used on food-contact surfaces.^{Pf}

§228.104 (e)

(e) Hot oil filtering equipment. Hot oil filtering equipment shall meet the characteristics specified under subsections (a) or (b) of this section and shall be readily accessible for filter replacement and cleaning of the filter.^{Pf}

(f) Can openers. Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.^{Pf}

(g) Nonfood-contact surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.^{Pf}

(h) Kick plates, removable. Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(1) removable by one of the methods specified under subsection (a)(5) of this subsection or capable of being rotated open; and

(2) removable or capable of being rotated open without unlocking equipment doors.

(i) Ventilation hood systems, filters. Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

§228.105. Accuracy of Temperature Measuring Devices.

(a) Temperature measuring device, food.

(1) Food temperature measuring device that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to ± 1 degrees Celsius in the intended range of use.^{Pf}

(2) Food temperature measuring device that are scaled only in Fahrenheit shall be accurate to ± 2 degrees Fahrenheit in the intended range of use.^{Pf}

(b) Temperature measuring devices, ambient air and water.

(1) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to ± 1.5 degrees Celsius in the intended range of use.^{Pf}

(2) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to ± 3 degrees Fahrenheit in the intended range of use.^{Pf}

§228.105 (c)

(c) Pressure measuring devices, mechanical warewashing equipment. Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pounds per square inch) or smaller and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the range indicated on the manufacturer's data plate.

§228.106 (c)(2)

§228.106. Functionality of Equipment.

(a) Ventilation hood systems, drip prevention. Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(b) Equipment openings, closures and deflectors.

(1) A cover or lid for equipment shall overlap the opening and be sloped to drain.^{Pf}

(2) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).^{Pf}

(3) Except as specified under paragraph (4) of this subsection, fixed piping, temperature measuring device, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.^{Pf}

(4) If a watertight joint is not provided:

(A) the piping, temperature measuring device, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and

(B) the opening shall be flanged as specified under paragraph (2) of this subsection.

(c) Dispensing equipment, protection of equipment and food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

(1) the delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(2) the delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

§228.106 (c)(3)

§228.106 (e)

(3) the delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(A) located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(B) available for self-service during hours when it is not under the full-time supervision of a food employee; and

(4) the dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(5) dispensing equipment in which time/temperature controlled for safety (TCS) food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under §228.75(f)(1) of this title shall:

(A) be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment;^{Pf} and

(B) conform to the requirements for this equipment as specified in NSF/ANSI 18-2006- manual food and beverage dispensing equipment.^{Pf}

(d) Vending machine, vending stage closure. The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that are not time/temperature controlled for safety (TCS) foods such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

(1) located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(2) available for self-service during hours when it is not under the full-time supervision of a food employee.

(e) Bearings and gear boxes, leak-proof. Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

§228.106 (f)

(f) Beverage tubing, separation. Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.

(g) Ice units, separation of drains. Liquid waste drain lines may not pass through an ice machine or ice storage bin.

(h) Condenser unit, separation. If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

(i) Can openers on vending machines. Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

(j) Molluscan shellfish tanks.

(1) Except as specified under paragraph (2)(B) of this subsection, molluscan shellfish life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.^P

(2) Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a HACCP plan that:^{Pf}

(A) is submitted by the permit holder and approved by the regulatory authority as specified under §228.243(b) of this title (relating to Compliance and Enforcement);^{Pf} and

(B) ensures that:

(i) water used with fish other than molluscan shellfish does not flow into the molluscan tank;^{Pf}

(ii) the safety and quality of the shellfish as they were received are not compromised by the use of the tank;^{Pf} and

(iii) the identity of the source of the shellstock is retained as specified under §228.64(e) of this title;^{Pf}

(k) Vending machines, automatic shutoff.

§228.106 (k)

§228.106 (k)(1)

§228.106 (l)(4)

(1) A machine vending time/temperature controlled for safety (TCS) food shall have an automatic control that prevents the machine from vending food:

(A) if there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under Subchapter D of this chapter; ^P and

(B) if a condition specified under subparagraph (A) of this paragraph occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Subchapter D of this chapter. ^P

(2) When the automatic shutoff within a machine vending time/temperature controlled for safety (TCS) food:

(A) in a refrigerated vending machine, the ambient air temperature may not exceed 5 degrees Celsius (41 degrees Fahrenheit) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; ^P or

(B) in a hot holding vending machine, the ambient air temperature may not be less than 57 degrees Celsius (135 degrees Fahrenheit) for more than 120 minutes immediately after the machine is filled, serviced, or restocked. ^P

(l) Temperature measuring devices.

(1) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit. ^{Pf}

(2) Except as specified in paragraph (3) of this subsection, cold or hot holding equipment used for time/temperature controlled for safety (TCS) food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display. ^{Pf}

(3) Paragraph (2) of this subsection does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

(4) Temperature measuring devices shall be designed to be easily readable. ^{Pf}

§228.106 (l)(5)

(5) Food temperature measuring devices and water temperature measuring device on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1 degrees Celsius or 2 degrees Fahrenheit in the intended range of use.^{Pf}

§228.106 (q)

(m) Warewashing machine, data plate operating specifications. A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

(1) temperatures required for washing, rinsing, and sanitizing;^{Pf}

(2) pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse;^{Pf} and

(3) conveyor speed for conveyor machines or cycle time for stationary rack machines.^{Pf}

(n) Warewashing machines, internal baffles. Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.^{Pf}

(o) Warewashing machines, temperature measuring devices. A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

(1) in each wash and rinse tank;^{Pf} and

(2) as the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.^{Pf}

(p) Manual warewashing equipment, heaters and baskets. If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

(1) designed with an integral heating device that is capable of maintaining water at a temperature not less than 77 degrees Celsius (171 degrees Fahrenheit);^{Pf} and

(2) provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.^{Pf}

(q) Warewashing machines, automatic dispensing of detergents and sanitizers. A warewashing machine that is installed after adoption of these rules by the regulatory authority shall be equipped to:

§228.106 (q)(1)

§228.106 (u)(3)

(1) automatically dispense detergents and sanitizers; ^{Pf} and

(2) incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles. ^{Pf}

(r) Warewashing machines, flow pressure device.

(1) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; ^{Pf} and

(2) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve. ^{Pf}

(3) Paragraphs (1) and (2) of this subsection do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

(s) Warewashing sinks and drainboards, self-draining. Sinks and drainboards of warewashing sinks and machines shall be self-draining. ^{Pf}

(t) Equipment compartments, drainage. Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

(u) Vending machines, liquid waste products.

(1) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(2) Vending machines that dispense liquid food in bulk shall be:

(A) provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(B) equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(3) Shutoff devices specified under paragraph (2)(B) of this subsection shall prevent water or liquid food from continuously running if there is a failure of a flow control

§228.106 (u)(3)

§228.107 (b)

device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

(v) Case lot handling equipment, movability. Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

(w) Vending machine doors and openings.

(1) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch by:

(A) being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or one-sixteenth inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this requirement;

(B) being effectively gasketed;

(C) having interface surfaces that are at least 13 millimeters or one-half inch wide; or

(D) jambs or surfaces used to form an L-shaped entry path to the interface.

(2) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

(x) Acceptability. Food equipment certification, classification. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply with §§228.101-228.106 of this title.

§228.107. Equipment, Numbers and Capacities.

(a) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Subchapter C of this chapter (relating to Food).^{Pf}

(b) Manual warewashing, sink compartment requirements.

§228.107 (b)(1)

(1) Except as specified in paragraph (3) of this subsection, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.^{Pf}

(2) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in paragraph (3) of this subsection shall be used.^{Pf}

(3) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

- (A) high-pressure detergent sprayers;
- (B) low- or line-pressure spray detergent foamers;
- (C) other task-specific cleaning equipment;
- (D) brushes or other implements;
- (E) two-compartment sinks as specified under paragraphs (4) and (5) of this subsection; or
- (F) receptacles that substitute for the compartments of a multi-compartment sink.

(4) Before a two-compartment sink is used:

(A) The permit holder shall have its use approved by the regulatory authority;^{Pf} and

(B) the permit holder shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:

(i) make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use;^{Pf} and

(ii) use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and as specified under §228.111(o) of this title;^{Pf} or

§228.107 (b)(4)(B)(iii)

§228.108 (d)(1)

(iii) use a hot water sanitization immersion step as specified under §228.115(f)(3) of this title.^{Pf}

(5) A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.^{Pf}

(c) Drainboards. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.^{Pf}

(d) Ventilation hood systems, adequacy. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(e) Clothes washers and dryers.

(1) Except as specified in paragraph (2) of this subsection, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(2) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under §228.122(a)(2) of this title, a mechanical clothes washer and dryer need not be provided.

§228.108. Utensils, Temperature Measuring Devices, and Testing Devices.

(a) Utensils, consumer self-service. A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.

(b) Food temperature measuring devices. Food temperature measuring device shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Subchapter C of this chapter (relating to Food).^{Pf}

(c) A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets.^{Pf}

(d) Temperature measuring devices, manual and mechanical warewashing.

(1) In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.^{Pf}

§228.108 (d)(2)

§228.110 (a)

(2) In hot water mechanical warewashing operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the utensil surface temperature.^{Pf}

(e) Sanitizing solutions, testing devices. A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided.^{Pf}

§228.109. Location and Installation, Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

(a) Except as specified in subsection (b) of this section, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

(1) in locker rooms;

(2) in toilet rooms;

(3) in garbage rooms;

(4) in mechanical rooms;

(5) under sewer lines that are not shielded to intercept potential drips;

(6) under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(7) under open stairwells; or

(8) under other sources of contamination.

(b) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(c) Clothes washer and dryer location requirements. If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

§228.110. Installation.

(a) Fixed equipment, spacing or sealing.

§228.110 (a)(1)

(1) Equipment that is fixed because it is not easily movable shall be installed so that it is:

(A) spaced to allow access for cleaning along the sides, behind, and above the equipment;

(B) spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or

(C) sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(2) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(A) sealed to the table; or

(B) elevated on legs as specified under subsection (b)(4) of this subsection.

(b) Fixed equipment, elevation or sealing.

(1) Except as specified in paragraphs (2) and (3) of this subsection, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15-centimeter (6-inch) clearance between the floor and the equipment.^{Pf}

(2) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(3) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

(4) Except as specified in paragraph (5) of this subsection, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10-centimeter (4-inch) clearance between the table and the equipment.

(5) The clearance space between the table and counter-mounted equipment may be:

(A) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

§228.110 (b)(5)(B)

§228.111 (e)(2)

(B) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

§228.111. Equipment, Maintenance and Operation.

(a) Good repair and proper adjustment.

(1) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under §228.101-228.106 of this title.

(2) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(3) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

(b) Cutting surfaces. Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

(c) Microwave ovens. Microwave ovens shall meet the safety standards specified in 21 CFR §1030.10, Microwave Ovens.

(d) Warewashing equipment, cleaning frequency. A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under §228.107(c) of this title shall be cleaned: ^{Pf}

(1) before use; ^{Pf}

(2) throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; ^{Pf} and

(3) if used, at least every 24 hours. ^{Pf}

(e) Warewashing machines, manufacturers' operating instructions.

(1) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions. ^{Pf}

(2) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications. ^{Pf}

§228.111 (f)

§228.111 (i)(2)

(f) Warewashing sinks, use limitation.

(1) A warewashing sink may not be used for handwashing as specified under §228.38(e) of this title (relating to Management and Personnel) or dumping mop water.

(2) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under subsection (d) of this section before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under §228.116 - 228.118 of this title before and after using the sink to wash produce or thaw food.^{Pf}

(g) Warewashing equipment, cleaning agents. When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in §228.107(b)(3) of this title, shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.^{Pf}

(h) Warewashing equipment, clean solutions. The wash, rinse, and sanitize solutions shall be maintained clean.^{Pf}

(i) Manual warewashing equipment, wash solution temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43 degrees Celsius (110 degrees Fahrenheit) or the temperature specified on the cleaning agent manufacturer's label instructions.^{Pf}

(j) Mechanical warewashing equipment, wash solution temperature.

(1) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

(A) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit);^{Pf}

(B) for a stationary rack, dual temperature machine, 66 degrees Celsius (150 degrees Fahrenheit);^{Pf}

(C) for a single tank, conveyor, dual temperature machine, 71 degrees Celsius (160 degrees Fahrenheit);^{Pf} or

(D) for a multitank, conveyor, multitemperature machine, 66 degrees Celsius (150 degrees Fahrenheit).^{Pf}

(2) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49 degrees Celsius (120 degrees Fahrenheit).^{Pf}

§228.111 (k)

(k) Manual warewashing equipment, hot water sanitization temperatures. If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77 degrees Celsius (171 degrees Fahrenheit) or above.^P

(l) Mechanical warewashing equipment, hot water sanitization temperatures.

(1) Except as specified in paragraph (2) of this subsection, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90 degrees Celsius (194 degrees Fahrenheit), or less than:^{Pf}

(A) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit);^{Pf} or

(B) for all other machines, 82 degrees Celsius (180 degrees Fahrenheit).^{Pf}

(2) The maximum temperature specified under paragraph (1) of this subsection, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(m) Mechanical warewashing equipment, sanitization pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be specified on the machine manufacturer's data plate and may not be less than 35 kilopascals (5 pounds per square inch) or more than 200 kilopascals (30 pounds per square inch).^{Pf}

(n) Manual and mechanical warewashing equipment, chemical sanitization temperature, pH, concentration, and hardness. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under §228.118(c) of this title shall be meet the criteria in §228.206(a) of this title (relating to Chemicals) shall be used in accordance with the EPA-approved manufacturer's label use instructions,^P and shall be used as follows:

(1) a chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart;^P

Figure: 25 TAC §228.111(n)(1)

(2) an iodine solution shall have a:

(A) minimum temperature of 20 degrees Celsius (68 degrees Fahrenheit);^P

(B) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective;^P and

§228.111 (n)(2)(C)

§228.111 (o)

(C) concentration between 12.5 mg/L and 25 mg/L;^P

(3) a quaternary ammonium compound solution shall:

(A) have a minimum temperature of 24 degrees Celsius (75 degrees Fahrenheit);^P

(B) have a concentration as specified under §228.206 of this title (relating to Chemicals) and as indicated by the manufacturer's use directions included in the labeling;^P and

(C) be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by EPA-registered label use instructions.^P

(4) if another solution of a chemical specified under paragraphs (1)-(3) of this subsection is used, the permit holder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved;^P or

(5) if a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions.^P

(6) if a chemical sanitizer is generated by a device located on-site at the food establishment it shall be used as specified in paragraphs (1) - (4) of this subsection and shall be produced by a device that:

(A) complies with regulation as specified in §§2(q)(1) and 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),^P

(B) complies with 40 CFR 152.500 requirement for devices and 40 CFR 156.10 labeling requirements,^P

(C) displays the EPA device manufacturing facility registration number on the device,^{Pf} and

(D) is operated and maintained in accordance with manufacturer's instructions.^{Pf}

(o) Manual warewashing equipment, chemical sanitization using detergent-sanitizers. If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.^{Pf}

§228.111 (p)**§228.112 (c)(2)**

(p) Warewashing equipment, determining chemical sanitizer concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.^{Pf}

Figure: 25 TAC §228.111(n)(1)

Concentration Range	Minimum Temperature	
	<i>pH 10 or less</i> °C (°F)	<i>pH 8 or less</i> °C (°F)
mg/L		
25-49	49 (120)	49 (120)
50-99	38 (100)	24 (75)
100	13 (55)	13 (55)

§228.112. Utensils and Temperature and Pressure Measuring Devices.

(a) Good repair and calibration.

(1) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under §§228.101 - 228.106 of this title or shall be discarded.^{Pf}

(2) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.^{Pf}

(3) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.^{Pf}

(b) Single-service and single-use articles, required use. A food establishment without facilities specified under §§228.113 – 228.118 of this title for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.^P

(c) Single-service and single-use articles, use limitation.

(1) Single-service and single-use articles may not be reused.

(2) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

§228.112 (d)

§228.114 (a)(3)

(d) Shells, use limitation. Mollusk and crustacea shells may not be used more than once as serving containers.

§228.113. Cleaning of Equipment and Utensils.

Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils.

(1) Equipment food-contact surfaces and utensils shall be clean to sight and touch.^P

(2) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(3) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

§228.114. Frequency of Cleaning.

(a) Equipment food-contact surfaces and utensils.

(1) Equipment food-contact surfaces and utensils shall be cleaned:

(A) except as specified in paragraph (2) of this subsection, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;^P

(B) each time there is a change from working with raw foods to working with ready-to-eat foods;^P

(C) between uses with raw fruits and vegetables and with time/temperature controlled for safety (TCS) food;^P

(D) before using or storing a food temperature measuring device;^P and

(E) at any time during the operation when contamination may have occurred.^P

(2) Paragraph (1)(A) of this subsection does not apply if the food-contact surface or utensil is in contact with a succession of different raw meat and poultry each requiring a higher cooking temperature as specified under §228.71(a) of this title than the previous type.

(3) Except as specified in paragraph (4) of this subsection, if used with time/temperature controlled for safety (TCS) food equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.^P

§228.114 (a)(4)

§228.114 (a)(4)(F)(iv)

(4) Surfaces of utensils and equipment contacting time/temperature controlled for safety (TCS) food may be cleaned less frequently than every four hours if:

(A) in storage, containers of time/temperature controlled for safety (TCS) food and their contents are maintained at temperatures specified under Subchapter C of these rules and the containers are cleaned when they are empty;

(B) utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

(i) the utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Figure: 25 TAC §228.114(a)(4)(B)(i)

(ii) the cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment;

(C) containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat time/temperature controlled for safety (TCS) food that is maintained at the temperatures specified under Subchapter C of these rules, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

(D) temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Subchapter C of this chapter;

(E) equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;

(F) the cleaning schedule is approved based on consideration of:

(i) the characteristics of the equipment and its use;

(ii) the type of food involved;

(iii) the amount of food residue accumulation; and

(iv) the temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

§228.114 (a)(4)(G)

§228.114 (c)

(G) in-use utensils are intermittently stored in a container of water in which the water is maintained at 57 degrees Celsius (135 degrees Fahrenheit) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

(5) Except when dry cleaning methods are used as specified under §228.115(a) of this title, surfaces of utensils and equipment contacting food that is not time/temperature controlled for safety shall be cleaned:

(A) at any time when contamination may have occurred;

(B) at least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(C) before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(D) in equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:

(i) at a frequency specified by the manufacturer; or

(ii) absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

(b) Cooking and baking equipment.

(1) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in subsection (a)(4)(F) of this section.

(2) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(c) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

§228.114 (c)

§228.115 (c)(2)

Figure: 25 TAC §228.114(a)(4)(B)(i)

Temperature	Cleaning Frequency
5.0 °C (41 °F) or less	24 hours
>5.0 °C - 7.2 °C (>41 °F - 45 °F)	20 hours
>7.2 °C - 10.0 °C (>45 °F - 50 °F)	16 hours
>10.0 °C - 12.8 °C (>50 °F - 55 °F)	10 hours

§228.115. Methods of Cleaning.

(a) Dry cleaning.

(1) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not time/temperature controlled for safety (TCS) food.

(2) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(b) Precleaning.

(1) Food debris on equipment and utensils shall be scrapped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(2) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

(c) Loading of soiled items, warewashing machines. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

(1) exposes the items to the unobstructed spray from all cycles;^{Pf} and

(2) allows the items to drain.^{Pf}

§228.115 (d)

§228.115 (f)(2)

(d) Wet cleaning.

(1) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.^{Pf}

(2) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.^{Pf}

(e) Washing, procedures for alternative manual warewashing equipment. If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in §228.107(b)(3) of this title in accordance with the following procedures:^{Pf}

(1) equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;^{Pf}

(2) equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation;^{Pf} and

(3) equipment and utensils shall be washed as specified under subsection (d)(1) of this section.^{Pf}

(f) Rinsing procedures. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:^{Pf}

(1) use of a distinct, separate water rinse after washing and before sanitizing if using:^{Pf}

(A) a three-compartment sink;^{Pf}

(B) alternative manual warewashing equipment equivalent to a three-compartment sink as specified in §228.107(b)(3) of this title;^{Pf} or

(C) a three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;^{Pf}

(2) use of a detergent-sanitizer as specified under §228.111(o) of this title;

§228.115 (f)(2)(A)

§228.118 (3)

(A) alternative warewashing equipment as specified in §228.107(b)(3) of this title that is approved for use with a detergent-sanitizer;^{Pf} or

(B) a warewashing system for CIP equipment;^{Pf}

(3) use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation;^{Pf}

(4) if using a warewashing machine that does not recycle the sanitizing solution as specified under paragraph (5) of this subsection, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:^{Pf}

(A) integrated in the application of the sanitizing solution;^{Pf} and

(B) washed immediately after each application;^{Pf} or

(5) if using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.^{Pf}

§228.116. Sanitization Objectives, Food-contact Surfaces and Utensils. Equipment food-contact surfaces and utensils shall be sanitized.

§228.117. Sanitization Frequency, Before Use After Cleaning. Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.^P

§228.118. Sanitization Methods, Hot Water and Chemicals.

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(1) hot water manual operations by immersion for at least 30 seconds and as specified under §228.111(k) of this title;^P

(2) hot water mechanical operations by being cycled through equipment that is set up as specified under §228.111(e), (l) and (m) of this title and achieving a utensil surface temperature of 71 degrees Celsius (160 degrees Fahrenheit) as measured by an irreversible registering temperature indicator;^P or

(3) chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under §228.111(n) of this title by providing:

§228.118 (3)(A)

§228.121 (b)

(A) except as specified under paragraph (B) of this subsection, an exposure time of at least 10 seconds for a chlorine solution specified under §228.111(n)(1) of this title;^P

(B) a contact time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) or a pH of 8 or less and a temperature of at least 24 degrees Celsius (75 degrees Fahrenheit);^P

^P or (C) a contact of at least 30 seconds for other chemical sanitizing solutions;

(D) An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in §228.2(125) of this title (relating to Definitions).^P

§228.119. Laundering, Clean Linens. Clean linens shall be free from food residues and other soiling matter.

§228.120. Laundering, Frequency, Specifications.

(a) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(b) Cloth gloves used as specified in §228.68(e)(4) of this title shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork or poultry.

(c) Linens and napkins that are used as specified under §229.68(c) of this title and cloth napkins shall be laundered between each use.

(d) Wet wiping cloths shall be laundered daily.

(e) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

§228.121. Laundering Methods.

(a) Storage of soiled linens. Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

(b) Mechanical washing.

§228.121 (b)(1)

(1) Except as specified in paragraph (2) of this subsection, linens shall be mechanically washed.

(2) In food establishments in which only wiping cloths are laundered as specified in §228.107(e)(2) of this title, the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under §228.111(d) of this title.

(c) Use of laundry facilities.

(1) Except as specified in paragraph (2) of this subsection, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(2) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

§228.122. Drying, Equipment and Utensils.

(a) Equipment and utensils, air-drying required. After cleaning and sanitizing, equipment and utensils:

(1) shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR §180.940, Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact sanitizing solutions), before contact with food; and

(2) may not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

(b) Wiping cloths, air-drying locations. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in §228.107(e)(2) of this title, shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under §228.111(n) of this title.

§228.123. Lubricating and Reassembling.

(a) Food-contact surfaces. Lubricants as specified under §228.207 of this title shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

§228.123 (b)

(b) Equipment. Equipment shall be reassembled so that food-contact surfaces are not contaminated.

§228.124. Storage.

(a) Equipment, utensils, linens, and single-service and single-use articles.

(1) Except as specified in paragraph (4) of this subsection, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(A) in a clean, dry location;

(B) where they are not exposed to splash, dust, or other contamination;
and

(C) at least 15 cm (6 inches) above the floor.

(2) Clean equipment and utensils shall be stored as specified under paragraph (1) of this subsection and shall be stored:

(A) in a self-draining position that allows air drying; and

(B) covered or inverted.

(3) Single-service and single-use articles shall be stored as specified under subparagraph (A) of this paragraph and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(4) Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as specified under §228.106(v) of this title.

(b) Prohibitions.

(1) Except as specified in paragraph (2) of this subsection, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

(A) in locker rooms;

(B) in toilet rooms;

(C) in garbage rooms;

§228.124 (b)(1)(D)

(D) in mechanical rooms;

(E) under sewer lines that are not shielded to intercept potential drips;

(F) under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(G) under open stairwells; or

(H) under other sources of contamination.

(2) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

§228.125. Preventing Contamination.

(a) Kitchenware and tableware.

(1) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

(2) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(3) Except as specified under paragraph (2) of this subsection, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

(b) Soiled and clean tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

(c) Preset tableware. If tableware is preset:

(1) except as specified in paragraph (2) of this subsection, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

(2) preset tableware may be exposed if:

(A) unused settings are removed when a consumer is seated; or

(B) settings not removed when a consumer is seated are cleaned and sanitized before further use.

§228.125 (d)

§228.142 (a)(2)

(d) Rinsing equipment and utensils after cleaning and sanitizing. After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:^{Pf}

(1) the rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under §228.106 and §228.111 of this title;^{Pf} and

(2) the rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.^{Pf}

Subchapter E. Water, Plumbing, and Waste.

§228.141. Source.

(a) Approved system. Drinking water shall be obtained from an approved source that is:

(1) a public water system;^P or

(2) a nonpublic water system that is constructed, maintained, and operated according to Subchapter J of this chapter (pertaining to Private Water Systems).^P

(b) System flushing and disinfection. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.^P

(c) Bottled drinking water. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled Drinking Water.^P

§228.142. Water Quality Standards.

(a) Public and private water systems. Except as specified under subsection (b) of this section:

(1) Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations, state drinking water quality standards in accordance with 30 TAC §§290.38 – 290.47(Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems);^P and

(2) Water from a nonpublic water system shall meet the requirements in Subchapter J of this chapter, Private Water Systems.^P

§228.142 (b)

§228.144 (a)(2)(B)

(b) Nondrinking water.

(1) A nondrinking water supply shall be used only if its use is approved by the regulatory authority.^P

(2) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection.^P

(c) Sampling. Except when used as specified under subsection (b) of this section, water from a nonpublic water system shall be sampled and tested at least monthly and as required by Subchapter J of this chapter (pertaining to Private Water Systems).^{Pf}

(d) Sample report. The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by Subchapter J of this chapter (pertaining to Private Water Systems).^{Pf}

§228.143. Water Quantity and Availability.

(a) Capacity. The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.^{Pf}

(b) Pressure. Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under §228.144(b)(1) and (2) of this title to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.^{Pf}

(c) Hot water. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.^{Pf}

§228.144. Water Distribution, Delivery, and Retention Systems.

(a) Distribution. Water shall be received from the source through the use of:

(1) an approved public water main;^{Pf} or

(2) one or more of the following that shall be constructed, maintained, and operated according to law:^{Pf}

(A) nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances that meet the requirements of Subchapter J (pertaining to Private Water Systems);^{Pf}

(B) water transport vehicles;^{Pf} or

§228.144 (a)(2)(C)

§228.146 (b)(3)

(C) water containers.^{Pf}

(b) Alternative water supply. Water meeting the requirements specified under §§228.141 – 228.143 of this title shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

- (1) a supply of containers of commercially bottled drinking water;^{Pf}
- (2) one or more closed portable water containers;^{Pf}
- (3) an enclosed vehicular water tank;^{Pf}
- (4) an on-premises water storage tank;^{Pf} or
- (5) piping, tubing, or hoses connected to an adjacent approved source.^{Pf}

§228.145. Plumbing Systems, Approved Materials.

(a) Construction. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to the Plumbing Code.^P

(b) Water filter. A water filter shall be made of safe materials.^P

§228.146. Plumbing Design, Construction, and Installation.

(a) Approved system and cleanable fixtures.

(1) A plumbing system shall be designed, constructed, and installed according to the Plumbing Code.^P

(2) A plumbing fixture such as a handwashing facility, toilet, or urinal shall be easily cleanable.

(b) Handwashing facility, installation.

(1) A handwashing sink shall be equipped to provide water at a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) through a mixing valve or combination faucet.^{Pf}

(2) A steam mixing valve may not be used at a handwashing sink.^{Pf}

(3) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.^{Pf}

§228.146 (b)(4)

§228.147 (c)(1)

(4) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.^{Pf}

(c) Backflow prevention, air gap. An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).^P

(d) Backflow prevention device, design standard. A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.^P

(e) Conditioning device, design. A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

§228.147. Plumbing, Numbers and Capacities.

(a) Handwashing facilities.

(1) Except as specified in paragraphs (2) and (3) of this subsection, at least one handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by employees in areas specified under §228.148 of this title, and not fewer than the number of handwashing lavatories required by the Plumbing Code shall be provided.^{Pf}

(2) If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing lavatories in a food establishment that has at least one handwashing lavatory.

(3) If approved by the regulatory authority, when no food exposure exists and handwashing sinks are not conveniently available, such as in some Mobile Food Units or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing.^P

(b) Toilets and urinals. At least one toilet and not fewer than the toilets required by the Plumbing Code shall be provided. If authorized by the Plumbing Code and urinals are substituted for toilets, the substitution shall be done as specified in the Plumbing Code.

(c) Service sink.

(1) At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.^{Pf}

§228.147 (c)(2)

§228.149 (a)

(2) Toilets, urinals and showers may not be used as a service sink for the disposal of mop water and similar liquid waste.

(d) Backflow prevention device, when required. A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by the Plumbing Code, by:

(1) providing an air gap as specified under §228.146(c) of this title; ^P or

(2) installing an approved backflow prevention device as specified under 228.146(d) of this title. ^P

(e) Backflow prevention device, carbonator.

(1) If not provided with an air gap as specified under §228.146(c) of this title, a dual check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 25.4mm (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line. ^P

(2) A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under paragraph (1) of this subsection.

§228.148. Plumbing, Location and Placement.

(a) Handwashing facilities. A handwashing facility shall be located:

(1) to allow convenient use by employees in food preparation, food dispensing, and warewashing areas; ^{Pf} and

(2) in, or immediately adjacent to, toilet rooms. ^{Pf}

(b) Backflow prevention device, location. A backflow prevention device shall be located so that it may be serviced and maintained.

(c) Conditioning device, location. A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

§228.149. Plumbing, Operation and Maintenance.

(a) Using a handwashing facility.

§228.149 (a)(1)

(1) A handwashing facility shall be maintained so that it is accessible at all times for employee use.^{Pf}

(2) A handwashing facility may not be used for purposes other than handwashing.^{Pf}

(3) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.^{Pf}

(b) Prohibiting a cross connection.

(1) A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.^P

(2) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.^{Pf}

(c) Scheduling inspection and service for a water system device. A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.^{Pf}

(d) Water reservoir of fogging devices, cleaning.

(1) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(A) maintained in accordance with manufacturer's specifications;^P and

(B) cleaned in accordance with manufacturer's specifications or according to the procedures specified under paragraph (2) of this subsection, whichever is more stringent.^P

(2) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(A) draining and complete disassembly of the water and aerosol contact parts;^P

(B) brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;^P

§228.149 (d)(2)(C)

(C) flushing the complete system with water to remove the detergent solution and particulate accumulation;^P and

(D) rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution.^P

(e) System maintained in good repair. A plumbing system shall be:

(1) repaired according to the Plumbing Code;^P and

(2) maintained in good repair.

(f) Mobile water tank and Mobile Food Unit water tank.

(1) Materials, approved. Materials that are used in the construction of a mobile water tank, Mobile Food Unit water tank, and appurtenances shall be:

(A) safe;^P

(B) durable, corrosion-resistant, and nonabsorbent;^{Pf} and

(C) finished to have a smooth, easily cleanable surface.^{Pf}

(2) Tank design and construction. A mobile water tank shall be:

(A) enclosed from the filling inlet to the discharge outlet;^{Pf} and

(B) sloped to an outlet that allows complete drainage of the tank.^{Pf}

(3) Tank inspection and cleaning port, protected and secured. If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

(A) flanged upward at least 13 mm (one-half inch);^{Pf} and

(B) equipped with a port cover assembly that is:

(i) provided with a gasket and a device for securing the cover in place;^{Pf} and

(ii) flanged to overlap the opening and sloped to drain.^{Pf}

(4) "V" type threads, use limitation. A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

§228.149 (f)(5)

(5) Tank vent, protected. If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(B) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(6) Tank inlet and outlet, sloped to drain.

(A) A water tank and its inlet and outlet shall be sloped to drain.

(B) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(7) Tank hose, construction and identification. A hose used for conveying drinking water from a water tank shall be:

(A) safe; ^P

(B) durable, corrosion-resistant, and nonabsorbent; ^{Pf}

(C) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition; ^{Pf}

(D) finished with a smooth interior surface; ^{Pf} and

(E) clearly and durably identified as to its use if not permanently attached. ^{Pf}

(8) Tank filter, compressed air. A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system. ^P

(9) Protective cover or device. A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

(10) Mobile Food Unit tank inlet. A Mobile Food Unit's water tank inlet shall be:

(A) 19.1 mm (three-fourths inch) in inner diameter or less; ^{Pf} and

§228.149 (f)(10)(B)

§228.150 (c)

(B) provided with a hose connection of a size or type that will prevent its use for any other service.^{Pf}

(11) Fill hose and water holding tank shall be labeled as “Potable Water”.

(12) Water in a Mobile Food Unit holding tank shall be tested for contamination by sampling upon request by the regulatory authority.^{Pf}

(13) Operation and maintenance, system flushing and disinfection. A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.^P

(14) Using a pump and hoses, backflow prevention. A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(15) Protecting inlet, outlet, and hose fitting. If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified in paragraph (9) of this subsection.

(16) Tank, pump, and hoses, dedication.

(A) Except as specified in subparagraph (B) of this paragraph, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.^P

(B) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

§228.150. Sewage Retention, Drainage, and Delivery.

(a) Mobile holding tank. capacity and drainage. A sewage holding tank in a Mobile Food Unit shall be:

(1) Sized 15 percent larger in capacity than the water supply tank; and

(2) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(b) Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under §228.146(a)(1) of this title.

(c) Backflow prevention.

§228.150 (c)(1)

(1) Except as specified in paragraphs (2), (3) and (4) of this subsection, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed. ^P

(2) Paragraph (1) of this subsection does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

(3) If allowed by the Plumbing Code, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(4) If allowed by the Plumbing Code, a warewashing or culinary sink may have a direct connection.

(d) Grease trap. If used, a grease trap shall be located to be easily accessible for cleaning, operation, and maintenance.

(e) Conveying sewage. Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to the Plumbing Code. ^P

(f) Removing Mobile Food Unit wastes. Sewage and other liquid wastes shall be removed from a Mobile Food Unit at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created. ^P

(g) Flushing a waste retention tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

§228.151. Disposal Facility.

(a) Approved sewage disposal system. Sewage shall be disposed through an approved facility that is:

(1) a public sewage system; ^P or

(2) an individual sewage disposal system that is sized, constructed, maintained, and operated according to 30 TAC, Chapter 285, On-Site Sewage Facilities. ^P

(b) Other liquid wastes and rainwater. Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to 30 TAC, Chapter 285, On-Site Sewage Facilities.

§228.152

§228.152 (g)(1)

§228.152. Refuse, Recyclables, and Returnables, Facilities on the Premises.

(a) Indoor storage area. If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under §§228.171, 228.173(a)-(h), 228.174(e) and (f) of this title (relating to Physical Facilities).

(b) Outdoor storage surface. An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

(c) Outdoor enclosure. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(d) Receptacles.

(1) Except as specified in paragraph (2) of this subsection, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect and rodent-resistant, leak-proof, and nonabsorbent.

(2) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

(e) Receptacles in vending machines. Except for a receptacle for beverage bottle crown closures, a refuse receptacle may not be located within a vending machine.

(f) Outside receptacles.

(1) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(2) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

(g) Storage areas, rooms, and receptacles, capacity and availability.

(1) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

§228.152 (g)(2)

(2) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(3) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

(h) Toilet room receptacle, covered. A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(i) Cleaning implements and supplies.

(1) Except as specified in paragraph (2) of this subsection, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

(2) If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

(j) Storage areas, redeeming machines, receptacles and waste handling units, location.

(1) An area designated for refuse, recyclables, returnables, and, except as specified in paragraph (2) of this subsection, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

(2) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(3) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

(k) Storing refuse, recyclables, and returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(l) Areas, enclosures, and receptacles, good repair. Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(m) Outside storage prohibitions.

§228.152 (m)

§228.152 (m)(1)

§228.153 (a)

(1) Except as specified in paragraph (2) of this subsection, refuse receptacles not meeting the requirements specified under §228.152(d)(1) of this title such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.

(2) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

(n) Covering receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(1) inside the food establishment if the receptacles and units:

(A) contain food residue and are not in continuous use; or

(B) after they are filled; and

(2) with tight-fitting lids or doors if kept outside the food establishment.

(o) Using drain plugs. Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

(p) Maintaining refuse areas and enclosures. A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under §228.186(n) of this title (pertaining to Physical Facilities), and clean.

(q) Cleaning receptacles.

(1) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under §228.150(e) of this title.

(2) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

§228.153. Refuse Removal.

(a) Frequency. Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

§228.153 (b)

§228.172(b)

(b) Receptacles or vehicles. Refuse, recyclables, and returnables shall be removed from the premises by way of:

(1) portable receptacles that are constructed and maintained according to 30 TAC, Chapter 330, Municipal Solid Waste; or

(2) a transport vehicle that is constructed, maintained, and operated according to 30 TAC, Chapter 330, Municipal Solid Waste.

§228.154. Facilities for Disposal and Recycling, Community or Individual Facility.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to 30 TAC, Chapter 330, Municipal Solid Waste.

Subchapter F. Physical Facilities.

§228.171. Indoor Areas, Surface Characteristics.

Except as specified in §228.222(j) and (k)(1) of this title, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

(1) smooth, durable, and easily cleanable for areas where food establishment operations are conducted;

(2) closely woven and easily cleanable carpet for carpeted areas; and

(3) nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, Mobile Food Unit servicing areas, and areas subject to flushing or spray cleaning methods.

§228.172. Outdoor Areas, Surface Characteristics.

(a) Walking and driving areas. The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(b) Exterior surfaces. Exterior surfaces of buildings and Mobile Food Units shall be of weather-resistant materials and shall comply with law.

§228.172 (c)

(c) Storage areas. Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under §228.152 (b) and (c) of this title (relating to Water, Plumbing and Waste).

§228.173 (d)(2)(A)

§228.173. Floors, Walls, and Ceilings.

(a) Cleanability. Except as specified under subsection (d) of this section, and except for antislip floor coverings or applications that may be used for safety reasons, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable,

(b) Floors, walls, and ceilings, utility lines.

(1) Utility service lines and pipes may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(3) Exposed horizontal utility service lines and pipes may not be installed on the floor

(c) Floor and wall junctures, coved, and enclosed or sealed.

(1) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm (one thirty-second inch).

(2) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be covered and sealed.

(d) Floor carpeting, restrictions and installation.

(1) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

(2) If carpeting is installed as a floor covering in areas other than those specified under paragraph (1) of this subsection, it shall be:

(A) securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

§228.173 (d)(2)(B)

(B) installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

(e) Floor covering, mats and duckboards. Mats and duckboards shall be designed to be removable and easily cleanable.

(f) Wall and ceiling coverings and coatings.

(1) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(2) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(3) Walls including non-supporting partitions, wall covering and ceilings of the walk-in refrigeration units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules shall be light in color.

(g) Walls and ceilings, attachments.

(1) Except as specified in paragraph (2) of this subsection, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

(2) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(h) Walls and ceilings, studs, joists, and rafters. Except for temporary food establishments, studs, joists, and rafters may not be exposed in areas subject to moisture.

§228.174. Functionality.

(a) Light bulbs, protective shielding.

(1) Except as specified in paragraph (2) of this subsection, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(2) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages; if:

§228.174 (a)(2)(A)

(A) the integrity of the packages cannot be affected by broken glass falling onto them; and

(B) the packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(3) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

(b) Heating, ventilating, air conditioning system vents. Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

(c) Insect control devices, design and installation.

(1) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(2) Insect control devices shall be installed so that:

(A) the devices are not located over a food preparation area; and

(B) dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(d) Toilet rooms, enclosed. Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

(e) Outer openings, protected.

(1) Except as specified in paragraphs (2) - (5) of this subsection, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

(A) filling or closing holes and other gaps along floors, walls, and ceilings;

(B) closed, tight-fitting windows; and

(C) solid, self-closing, tight-fitting doors.

(2) Paragraph (1) of this subsection does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure,

§228.174 (e)(2)

§228.174 (i)

such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(3) Exterior doors used as exits need not be self-closing if they are:

(A) solid and tight-fitting;

(B) designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and

(C) limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(4) Except as specified in paragraphs (2) and (5) of this subsection, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under paragraph (1) of this subsection, the openings shall be protected against the entry of insects and rodents by:

(A) 16 mesh to 25.4mm (16 mesh to 1 inch) screens;

(B) properly designed and installed air curtains to control flying insects; or

(C) other effective means.

(5) Paragraph (4) of this subsection does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

(f) Exterior walls and roofs, protective barrier. Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

(g) Outdoor food vending areas, overhead protection. Except for machines that vend canned beverages if located outside, a machine used to vend food shall be provided with overhead protection.

(h) Outdoor servicing areas, overhead protection. Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

(i) Outdoor walking and driving surfaces, graded to drain. Exterior walking and driving surfaces shall be graded to drain.

§228.174 (j)

(j) Outdoor refuse areas, curbed and graded to drain. Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that result from the refuse and from cleaning the area and waste receptacles.

(k) Private homes and living or sleeping quarters, use prohibition. A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.^P

(l) Living or sleeping quarters, separation. Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

§228.175. Handwashing Sinks.

(a) Minimum number. Handwashing sinks shall be provided as specified under §228.147(a) (1)-(3) of this title.

(b) Handwashing cleanser, availability. Each handwashing sink or group of 2 adjacent sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.^{Pf}

(c) Hand drying provision. Each handwashing sink or group of adjacent sinks shall be provided with:

(1) individual, disposable towels;^{Pf}

(2) a continuous towel system that supplies the user with a clean towel;^{Pf} or

(3) a heated-air hand drying device.^{Pf}

(4) a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.^{Pf}

(d) Handwashing aids and devices, use restrictions. A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified in subsections (b) and (c) of this section and §228.152(g)(3) of this title.

(e) Handwashing signage. A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

§228.175 (f)

(f) Disposable towels, waste receptacle. A handwashing sink or group of adjacent sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under §228.152(g)(3) of this title.

§228.176. Toilets and Urinals.

(a) Minimum number. Toilets and urinals shall be provided as specified under §228.147(b) of this title.

(b) Toilet tissue, availability. A supply of toilet tissue shall be available at each toilet.

§228.177. Lighting Intensity.

The light intensity shall be:

(1) at least 108 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

(2) at least 215 lux (20 foot candles):

(A) at a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

(B) inside equipment such as reach-in and under-counter refrigerators;

(C) at a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(3) at least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

§228.178. Ventilation, Mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

§228.179. Dressing Areas and Lockers, Designation.

(a) Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

§228.179 (b)

(b) Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

§228.180. Service Sinks, Availability.

A service sink or curbed cleaning facility shall be provided as specified under §228.147(c)(1) of this title.

§228.181. Handwashing Sinks, Conveniently Located.

Handwashing sinks shall be conveniently located as specified under §228.148(a) of this title.

§228.182. Toilet Rooms, Convenience and Accessibility.

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

§228.183. Employee Accommodations, Designated Areas.

(a) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(b) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

§228.184. Distressed Merchandise, Segregation and Location.

Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.^P

§228.185. Receptacles, Waste Handling Units, and Designated Storage Areas.

Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under §228.152(j) of this title.

§228.186. Premises, Buildings, Systems, Rooms, Fixtures, Equipment, Devices, and Materials.

(a) Repairing. The physical facilities shall be maintained in good repair.

§228.186 (a)

§228.186 (b)

(b) Cleaning, frequency and restrictions.

(1) The physical facilities shall be cleaned as often as necessary to keep them clean.

(2) Except for cleaning that is necessary due to a spill or other accident cleaning shall be done during periods when the least amount of food is exposed such as after closing.

(c) Cleaning floors, dustless methods.

(1) Except as specified in paragraph (2) of this subsection, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(2) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(A) without the use of dust-arresting compounds; and

(B) in the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

(d) Cleaning ventilation systems, nuisance and discharge prohibition.

(1) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(2) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

(e) Cleaning maintenance tools, preventing contamination. Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.^P

(f) Drying mops. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(g) Absorbent materials on floors, use limitation. Except as specified in subsection (c)(2) of this section, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

§228.186 (h)

(h) Cleaning of Plumbing Fixtures. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

(i) Closing toilet room doors. Except during cleaning and maintenance operations toilet room doors as specified under §228.174(d) of this title shall be kept closed.

(j) Using dressing rooms and lockers.

(1) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(2) Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(k) Controlling pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:

(1) routinely inspecting incoming shipments of food and supplies;

(2) routinely inspecting the premises for evidence of pests;

(3) using methods, if pests are found, such as trapping devices or other means of pest control as specified under §228.204(b) and §228.208(b) and (c) of this title; ^{Pf} and

(4) eliminating harborage conditions.

(l) Removing dead or trapped birds, insects, rodents, and other pests. Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

(m) Storing maintenance tools. Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

(1) stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(2) stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

(n) Maintaining premises, unnecessary items and litter. The premises shall be free of:

(1) items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

§228.186 (n)(2)

(2) litter.

(o) Prohibiting animals.

(1) Except as specified in paragraphs (2) and (3) of this subsection, live animals may not be allowed on the premises of a food establishment.

(2) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result:

(A) edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(B) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(C) in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, or service animals in training when accompanied by an approved trainer if a health or safety hazard will not result from the presence or activities of the service animal;

(D) pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(i) effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(ii) condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(E) in areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.

(3) Live or dead fish bait may be stored if contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result.

§228.201

§228.204 (b)(1)(A)

Subchapter G. Poisonous or Toxic Materials.

§228.201. Original Containers, Identifying Information, Prominence.

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.^P

§228.202. Working Containers, Common Name.

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.^P

§228.203. Storage, Separation.

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) separating the poisonous or toxic materials by spacing or partitioning;^P and

(2) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.^P

§228.204. Presence and Use.

(a) Restriction.

(1) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.^P

(2) Paragraph (1) of this subsection does not apply to packaged poisonous or toxic materials that are for retail sale.

(b) Conditions of use. Poisonous or toxic materials shall be:

(1) used according to:

(A) law and this chapter;^P

§228.204 (b)(1)(B)

§228.206 (a)(1)

(B) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;^P

(C) the conditions of certification, if certification is required, for use of the pest control materials;^P and

(D) additional conditions that may be established by the regulatory authority;^P and

(2) applied so that:

(A) a hazard to employees or other persons is not constituted;^P and

(B) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by:^P

(i) removing the items;^P

(ii) covering the items with impermeable covers;^P or

(iii) taking other appropriate preventive actions;^P and

(iv) cleaning and sanitizing equipment and utensils after the application.^P

(3) A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC 136(e), Certified Applicator of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator.^P

§228.205. Container Prohibitions, Poisonous or Toxic Material Containers.

A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.^P

§228.206. Chemicals.

(a) Sanitizers, criteria. Chemical sanitizers, including chemical sanitizing solutions generated on site, and other chemical antimicrobials applied to food-contact surfaces shall:

(1) Meet the requirements specified in 40 CFR 180.940. Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions),^P or

§228.206 (a)(2)

§228.206 (d)(1)(D)

(2) Meet the requirements as specified in 40 CFR 180.2020. Pesticide Chemicals Not Requiring a Tolerance or Exemption from Tolerance-Non-food determinations.^P

(b) Chemical for washing, treatment, storage, and processing fruits and vegetables, criteria.

(1) Chemicals, including those generated on-site, used to wash or peel raw, whole fruits and vegetables shall:

(A) be an approved food additive listed for this intended use,^P

(B) be generally recognized as safe (GRAS) for this intended use;^P or

(C) be the subject of an effective food contact notification for this intended use (only effective for the manufacturer or supplier identified in the notification),^P and

(D) meet the requirements in 40 CFR 156 Labeling Requirements for Pesticide and Devices.^P

(2) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368 Ozone.^P

(c) Boiler water additives, criteria. Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR §173.310, Boiler Water Additives.^P

(d) Drying agents, criteria. Drying agents used in conjunction with sanitization shall:

(1) contain only components that are listed as one of the following:

(A) generally recognized as safe for use in food as specified in 21 CFR 182, Substances Generally Recognized as Safe, or 21 CFR 184, Direct Food Substances Affirmed as Generally Recognized as Safe;^P

(B) generally recognized as safe for the intended use as specified in 21 CFR 186, Indirect Food Substances Affirmed as Generally Recognized as Safe;^P

(C) generally recognized as safe for the intended use as determined by experts qualified in scientific training and experience to evaluate the safety of substances added, directly or indirectly, to FOOD as described in 21 CFR 170.30 Eligibility for classification as generally recognized as safe (GRAS),^P

(D) subject of an effective Food Contact Notification as described in the Federal Food Drug and Cosmetic Act (FFDCA) Section 409(h),^P or

§228.206 (d)(1)(E)

§228.209 (a)

(E) approved for use as a drying agent under a prior sanction as described in the FFDCA § 201(s)(4);^P

(F) specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR 175 - 178;^P

(G) approved for use as a drying agent under the threshold of regulation process established by 21 CFR §170.39, Threshold of regulation for substances used in food-contact articles;^P and

(2) when sanitization is with chemicals, the approval required under paragraph (1)(E) or (G) of this subsection or the regulation as an indirect food additive required under paragraph (1)(F) of this subsection, shall be specifically for use with chemical sanitizing solutions.^P

§228.207. Lubricants, Incidental Food Contact, Criteria.

Lubricants shall meet the requirements specified in 21 CFR §178.3570, Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.^P

§228.208. Pesticides.

(a) Restricted use pesticides, criteria. Restricted use pesticides specified in §228.204(b)(3) of this title shall meet the requirements specified in 40 CFR 152, Subpart I, Classification of Pesticides.^P

(b) Rodent bait stations. Rodent bait shall be contained in a covered, tamper-resistant bait station.^P

(c) Tracking powders, pest control and monitoring.

(1) Except as specified in paragraph (2) of this subsection, a tracking powder pesticide may not be used in a food establishment.^P

(2) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

§228.209. Medicines.

(a) Restriction and storage.

§228.209 (a)(1)

(1) Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment.^P

(2) Medicines that are in a food establishment for the employees' use shall be labeled as specified in §228.201 of this title and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.^P

(b) Refrigerated medicines, storage. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

(1) stored in a package or container and kept inside a covered, leak-proof container that is identified as a container for the storage of medicines;^P and

(2) located so they are inaccessible to children.^P

§228.210. First Aid Supplies, Availability. A first aid kit shall be provided.

§228.211. First Aid Supplies, Storage. First aid supplies that are in a food establishment for the employees' use shall be:

(1) labeled as specified under §228.201 of this title;^P and

(2) stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.^P

§228.212. Other Personal Care Items, Storage.

Except as specified in §228.209(b) and §228.211 of this title, employees shall store their personal care items in facilities as specified under §228.187(j)(2) of this title (relating to Physical Facilities).

§228.213. Storage and Display, Separation.

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) separating the poisonous or toxic materials by spacing or partitioning;^P and

(2) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.^P

§228.221

§228.221 (a)(4)(B)

Subchapter H. Requirements Applicable to Certain Establishments.

§228.221. Mobile Food Units.

(a) Mobile Food Unit provisions.

(1) General. Except as otherwise provided in this paragraph and in paragraph (2) of this subsection, the regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all time/temperature controlled for safety (TCS) food, and when no health hazard will result, may waive or modify requirements of this rule relating to physical facilities, except those requirements as specified in paragraphs (7) and (8) of this subsection; subsection (c)(1)(A) - (E) of this section and §§228.71 - 228.75 of this title (relating to Food). The regulatory authority shall require a Mobile Food Unit operator to demonstrate that the vehicle is readily moveable.

(2) Restricted operation. Mobile Food Units that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are non-time/temperature controlled for safety (NTCS) food and are dispensed from covered urns or other protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its central preparation facility.

(3) Readily movable. The regulatory authority prohibits alteration, removal, attachments, additions, placement or change in, under, or upon the Mobile Food Unit that would prevent or otherwise reduce ready mobility. A regulatory authority may require a Mobile Food Unit to come, on an annual basis or as often as required, to a location designated by the regulatory authority as proof that the Mobile Food Unit is readily moveable.^{Pf}

(4) Initial permitting inspection. The regulatory authority shall require a Mobile Food Unit to come to a location designated by the authority. The mobile unit must be totally operable at time of inspection, including but not limited to handwash/warewash facilities, refrigeration and wastewater disposal. Required documentation to have available includes:

(A) Certified Food Manager Certification.^{Pf}

(B) Central Preparation Facility Authorization (if required). A signed letter of authorization is required, to verify facility use, if the Central Preparation Facility is not owned by the mobile unit operator.

§228.221 (a)(4)(C)

(C) Central Preparation Facility Inspection Report. A copy of the most current health inspection of the central preparation facility must be maintained on the mobile unit at all times.

(D) Servicing Area Authorization. A signed letter of authorization may be required by the regulatory authority to verify service area use, if the servicing area is not owned by the mobile unit operator.

(E) Menu of all food items to be sold.

(5) Single-service articles. Mobile Food Units shall provide only single service articles for use by the consumer.

(6) Equipment, numbers and capacities.

(A) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Subchapter C of this rule.^{Pf}

(B) Manual warewashing, sink compartment requirements.^{Pf}

(i) A sink with at least three compartments shall be provided for manually washing, rinsing,^{Pf} and sanitizing equipment and utensils as specified under §228.107(b)(1) of this title.^{Pf}

(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils as specified under §228.107(b)(2) of this title.^{Pf}

(C) At least one handwashing sink shall be available for convenient use by employees and properly provisioned in accordance with §228.175(b) - (c) of this title.^{Pf}

(7) Mobile water system materials, design, and operation. Mobile Food Unit water systems shall meet the requirements of §228.149(f) of this title (relating to Water, Plumbing, and Waste).

(8) Mobile Food Unit tank inlet. A Mobile Food Unit's water tank inlet shall be:

(A) 19.1 mm (3/4 inch) in inner diameter or less;^{Pf} and

(B) Provided with a hose connection of a size or type that will prevent its use for any other service.^{Pf}

(C) Fill hose and water holding tank shall be labeled as "Potable Water."

§228.221 (a)(9)

(9) Sewage and other liquid waste.

(A) Waste retention. If liquid waste results from operation of a Mobile Food Unit, the waste shall be stored in a permanently installed retention tank.

(B) Capacity and drainage. A leak-proof sewage holding tank in a Mobile Food Unit shall be:

(i) sized at least 15% larger in capacity than the water supply tank; and

(ii) sloped to a drain that is 25 millimeters (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(C) All connections on the vehicle for servicing the Mobile Food Unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the Mobile Food Unit.

(D) Discharge liquid waste shall not be discharged from the retention tank while the Mobile Food Unit is in motion. ^P

(E) Flushing a waste retention tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner. ^P

(F) Removing Mobile Food Unit wastes. Sewage and other liquid wastes shall be removed from a Mobile Food Unit at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created. ^P

(G) Liquid waste holding tank shall be labeled as “waste water”

(10) Mobile Food Unit water and wastewater exemption.

(A) A roadside vendor that sells only prepackaged food is exempt from these rules pertaining to water and wastewater.

(B) A Mobile Food Unit that prepares food requiring no water for operations and no hand contact with food is exempt from these rules pertaining to water and wastewater if the required cleaning and sanitization equipment exist at its central preparation facility. Chemically treated towelettes for handwashing may be used as specified in §228.147(a)(3) of this title (pertaining to Water, Plumbing and Waste). ^P

(11) Toilet rooms, convenience and accessibility. Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

§228.221 (b)

§228.222 (a)

(b) Central preparation facility.

(1) Supplies, cleaning, and servicing operations. Mobile Food Units shall operate from a central preparation facility or other fixed food establishment and shall report to such location daily for supplies and for cleaning and servicing operations.

(2) Construction. The central preparation facility or other fixed food service establishment, used as a base of operation for Mobile Food Units, shall be constructed and operated in compliance with the requirements of these rules (pertaining to Physical Facilities).

(c) Servicing area and operations.

(1) Protection.

(A) A Mobile Food Unit servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operation. Those areas used only for the loading of water and/or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(B) Within the servicing area, the location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies.^P

(C) A servicing area will not be required where only packaged food is placed on the Mobile Food Unit or where Mobile Food Units do not contain waste retention tanks.

(D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(E) Potable water servicing equipment shall be installed in the servicing area according to the Plumbing Code and shall be stored and handled in a way that protects the water and equipment from contamination.^{Pf}

(2) Construction exemption. The construction of the walls and ceilings of the servicing area is exempted from the provisions of §228.173(a) of this title (relating to Physical Facilities).

§228.222. Temporary Food Establishments.

(a) General. 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 time/temperature controlled for safety (TCS) foods, and when no health

§228.222 (a)

§228.222 (e)

hazard will result, such as children's neighborhood beverage stands, may waive or modify requirements of these rules.

(1) Foods that are not prepared on site or that require extensive preparation or cooking must be prepared at a licensed food establishment.^P

(2) Each temporary establishment may be required by the regulatory authority to have at least one person on-site who has a minimum of an accredited food handler certification.^{Pf}

(b) Food temperatures. All food temperature requirements shall be met as contained in Subchapter C (relating to Food).^P

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

(d) Equipment and utensils.

(1) Design and construction. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.^{Pf}

(2) Location and installation. Equipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the establishment.

(3) Hot and cold holding equipment. Equipment for cooling or heating food, and holding cold or hot food shall be adequate in number and capacity to provide food temperatures as specified under §§228.71 - 228.75 of this title.^{Pf}

(4) Protection from contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Alternative manual warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a 3-compartment sink, may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of alternative equipment. Each compartment shall be large enough to immerse the largest piece of equipment that will be used. A means to heat water must also be provided.^{Pf}

(e) Single-service articles. A temporary food establishment shall provide only single-service articles for use by the consumer.

§228.222 (f)

(f) Water. Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment. Water need not be under pressure but shall come from approved sources which include: commercially bottled drinking water, closed portable water containers, enclosed vehicular water tanks, on-premise water storage tanks, or piping, tubing or hoses connected to an approved source.^P

(g) Wet storage. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.^P

(h) Sewage. All waste water and sewage generated from the establishment shall be disposed of through an approved sanitary sewage system that is:

(1) A public sewage system;^P or

(2) An individual sewage disposal system that is sized, constructed, maintained, and operated according to 30 TAC, Chapter 285, On-Site Sewage Facilities.

(i) Handwashing. Handwashing facilities shall include a container with a spigot that provides potable, clean, warm water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially pre-packaged foods that are dispensed in their original containers.^{Pf}

(j) Floors. If graded to drain, a floor may be concrete, machine-laid asphalt, dirt, or gravel covered with mats, ply-wood, removable platforms, duckboards if covered with mats, or other suitable materials approved by the regulatory authority, such as tarps that effectively control dust and mud.

(k) Ceilings and outer openings of food preparation areas.

(1) Wall and ceilings. Wall and ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather, windblown dust, birds, and debris.

(2) Outer openings. The outer openings shall be protected against entry of insects and rodents by:

(A) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screens;

(B) properly designed and installed air curtains; or

(C) other effective means.

§228.222 (k)(3)

§228.223 (e)

(3) Exclusion provision. Paragraph (2) of this subsection does not apply if flying insects and other pests are absent due to the location of the establishment or other limiting condition.

§228.223. Bed and Breakfast.

(a) General. A Bed and Breakfast:

(1) shall comply with these minimum requirements of this section if the facility:

(A) has more than seven rooms for rent; or

(B) provides food service other than breakfast to overnight guests

(2) Except as specified in §228.223(a)(1) and (a)(3) of this title, that provides food service to others than to its overnight guests must comply with the rules and regulations applicable to retail food establishments.^{Pf}

(3) Limited Bed and Breakfast:

(A) has seven or fewer rooms for rent;

(B) serves only breakfast to over-night guests;

(C) is not a retail food establishment; and

(D) complies with §228.223(b) of this title.

(b) Certified food protection manager. The owner or manager shall successfully complete a food manager's certification course accredited by this department.^{Pf}

(c) Food supplies. Food shall be obtained from approved sources in accordance with §228.62 of this title, shall be in sound condition, and be safe for human consumption.^P

(d) Food preparation and protection.

(1) Food preparation and protection. Food shall be prepared and protected in accordance with Subchapter C (relating to Food) of this chapter.^P

(2) Temperature requirements. All food temperature requirements shall be met as contained in Subchapter C (relating to Food) of this chapter.^P

(e) Cleaning and sanitizing.

§228.223 (e)(1)

§228.223 (n)

(1) Manual. A three compartment sink shall be used if washing, rinsing and sanitizing of utensils and equipment is done manually; or a two compartment sink may be utilized if single service tableware is provided, and if an approved detergent sanitizer is used.^{Pf}

(2) Mechanical. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.^{Pf}

(f) Personal hygiene. Employees shall conform to good hygienic practices as required in Subchapter B (relating to Management and Personnel) of these rules.^{Pf}

(g) Employee restrooms. A restroom shall be available for use by employees.

(h) Equipment and utensil design and construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.^{Pf}

(i) Handsinks.

(1) Location. An accessible and conveniently located handwash sink shall be provided in or immediately adjacent to food preparation areas and restrooms.^{Pf}

(2) Intended use. Handsink(s) shall be used for no other purpose other than handwashing.^{Pf}

(j) Food-contact surfaces. All food contact surfaces, counters, or work surfaces in the establishment shall be smooth, non-absorbent and easily cleanable.^{Pf}

(k) Insect proof/rodent proof.

(1) Construction. Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

(2) Chemical control. Pesticides and rodenticides shall be applied according to §228.208 of this title.^P

(l) Equipment. Equipment shall be provided to maintain time/temperature controlled for safety (TCS) foods at the temperatures required in accordance with Subchapter C of these rules.^{Pf}

(m) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(n) Sewage. Sewage shall be disposed through an approved facility that is:

§228.223 (n)(1)

§228.224 (d)(4)

(1) a public sewage system; ^P or

(2) an individual sewage disposal system that is sized, constructed, maintained, and operated according to law 30 TAC, Chapter 285, On-Site Sewage Facilities. ^P

(o) Water supply. Hot and cold water under pressure ^{Pf} shall be provided and shall be from an approved source that meets the standards in accordance with:

(1) state drinking water quality standards in accordance with 30 TAC §§290.38 – 290.47(Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), ^P or

(2) private water system standards as provided in Subchapter J , Private Water Systems. ^P

§228.224. Outfitter Operations.

(a) General. Requirements in this section are specific for Outfitter Operations. The regulatory authority may impose additional requirements to protect against health hazards that may be specific to these operations.

(b) Food supplies. Food supplies, including ice, shall be obtained from approved sources. No home prepared products shall be offered. ^P

(c) Food temperatures. All food temperature requirements shall be met as contained in Subchapter C of this chapter (relating to Food). ^P

(d) Food preparation and protection for excursions.

(1) Except for paragraphs (2) - (4) of this subsection, all food shall be prepared and protected in Central Preparation Facility and meet requirements contained in Subchapter C of this chapter (relating to Food) of this chapter. ^P

(2) Only commercially prepackaged ready-to-eat foods or ready-to-eat foods that have been prepared and packaged with no cooking at Central Preparation Facility may be served. ^P

(3) Raw time/temperature controlled for safety (TCS) foods (TCS) may be cooked on-site if cooked and immediately served. ^P

(4) All food must be stored to protect from contamination as contained in Subchapter C (relating to Food). ^P

§228.224 (d)(5)

§228.224 (l)

(5) Time/temperature controlled for safety (TCS) foods (TCS) that required complex preparation must be served within the first 24 hours of the excursion departure time. ^P

(6) Leftovers. Leftovers shall not be re-heated or re-served. ^P

(e) Warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a multi-compartment sink, may be used for washing and sanitizing utensils when approved by the regulatory authority. Outfitters without effective facilities for cleaning and sanitizing tableware shall only provide single-service articles for use by food employees and consumers. ^{Pf}

(f) Ice usage.

(1) Ice that is used for cooling food may not be used for human consumption. ^P

(2) Ice used for human consumption must be stored in a clean sanitized container that is properly constructed and maintained in good repair. ^{Pf}

(g) Potable water.

(1) Potable water shall be used on excursions for human consumption, food preparation, handwashing, and for cleaning and sanitizing utensils and equipment, ^P and

(2) Must be stored in a clean sanitized container that is easily cleanable and good condition. ^{Pf}

(h) Handwashing. Handwashing facilities shall include a container with a spigot that can be turned on to allow potable, clean, water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially prepackaged foods that are dispensed in their original containers. ^{Pf}

(i) Equipment. All equipment and utensils intended for food contact shall be approved for food use. ^{Pf}

(j) Thermometers. Thermometers shall be provided, accurate, and accessible during excursions. ^{Pf}

(k) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(l) Certified food protection manager. If food other than pre-packaged ready to eat food is being served, at least one guide during the excursion shall successfully complete a food manager's certification course accredited by this department. ^{Pf}

§228.224 (m)

(m) An outfitter operation must have a central preparation facility as specified in Subchapter A (pertaining to definitions).

§228.225 (e)(2)

§228.225. Self-Service Food Market.

(a) Self-Service Food Markets shall comply with the minimum standards of this section.

(b) Self-Service Food Markets shall:

(1) be equipped with 24/7 video surveillance records of consumers viewing, selecting, handling, and purchasing products that identify these customers. Video surveillance records must be maintained and available for the regulatory authority for a period of fourteen (14) calendar days.^{Pf}

(2) provide information to the regulatory authority as to the responsible party that will be available for routine inspections.^{Pf}

(c) Pre-packaged food sold at a Self-Service Food Market shall:

(1) meet the labeling requirements as specified in §228.62(a)(3) of this title; ^P and

(2) be tamper evident. ^P

(d) A food specified under §228.75(g)(1) or (2) or (h) of this title shall be discarded if it:

(1) exceeds the temperature or time specified in §228.75(g)(1) and (2) of this title, except time that the product is frozen; ^P

(2) is in a container or package that does not bear an expiration date or day; ^P or

(3) is not appropriately marked with a date or day that exceeds the temperature and time combination as specified in §228.75(g)(1) and (2) of this title. ^P

(e) All self-service food market display units offering refrigerated, time/temperature controlled for safety (TCS) food shall have an automatic shut-off control or a plan approved by the regulatory authority that prevents the market or market equipment from dispensing food if:

(1) there is a power failure, mechanical failure, or other condition that results in failure of the equipment to maintain food temperatures as specified under Subchapter D of these rules; ^{Pf} and

(2) where a condition specified under paragraph (1) of this subsection occurs, until the equipment is serviced and restocked with food that has been maintained at temperatures specified under Subchapter C (Pertaining to Food) of these rules. ^{Pf}

§228.225 (f)

(f) When a condition specified under subsection (e)(1) of this section occurs, the ambient temperature may not exceed forty-one degrees Fahrenheit (five degrees Celsius) for more than thirty minutes immediately after the display is filled, serviced, or restocked.^{Pf}

(g) All self-service food market display units offering time/temperature controlled for safety (TCS) food, shall be:

(1) equipped with a self-closing door;^{Pf} or

(2) maintained at forty-one degrees Fahrenheit (five degrees Celsius) if it is an open display unit.^{Pf}

(h) Self-Service Food Markets shall have a sign readily visible from the automated payment kiosk stating:

(1) the name of the business to whom complaints/ comments shall be addressed,

(2) the address of the business responsible for the market, and

(3) the responsible business' telephone number and email or web information, when applicable.

(i) When a retail food establishment operating as a Self-Service Food Market incorporates the provision in this section, they will not be required to maintain a person in charge onsite as specified under §228.34 of this title.^{Pf}

Subchapter I. Compliance.

§228.241. Use for Intended Purpose.

Public health protection.

(1) The regulatory authority shall apply these rules to promote its underlying purpose, as specified in §228.1 of this title (relating to Purpose), of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

(2) In enforcing the provisions of these rules, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of these rules based on the following considerations:

(A) whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

§228.241 (2)(B)

(B) whether food-contact surfaces comply with §228.101 of this title (relating to Equipment, Utensils, and Linens); and

(C) whether the capacities of cooling, heating, and holding equipment are sufficient to comply with §228.107(a) of this title.

(D) the existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under §228.248(7) of this title.

§228.242. Additional Requirements. Preventing health hazards, provision for conditions not addressed.

(1) Option to impose additional requirements. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in these rules that are authorized by law.

(2) Required documentation. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

§228.243. Variances.

(a) Modifications and waivers. The regulatory authority may grant a variance by modifying or waiving the requirements of these rules if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified in subsection (b) of this section in its records for the food establishment.

(b) Documentation of proposed variance and justification. Before a variance from a requirement of these rules is approved, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

(1) a statement of the proposed variance of the rule requirement citing relevant rule section numbers;^{Pf}

(2) an analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal;^{Pf} and

(3) a HACCP plan if required as specified in §228.244(c) of this title that includes the information specified in §228.244(b) of this title, as it is relevant to the variance requested.^{Pf}

§228.243 (c)

§228.244 (b)(2)

(c) Conformance with approved procedures. If the regulatory authority grants a variance as specified in subsection (a) of this section, or a HACCP plan is otherwise required as specified in §228.244(c) of this title, the food establishment shall:

(1) comply with the HACCP plans and procedures that are submitted and approved as specified in §228.244(d) of this title as a basis for the modification or waiver;^{Pf} and

(2) maintain and provide to the regulatory authority, upon request, records specified in §228.244(d)(4) and (5) of this title that demonstrate that the following are routinely employed:

(A) procedures for monitoring critical control points;^{Pf}

(B) monitoring of the critical control points;^{Pf}

(C) verification of the effectiveness of an operation or process;^{Pf} and

(D) necessary corrective actions if there is failure at a critical control point.^{Pf}

§228.244. Facility and Operating Plans.

(a) When plans are required. A permit applicant or permit holder may be required to submit to the regulatory authority properly prepared plans and specifications for review and approval before:

(1) the construction of a food establishment;^{Pf}

(2) the conversion of an existing structure for use as a food establishment;^{Pf} or

(3) the remodeling of a food establishment or a change of type of food establishment or food operation as specified under Subchapter L of the Chapter (pertaining to License/Permit Application), or under the conditions set by the regulatory authority, if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this code.^{Pf}

(b) Contents of the plans and specifications. The plans and specifications for a food establishment, including a food establishment specified under §228.244(c) of this title, shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with code provisions:

(1) intended menu;

(2) anticipated volume of food to be stored, prepared, and sold or served;

§228.244 (b)(3)

§228.244 (d)(2)

(3) proposed layout, mechanical schematics, construction materials, and finish schedules;

(4) proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

(5) evidence that standard procedures that ensure compliance with the requirements of this rule are developed or are being developed; and

(6) other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

(c) When a HACCP plan is required.

(1) Before engaging in an activity that requires a HACCP plan, a food establishment shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under subsection (d) of this section and the relevant provisions of these rules if:

(A) submission of a HACCP plan is required according to law;

(B) a variance is required as specified under §§228.71(a)(4)(D) and 228.76, or 228.106(j)(2) of this title; or

(C) the regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under §228.244(b) of this title, an inspectional finding or a variance request.

(2) A food establishment shall have a properly prepared HACCP plan as specified under subsection (d) of this section.

(3) Before engaging in reduced oxygen packaging without a variance as specified under §228.77 of this title, a food establishment shall submit a properly prepared HACCP plan to the regulatory authority.

(d) Contents of a HACCP plan. For a food establishment that is required under subsection (a) of this section to have a HACCP plan, the plan and specifications shall indicate:

(1) a categorization of the types of time/temperature controlled for safety (TCS) foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;^{Pf}

(2) a flow diagram by specific food or category type identifying critical control points and providing information on the following:

§228.244 (d)(2)(A)

§228.246

(A) ingredients, materials, and equipment used in the preparation of that food;^{Pf} and

(B) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;^{Pf}

(3) food employee and supervisory training plan that addresses the food safety issues of concern;^{Pf}

(4) a statement of standard operating procedures for the plan under consideration including clearly identifying:

(A) each critical control point;^{Pf}

(B) the critical limits for each critical control point;^{Pf}

(C) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;^{Pf}

(D) the method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;^{Pf}

(E) action to be taken by the person in charge if the critical limits for each critical control point are not met;^{Pf} and

(F) records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed;^{Pf} and

(5) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.^{Pf}

§228.245. Confidentiality, Trade Secrets.

The regulatory authority shall treat as confidential in accordance with the requirements of the Public Information Act, Texas Government Code, Chapter 552, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in §228.244(b) and (d) of this title.

§228.246. Construction Inspection and Approval, Preoperational Inspections.

The regulatory authority may conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans

§228.246**§228.248 (7)(C)**

and approved modifications of those plans, has established standard operating procedures as specified under §228.244(b)(5) of this title, and is in compliance with this chapter.

§228.247. Permit Requirement, Prerequisite for Operation.

A person may not operate a food establishment without a valid permit or license to operate issued by the regulatory authority.^{Pf}

§228.248. Conditions of Retention, Responsibilities of the Permit Holder.

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

(1) post the permit in a location in the food establishment that is conspicuous to consumers;

(2) comply with the provisions of these rules including the conditions of a granted variance as specified under §228.243(c) and §228.244(b) of this title;

(3) if a food establishment is required under §228.244(c) of this title to operate under a HACCP plan, comply with the plan as specified under §228.243(c) of this title;

(4) immediately contact the regulatory authority to report an illness of a food employee as specified under §228.35(2) of this title (relating to Management and Personnel);

(5) immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under §228.252(a) of this title;

(6) allow representatives of the regulatory authority access to the food establishment as specified under §228.250(b) of this title;

(7) replace existing facilities and equipment specified in §228.241 of this title with facilities and equipment that comply with these rules if:

(A) the regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

(B) the regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or

(C) the facilities and equipment are replaced in the normal course of operation;

§228.248 (8)

(8) comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;

(9) accept notices issued and served by the regulatory authority according to law; and

(10) be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with these rules or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(11) Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the regulatory authority.

§228.249. Inspection Frequency, Performance-based and Risk Based.

(a) The regulatory authority shall inspect each food establishment at least once every six months.

(b) If the regulatory authority cannot meet this inspection frequency, frequency shall be prioritized and uniformly applied throughout the jurisdiction based upon assessment of a food establishment's history of compliance with these rules and the potential for causing foodborne illness by evaluating:

(1) past performance, for nonconformance with code or HACCP plan requirements that are priority items or priority foundation items;

(2) past performance, for numerous or repeat violations of code or HACCP plan requirements that are core items;

(3) past performance, for complaints investigated and found to be valid;

(4) the hazards associated with the particular foods that are prepared, stored, or served;

(5) the type of operation including the methods and extent of food storage, preparation, and service;

(6) the number of people served; and

§228.249 (b)(6)

§228.249 (b)(7)

§228.250 (c)

(7) whether the population served is a highly susceptible population.

(8) any other risk factors deemed relevant to the operation by the regulatory authority.

(c) The regulatory authority should periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature controlled for safety (TCS) food and that:

(1) Has improvised rather than permanent facilities or equipment for accomplishment functions such as handwashing, food preparation and protection, Food temperature control, warewashing, providing drinking water, waste retention and disposal,, and insect and rodent control; or

(2) Has inexperienced food employees.

§228.250. Competency of Inspectors and Access.

(a) Competency of inspectors. An individual conducting inspections of retail food establishments should be a Registered Professional Sanitarian in Texas or a Sanitarian-in-Training in Texas, as defined in §140.102 of this title (relating to Definitions), or should meet the FDA Voluntary National Retail Food Regulatory Program Standards basic curriculum and field training elements in order to:

(1) assure application of basic scientific principles, including HACCP principles of food safety, during inspections;

(2) properly conduct foodborne illness investigations;

(3) assure uniformity in the interpretations of these rules; and

(4) assure fair and uniform enforcement of these rules.

(b) Access allowed at reasonable times after due notice. After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with these rules by allowing access to the establishment, allowing inspection, and providing information and records specified in these rules and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(c) Refusal, notification of right to access, and final request for access. If a person denies access to the regulatory authority, the regulatory authority shall:

§228.250 (c)(1)

(1) inform the person that:

(A) the food establishment is required to allow access to the regulatory authority as specified under this subsection;

(B) access is a condition of the acceptance and retention of a food establishment permit to operate as specified under §228.248(6) of this title; and

(C) if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection warrant, may be obtained according to law; and

(2) make a final request for access.

(d) Refusal, reporting. If after the regulatory authority presents credentials and provides notice as specified under subsection (b) of this section, explains the authority upon which access is requested, and makes a final request for access as specified in subsection (c) of this section, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

(e) Inspection warrant to gain access. If denied access to a food establishment for an authorized purpose and after complying with subsection (c) of this section, the regulatory authority may issue, or apply for the issuance of, an inspection warrant to gain access as provided in law.

§228.251. Report of Findings.

(a) Documenting information and observations. The regulatory authority shall document on an inspection report form:

(1) administrative information about the food establishment's legal identity, street and mailing addresses, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

(2) specific factual observations of violative conditions or other deviations from these rules that require correction by the permit holder including:

(A) failure of the person in charge to demonstrate knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of these rules specified under §228.32 of this title;

(B) failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under §228.35(b) and (d) of this title;

§228.251 (a)(2)(C)

§228.251 (d)(2)

(C) nonconformance with critical/priority items or priority foundation items of these rules.

(D) failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under §228.243(c) of this title;

(E) failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under §228.244(d)(4)(F) of this title; and

(F) nonconformance with critical limits of a HACCP plan; and

(3) a summary of the inspectional findings that totals weighted demerit values for the inspection items.

(b) Specifying time frame for corrections. The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under §228.252, §228.253(a) and 228.254(a) of this title.

(c) Issuing report and obtaining acknowledgment of receipt. At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

(d) Refusal to sign acknowledgment. The regulatory authority shall:

(1) inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in subsection (c) of this section that:

(A) an acknowledgment of receipt is not an agreement with findings;

(B) refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified; and

(C) a refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(2) make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

§228.251 (e)

(e) Public information. Except as specified in §228.245 of this title, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

§228.251 (f)

(f) Inspection reports. For the purposes of Health and Safety Code, Chapter 437, the department adopts the Retail Food Establishment Inspection Report form as specified in the following figure:

Figure: 25 TAC, §228.251(f)

Retail Food Establishment Inspection Report

1 Cooling

- TCS* food cooled from 135° F to 70° F more than 2 hours OR 135° F to 41° F (45° F) more than 6 hours; OR prepared food cooled to 41° F (45° F) more than 4 hours:

Action: Voluntary destruction, rapid reheating of cooked foods if less than 4 hours

2 Cold Hold

- TCS food held above 41° F (45° F) more than 4 hours:

Action: Voluntary destruction

- TCS food held above 41° F (45° F) less than 4 hours:

Action: Rapid cool (e.g. ice bath)

3 Hot Hold

- TCS food held below 135° F more than 4 hours:

Action: Voluntary destruction

- TCS food held below 135° F less than 4 hours:

Action: Rapid reheat to 165° F or more

4 Cooking

- TCS food undercooked:

Action: Re-cook to proper temperature

5 Rapid Reheating

- TCS food improperly reheated:

Action: Reheat rapidly to 165° F

7 Approved Source/Sound Condition

- Foods from unapproved sources/unsound condition:

Action: Voluntary destruction

9 Cross-Contamination of Raw/Cooked Foods

- Ready-To-Eat food contaminated by raw TCS food:

Action: Voluntary destruction of ready-to-eat foods

14 Handwashing

- Food employees observed not washing hands:

Action: Instruct employees to wash hands as specified in the Rules.

15 Proper Handling of Ready-to-Eat Foods

- Employee did not properly wash and sanitize hands before touching ready-to-eat food with bare hands:

Action: Voluntary destruction

19, 23 Water Supply

- Facility does not have water for washing hands, preparing food, or cleaning equipment/utensils:

Action: Voluntary suspension of food preparation

* Time/Temperature Controlled for Safety (TCS) Food

[illegible]

§228.252

§228.253 (b)(1)

§228.252. Imminent Health Hazard.

(a) Ceasing operations and reporting.

(1) Except as specified in paragraph (2) of this subsection, a food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.^P

(2) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(b) Resumption of operations. If operations are discontinued as specified under paragraph (1) of this subsection or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

§228.253. Priority Item/Priority Foundation Item, Time Frame for Correction.

(a) Timely correction.

(1) Except as specified in paragraph (2) of this subsection, the food establishment shall at the time of inspection implement immediate corrective actions of a priority item/priority foundation item of these rules and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.^{Pf}

(2) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed;

(A) 3 calendar days after the inspection, for the permit holder to correct violations of a priority item; or

(B) 10 calendar days after the inspection, for the food establishment to correct priority foundation items or HACCP plan deviations.

(b) Verification and documentation of correction.

(1) After observing at the time of inspection a correction of a priority item or priority foundation item or a HACCP plan deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

§228.253 (b)(2)

§228.256 (a)

(2) As specified under subsection (a)(2) of this section, after receiving notification that the food establishment has corrected a priority item or priority foundation item or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

(3) When the total cumulative demerit value of an establishment exceeds 30 demerits, the establishment shall initiate immediate corrective action on all identified priority items or priority foundation items and shall initiate corrective action on all other violations within 48 hours. One or more reinspections shall be conducted at reasonable time intervals to assure correction.

(4) In the case of temporary food establishments, all priority items or priority foundation items must be corrected immediately and other violations must be corrected within 24 hours or sooner if required by the regulatory authority. If violations are not corrected, the establishment shall immediately cease food operations until authorized to resume by the regulatory authority.

§228.254. Core Item Violations, Time Frame for Correction.

(a) Time frame. Except as specified in subsection (b) of this section, the food establishment shall correct core items by a date and time agreed to or specified by the regulatory authority but no later than 90 calendar days after the inspection.

(b) Extension of compliance schedule. The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under subsection (a) of this section if a written schedule of compliance is submitted by the food establishment and no health hazard exists or will result from allowing an extended schedule for compliance.

§228.255. Examination and Detention of Food.

The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these rules. A receipt for samples shall be issued by the regulatory authority. The department shall, upon written notice to the owner or person in charge specifying the reason therefore, place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

§228.256. Investigation and Control.

(a) Obtaining information: personal history of illness, medical examination, and specimen analysis. The regulatory authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious

§228.256 (a)

agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(1) securing a confidential medical history of the employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

(2) requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee, other employees or conditional employee.

(b) Restriction or exclusion of food employee, or summary suspension of permit. Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder instituting one or more of the following control measures:

(1) restricting the food employee or conditional employee;

(2) excluding the food employee or conditional employee; or

(3) closing the food establishment by summarily suspending a permit to operate in accordance with law.

(c) Restriction or exclusion order: warning or hearing not required, information required in order. Based on the findings of the investigation as specified in subsection (a) of this section and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

(1) states the reasons for the restriction or exclusion that is ordered;

(2) states the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

(3) states that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and

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

(d) Removal of restriction or exclusion. The regulatory authority shall release a food employee or conditional employee from restriction or exclusion according to Health and Safety Code, §438.033, and the following conditions:

§228.256 (d)(1)

§228.257 (c)

(1) a food employee who was infected with *Salmonella typhi* if the food employee's stools are negative for *S. typhi* based on testing of at least three consecutive stool specimen cultures that are taken:

- (A) not earlier than one month after onset;
- (B) at least 48 hours after discontinuance of antibiotics; and
- (C) at least 24 hours apart;

(2) if one of the cultures taken as specified in paragraph (1) of this subsection is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained;

(3) a food employee who was infected with *Shigella* spp. or Shiga toxin-producing *Escherichia coli* if the employee's stools are negative for *Shigella* spp. or Shiga toxin-producing *Escherichia coli* based on testing of two consecutive stool specimen cultures that are taken:

- (A) not earlier than 48 hours after discontinuance of antibiotics; and
- (B) at least 24 hours apart; and

(4) a food employee who was infected with hepatitis A virus if:

- (A) symptoms cease; or
- (B) at least two blood tests show falling liver enzymes.

§228.257. Reporting of Communicable Diseases.

(a) Who shall report. Certain persons, as required in 25 TAC §97.2 (relating to Who Shall Report), shall report certain confirmed and suspected foodborne diseases.

(b) What to report. Confirmed and suspected cases of the following diseases, including, but not limited to the following, are reportable: botulism; campylobacteriosis; cryptosporidiosis; *Escherichia coli* 0157:H7; hepatitis A, acute viral; listeriosis; salmonellosis; shigellosis; trichinosis; and *Vibrio* infection.

(c) When to report. Reporting of communicable diseases shall be done in accordance with 25 TAC §97.4 (relating to When To Report a Condition or Isolate; Where to Submit an Isolate; Where to Report a Condition or Isolate).

§228.257 (d)

§228.272 (a)(3)

(d) Where to report. Persons required to report communicable diseases shall report to the local health authority, or in the case where there is no local health authority, the report shall be made to the department's Regional Director as required in 25 TAC §97.5 (relating to Where To Report a Condition or Isolate; Where To Submit an Isolate).

(e) Reporting and other duties of local health authorities and regional directors. Local health authorities and regional directors shall report communicable diseases to the department as provided for in 25 TAC §97.6 (relating to Reporting and Other Duties of Local Health Authorities and Regional Directors).

Subchapter J. Private Water Systems.

§228.271. Water Supply and Pressure.

Food Service Establishments having water supplies that do not meet the definition of a public water system as defined by Title 30 of the Texas Administrative Code Chapter (30 TAC) §290.38(66) or that are not regulated by the Texas Commission on Environmental Quality (TCEQ) shall comply with the requirements of this subchapter.

(1) Water supply. An adequate supply of water shall be available at all times in each food service facility, with a minimum of 24 Gallons/Person/Day (GPD) provided.^{Pf}

(2) Water pressure. The system shall be designed to maintain a minimum pressure of 35 pounds per square inch (psi) and shall be designed to provide the maximum daily demand for the various types of facilities listed in 30 TAC §290.45(d)(1)(A). When the system is intended to provide firefighting capability, it shall also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. Minimum distribution pressure shall not be less than 20 psi at any time.^{Pf}

§228.272. Water Quality.

(a) Bacteriological properties. Each food establishment that uses a private water system shall have its water sampled and tested for total coliform, fecal coliform, *E. coli*, or other fecal indicator organisms as specified in this subsection.^P

(1) A food establishment shall have its water sampled and tested and must obtain negative test results one month before commencing operation.^P

(2) A food establishment shall have its water sampled and tested every six months and must obtain negative test results.^P

(3) If a test result is positive, the food establishment shall remediate the water system and have its water sampled and tested every month until test results are negative for 12

§228.272 (a)(3)

§228.272 (c)

consecutive months. After achieving negative test results for 12 consecutive months, the facility shall resume water testing every six months as specified in paragraph (2) of this subsection.^P

(4) Testing for microbial contaminants shall be performed at an accredited laboratory certified in accordance with 30 TAC Chapter 25 Environmental Testing Laboratory Accreditation And Certification.

(5) If a routine distribution coliform sample is positive for *E. coli*, then the facility shall post a written boil water notification. The notification shall state, "To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making must be boiled and cooled before consumption or use in preparing food or cleaning food contact surfaces and equipment. The water shall be brought to a vigorous rolling boil and then boiled for least two minutes. Instead of boiling water, the food establishment may use purchased bottled water, water obtained from some other suitable source, or ice obtained from an approved source."^P

(6) The boil water notification shall remain in effect until a repeat distribution coliform sample is coliform-negative.^P

(7) Records of all bacteriological tests and of any boil water notification shall be kept on site.

(b) Chemical properties.

(1) Food service facilities shall submit a water sample obtained from the entry point to the distribution system to a laboratory for chemical analysis at least once every three years.^P

(2) The chemical analysis shall be for primary and secondary constituent levels.^P

(3) Maximum primary constituent levels are as described in the following table.^P

Figure: 25 TAC §228.272(b)(3)

(4) Maximum secondary constituent levels are as described in the following table.^P

Figure: 25 TAC §228.272(b)(4)

(5) Records of all chemical testing shall be kept on site.^P

(c) Minimum residual disinfectant concentrations and maximum residual disinfectant levels (MRDLs).^P

§228.272 (c)(1)

(1) The minimum residual disinfectant concentration in the water entering the distribution system and the water within the distribution system shall be 0.2 milligrams per liter (mg/L) free chlorine. ^P

(2) The MRDL of free chlorine in the water within the distribution system shall be 4.0 mg/L based on a running annual average. ^P

Figure: 25 TAC §228.272(b)(3)

CONSTITUENT	LEVEL (mg/l except where otherwise stated)
Antimony	0.006
Arsenic	0.010
Asbestos	7 million fibers/liter (longer than 10 µm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide	0.2 (as free Cyanide)
Fluoride	4.0
Mercury	0.002
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Nitrate and Nitrite (Total)	10 (as Nitrogen)
Selenium	0.05
Thallium	0.002

§228.273**§228.274 (b)**Figure: 25 TAC §228.272(b)(4)

CONSTITUENT	LEVEL (mg/l except where otherwise stated)
Aluminum	0.05 to 0.2
Chloride	300
Color	15 color units
Copper	1.0
Corrosivity	Non-corrosive
Fluoride	2.0
Foaming agents	0.5
Hydrogen sulfide	0.05
Iron	0.3
Manganese	0.05
Odor	3 Threshold Odor Number
pH	>7.0
Silver	0.1
Sulfate	300
Total Dissolved Solids	1,000
Zinc	5.0

§228.273. Backflow Prevention. The plumbing system shall preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use, including on a hose bib, by:

(a) providing an air gap between the water supply inlet and the flood level rim of a plumbing fixture, equipment, or nonfood equipment that is at least twice the diameter of the water supply inlet and not less than 25 mm (1 inch); ^P or

(b) installing an approved backflow prevention device that meets the American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device. ^P

§228.274. Disinfection of New or Repaired Water System Facilities.

(a) When repairs are made to existing mains or when new main extensions are installed, they shall be disinfected using such amounts of chlorine compounds as to fill the repaired or new mains and appurtenances with water containing 50 mg/L chlorine. ^P

(b) After the water containing this amount of chlorine, which is greater than that normally present in drinking water, has been in contact with the pipe and appurtenances for at least 24 hours, the main shall be flushed until the free chlorine or chloramine in the water within the new or repaired distribution system is less than 4.0 mg/L. ^P

§228.274 (c)

§228.278

(c) A sample of water from the new or repaired main shall be submitted to a TCEQ Accredited laboratory for bacteriological examination so as to be assured that the disinfection procedure was effective.^P

(d) A supply of sodium hypochlorite or calcium hypochlorite disinfectant shall be kept on hand for use when making repairs and repairing line breaks.

§228.275. Flushing of Water System Mains. All dead-end mains should be flushed at monthly intervals or more frequently to maintain water quality.^P

§228.276. Collection System Location.

(a) No sanitary sewers or septic tanks shall be allowed within a distance of 150 feet of any well used for drinking water. No cesspool or septic tank open-jointed drain field shall be allowed within a distance of 150 feet of any well used for drinking water.^P

(b) Storm sewers located within specified distances for sanitary sewers shall be constructed so as to prevent leakage from them.^P

(c) Water lines and sanitary sewers shall be installed no closer to each other than nine feet.^P

§228.277. Well Logs.

Copies of well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, bacteriological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file. A State of Texas Well Report must be filed with the Texas Department of Licensing and Regulation (TDLR) in accordance with Texas Occupational Code, Title 12. Practices and Trades Related to Water, Health, and Safety, Chapter 1901.251.

§228.278. Interconnection.

No physical connection between the distribution system of a food service facility water supply and that of any other water supply shall be permitted. Unless that water supply meets all applicable requirements of 30 TAC 290.^P

ANNEX

NUMERICALLY SEQUENTIAL INDEX BY PARAGRAPH

Subchapter A. General Provisions	1
§228.1. Purpose	1
§228.2. Definitions	1
Subchapter B. Management and Personnel	20
§228.31. Responsibility	20
(a) Present	20
(b) Person In Charge.....	20
§228.32. Knowledge	20
(1) Complying with Rules	20
(2) Being a certified food protection manager.....	20
(3) Responding correctly to inspector's questions	20
§228.33. Certified Food Protection Manager and Food Handler Requirements	22
(a) Certified food protection manager course and pass exam	22
(b) Certified food protection manager certificate posted.....	22
(c) Exception to certified food protection manager.....	22
(d) Accredited food handler course requirement	22
(e) Food handler requirement effective September 1, 2016 and certificate.....	22
(f) Exception to food handler requirement.....	23
§228.34. Duties	23
(1) Food establishment operations not conducted in a private home	23
(2) Persons unnecessary to the operation not allowed.....	23
(3) Employees and other persons comply with these rules.....	23
(4) Employees are effectively cleaning their hands.....	23
(5) Employees are visibly observing foods as they are received.....	23
(6) Employees are verifying food deliveries	23
(7) Employees are properly cooking time/temperature control for safety food	23
(8) Employees are using proper methods to rapidly cool time/temperature control for safety food, foods	24
(9) Consumers who order raw or partially cooked foods of animal origin are informed	24
(10) Employees are properly sanitizing cleaned multiuse equipment	24
(11) Consumer advisory for self-service	24
(12) Employees are preventing cross-contamination from hands	24
(13) Employees are properly trained in food safety	24
(14) Employees are properly trained on their reporting responsibilities for the big 6	24
(15) Written procedures and plans, maintained and implemented	24
§228.35. Responsibilities and Reporting Symptoms and Diagnosis	24
(a) Responsibility of person in charge to require reporting by food employees and applicants	24
(1) Specific symptoms.....	25
(2) Diagnosed with an illness	25
(3) Previous illness	25
(4) Exposure to or is the suspect source of a confirmed disease outbreak	25
(5) Exposure by work or by living quarters.....	26

(b)	Notification by person in charge to regulatory authority when an employee has certain medical conditions.....	26
(1)	Jaundice	26
(2)	Diagnosis of an illness	26
(c)	Responsibility of person in charge to ensure conditional employees report.....	26
(1)	Conditional employee exhibits or reports a symptom, or a diagnosed illness, prohibition	26
(2)	Conditional employee who works with a highly susceptible population, history of exposure	26
(d)	Person in charge responsible for reporting, exclusion and restriction	27
(1)	Exclusion of employee	27
(2)	Restriction of employee	27
(e)	Responsibility of a food employee or applicant to report to the person in charge	27
(f)	Food employee shall comply	27
(1)	Compliance with exclusion.....	27
(2)	Compliance with restriction.....	27
§228.36.	Conditions of Exclusions and Restrictions	27
(1)	Exclusions with symptoms	27
(2)	Exclusions for jaundice or diagnosis of hepatitis A.....	27
(3)	<i>Salmonella typhi</i>	28
(4)	Norovirus	28
(5)	<i>Shigella</i> spp.	28
(6)	Shiga toxin-producing <i>E. coli</i>	28
(7)	Non-typhoidal <i>salmonella</i>	28
(8)	Sore throat with fever	29
(9)	Skin lesions with pus	29
(10)	Exposure to foodborne pathogen	29
§228.37.	Managing Exclusions and Restrictions.....	29
(1)	Adherence to conditions of exclusion or restriction	29
(A)	Reinstating excluded or restricted employee.....	29
(B)	Norovirus - restriction, retain exclusion of employee	29
(C)	<i>Shigella</i> spp. - restriction, retain exclusion of employee	30
(D)	Shiga toxin-producing <i>Escherichia coli</i> - restriction, retain exclusion of employee.....	30
(E)	Non-typhoidal <i>Salmonella</i> - restriction, retain exclusion of employee	30
(2)	Reinstating employee after exclusion/restriction – Hepatitis A.....	30
(3)	Reinstating employee after exclusion/restriction – <i>Salmonella typhi</i>	31
(4)	Reinstating employee after exclusion/restriction – Norovirus.....	31
(5)	Reinstating employee after exclusion/restriction – <i>Shigella</i> spp.	31
(6)	Reinstating employee after exclusion/restriction – Shiga toxin-producing <i>Escherichia coli</i>	32
(7)	Reinstating employee after exclusion/restriction – Non-typhoidal <i>salmonella</i>	32
(8)	Reinstating employee after exclusion/restriction – <i>Streptococcus pyogenes</i>	33
(9)	Reinstating employee after exclusion/restriction – infected wound, boil, cut.....	33
(10)	Reinstating employee after exclusion/restriction – time frame requirements	33
§228.38.	Hands and Arms	35
(a)	Food employees shall keep their hands and exposed portions of their arms clean	35
(b)	Cleaning procedure for handwashing	35

(1) Food employees shall clean their hands and exposed portions of their arms for at least 20 seconds	35
(2) Handwash procedure	35
(3) Food employees shall pay particular attention to avoid re-contamination touching surfaces	36
(4) An automatic handwashing facility may be used	36
(c) Special handwash procedures	36
(d) When to wash	36
(1) After touching bare human body parts other than hands	36
(2) After using the toilet room.....	36
(3) After caring for or handling service animals or aquatic animals	36
(4) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating or drinking.....	36
(5) After handling soiled equipment or utensils	36
(6) As often as necessary to remove soil and contamination.....	36
(7) When switching between working with raw food and working with ready-to-eat food.....	36
(8) Before donning gloves for working with food.....	36
(9) After engaging in other activities that contaminate the hands	36
(e) Where to wash	37
(f) Hand antiseptics.....	37
(1) Hand antiseptic used as a topical application, hand dip or soap	37
(2) If hand antiseptic or solution used as hand dip does not meet the criteria.....	38
(3) Chemical hand sanitizing solution used as a hand dip.....	38
§228.39. Fingernail Maintenance	38
(a) Food employees shall keep their fingernails trimmed	38
(b) Food employee may not wear fingernail polish or artificial fingernails	38
§228.40. Jewelry Prohibition.....	38
§228.41. Outer Clothing, Clean Condition.....	38
§228.42. Food Contamination Prevention	38
(a) Eating, drinking, or using tobacco	38
(1) Food employees shall eat, drink or use any form of tobacco only in designated areas.....	38
(2) A food employee may drink from a closed beverage container.....	38
(b) Discharges from the eyes, nose, and mouth.....	39
§228.43. Hair Restraints	39
(a) Food employees shall wear hair restraints	39
(b) Food employees who are not required to wear hair restraints.....	39
§228.44. Animals, Handling Prohibitions	39
(a) Food employees may not handle animals that may be present	39
(b) Food employees with assistance animals, fish in aquariums, and display tanks	39
§228.45. Contamination Events.....	39
Subchapter C. Food	40
§228.61. Condition Safe, Unadulterated, and Honestly Presented	40
§228.62. Approved Sources.	40
(a) Compliance with Food Law.....	40
(1) Food shall be obtained from an approved source	40
(2) Food may not be prepared in a private home.....	40
(3) Packaged food shall be labeled.....	40
(4) Fish, freezing	40
(5) Whole-muscle, intact beef steaks.....	40

(6) Meat and poultry that is not a ready-to-eat food and packaged for sale, labeling	41
(7) Egg labeling.....	41
(b) Food in a hermetically sealed container.....	41
(c) Fluid milk and milk products.....	41
(d) Fish	41
(1) Fish received for sale or service	41
(2) Molluscan shellfish recreationally caught	41
(e) Molluscan shellfish.....	41
(1) Shall be obtained from an approved source.....	41
(2) Received in interstate commerce shall be from source listed in Interstate Certified Shellfish Shippers List	42
(f) Wild mushrooms.....	42
(1) Mushroom species picked in the wild shall not be offered for sale	42
(2) Exclusions.....	42
(g) Exotic animals and game animals.....	42
(1) If exotic animals are received for sale or service	42
(2) If game animals are received for sale or service.....	43
(3) Game animals may not be received for sale or service if it is listed on the Endangered and Threatened Wildlife and Plants list	44
§228.63. Specifications for Receiving.....	44
(a) Temperature.....	44
(1) Refrigerated time/temperature control for safety food 41°F or below when received	44
(2) Exemptions to 41°F	44
(3) Raw shell eggs.....	44
(4) Grade A milk	44
(5) Molluscan shellfish.....	44
(6) Time/temperature control for safety foods received hot.....	45
(7) Food labeled as frozen and kept frozen	45
(8) Free of evidence of temperature abuse	45
(b) Additives.....	45
(c) Eggs	45
(d) Eggs and milk products, pasteurized	45
(1) Obtained pasteurized	45
(2) Fluid and dry milk and milk products.....	45
(3) Frozen milk products	45
(4) Cheese	45
(e) Package integrity	45
(f) Ice	46
(g) Juice treated	46
(1) Juice shall be obtained from a processor with a HACCP system	46
(2) Juice shall be obtained pasteurized.....	46
(h) Shucked shellfish, packaging and identification.....	46
(1) Raw shucked shellfish obtained in nonreturnable packages with label	46
(2) Package of raw shucked shellfish with no label or label is missing content	46
(i) Shellstock identification	46
(1) Shall be obtained in containers bearing legible source identification tags or labels	46
(2) Container does not bear a tag or label or the label does not contain all of the information	47
(3) If on tag, dealer's information should be listed first	47
(4) If the harvester's tag or label is designed to accommodate each dealer's identification	47

(j) Shellstock, condition.....	47
§228.64. Molluscan Shellfish, Original Container and Records	48
(a) Molluscan shellfish may not be removed from original container.....	48
(b) Shellstock may be removed from the original container for display	48
(1) The source of the shellstock on display must be identified	48
(2) The shellstock are protected from contamination.....	48
(c) Shucked shellfish may be removed from container for display	48
(1) The labeling information for the shellfish on display retained	48
(2) The shellfish are protected from contamination	48
(d) Shucked shellfish may be repackaged by consumer self-service.....	48
(1) The labeling is on each container	48
(2) The labeling information correlates with the dates the shellfish are sole or served	48
(3) Labeling information and dates are maintained for 90 days	48
(4) The shellfish are protected from contamination	48
(e) Shellstock, maintaining identification	48
(1) Shellstock tags shall remain attached to the container.....	49
(2) The date when the last shellstock from the container is sold or served shall be recorded	49
(3) The identity of the source of shellstock that are sold or served shall be maintained by retaining tags for 90 days	49
§228.65. Preventing Contamination by Employees	49
(a) Preventing contamination from hands	49
(1) Food employees shall wash their hands.....	49
(2) Food employees may not contact exposed, ready-to-eat food with their bare hands.....	49
(3) Food employees shall minimize bare hand and arm contact.....	49
(4) Does not apply to adding ingredients that require further preparation.....	49
(5) Exemption for bare hand contact	50
(b) Preventing contamination when tasting	51
§228.66. Preventing Food and Ingredient Contamination.	52
(a) Packaged and unpackaged food - separation, packaging and segregation	52
(1) Food shall be protected from cross contamination	52
(2) Exemptions	53
(b) Food storage containers, identified with the common name of the food	53
(c) Pasteurized eggs, substitute for raw shell eggs for certain recipes	53
(d) Protection from unapproved additives	53
(1) Food shall be protected from contamination that may result from addition of additives	53
(2) An employee may not apply sulfiting agents.....	54
(e) Washing fruits and vegetables	54
(1) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants	54
(2) Fruits and vegetables may be washed by using chemicals	54
(3) Devices used for on-site generation of chemicals.....	54
§228.67. Preventing Contamination from Ice Used as a Coolant.....	54
(a) Ice used as exterior coolant, prohibited as ingredient	54
(b) Storage or display of food in contact with water or ice	54
(1) Packaged food may not be stored in direct contact with ice or water	54
(2) Unpackaged food may not be stored in direct contact with undrained ice	54
(3) Whole, raw fruits or vegetables; cut, raw vegetables may be immersed in ice or water.....	54
(4) Raw chicken and raw fish received immersed in ice in shipping may remain in that condition	55

§228.68. Preventing Contamination from Equipment, Utensils, and Linens	55
(a) Food contact surfaces	55
(1) Equipment and utensils that are cleaned.....	55
(2) Single-service and single-use articles	55
(3) Laundered linens.....	55
(b) In-use utensils, between-use storage.....	55
(1) In the food with their handles above the top of the food and the container	55
(2) In food that is not time/temperature control for safety with their handles above the top of the food within the container or equipment	55
(3) On a clean portion of the food preparation table or cooking equipment	55
(4) In running water of sufficient velocity to flush particulates	55
(5) In a clean, protected location	55
(6) In a container of water if the water is maintained at a temperature of at least 135°F	55
(c) Linens and napkins, use limitation.....	56
(d) Wiping cloths, use limitation	56
(1) Cloths in-use for wiping food spills.....	56
(2) Cloths in-use for wiping counters and equipment	56
(3) Cloths in-use for wiping surfaces in contact with raw animal foods	56
(4) Dry wiping cloths and the chemical sanitizing solution	56
(5) Containers of chemical sanitizing solution	56
(6) Single-use disposable sanitizer wipes	56
(e) Gloves, use limitation	56
(1) Single-use gloves shall be used for only one task.....	56
(2) Slash-resistant gloves shall be used in direct contact only with food that is subsequently cooked	56
(3) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked	57
(4) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked	57
(f) Using clean tableware for second portions and refills	57
(1) Food employees may not use tableware, soiled by the consumer, to provide second portions or refills	57
(2) Self-service consumers may not be allowed to use soiled tableware to obtain additional food from the display and serving equipment.....	57
(3) Drinking cups and containers may be reused by self-service consumers	57
(g) Refilling returnables	57
(1) Empty containers returned to a food establishment for cleaning and refilling	57
(2) A take-home food container returned to a food establishment for food.....	57
(3) A take-home food container returned to a food establishment for a beverage.....	58
(4) Consumer-owned, personal take-out beverage containers may be refilled by employees.....	58
(5) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.....	58
§228.69. Preventing Contamination from the Premises	59
(a) Food storage	59
(1) Food shall be protected from contamination during storage.....	59
(2) Food in packages and working containers may be stored less than 6 inches above the floor.....	59

(3) Pressurized beverage containers, cased food in waterproof containers may be stored on a floor	59
(b) Food storage, prohibited areas	59
(1) In locker rooms	59
(2) In toilet rooms	59
(3) In dressing rooms	59
(4) In garbage rooms	59
(5) In mechanical rooms	59
(6) Under sewer lines	59
(7) Under leaking water lines	59
(8) Under open stairwells	59
(9) Under other sources of contamination	59
(c) Vended time/temperature control for safety food, original container	59
(d) Food preparation	60
§228.70. Preventing Contamination by Consumers	60
(a) Food display	60
(b) Condiments, protection	60
(1) Condiments shall be protected from contamination by being kept in dispensers	60
(2) Condiments at a vending machine location	60
(c) Consumer self-service operations	60
(1) Raw, unpackaged animal food may not be offered for consumer self-service	60
(2) Consumer self-service operations for ready-to-eat foods shall be provided with utensils	60
(3) Consumer self-service operations shall be monitored	60
(d) Returned food and re-service of food	61
(1) Food that is unused or returned by the consumer may not be offered as food for human consumption	61
(2) A container of food that is not time/temperature control for safety food may be re-served	61
(e) Preventing contamination from other sources	61
§228.71. Cooking	61
(a) Raw animal foods	61
(1) Raw animal foods shall be cooked to heat all parts of the food	61
(2) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts	62
(3) Raw or undercooked whole-muscle, intact beef steak	62
(4) Raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish or steak tartare	62
(b) Microwave cooking. Raw animal foods cooked in a microwave oven	63
(1) Rotated or stirred throughout	63
(2) Covered	63
(3) Heated to 165°F	63
(4) Allowed to stand covered for 2 minutes after cooking	63
(c) Plant food cooking for hot holding	63
(d) Non-continuous cooking of raw animal foods	63
(1) Subject to an initial heating process that is no longer than 60 minutes	63
(2) Immediately cooled	64
(3) After cooling, held frozen or cold	64
(4) Prior to sale or service, cooked	64
(5) Cooled according to the time and temperature parameters	64
(6) Prepared and stored according to written procedures	64
§228.72. Freezing	65
(a) Parasite destruction	65

(1) Freezing guidelines	65
(2) Exceptions	66
(b) Records, creation and retention	66
(1) 90 calendar days	66
(2) Written agreement from supplier that freezing requirements are met	66
(3) Written agreement from supplier or aquaculturist for fish that are raised and fed	66
(c) Preparation for immediate service	67
§228.73. Reheating for Hot Holding	67
(a) Temperature	67
(b) Microwave	67
(c) Commercially processed and packaged food	67
(d) Time	67
(e) Roast	67
§228.74. Juice Packaged in a Food Establishment	67
(a) HACCP	67
(b) Labeling	67
(1) Requirements	67
(2) Warning, notice and safe handling statements	68
§228.75. Temperature and Time Control	68
(a) Frozen food	68
(b) Time/temperature control for safety food, slacking	68
(1) Under refrigeration at 41°F or less	68
(2) Remains frozen	68
(c) Thawing	68
(1) Under refrigeration	68
(2) Submerged under running water	68
(3) As part of a cooking process	69
(4) Individual consumer order	69
(5) Reduced oxygen packaged fish	69
(d) Cooling	69
(1) Cooling requirements within a total of 6 hours	69
(2) Prepared from ingredients at ambient temperature	69
(3) Food received above 41°F as allowed by law cooled to 41°F	69
(4) Raw shell eggs	70
(e) Cooling methods	70
(1) Methods approved	70
(2) Containers in cooling or cold holding equipment	70
(f) Hot and cold holding	70
(1) Except during preparation, cooking, or cooling, or when time is used as the public health control, maintained	70
(2) Eggs not pasteurized	71
(3) Homogenous liquid form	71
(g) Ready-to-eat, time/temperature control for safety food, date marking	71
(1) Prepared and held in a food establishment for more than 24 hours	71
(2) Original container opened held more than 24 hours	71
(3) Ingredient	71
(4) Date marking system	72
(5) Individual meal portions upon consumer's request	72
(6) Shellstock	72
(7) Prepared and packaged by a food processing plant exemptions	72
(h) Ready-to-eat, time/temperature control for safety food, disposition	73
(1) Noncompliance with date marking	73
(2) In a vending machine that exceeds a temperature and time combination	73

(i) Time as a public health control.....	73
(1) Written procedures	73
(2) Time maximum of 4 hours	74
(3) Time maximum of 6 hours	74
(4) Highly susceptible population	75
§228.76. Specialized Processing Methods, Variance Requirements	75
(1) Smoking as a method of preservation	75
(2) Curing food.....	75
(3) Using additives	75
(4) Reduced oxygen packaging	75
(5) Molluscan shellfish life-support system display tank	75
(6) Custom processing animals that are for personal use	75
(7) Other as deemed by regulatory authority	75
(8) Sprouting seeds or beans	75
§228.77. <i>Clostridium Botulinum</i> and <i>Listeria Monocytogenes</i> Controls.....	76
(1) Reduced oxygen packaging	76
(2) HACCP plan	76
(3) Fish requirements	77
(4) Cook-Chill or Sous Vide	77
(5) Cheese	79
(6) HACCP plan exemption	79
§228.78. Food Identity, Presentation, On-premises Labeling, and Accurate Representation	79
(a) Standards of identity	79
(b) Honestly presented.....	79
(1) Does not mislead or misinform the consumer	79
(2) Food or color additives, colored overwraps or lighting	80
§228.79. Labeling.....	80
(a) Food labels.....	80
(1) Food packaged in a food establishment	80
(2) Label information	80
(3) Bulk food for consumer self-dispensing	80
(4) Bulk, unpackaged food portioned to consumer specification	81
(b) Other forms of information	81
(1) If required by law, provided	81
(2) Dating information may not be concealed or altered.....	81
§228.80. Consumer Advisory.....	81
(a) Inform consumers by way of disclosure and reminder	81
(b) Disclosure shall include	81
(1) Description of the animal-derived foods	81
(2) Identification of the animal-derived foods with an asterisk.....	81
(c) Reminder shall include asterisking animal-derived foods requiring disclosure to a footnote	81
(1) Written information is available upon request.....	82
(2) Increase your risk of foodborne illness.....	82
(3) Especially if you have certain medical conditions.....	82
§228.81. Contaminated Food, Disposition. Discarding or reconditioning unsafe, adulterated, contaminated food	82
(1) Unsafe, adulterated or not honestly presented	82
(2) Not from an approved source	82
(3) Contaminated ready-to-eat food	82
(4) Food that is contaminated by food employees or consumers	82
§228.82. Additional Safeguards, Special Requirements for Serving Highly Susceptible Populations	82
(1) Juice.....	82
(2) Pasteurized eggs or egg products.....	83

(3) Food that may not be served	83
(4) No bare hand contact	83
(5) Time only may not be used for raw eggs	83
(6) Exemptions	83
(7) Re-service of food	84
(8) Food may not be re-served under certain conditions	84
§228.83. Donation of Foods	84
(a) Previous service	84
(b) Time/temperature control for safety foods.....	84
(1) Hot holding and refrigeration	85
(2) Recipient has the facilities to meet transportation, storage and reheating requirements	85
(3) Temperature is at or below 41°F at time of donation	85
(4) Transportation directly to a consumer	85
(c) Labeling	85
(d) Shelf life	85
(e) Damaged foods	85
(f) Distressed foods.....	85
Subchapter D. Equipment, Utensils, and Linens	85
§228.101. Multiuse Materials.....	85
(a) Characteristics.....	85
(1) Safe	85
(2) Durable, corrosion-resistant and nonabsorbent.....	85
(3) Sufficient in weight and thickness	85
(4) Smooth, easily cleanable surface	85
(5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.....	86
(b) Cast iron, use limitation	86
(1) May not be used for utensils or food-contact surfaces of equipment.....	86
(2) May be used as surface for cooking.....	86
(3) May be used in utensils for serving food	86
(c) Lead, use limitation	86
(1) Ceramic, china, crystal utensils and decorative utensils shall be lead-free	86
(2) Pewter alloys	86
(3) Solder and flux	86
(d) Copper, use limitation.....	86
(1) Copper, copper alloys may not be used with a food that has a pH below 6	86
(2) May be used in contact with beer brewing ingredients that have a pH below 6	86
(e) Galvanized metal, use limitation.....	86
(f) Sponges, use limitation.....	86
(g) Wood, use limitation.....	87
(1) Wood and wood wicker may not be used as a food-contact surface	87
(2) Hard close-grained wood may be used	87
(3) Whole, uncut, raw fruits and vegetables and nuts in the shell may be kept in the wood shipping containers.....	87
(4) If the nature of the food requires removal of rinds, peels, husks or shells before consumption	87
(h) Nonstick coatings, use limitation	87
(i) Nonfood-contact surfaces	87
§228.102. Single-service and Single-use, Characteristics	88

(1) Materials that are used to make single-service and single-use articles may not allow the migration of deleterious substances or impart colors, odors or tastes to food.....	88
(2) Materials that are used to make single-service and single-use articles shall be safe and clean.....	88
§228.103. Durability and Strength	88
(a) Equipment and utensils.....	88
(b) Food temperature measuring devices.....	88
§228.104. Cleanability	89
(a) Food-contact surfaces	89
(1) Smooth.....	89
(2) Free of breaks, open seams, cracks, chips, inclusions, pits and similar imperfections	89
(3) Free of sharp internal angles, corners and crevices	89
(4) Finished to have smooth welds and joints	89
(5) Accessible for cleaning and inspection.....	89
(b) Exemption.....	89
(c) Cleaned in place (CIP) equipment	89
(1) Designed and constructed	89
(2) Inspection access points.....	89
(d) “V” threads, use limitation.....	89
(e) Hot oil filtering equipment	90
(f) Can openers	90
(g) Nonfood-contact surfaces	90
(h) Kick plates, removable	90
(1) Methods	90
(2) Without unlocking equipment doors.....	90
(i) Ventilation hood systems, filters.....	90
§228.105. Accuracy of Temperature Measuring Devices	90
(a) Food.....	90
(1) Accurate to $\pm 1^{\circ}\text{C}$	90
(2) Accurate to $\pm 2^{\circ}\text{F}$	90
(b) Ambient air and water.....	90
(1) Easily readable and accurate to $\pm 1.5^{\circ}\text{C}$	90
(2) Accurate to $\pm 3^{\circ}\text{F}$	90
(c) Pressure measuring devices, mechanical warewashing equipment.....	91
§228.106. Functionality of Equipment	91
(a) Ventilation hood systems, drip prevention	91
(b) Equipment openings, closures, and deflectors	91
(1) Cover or lid overlap.....	91
(2) Flanged upward	91
(3) Watertight joint.....	91
(4) Watertight joint not provided.....	91
(c) Dispensing equipment, protection of equipment and food	91
(1) Designed to protect against condensation and splash	91
(2) Protected from manual contact	91
(3) Protected from dust, insects, rodents, etc.....	92
(4) Dispensing equipment actuating lever	92
(5) Dispensing equipment in which time/temperature control for safety food in a homogenous liquid form is maintained outside of the temperature control requirements	92
(d) Vending machine, vending stage closure.....	92
(1) Location	92
(2) Availability	92
(e) Bearings and gear boxes, leak proof	92
(f) Beverage tubing, separation.....	93

(g) Ice units, separation of drains	93
(h) Condenser unit, separation.....	93
(i) Can openers on vending machine	93
(j) Molluscan shellfish tanks.....	93
(1) Not offered for human consumption	93
(2) Offered for human consumption.....	93
(k) Vending machines, automatic shutoff.....	93
(l) Temperature measuring devices	94
(1) In mechanically refrigerated or hot food storage unit.....	94
(2) Designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device.....	94
(3) Exception.....	94
(4) Easily readable.....	94
(5) Warewashing machines	95
(m) Warewashing machine, data plate operating specifications.....	95
(1) Temperature.....	95
(2) Pressure.....	95
(3) Conveyor speed	95
(n) Warewashing machine, internal baffles	95
(o) Warewashing machines, temperature measuring devices	95
(1) Each wash and rinse tank.....	95
(2) As the water enters the hot water sanitizing final rinse manifold or chemical sanitizing solution tank.....	95
(p) Manual warewashing equipment, heaters and baskets.....	95
(1) Designed with heating device	95
(2) Provided with rack or basket	95
(q) Warewashing machines, automatic dispensing of detergents and sanitizers	95
(1) Auto dispense detergents and sanitizers	96
(2) Incorporate visual means to verify.....	96
(r) Warewashing machines, flow pressure device	96
(1) Fresh hot water sanitizing rinse	96
(2) Flow pressure measuring device upstream	96
(3) Pumped or recirculated sanitizing rinse	96
(s) Warewashing sinks and drainboards, self-draining	96
(t) Equipment compartments, drainage.....	96
(u) Vending machines, liquid waste products.....	96
(1) Equipped with diversion devices and retention pans or drains for container leakage	96
(2) Dispensing liquid food in bulk	96
(3) Shutoff devices	96
(v) Case lot handling equipment, movability	97
(w) Vending machine doors and openings	97
(1) Tight-fitting	97
(2) Outer openings.....	97
(x) Acceptability. Food equipment certification, classification.....	97
§228.107. Equipment, Numbers and Capacities.....	97
(a) Cooling, heating, and holding capacities	97
(b) Manual warewashing, sink compartment requirements	97
(1) Three compartment sink	98
(2) Compartment size	98
(3) Alternative manual warewashing.....	98
(4) Before a two-compartment sink is used.....	98
(5) Two-compartment sink may not be used for continuous operations	99
(c) Drainboards	99
(d) Ventilation hood systems, adequacy.....	99

(e) Clothes washers and dryers.....	99
(1) Work clothes and linens laundered on premises, washer and dryer provided.....	99
(2) Wiping cloths, washer and dryer not provided.....	99
§228.108. Utensils, Temperature Measuring Devices, and Testing Devices	99
(a) Utensils, consumer self-service	99
(b) Food temperature measuring devices.....	99
(c) Small-diameter probe.....	99
(d) Manual and mechanical warewashing	99
(1) Provided and readily accessible, manual warewashing	99
(2) Irreversible registering temperature indicator provided and readily accessible, hot water mechanical warewashing	100
(e) Sanitizing solutions, testing devices	100
§228.109. Location and Installation, Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.....	100
(a) Storage location, may not be located in	100
(1) Locker room	100
(2) Toilet room	100
(3) Garbage room	100
(4) Mechanical room	100
(5) Under sewer lines	100
(6) Under leaking water lines	100
(7) Under open stairwells	100
(8) Under other sources of contamination	100
(b) Locker room limitation	100
(c) Clothes washer and dryer location requirements	100
§228.110. Installation	100
(a) Fixed equipment, spacing or sealing.....	100
(1) Not easily moveable	101
(2) Counter-mounted	101
(b) Fixed equipment, elevation or sealing	101
(1) Floor-mounted equipment sealing or elevated.....	101
(2) Elevation exemption	101
(3) Exemption for display	101
(4) Counter-mounted equipment elevation.....	101
(5) Clearance space for counter-mounted equipment.....	101
§228.111. Equipment, Maintenance and Operation	102
(a) Good repair and proper adjustment.....	102
(1) Maintained.....	102
(2) Intact, tight, and adjusted.....	102
(3) Can openers	102
(b) Cutting surfaces	102
(c) Microwave ovens.....	102
(d) Warewashing equipment, cleaning frequency	102
(1) Before use	102
(2) Throughout the day.....	102
(3) At least every 24 hours	102
(e) Warewashing machines, manufacturers' operating instructions	102
(1) Operated in accordance with the machine's data plate	102
(2) Conveyor speed or automatic cycle times	102
(f) Warewashing sinks, use limitation	103
(1) Use limitation	103
(2) Sanitization between uses	103
(g) Warewashing equipment, cleaning agents	103
(h) Warewashing equipment, clean solutions.....	103
(i) Manual warewashing equipment, wash solution temperature	103

(j)	Mechanical warewashing equipment, wash solution temperature	103
(1)	Hot water sanitization	103
(2)	Chemical sanitization	103
(k)	Manual warewashing equipment, hot water sanitization temperatures	104
(l)	Mechanical warewashing equipment, hot water sanitization temperatures.....	104
(1)	Fresh hot water sanitizing rinse temperature	104
(2)	Maximum temperature for high pressure, high temperature systems	104
(m)	Mechanical warewashing equipment, sanitization pressure	104
(n)	Manual and mechanical warewashing equipment, chemical sanitizer temperature, pH, concentration and hardness	104
(1)	Chlorine solution	104
(2)	Iodine solution	104
(3)	Quaternary ammonia compound solution.....	105
(4)	Other solution as approved by regulatory authority	105
(5)	Use of chemical other than chlorine, iodine, or quaternary ammonium applied according to EPA	105
(6)	Use of chemical sanitizer generated by a device located on-site	105
(o)	Manual warewashing equipment, chemical sanitization using detergent-sanitizers	105
(p)	Warewashing equipment, determining chemical sanitizer concentration	106
§228.112.	Utensils and Temperature and Pressure Measuring Devices	106
(a)	Good repair and calibration	106
(1)	Utensils	106
(2)	Food temperature measuring devices	106
(3)	Ambient air temperature, water pressure, and water temperature measuring devices.....	106
(b)	Single-service and single-use articles, required use.....	106
(c)	Single-service and single-use articles, use limitation	106
(1)	May not be reused	106
(2)	Bulk milk container dispensing tube	106
(d)	Shells, use limitation.....	107
§228.113.	Cleaning of Equipment and Utensils	107
(1)	Clean to sight and touch	107
(2)	Kept free of encrusted grease	107
(3)	Free of an accumulation of dust, dirt, food residue, and other debris	107
§228.114.	Frequency of Cleaning	107
(a)	Food-contact surfaces and utensils	107
(1)	Equipment food-contact surfaces and utensils shall be cleaned	107
(2)	Succession of different raw meats according to cooking temperature	107
(3)	Time/temperature control for safety food equipment cleaning.....	107
(4)	Exemption to every 4 hours.....	108
(5)	Dry cleaning methods	109
(b)	Cooking and baking equipment	109
(1)	Cleaning frequency	109
(2)	Microwave ovens.....	109
(c)	Nonfood-contact surfaces	109
§228.115.	Methods of Cleaning	110
(a)	Dry cleaning	110
(1)	Brushing, scraping and vacuuming.....	110
(2)	Use limitation	110
(b)	Precleaning	110
(1)	Scrapped over a waste disposal unit or garbage receptacle or prewash cycle	110
(2)	Utensils and equipment	110

(c)	Loading of soiled items, warewashing machines.....	110
(1)	Unobstructed spray	110
(2)	Drain	110
(d)	Wet cleaning	111
(1)	Wash to remove or completely loosen soils	111
(2)	Based on type and purpose of the equipment	111
(e)	Washing, procedures for alternative manual warewashing equipment	111
(1)	Disassembled as necessary	111
(2)	Scrapped or rough cleaned.....	111
(3)	Washed	111
(f)	Rinsing procedures	111
(1)	Use of a distinct, separate water rinse.....	111
(2)	Use of a detergent-sanitizer	111
(3)	Use of a nondistinct water rinse integrated in the hot water immersion step.....	112
(4)	Use of a nondistinct water rinse in a warewashing machine	112
(5)	Warewashing machine that recycles the sanitizing solution.....	112
§228.116.	Sanitization Objectives, Food-contact Surfaces and Utensils.....	112
§228.117.	Sanitization Frequency, Before Use After Cleaning.....	112
§228.118.	Sanitization Methods, Hot Water and Chemicals	112
(1)	Hot water manual operations	112
(2)	Hot water mechanical operations.....	112
(3)	Chemical manual or mechanical operations	112
§228.119.	Laundering, Clean Linens	113
§228.120.	Laundering, Frequency, Specifications	113
(a)	Frequency	113
(b)	Cloth gloves.....	113
(c)	Linens and napkins	113
(d)	Wet wiping cloths	113
(e)	Dry wiping cloths	113
§228.121.	Laundering Methods.....	113
(a)	Storage of soiled linens.....	113
(b)	Mechanical washing	113
(1)	Mechanically washed	114
(2)	Wiping cloths only.....	114
(c)	Use of laundry facilities	114
(1)	Use limitation	114
(2)	Separate laundry facilities.....	114
§228.122.	Drying, Equipment and Utensils	114
(a)	Equipment and utensils, air-drying required.....	114
(1)	Shall be air-dried or used after adequate draining	114
(2)	May not be cloth dried	114
(b)	Wiping cloths, air-drying location	114
§228.123.	Lubricating and Reassembling	114
(a)	Food-contact surfaces	114
(b)	Equipment.....	115
§228.124.	Storage.....	115
(a)	Equipment, utensils, linens and single-service and single-use articles	115
(1)	Storage location	115
(2)	Storage position	115
(3)	Original protective package.....	115
(4)	Closed package storage height above floor	115
(b)	Prohibitions.....	115
(1)	May not be stored	115
(2)	Locker room storage	116
§228.125.	Preventing Contamination	116

(a) Kitchenware and tableware.....	116
(1) Handled, displayed and dispensed so that contamination of food- and lip-contact surfaces is prevented	116
(2) Knives, forks, and spoons not prewrapped; storage for self-service.....	116
(3) Original packaging or dispenser	116
(b) Soiled and clean tableware	116
(c) Preset tableware	116
(1) Protection from contamination	116
(2) Exposed tableware	116
(d) Rinsing equipment and utensils after cleaning and sanitizing	117
(1) Directly from a potable water supply by a warewashing machine	117
(2) After the equipment and utensils have been sanitized using a sanitizer with EPA label requirements calling for rinse after sanitizing.....	117
Subchapter E. Water, Plumbing, and Waste	117
§228.141. Source.....	117
(a) Approved system	117
(1) Public water system	117
(2) Nonpublic water system	117
(b) System flushing and disinfection	117
(c) Bottled drinking water	117
§228.142. Water Quality Standards.....	117
(a) Public and private water systems	117
(1) Public water system	117
(2) Nonpublic water system	117
(b) Nondrinking water	118
(1) If approved by regulatory authority	118
(2) Nonculinary purposes	118
(c) Sampling.....	118
(d) Sample report.....	118
§228.143. Water Quantity and Availability.....	118
(a) Capacity	118
(b) Pressure.....	118
(c) Hot water	118
§228.144. Water Distribution, Delivery, and Retention Systems.....	118
(a) Distribution.....	118
(1) Approved public water main	118
(2) Constructed, maintained and operated according to law	118
(a) Alternative water supply.....	119
(1) Commercially bottled drinking water	119
(2) Closed portable water containers.....	119
(3) Enclosed vehicular water tank	119
(4) On-premises water storage tank.....	119
(5) Piping, tubing or hoses connected to an adjacent approved source	119
§228.145. Plumbing Systems, Approved Materials	119
(a) Construction.....	119
(b) Water filter.....	119
§228.146. Plumbing Design, Construction, and Installation	119
(a) Approved system and cleanable fixtures	119
(1) Designed, constructed and installed.....	119
(2) Easily cleanable	119
(b) Handwashing facility, installation	119
(1) Temperature through mixing valve or combination faucet.....	119
(2) Steam mixing valve	119

(3) Self-closing, slow-closing or metering faucet	119
(4) Installation	120
(c) Backflow prevention, air gap	120
(d) Backflow prevention device, design standard	120
(e) Conditioning device, design	120
§228.147. Plumbing, Numbers and Capacities	120
(a) Handwashing facilities	120
(1) Number	120
(2) Automatic handwashing facilities	120
(3) Chemically treated towelettes exemption	120
(b) Toilets and urinals	120
(c) Service sink	120
(1) Provided	120
(2) Toilets, urinals and showers	121
(d) Backflow prevention device, when required	121
(1) Air gap	121
(2) Approved backflow prevention device	121
(e) Backflow prevention device, carbonator	121
(1) Dual check valve with vent	121
(2) Dual check valve attached to the carbonator	121
§228.148. Plumbing, Location and Placement	121
(a) Handwashing facilities	121
(1) Convenient use	121
(2) Toilet rooms	121
(b) Backflow prevention device, location	121
(c) Conditioning device, location	121
§228.149. Plumbing, Operation and Maintenance	121
(a) Using a handwashing facility	121
(1) Maintained	122
(2) Use restriction	122
(3) Automatic handwashing facility	122
(b) Prohibiting a cross connection	122
(1) Drinking water connected to non-drinking water	122
(2) Piping identification	122
(c) Scheduling inspection and service for a water system device	122
(d) Water reservoir of fogging devices, cleaning	122
(1) Reservoir used to supply water	122
(2) Cleaning procedures	122
(e) System maintained in good repair	123
(1) Repaired	123
(2) Maintained	123
(f) Mobile water tank and Mobile Food Unit water tank	123
(1) Materials, approved	123
(2) Tank design and construction	123
(3) Tank inspection and cleaning port, protected and secured	123
(4) “V” type threads, use limitation	123
(5) Tank vent, protected	124
(6) Tank inlet and outlet, sloped to drain	124
(7) Tank hose, construction and identification	124
(8) Tank filter, compressed air	124
(9) Protective cover or device	124
(10) Mobile Food Unit tank inlet	124
(11) Fill hose and water holding tank	125
(12) Tested for contamination	125
(13) Operation and maintenance, system flushing and disinfection	125
(14) Using a pump and hoses, backflow prevention	125

(15) Protecting inlet, outlet and hose fitting	125
(16) Tank, pump, and hoses, dedication	125
§228.150. Sewage Retention, Drainage, and Delivery	125
(a) Mobile holding tank	125
(1) Size	125
(2) Slope	125
(b) Food establishment drainage systems	125
(c) Backflow prevention	125
(1) Direct connection	126
(2) Floor drains in refrigerated spaces	126
(3) Warewashing machine	126
(4) Culinary sink	126
(d) Grease trap	126
(e) Conveying sewage	126
(f) Removing Mobile Food Unit wastes	126
(g) Flushing a waste retention tank	126
§228.151. Disposal Facility	126
(a) Approved sewage disposal system	126
(1) Public	126
(2) Individual	126
(b) Other liquid wastes and rainwater	126
§228.152. Refuse, Recyclables, and Returnables, Facilities on the Premises.	127
(a) Indoor storage area	127
(b) Outdoor storage surface	127
(c) Outdoor enclosure	127
(d) Receptacles	127
(1) Durable, cleanable, insect and rodent-resistant, leak-proof and nonabsorbent	127
(2) Plastic bags and wet strength paper bags	127
(e) Receptacles in vending machines	127
(f) Outside receptacles	127
(1) Design and construction	127
(2) Installation	127
(g) Storage areas, rooms, and receptacles, capacity and availability	127
(1) Sufficient capacity	127
(2) Provided	128
(3) Location	128
(h) Toilet room receptacle, covered	128
(i) Cleaning implements and supplies	128
(1) Provided	128
(2) Off-premise-based cleaning	128
(j) Storage areas, redeeming machines, receptacles and waste handling units, location	128
(1) Designation	128
(2) Redeeming machine	128
(3) Location	128
(k) Storing refuse, recyclables, and returnables	128
(l) Areas, enclosures, and receptacles, good repair	128
(m) Outside storage prohibitions	128
(1) Meeting requirements	129
(2) Cardboard or other packaging material	129
(n) Covering receptacles	129
(1) Inside the food establishment	129
(2) Outside the food establishment	129
(o) Using drain plugs	129
(p) Maintaining refuse areas and enclosures	129

(q) Cleaning receptacles	129
(1) Disposal	129
(2) Cleaning frequency	129
§228.153. Refuse Removal	129
(a) Frequency	129
(b) Receptacles or vehicles	130
(1) Portable receptacles	130
(2) Transport vehicles	130
§228.154. Facilities for Disposal and Recycling, Community or Individual Facility	130
Subchapter F. Physical Facilities	130
§228.171. Indoor Areas, Surface Characteristics	130
(1) Smooth, durable, and easily cleanable	130
(2) Carpet	130
(3) Nonabsorbent	130
§228.172. Outdoor Areas, Surface Characteristics	130
(a) Walking and driving areas	130
(b) Exterior surfaces	130
(c) Storage areas	131
§228.173. Floors, Walls, and Ceilings	131
(a) Cleanability	131
(b) Floors, walls, and ceilings, utility lines	131
(1) Exposure	131
(2) Installation	131
(3) Floor	131
(c) Floor and wall junctures, coved, and enclosed or sealed	131
(1) Cleaning methods other than water flushing	131
(2) Water flushing	131
(d) Floor carpeting, restrictions and installation	131
(1) Location	131
(2) Installation	131
(e) Floor covering, mats and duckboards	132
(f) Wall and ceiling coverings and coatings	132
(1) Easily cleanable	132
(2) Wall construction	132
(3) Light in color	132
(g) Walls and ceilings, attachments	132
(1) Easily cleanable	132
(2) Consumer area	132
(h) Walls and ceilings, studs, joists and rafters	132
§228.174. Functionality	132
(a) Light bulbs, protective shielding	132
(1) Shielded, coated, or shatter-resistant; location	132
(2) Exception	132
(3) Heat lamp	133
(b) Heating, ventilating, air conditioning system vents	133
(c) Insect control devices, design and installation	133
(1) Electrocute or stun	133
(2) Installation	133
(d) Toilet rooms, enclosed	133
(e) Outer openings, protected	133
(1) Protected against the entry of insects and rodents	133
(2) Exemption	133
(3) Exterior doors, self-closing exemption	134
(4) Windows protected	134

(5) Location of establishment exemption	134
(f) Exterior walls and roofs, protective barrier	134
(g) Outdoor food vending areas, overhead protection	134
(h) Outdoor servicing areas, overhead protection.....	134
(i) Outdoor walking and driving surfaces, graded to drain	134
(j) Outdoor refuse areas	135
(k) Private homes and living or sleeping quarters, prohibition.....	135
(l) Living or sleeping quarters, separation	135
§228.175. Handwashing Sinks	135
(a) Minimum number	135
(b) Cleanser, availability	135
(c) Hand drying provision	135
(1) Individual, disposable towels.....	135
(2) Continuous towel system	135
(3) Heated-air hand drying device.....	135
(4) Hand drying device employing air-knife system	135
(d) Handwashing aids and devices, use restrictions	135
(e) Handwashing signage	135
(f) Disposable towels, waste receptacle	136
§228.176. Toilets and Urinals	136
(a) Minimum number	136
(b) Toilet tissue, availability.....	136
§228.177. Lighting Intensity	136
(1) At least 108 lux.....	136
(2) At least 215 lux.....	136
(3) At least 540 lux.....	136
§228.178. Ventilation, Mechanical.	136
§228.179. Dressing Areas and Lockers, Designation.....	136
(a) Designation	136
(b) Facilities provided	137
§228.180. Service Sinks, Availability	137
§228.181. Handwashing Sinks, Conveniently Located	137
§228.182. Toilet Rooms, Convenience and Accessibility	137
§228.183. Employee Accommodations, Designated Areas.....	137
(a) Designated area	137
(b) Facilities provided	137
§228.184. Distressed Merchandise, Segregation and Location	137
§228.185. Receptacles, Waste Handling Units, and Designated Storage Areas.....	137
§228.186. Premises, Buildings, Systems, Rooms, Fixtures, Equipment, Devices, and Materials.....	137
(a) Repairing	137
(b) Cleaning frequency and restrictions.....	138
(1) Frequency	138
(2) Exception	138
(c) Cleaning floors, dustless methods.....	138
(1) Methods	138
(2) Spills or drippage	138
(d) Cleaning ventilation systems, nuisance and discharge prohibition.....	138
(1) Intake and exhaust air ducts.....	138
(2) Vented to the outside	138
(e) Cleaning maintenance tools, preventing contamination	138
(f) Drying mops	138
(g) Absorbent materials on floors, use limitation	138
(h) Cleaning of plumbing fixtures	139
(i) Closing toilet room doors	139
(j) Using dressing rooms and lockers	139

(1) Shall be used	139
(2) Provided.....	139
(k) Controlling pests	139
(1) Incoming shipments.....	139
(2) Premises.....	139
(3) Methods	139
(4) Elimination	139
(l) Removing dead or trapped birds, insects, rodents and other pests.....	139
(m) Storing maintenance tools.....	139
(1) No food contamination	139
(2) Orderly manner.....	139
(n) Maintaining premises, unnecessary items and litter	139
(1) Free of unnecessary or unused equipment	139
(2) Free of litter	140
(o) Prohibiting animals	140
(1) Prohibition	140
(2) Exemption	140
(3) Bait	140
Subchapter G. Poisonous or Toxic Materials	141
§228.201. Original Containers, Identifying Information, Prominence	141
§228.202. Working Containers, Common Name	141
§228.203. Storage, Separation.....	141
(1) Separation	141
(2) Location	141
§228.204. Presence and Use	141
(a) Restriction.....	141
(1) Required for operation and maintenance	141
(2) Retail sale	141
(b) Conditions of use. Poisonous or toxic materials	141
(1) Used according to law	141
(2) Application	142
(3) Restricted use pesticide	142
§228.205. Container Prohibitions, Poisonous or Toxic Material Containers.	142
§228.206. Chemicals	142
(a) Sanitizers, criteria	142
(1) Tolerance exemptions.....	142
(2) Tolerance-Non-food determinations	143
(b) Chemical for washing, treatment, storage, and processing fruits and vegetables, criteria	143
(1) Chemicals	143
(2) Ozone	143
(c) Boiler water additives, criteria.....	143
(d) Drying agents, criteria.....	143
(1) Components, generally recognized as safe	143
(2) Prior approval	144
§228.207. Lubricants, Incidental Food Contact, Criteria	144
§228.208. Pesticides	144
(a) Restricted use pesticides, criteria.....	144
(b) Rodent bait stations.....	144
(c) Tracking powders, pest control and monitoring	144
(1) Restriction.....	144
(2) Nontoxic tracking powder	144
§228.209. Medicines	144
(a) Restriction and storage.....	144

(1) Retail sale	145
(2) Employees' use.....	145
(b) Refrigerated medicines, storage.....	145
(1) Stored in package or container	145
(2) Location	145
§228.210. First Aid Supplies, Availability	145
§228.211. First Aid Supplies, Storage.....	145
(1) Labeled	145
(2) Stored in a kit or container.....	145
§228.212. Other Personal Care Items, Storage	145
§228.213. Storage and Display, Separation.....	145
(1) Spacing or partitioning	145
(2) Location	145
Subchapter H. Requirements Applicable to Certain Establishments	146
§228.221. Mobile Food Units.....	146
(a) Provisions	146
(1) General	146
(2) Restricted operation.....	146
(3) Readily movable	146
(4) Initial permitting inspection.....	146
(5) Single-service articles.....	147
(6) Equipment, numbers and capacities.....	147
(7) Mobile water system materials, design, and operation	147
(8) Mobile Food Unit tank inlet	147
(9) Sewage and other liquid waste	148
(10) Mobile Food Unit water and wastewater exemption	148
(11) Toilet rooms, convenience and accessibility	148
(b) Central preparation facility	149
(1) Supplies, cleaning, and servicing operations	149
(2) Construction	149
(c) Servicing area and operations	149
(1) Protection.....	149
(2) Construction exemption.....	149
§228.222. Temporary Food Establishments	149
(a) General.....	149
(1) Preparation on site	150
(2) Accredited food handler	150
(b) Food temperatures	150
(c) Ice	150
(d) Equipment and utensils.....	150
(1) Design and construction	150
(2) Location and installation	150
(3) Hot and cold holding equipment.....	150
(4) Protection from contamination	150
(5) Alternative manual warewashing	150
(e) Single-service articles	150
(f) Water	151
(g) Wet storage	151
(h) Sewage.....	151
(1) Public.....	151
(2) Individual	151
(i) Handwashing	151
(j) Floors	151
(k) Ceilings and outer openings of food preparation areas	151

(1) Wall and ceilings	151
(2) Outer openings.....	151
(3) Exclusion provision	152
§228.223. Bed and Breakfast	152
(a) General.....	152
(1) Compliance.....	152
(2) Food service outside of guests	152
(3) Limited Bed and Breakfast	152
(b) Certified food protection manager	152
(c) Food supplies	152
(d) Food preparation and protection	152
(1) Food preparation and protection	152
(2) Temperature requirements	152
(e) Cleaning and sanitizing.....	152
(1) Manual.....	153
(2) Mechanical	153
(f) Personal hygiene.....	153
(g) Employee restrooms	153
(h) Equipment and utensil design and construction.....	153
(i) Handsinks	153
(1) Location	153
(2) Intended use	153
(j) Food-contact surfaces	153
(k) Insect proof/rodent proof	153
(1) Construction	153
(2) Chemical control	153
(l) Equipment.....	153
(m) Garbage receptacles.....	153
(n) Sewage.....	153
(1) Public.....	154
(2) Individual	154
(o) Water supply.....	154
(1) Public.....	154
(2) Private	154
§228.224. Outfitter Operations.....	154
(a) General.....	154
(b) Food supplies.....	154
(c) Food temperatures	154
(d) Food preparation and protection for excursions	154
(1) Central Preparation Facility.....	154
(2) Commercially prepackaged ready-to-eat foods	154
(3) Raw time/temperature control for safety foods	154
(4) Storage.....	154
(5) Complex preparation	155
(6) Leftovers	155
(e) Warewashing	155
(f) Ice usage	155
(1) Cooling.....	155
(2) Human consumption.....	155
(g) Potable water	155
(1) Used on excursions	155
(2) Storage	155
(h) Handwashing	155
(i) Equipment.....	155
(j) Thermometers	155
(k) Garbage receptacles	155

(l) Certified food protection manager	155
(m) Central preparation facility	156
§228.225. Self-Service Food Market.....	156
(a) Minimum standards	156
(b) Requirements	156
(1) Video surveillance with records	156
(2) Responsible party	156
(c) Pre-packaged food	156
(1) Labeled	156
(2) Tamper evident	156
(d) Discard.....	156
(1) Time/temperature abuse	156
(2) No expiration date on packaging	156
(3) Not appropriately marked	156
(e) Display units, automatic shut-off.....	156
(1) Power failure, mechanical failure	156
(2) Other condition.....	156
(f) Temperature requirements	157
(g) Display units for time/temperature control for safety food.....	157
(1) Self-closing door.....	157
(2) Temperature requirement.....	157
(h) Signage	157
(1) Name of business.....	157
(2) Address	157
(3) Responsible business' telephone number	157
(i) Person in charge.....	157
Subchapter I. Compliance.....	157
§228.241. Use for Intended Purpose	157
(1) Application of rules	157
(2) Enforce	157
§228.242. Additional Requirements. Preventing health hazards, provision for conditions not addressed.....	158
(1) Option to impose additional requirements	158
(2) Required documentation.....	158
§228.243. Variances	158
(a) Modifications and waivers.....	158
(b) Documentation of proposed variance and justification.....	158
(1) Proposed variance.....	158
(2) Analysis	158
(3) HACCP plan.....	158
(c) Conformance with approved procedures	159
(1) Comply with HACCP plans.....	159
(2) Records	159
§228.244. Facility and Operating Plans.....	159
(a) When plans are required	159
(1) Construction	159
(2) Conversion.....	159
(3) Remodeling	159
(b) Contents of plans and specifications	159
(1) Intended menu	159
(2) Anticipated volume.....	159
(3) Proposed layout, mechanical schematics, construction material	160
(4) Proposed equipment	160
(5) Evidence of standard operating procedures	160

(6) Other information required by regulatory authority	160
(c) When a HACCP plan is required	160
(1) Before engaging in activity requiring HACCP plan	160
(2) Properly prepared	160
(3) Before engaging in reduced oxygen packaging	160
(d) Contents of a HACCP plan	160
(1) Categorization of foods	160
(2) Flow diagram	160
(3) Training plan	161
(4) Standard operating procedures	161
(5) Scientific data	161
§228.245. Confidentiality, Trade Secrets	161
§228.246. Construction Inspection and Approval, Preoperational Inspections	161
§228.247. Permit Requirement, Prerequisite for Operation	162
§228.248. Conditions of Retention, Responsibilities of the Permit Holder	162
(1) Post the permit	162
(2) Comply with rules	162
(3) Comply with HACCP plan	162
(4) Reporting	162
(5) Discontinue operations	162
(6) Access	162
(7) Facilities and equipment	162
(8) Comply with directives	163
(9) Accept notices	163
(10) Be subject to administrative, civil, injunctive and criminal remedies authorized in law	163
(11) Notification	163
§228.249. Inspection Frequency, Performance-based and Risk Based	163
(a) Inspection rate	163
(b) Prioritization	163
(c) Temporary food establishment	164
(1) Improvised functions	164
(2) Inexperienced food employees	164
§228.250. Competency of Inspectors and Access	164
(a) Registered Professional Sanitarian or Sanitarian-in-Training	164
(1) Application of basic scientific principles	164
(2) Properly conduct foodborne illness investigations	164
(3) Assure uniformity	164
(4) Assure fair and uniform enforcement	164
(b) Access	164
(c) Refusal, notification of right to access	164
(1) Inform	165
(2) Final request	165
(d) Refusal, reporting	165
(e) Inspection warrant to gain access	165
§228.251. Report of Findings	165
(a) Documenting information and observations	165
(1) Administrative information	165
(2) Specific factual observations	165
(3) Summary of inspectional findings	166
(b) Specifying time frame for corrections	166
(c) Issuing report and obtaining acknowledgment of receipt	166
(d) Refusal to sign acknowledgment	166
(1) Inform	166
(2) Final request	166
(e) Public information	167

(f) Inspection reports.....	167
§228.252. Imminent Health Hazard	171
(a) Ceasing operations and reporting.....	171
(1) Imminent health hazard	171
(2) Exemption.....	171
(b) Resumption of operations	171
§228.253. Priority Item/Priority Foundation Item, Time Frame for Correction	171
(a) Timely correction.....	171
(1) Immediate corrective actions	171
(2) Agreement for longer time frame	171
(b) Verification and documentation of correction	171
(1) After observing correction.....	171
(2) After receiving notification of correction	172
(3) Immediate corrective action for demerits exceeding 30	172
(4) Temporary food establishment, immediate correction	172
§228.254. Core Item Violations, Time Frame for Correction	172
(a) Time frame	172
(b) Extension of compliance schedule.....	172
§228.255. Examination and Detention of Food.....	172
§228.256. Investigation and Control	172
(a) Obtaining information	172
(1) Medical history.....	173
(2) Medical examination	173
(b) Restriction or exclusion	173
(1) Restriction.....	173
(2) Exclusion	173
(3) Closure	173
(c) Restriction or exclusion order.....	173
(1) Reasons for restriction or exclusion.....	173
(2) Evidence	173
(3) Suspected food employee	173
(4) Regulatory authority representative.....	173
(d) Removal of restriction or exclusion.....	173
(1) <i>Salmonella typhi</i> - Negative stool.....	174
(2) <i>Salmonella typhi</i> – Positive cultures.....	174
(3) <i>Shigella</i> spp. or Shiga toxin producing <i>Escherichia coli</i> – stool sample.....	174
(4) Hepatitis A infection.....	174
§228.257. Reporting of Communicable Diseases	174
(a) Who shall report	174
(b) What to report.....	174
(c) When to report	174
(d) Where to report.....	175
(e) Reporting and other duties of local health authorities	175
Subchapter J. Private Water Systems	175
§228.271. Water Supply and Pressure.....	175
(1) Water supply.....	175
(2) Water pressure	175
§228.272. Water Quality	175
(a) Bacteriological properties, private water system.	175
(1) Test one month before operation	175
(2) Test every six months	175
(3) Positive test results	175
(4) Accredited laboratory	176

(5) Boil water notification	176
(6) Boil water notification shall remain in effect	176
(7) Records of all bacteriological tests	176
(b) Chemical properties	176
(1) Every 3 years	176
(2) Primary and secondary constituent levels.....	176
(3) Maximum primary constituent levels	176
(4) Maximum secondary constituent levels.....	176
(5) Records	176
(c) Minimum and maximum residual concentrations.....	176
(1) Water entering the distribution system	177
(2) Water within the distribution system	177
§228.273. Backflow Prevention	178
(a) Air gap	178
(b) Installation	178
§228.274. Disinfection of New or Repaired Water Systems Facilities	178
(a) When repairs are made	178
(b) After chlorination.....	178
(c) Water sample	179
(d) Supply of disinfectant	179
§228.275. Flushing of Water System Mains	179
§228.276. Collection System Location.....	179
(a) Sanitary sewers or septic tanks	179
(b) Storm sewers.....	179
(c) Water lines and sanitary sewers; installation location	179
§228.277. Well logs	179
§228.278. Interconnection	179

INDEX

a_w, definition, 1

Access

- allowed after due notice, 163
- application for inspection order, 165
- court petition for, 165
- denial, judicial remedies, 164, 165
- notification of right, 164
- owner agreement, 162
- refusal, 163, 165
- to premises and records, 162, 165

Accuracy, 90-91

Acidity. *See pH*

Accredited program, definition 1

Additives, food and color

- canthaxanthin, 81
- definition, 1
- food upon receipt, 45
- limitations, 17, 75, 80
- sulfites, 45
- unapproved, protection from, 37, 53-54

Administrative remedies, 163- 174

Adulterated

- definition, 1
- food condition, 24, 40, 82, 171

Air-drying

- equipment and utensils, 114
- wiping cloths, locations, 114

Air gap. *See backflow prevention*

Air temperature, 90-91

See Ambient temperature measuring devices

Aisles in work spaces. *See Spacing*

Alkalinity. *See pH*

Allergens, *See Major Food Allergens*

Alligator. *See Fish*

Ambient air temperature measuring devices, 90-91

Animal foods, raw

- consumer self-service, limitations, 60, 83
- cooking requirements, 61-65
- separation from other foods, 52

Animal foods, raw or undercooked, consumer

advisory, 81

Animals

- commercially raised for food, 42-44
- exotic species, limitations as food source, 6, 42
- handling by employees, prohibition and exception, 39, 140
- handwashing after handling, 36

live, prohibition and exceptions, 140

wild, 42-44

Anti-slip floor coverings, 131

Applicant, responsibility to report illness, 25

Approved, definition, 1

Area

- adjacent to easily movable equipment, 101
- behind vending machine kick plates, 90
- consumer eating and drinking, 60, 116
- consumer shopping, 101
- designated for eating, drinking, and tobacco use, 38, 137
- dining, 140
- distressed merchandise, 85, 137
- dressing, 59, 136, 139
- driving, 130, 134
- dry storage, 132
- employee restriction, 173
- exposed, 132
- food preparation, 130- 133, 140, 151,
- handwashing facility, 119, 120, 121
- indoor, construction material, 130, 132, 160
- light intensity by, 136
- living, 23, 135
- outdoor, construction materials, 127, 130, 131, 134
- outside fenced, 140
- outside food vending & dispensing, 134
- poisonous or toxic materials, 141, 145
- prohibited food storage, 59
- protected, for tank vent, 124
- refuse, 129, 135
- requiring drip-free ventilation, 91
- self-service, 24, 54
- separate, for raw foods, 77
- servicing, 130, 134, 147, 149
- shellfish harvesting, 46
- sleeping, 23, 135
- storage, 23, 59, 100, 108- 109, 113-114, 119, 127, 128-129, 131-132, 136-137, 139-141, 144-145, 153, 155
- underneath equipment for cleaning, 101
- underneath fingernails, cleaning, 35, 50
- unaffected by imminent health hazard, 171
- vending machine, 60, 92, 120, 134
- walking, 130, 134
- warewashing, 23, 91, 121, 130, 131
- waste servicing, 126, 148

- where persons must comply with Rules, 20, 23, 152, 162, 163, 164
 - where unnecessary persons are not allowed, 23
- Artificial color or flavor, declaration, 45, 80-81
- Asymptomatic definition, 1
- Asymptomatic carrier, 28-34
- Attachments, wall and ceilings, cleanability, 132
- Automatic shutoff
 - vending machines, 73, 94, 96
 - self-service market, 156
- Backflow prevention, plumbing system
 - air gap, 120, 121
 - carbonator, 86, 21
 - knowledge of person in charge, 20
 - sewage systems, 126
 - water system operation, 122, 178
 - copper, use limitation, 86
 - design standard, 120
 - location, 121
 - numbers and capacity, 120
 - operation and maintenance, 120, 121
- Backsiphonage. *See Backflow*
- Bacon, slab, storage, 53
- Bacteria. *See Disease outbreaks caused by*
- Baffles, internal, for warewashing machine, 95
- Bags. *See Single-service articles*
- Bait, fish, 140
- Bait station, rodent, 144
- Bakery products, 81
- Balut, definition 1
- Bare hand contact of food, 34-35, 38, 49, 50, 83
- Basket, for warewashing equipment, 95, 110
- Bearings and gear boxes, leak proof, 92, 144
- Bed and Breakfast, 152-154
- Beef
 - consumer self-service, 60
 - cooking requirement, 62, 65, 67
 - minimum holding times for cooking, 65, 67
 - oven parameters for cooking, 64, 65, 67
 - raw, storage, 52, 53
 - raw or rare, consumer advisory, 81
 - steak, seared, 62
 - use of clean equipment, 107-109
 - use of laundered gloves, 113
 - whole muscle, intact, 40
 - whole-muscle, intact, cooking, 62
- Beef roasts, cooking requirements, 62, 65, 70
- Beverage
 - containers, consumer-owned, refilling, 58
 - definition, 2
 - tubing, separation from stored ice, 93
 - vending machines, liquid waste disposal, 96
- Birds, dead or trapped, removal, 139
- Boil. *See Lesion, containing pus*
- Boiler water additives, criteria, 143
- Bottled drinking water
 - definition, 2

- source, 117, 119, 151
- Botulism, reporting, 174,
 - See Clostridium botulinum*
- Bowls. *See Tableware*
- Bread wrappers. *See Single-use articles*
- Buffets, monitoring by food employees, 60
- Buffet table sign, 57
- Buildings. *See Physical facilities*
- Bulk food
 - dispensing methods, 60
 - display, protection, 60-61
 - labeling requirements, 81
 - liquid, vended 96
 - raw animal food, prohibition, 60
 - unpackaged, labeling exemptions, 81
- Bulk milk container dispensing tube, 106
- Cabinets
 - storage, 100, 116, 140
 - vending machine, 97
- Calibration, temperature measuring devices, 106
- Can openers
 - design and construction, 90
 - maintenance and operation, 102
 - on vending machines, design & construction, 93
- Cans, number 10. *See Single-use articles*
- Canthaxanthin, color additive, 80
- Carbonator, 86, 21
- Cardboard for recycling, outside storage, 129
- Carpeting, floor, restrictions and installation, 131
- Carrier, disease. *See asymptomatic carrier*
- Carry-out utensils. *See Single-service articles*
- Case lot handling equipment, movability, 97
- Casing, 2,
- Cast iron utensils and equipment food-contact surfaces,
 - use limitation, 86
- Catering operation. *See Food establishment*
- Ceilings, coverings & coatings, cleanability, 131-133
- Central preparation facility. *See Food Establishment*
- Ceramic utensils, lead limitation, 86
- Certification number, definition, 2
- Certified Food Protection Manager, 20, 22, 152, 155
- CFR, definition, 2
- Cheese,
 - date marking, 72
 - reduced oxygen packaging, 79
 - pasteurized, 45
- Chemicals
 - preservatives, declaration, 79, 87
 - sanitization of equipment food-contact surfaces and utensils, 112
 - sanitizers, criteria, 142-143
 - sanitizers, hand dip, 37, 38
 - washing fruits and vegetables, criteria, 54, 143
 - working containers, 141
- Chicken, raw, immersion in ice or water, 55
- Children's menu 63
- China utensils, lead limitation, 86
- Chlorine solutions, chemical sanitization, 104, 105, 113, 177-178
- Cider, apple. *See juice*

CIP (Clean In Place)
 definition, 2
 equipment, design and construction, 89, 111, 112

Clams, lightly cooked or raw, consumer advisory
See also Molluscan shellfish

Cleanability
 carpeting, 131-132
 ceilings, 131-132
 floor and wall junctures, 131-132
 floors, 131-132 137
 food-contact surfaces, 89-90
 mats and duckboards, 131-132
 nonfood-contact surfaces, 90
 studs, joists, and rafters, 132
 utility lines, 131
 wall and ceiling attachments, 131-132
 wall and ceiling coverings and coatings, 131-132
 walls, 131-132

Cleanable fixtures, plumbing system, 119

Cleaned in place. *See CIP*

Cleaners. *See Poisonous or toxic materials*

Cleaning agents
 handwashing, 135
 warewashing equipment, 103

Cleaning and sanitizing
 equipment and supplies for refuse, recyclables, and returnables, 127,
 equipment and utensils to prevent food cross contamination, 55, 102, 111
 knowledge demonstrated by person in charge, 20, 22, 23
 maintenance tools, preventing contamination, 138
 physical facilities, frequency and restrictions, 138
 procedure for employees' hands and arms, 34-35
 ventilation systems, nuisance and discharge prohibition, 138

Cleaning of equipment and utensils
 criteria, 106
 frequency, 107-108
 methods, 109

Cleanliness, personal, of employees
 fingernails, 35, 38
 hands and arms, 35
 jewelry, prohibition, 38
 outer clothing, 38

Clean tableware sign, 24, 57

Clostridium botulinum, nongrowth in reduced atmosphere packaging, variance, 75, 76
 reporting, botulism, 174
See also Time/temperature control for safety food definition

Clothes washers and dryers
 availability, 86
 location for contamination prevention, 99

Clothing, outer, of employees, clean condition, 38

Cloths
 for use with raw foods of animal origin, treatment, 56
 for wiping food spills, criteria, 56

Code of Federal Regulations, definition, 2, 3

Cold holding of time/temperature control for safety food, 70

Cold-plate beverage cooling devices, separation from stored ice, design, and construction, 93

Color additive,
 definition, 3
 protection from contamination, 53-54
 fish, 80

Commingle, definition, 3

Comminuted, definition, 3
 cooking fish and meats, 61

Common dining area, definition, 3

Common name, 53, 80, 141

Communicable. *See Infectious agent*

Community or individual facility for disposal of refuse, recyclables, and returnables, 130

Compactors, on-site, 127

Compliance with Rules, responsibility of permit holder, 162

Condenser unit, separation from food and food storage space, 93

Condiments, protection from contamination by consumers, 60

Conditional Employee 3,146,172

Conditioning device, plumbing system
 design, 120
 location, 121

Confidentiality, protection, 161

Confirmed disease outbreak, definition, 3

Construction
 mobile water tank and mobile food establishment water tank, 123-125, 147
 plumbing system, 119

Consumer
 advisory, 81
 definition, 3
 food on display, protection from contamination by, 60-61
 information requirements, 81-82
 self-service, clean tableware for refills, 57-58
 self-service operations, protection from contamination, 60-61

Consumer-owned container, refilling, 58-59

Contact time, chemical sanitization of equipment food-contact surfaces and utensils, 113

Container prohibitions for poisonous or toxic materials, 142

Containers, food storage, identification of food, 53

Containers, poisonous or toxic materials and personal care items *See also Single-service articles*
 labeling and identification, 141
 original, identifying information, 141
 use prohibitions, 142
 working, common name identification, 141

Contaminated food, disposition, 82

Contamination of food after receiving, prevention, 49-55

Contamination prevention, location of equipment, clothes washers/dryers & storage cabinets, 100

Control of foodborne disease transmission by

- employees, 20, 24-35
- Controlled atmosphere packaging. *See Reduced oxygen packaging*
- Cook chill packaging. *See Reduced oxygen packaging*
- Cooking
 - equipment, cleaning frequency, 107-109
 - destroying organisms of public health concern, 61-64
 - utensils. *See Utensils and Kitchenware*
 - requirement for raw animal foods, variance, 62-63
- Cooling
 - capacity, food equipment, 97
 - methods to limit growth of organisms of public health concern, 54, 64, 69, 70, 147, 155, 158
 - TCS cooked food, 24, 63, 69
- Copper and copper alloys, use limitation in food contact and fittings, 86
- Core item. *See also Time frame*
 - definition, 3
 - correction time, 171
- Corned beef roasts
 - minimum holding times for cooking, 65
 - oven parameters for cooking, 65
- Corrective action compliance, 170-172
- Corrosion-resistant material, definition, 4
- Cosmetics. *See Personal care items*
- Counter guards, 60
- Counter-mounted equipment, 4, 101
- Critical control point
 - definition, 3
 - flow diagram, 160
 - knowledge demonstration by person in charge, 20
 - monitoring, responsibility of permit holder, 159
 - standard operating procedures, 160-161
- Critical limit
 - definition, 4
 - violations, timely corrections, 171
- Cross connection, water supply system, prohibition, 21, 122
- Cross contamination of food, protection by separation and segregation, 52, 77
- Crustacea shells, use limitation, 106
- Crystal utensils, lead limitation, 86
- Cups, refilling in consumer self-service, 57-58
- Curing food, 75
- Cut, infected. *See Lesion, containing pus*
- Cut leafy greens,
 - as a TCS food, 18
 - definition, 4
- Cutting surfaces
 - materials, 87
 - resurfacing, 102
- Data plate, warewashing machine, 90, 94
- Date marking of ready-to-eat, time/temperature control
 - for safety food, 71-73
- Dealer 4
- Dealer's tag/label for molluscan shellstock, requirements, 46-49
- Deli tissue,
 - definition, 24
 - use to avoid contaminating food, 49
- Delivery, refuse, recyclables, and returnables, 129
- Denial of access, sworn statement, 164-165
- Department, 4
- Design, construction, and installation
 - Equipment and utensils
 - acceptability, 97
 - accuracy, 90
 - cleanability, 88-90
 - durability and strength, 88
 - Physical facility,
 - cleanability, 138
 - functionality, 132-135
 - mobile water tank and mobile food establishment water tank, 110-111, 147
 - plumbing system, 119-120
 - sewage system, 126
- Design standard, backflow prevention device, 120, 178
- Detergents. *See Cleaning agents*
- Detergent-sanitizers
 - for warewashing equipment, 85, 95-96, 98, 103, 112
 - rinsing procedures, 111
- Devices. *See Physical facilities, Equipment & Plumbing*
- Diarrhea, employee symptom, 24-33
- Dipper wells. *See Utensils, in-use storage*
- Disclosure, definition, 4, 82
- Disease of employee, 24-27
- Disease or medical condition, reporting
 - responsibility, 24-27, 173-174
- Disease outbreaks caused by *S. typhi*, *Shigella* spp., *Shiga toxin-producing E. coli*, Nontyphoidal *Salmonella*, Norovirus or hepatitis A virus, 24-27, 173-174
- Dish baskets. *See Baskets*
- Dishes. *See Menu items, Tableware*
- Dishwashing. *See Warewashing*
- Disinfection
 - drinking water system, 117
 - mobile water tank and mobile food establishment water tank, 125
- Dispensing equipment, design and construction
 - for protection of equipment and food, 91-92
- Dispensing tube, bulk milk container, 106
- Display. *See Food display*
- Disposable towels, waste receptacle, 136, 151
- Disposal facilities
 - refuse, recyclables & returnables, 126-128
 - sewage, other liquid wastes & rainwater, 126
- Disposition of ready-to-eat, time/temperature control for safety food, 73-75
- Distressed merchandise, segregation, and, location, 137

- Documentation
 - correction of violations, 171
 - employee training, proper handwashing, 50-51
 - inspection report, 168-170
 - variances, 158-159
 - reduced oxygen packaging, 76-79
- Dogs in food establishments
 - handling prohibition, 39
 - patrol and sentry, 39, 140
 - pets, 140
 - service & assistance, 16, 32, 140
- Dollies. *See Case lot handling equipment*
- Donation of food, 84-85
- Doors
 - common dining area, 140
 - equipment maintenance, 101
 - physical facility, 133-135
 - refuse receptacle, 127
 - toilet room, 133, 139
 - vending machine, 97
- Drain plugs for equipment and receptacles for
 - refuse, recyclables, and returnables, 129
- Drainage of equipment compartments, 96
- Drainage system, food establishment, design
 - and installation, 123, 125, 148
- Drainboards
 - capacity, 99
 - cleaning frequency, 102
 - cleanability, 96, 99
 - warewashing, self-draining, 96
- Drains, indirect, 119, 125
- Dressing areas
 - designation, 136
 - use by employees, 139
- Dried eggs, condition at receipt, 38
- Drinking by employees, food contamination
 - prevention, 38
- Drinking water
 - bottled, source, 117, 119, 151, 176
 - definition, 4
- Drinking water systems
 - approved, 117, 146, 151, 175
 - flushing and disinfection, 117, 123, 125
- Drip prevention, design and construction of
 - ventilation hood systems, 91
- Driving surfaces, 130
- Dry cleaning methods, equipment and utensils, 110
- Dry eggs, 45
- Dry milk, 45
- Dry storage area, definition, 5
- Drying agents, criteria, 143-144
- Duckboards, cleanability, 132
- Due process rights, 164-165
- Dustless methods of cleaning floors, 138
- E. Coli. See Escherichia coli***
- Easily cleanable, definition, 5
- Easily movable, definition, 5
- Eating by employees, food contamination prevention, 38
- Effective date of Rules, Title Page, 157
- Eggs
 - cooking requirements for immediate service, 61
 - cooking requirements for pooled eggs, 62
 - definition, 5
 - hard-boiled, non-time/temperature control for safety 10
 - lightly cooked or raw, consumer advisory, 81, 82
 - liquid, frozen, and dry, condition at receipt, 45
 - pasteurized, substitute for shell eggs, 10, 45, 53
 - product, definition, 5
 - service to highly susceptible populations, 83-85
 - storage after receiving, 70
- Egg product, definition 5,
- Eggs, raw, shell
 - condition at receipt, 41, 44
 - cooking, 61, 62
 - cooling, 70, 71
 - temperature at receipt, 44
- Elderly. *See Highly susceptible population*
- Emergency occurrence. *See imminent health hazard*
- Employee
 - accommodations, location, 136
 - definition, 5
 - disease or medical condition, 24-29
 - dressing areas, number, 136
 - eating, drinking, and tobacco use,
 - designated areas, 38, 137
 - food contaminated by, disposition, 82, 169
 - hygiene, 35-39
 - ill, exclusions and restrictions, 29-34
 - practices, supervision of, 20-24
 - prevention of food contamination, 49-51
 - responsibility to report illness, 24-27
 - serving high-risk populations, exclusions
 - and restrictions, 29-34
 - See Food employee, Permit holder; Person in charge*
- Emu. *See Ratites*
- Enclosures for refuse, recyclables, and
 - returnables, operation and maintenance, 128
- Enforcement. *See Compliance & Enforcement*
- EPA, definition, 5
- Equipment
 - air-drying, 114-115
 - assessment for Rule enforcement, 157-158
 - case lot handling, 97
 - cleaning criteria, 89, 107
 - cleaning frequency, warewashing, 89, 107-109
 - compartments, drainage, 96
 - cooling, heating, and holding capacities, 97
 - definition, 5, 6
 - design and construction, durability and
 - strength, 86-87, 150, 153, 155
 - existing, 86-87, 150, 153, 155, 162-163
 - fixed, elevation or sealing, installation, 101

- fixed, spacing or sealing, installation, 101
- food-contact surfaces and utensils,
 - cleaning frequency, 107
- HACCP plan, 160-161
- location for contamination prevention, 100
- maintenance, 102
- necessary replacement, 162
- plans, 159-160
- reassembly after cleaning, 115
- repair and adjustment, 102
- spacing, 101
- storage, 115
- storage prohibitions, 115
- Equipment certification and classification, 97
- Equipment and utensils, methods of cleaning
 - dry cleaning, 110
 - precleaning, 110
 - rinsing procedures, 111-112
 - wet cleaning, 111
 - washing, alternative manual warewashing, 111
- Equipment for refuse, recyclables, and returnables,
 - cleanable, 127
 - cleaning, 58, 128, 129
 - covering, 127, 128, 129
 - drain plugs, 129
 - location, 128
- Equipment openings, closures and deflectors, design and construction, 91
- Equipment, utensils, and linens *See Physical facilities*
 - cleaning, 110-115
 - design and construction, 85-87
 - laundering linens, 113-114
 - location and installation, 100-102, 150, 153, 155
 - maintenance and operation, 102-105
 - materials for construction and repair, 85-87
 - numbers and capacities, 97-99
 - protection of clean items, 114-116
 - sanitization of equipment and utensils, 112
- Escargot. *See Fish*
- Escherichia coli*** O157:H7, 174
- Escherichia coli, Shiga toxin-producing***
 - cause of disease outbreak, 24
 - cause of employee illness, 24-27
 - employee exclusion and restriction, 27-34
 - reporting responsibility of person in charge, 26, 141
 - infection, conditions for release of employee from restriction or exclusion, 32, 174
 - stools are free of, 32, 174
- Event, 6
- Exclude, definition, 6
- Exclusion of employee
 - illness, 23
 - infection or disease, 23-27, 174
 - release, 174
 - removal, 29-34
- Exclusion order
 - for infected or diseased employee, 27-34, 173

- Exotic animal, definition, 6, 42
- Expiration time for time/temperature control for safety food, 73-75
- Exposure, 25-26, 29
- Facilities
 - assessment for Rule enforcement, 157
 - disposal, recycling, & removal of waste, 128-130
 - necessary replacement, 162
 - on-premises for refuse, recyclables, and returnables, 128-129
- Facility plans and specifications, submission and approval, 159
- Faucet, handwashing, 119
- FDA, definition, 6
- Fever with sore throat, employee symptom, 24
- Filter, compressed air, for drinking water system, 119
- Filtering equipment, hot oil, design and construction, 90
- Fingernails of employees
 - artificial prohibition, and nail polish, 38
 - brushes, 51
 - maintenance, 38, 51
- First aid supplies in food establishments, storage, 145
- Fish
 - bait, 140
 - consumer self-service, 60
 - cooking requirements, 61
 - definition, 6
 - frozen by supplier, freezing records, 66
 - live, 139-140
 - other than molluscan shellfish, 41, 65-66
 - raw, storage, 52, 53
 - salmonid, 66
 - use of clean equipment, 107-109
 - use of laundered gloves, 113
- Fish, lightly cooked or raw, consumer advisory 62, 81-82
 - aquacultured, 66
 - freezing to control parasites, 65-66
 - immersion in ice or water, 54
 - marinated, or partially cooked, ready-to-eat, records of freezing, 66
 - restriction on reduced oxygen packaging, 69
- Fitting or tubing, copper and copper alloys, use limitation, 86
- Fixtures. *See Physical facilities*
- Flatware. *See Tableware*
- Floor drains, cleanability, 132
- Floor-mounted equipment, clearance, 101
- Floors
 - absorbent materials, use limitation, 130-131, 138
 - and floor coverings, cleanability, 131, 137
 - dustless cleaning methods, 137
- Flow pressure valve, warewashing machine, 96
- Flushing
 - drinking water system, 117, 123
 - mobile water tank and mobile food establishment water tank, 125

- waste retention tanks, 126
- Flux, use limitation for food-contact surfaces, 86
- Fogging devices, cleaning the water reservoir, 122
- Food
 - approved sources, 40-42
 - additives, 1, 37, 45, 53
 - characteristics, 40
 - contact with equipment and utensils, 55-58
 - contaminated, 82
 - cooked, TCS, cooling, 61-65
 - damaged, spoiled or recalled, storage, 53, 82, 137
 - definition, 6
 - destruction of organisms of public health concern, 61-67
 - frozen, TCS, 68-69
 - hermetically sealed, source, 41
 - honest presentation, 40, 79, 157
 - identity, presentation, and on-premises labeling, 80-81
 - in contact with water or ice, storage or display, 54
 - limitation of growth of organisms of public health concern, 66-75
 - packaged and unpackaged, separation, packaging and segregation, 52-53
 - packaged, labeling, 40, 80-81
 - protection from contamination, 49-61
 - specialized preparation methods, variance requirement, 75-79
 - standards of identity, 79
 - temperature & time control, limiting growth of organisms of public health concern, 66-75
 - vended, TCS, original container, 59
- Food, time/temperature control for safety
 - HACCP plan, 75-79, 158-161
 - hot and cold holding, 70
 - temperature at receipt, 44
 - temperature and time requirements, 61-75
 - time as public health control, 73-75
- Food, ready-to-eat, time/temperature control for safety
 - date marking, 71-73
 - disposition, 73-74
 - handling, 49
- Food additive, definition, 6
- Food allergy, awareness, 24
- Food bank. *See Food establishment*
- Food cart. *See definitions, Food establishment*
 - mobile food unit, 10
 - pushcart, 14
- Food contact, copper, use limitation, 86
- Food-contact surfaces
 - cast iron equipment, use limitation, 86
 - construction materials, 85
 - copper, use limitation, 86
 - cleaning criteria, 89, 107
 - cleaning frequency of equipment, 107-111
 - definition, 6

- design and construction, cleanability, 76
- galvanized metal equipment, use limitation, 86
- lead in ceramic, china & crystal, 86
- lead in pewter alloys, use limitation, 86
- lead in solder and flux, use limitation, 86
- linens and napkins, use limitation, 56
- lubricating, 114
- sanitization criteria, 95-96, 98, 104-106
- sanitization frequency, 112
- sanitization methods for equipment, 112
- "V" threads, use limitation, 89, 123
- wet cleaning methods for equipment, 111
- wood, use limitation, 87
- Food containers
 - placement in cooling or cold holding equipment, covered, 52
 - proper cooling, 70
 - prohibitions, 142
- Food contamination
 - by persons, discarding, 82, 156
 - by unclean utensils and equipment, 55-58
 - prevention after receiving, 49-60
 - prevention by employees, 49-52
- Food display, preventing contamination by consumers, 60
- Food employee
 - definition, 7
 - responsibility to report illness, 24
- Food establishment
 - definition, 7
 - inspection, frequency, 163-164
 - permit to operate, 162
 - temporary, 149-152
- Food guards. *See Food display*
- Food handler certification, 22-23
- Food package integrity, 45
- Food processing plant, definition, 7
- Food Protection Manager, Certified, 20, 22
- Food receiving, 44-47
- Food reheated in microwave oven, requirements, 63
- Food safety
 - control measures, HACCP plan, 158-161
 - purpose of the Rules, 1
- Food service establishment. *See Food establishment*
- Food sources,
 - compliance with food law, 40-44
 - original containers and records, 46-49
 - plans, 158-159
- Food specifications for receiving, 44-47
 - temperature, 44
- Food-specific container for beverages, refilling, 58
- Food storage
 - containers, identification of food, 46
 - preventing contamination from premises, 59-60
 - prohibited areas, 59-60
- Food temperature measuring devices
 - accessibility, 99
 - design and construction, accuracy, 90
- Food vending location/areas *See Food establishment*
 - outdoor, overhead protection, 134
- Foodborne disease
 - outbreak, definition, 6
 - prevention, knowledge, 20-23
 - prevention, 24-27, 171

- Foodborne illness
 - nature and extent, 6
 - potential as vector, frequency of inspections, 163-164
 - transmission by employees, prevention, 24-27
- Foot candles. *See Lighting*
- Fork lifts. *See Case lot handling equipment*
- Forks, handling, 116-117 *Also See Tableware*
- Freezing to destroy organisms of public health concern, 65-66
- Frog. *See Fish*, 5
- Frozen eggs, condition at receipt, 45
- Frozen food, limiting growth of organisms of public health concern, 65-66, 68
 - labeled, shipped & received frozen, 45
 - maintain frozen, 68
- Fruits, raw
 - cooking, 63
 - washing, 54, 143
 - whole or cut, immersion in ice or water, 54
 - whole, uncut, storage, 54, 87
- Galvanized metal, use limitation for utensils and food-contact surfaces of equipment, 87
- Game animal
 - commercially raised for food, 42-44
 - cooking requirements, 61-62
 - definition, 7
 - exotic species, 6, 9, 61-62
 - limitations as food source, 42-44
 - wild, field-dressed, limitations as food source, 44
- Gauge cock. *See Flow pressure valve*
- Garbage. *See Refuse*
- Garlic. *See Time/temperature control for safety food definition*
- Gastrointestinal illness, symptoms of employee, 24-27
- General use pesticide, definition, 8
- Glasses, refilling in consumer self-service, 92
- Gloves
 - cloth, 57
 - cloth, laundering frequency, 113
 - handwash before donning, 36
 - single-use, 56
 - slash resistant, 57
- Grade A Standards, definition, 8
- Grease traps, in food establishment drainage systems, 126
- Ground beef. *See Comminuted definition*
 - cooking, 61
- Group residence, definition, 8
- Guard dog. *See Service animal*
- HACCP plan
 - compliance, responsibility of permit holder, 162
 - contents, 160-161
 - criteria, reduced oxygen packaging, 75-79
 - critical limits, nonconformance, 166
 - definition, 8
 - knowledge by person in charge, 22
 - variances, 158-159
- HACCP principles, demonstrate knowledge 20
 - failure to demonstrate knowledge 165
- Hair restraints for employees, effectiveness, 39
- Hamburger. *See comminuted definition*
 - cooking, 61
- Hand antiseptics, 37-38
- Hand antiseptics for employees, 51
- Hand drying,
 - part of cleaning procedure, 35
 - provisions, 135
- Hand sanitizers for employees. *See Hand antiseptics*
- Handling
 - kitchenware, 116-117
 - single-service and single-use articles, 116
 - tableware, 116-117
- Hands and arms of employees
 - clean condition, 35
 - cleaning procedure, 35
 - hand antiseptics, 37-38
 - special handwash procedures, 36
 - when and where to wash, 36-37
- Hands, employees,
 - no bare hand contact with ready-to-eat food, 22, 49
 - alternative to no bare hand contact with ready to eat food, 36, 50, 51
- Handwashing
 - cleanser, availability, 135
 - food employees, 35-36, 50-51,
 - procedures, special, for employees, 36
 - training documentation, 50-51
- Handwashing sink/facilities
 - automatic, installation, 119-120
 - cleanability, 119
 - design and construction, 119
 - location, placement, accessible, 120-121
 - maintaining and using, 122
 - numbers and capacities, 120
 - operation and maintenance, 121-122
 - use limitation, 122
 - signage, 135
 - water temperature, 119
- Harvester's tag/label for molluscan shellstock, requirements, 46-47
- Hazard Analysis Critical Control Point. *See HACCP*
- Hazard, definition, 8
- Health hazard, imminent
 - discontinuance of operations and reporting requirement, 162
 - prevention, Rules application, additional requirements, 162, 171
 - summary suspension of operations, 173
- Health practitioner. 8
- Health status of employee, required reporting,

- 22, 24-27, 174-175
- Hearing, appeal, restriction or exclusion order, 173
- Heat lamp, shield, 132-133
- Heater, for manual warewashing equipment, 95
- Heating capacity, food equipment, 97
- Hepatitis A virus
 - cause of disease outbreak, 24-27
 - cause of employee illness, 23
 - conditions for release of employee from restriction or exclusion, 27-34, 174
 - reporting, person-in-charge, 23, 174
 - virus-free employee, removal of restriction, 30, 174
- Hermetically sealed
 - container, definition, 8
 - food, source, 41
 - food containers, cleaning, 52
 - reheating, food taken from a container, 67
- High-risk conditions of employee illness, 24-26
- High-risk population. *See Highly susceptible population*
- Highly susceptible population
 - additional safeguards, 82-84
 - consumer advisory, 81-82
 - definition, 8
 - exclusions and restrictions of ill employees, 27-34
- Holding capacity, food equipment, 97
- Holding tank. *See Sewage, holding tank*
- Holding time, minimum
 - comminuted meats, 61-62
 - cooking, roast beef and corned beef, 62, 64-65
- Hollowware. 116-117 *See Tableware*
- Homes and living/sleeping quarters, private, use
 - prohibition, 23, 135
- Honest presentation, intent of Rules, 1
- Hooks, slab bacon, 53
- Hood. *See Ventilation systems*
- Hot holding of time/temperature control for safety, 70
- Hot water
 - quantity and availability, 118
 - sanitization of equipment food-contact surfaces and utensils 95, 103-104
- Hygienic practices of employees
 - food contamination prevention, 35-38, 49-51
 - hair restraints, 39
 - handling animals, prohibition, 39
- Ice
 - defined as food, 46
 - exterior cooling, prohibition as ingredient, 54
 - source, 46
 - storage or display of food in contact with, 54
- Ice units, separation of drains, design and construction, 93
- Identity standards for food, 79
- Illness of employee, investigation, 173-174
- Illness prevention, intent of Rules, 1, 157
- Imminent health hazard
 - ceasing operations and reporting, 171, 174
 - definition, 8
- Immunocompromised persons. *See Highly susceptible Population*
- In-place cleaning. *See CIP*
- Incinerators for solid waste, 130
- Individual sewage disposal system, disposal through approved system, 151
- Indoor areas, materials, 127, 130
- Infection, employee, symptom, 24-27
- Infectious agent, employee freedom from, removal of restriction, 27-34, 174
- Ingredients, HACCP plan, 159
- Ingredients, label information, 80
- Injected, definition, 9
- Insect control
 - devices, design, and installation, 139, 144
 - food establishments, poisonous or toxic materials, 141-144
 - maintenance, 139
 - outer openings protected, 133
 - See also Pest control*
- Insects, dead or trapped, removal, 139
- Inspection
 - access to premises and records, 164-165
- Inspection, frequency
 - establishing, 163-164
 - performance-and risk-based, 163-164
- Inspection port, enclosed water system, 119
- Inspection report
 - acknowledgment of receipt, 166
 - documentation, 157, 165
 - issuance, 166
 - public information, 167
 - receipt, refusal to sign acknowledgment, 166
- Installation
 - equipment, 100-102, 150
 - plumbing system, 107-108
- Institutional food service. *See Food establishment, highly susceptible population*
- Interaction between pH and a_w , *See time/temperature control for safety food*
- Interstate Certified Shellfish Shippers List, sources of molluscan shellfish, 41-42
- Intestinal illness of employee, 24-27
- Iodine solutions, chemical sanitization, 104-105
- Irreversible registering temperature indicator
 - provided onsite 100
 - utensil surface temperature, 112
- Jars. *See Single-use articles*
- Jaundiced employee
 - exclusion, 27-28
 - notification, reporting of symptoms, 25, 26
 - removal of exclusion, 30-31, 34
- Jewelry, employees, prohibition exception, 38, 51
- Juice

- definition, 9
- HACCP, 83
- packaged, 46
- prohibition,
- service to highly susceptible population, 82
- treated, 83
- warning label, 82
- Junctures, floor and wall, coved and enclosed or sealed, cleanability, 131
- Justification, variances, 158

Ketchup bottles. *See Single-use articles*

Kick plates,

- good repair, cleanability, 102
- removable, 90

Kitchenware

- definition, 9
- handling, 116-117

Knives, handling, 116-117, *See also Tableware*

Label, common name on food container, 53

Labeling

- approved source, 40
- bulk food, 80-81
- donated foods, 85
- identification 141
- juice, 68
- molluscan shellfish, 48-49
- packaged food, 80
- poisonous or toxic materials, 142

Lamb

- consumer self-service raw, 60
- consumer advisory, 81-82
- frequency of cleaning, 107
- preventing contamination, 52
- use of laundered gloves, 57, 113

Landfills for solid waste, 130

Laundering cloth gloves, 113

Laundering

- frequency, methods, 113-114

Laundry facilities, use limitations, 114

Lavatories. *See Handwashing facilities*

Law, definition, 9

Lead limitation in ceramic, china, crystal, and decorative utensils, 86

Leafy greens

- cut as TCS food, 18
- definition, 4, 9

Lesion, containing pus, 29

License, definition 9, *See permit*

License holder, definition 9, *See permit holder*

Light bulbs, protective shielding, 132-133

Lighting, intensity, 136

Linens and napkins, use limitation for food-contact surfaces, 56

Linens

- definition, 9
- laundering criteria, 113
- laundering frequency, 113
- laundering methods, 113-114
- mechanical washing methods, 114
- soiled, storage methods, 100, 113
- storage after cleaning, 100, 115
- storage prohibitions, 115-116

Liquid eggs, condition at receipt, 45

Liquid food or ice, dispensing equipment, design and construction, 91-92

Liquid food vending machines, waste receptacle, 96-97

Liquid waste, *See also Sewage or Mobile Food unit*

- drain lines prohibition, 93
- service sink, use, prohibition 120-121
- vending machines, 96-97

Listeriosis, (*Listeria monocytogenes*)

- Definition, 9
- Reporting, 174-175

Litter, maintaining premises, 140

Living/sleeping quarters

- food establishment operations, 23
- prohibition/separation, 135

Livestock, definition, 9

Loading soiled items, warewashing machines, 110

Location, grease trap, 126

Locker room

- contamination prevention, use limitation, 100
- food storage, prohibited areas, 59
- storage, 115-116

Lockers

- designation, 136-137
- location, 137
- use, 139

Lubricants, incidental food contact, criteria, 144

Lubricating food-contact surfaces, 114

Maintenance *See also Operation and maintenance*

- equipment, storage, 139
- refuse areas and enclosures, 127, 129
- tools, cleaning, 138

Major Food Allergen

- definition, 9
- labeling, 80

Management and personnel

- employee health, 24-27
- hygienic practices, 35-39
- personal cleanliness, 20, 35-39
- supervision, 20-23

Manager, food protection certified, 20, 22

Manual warewashing. *See Warewashing*

Manufacturers' dating information, 79, 81

Materials *See also Physical facilities*

- construction and repair, surface characteristics, 137
- HACCP plan, 158
- mobile water tank and mobile food

- establishment water tank, 123-125, 147-148
- Mats, floor, cleanability, 132
- Meal portions, individual, from bulk container, 81
- Meats
 - cooking requirements, 61-64
 - cured, 75
 - customer self-service, 60
 - definition, 10
 - rare or raw, consumer advisory, 21, 41, 60, 82-83
 - raw, storage, 52
 - use of clean equipment, 107-109
 - use of laundered gloves, 57, 113
- Mechanically tenderized, definition, 10
- Mechanical warewashing. *See Warewashing*
- Medical condition of employee, 24-27
- Medical history of ill employee, 174
- Medicines, employee, in food establishments,
 - restriction and storage, 145
 - See also Personal care items*
- Melons, cut. *See Time/temperature control for safety food definition*
- Menu, claims, 81
- Menu items, consumer advisor, 81-82
- Meringue, 53, 83
- mg/L, definition, 10
- Microwave ovens
 - cleaning frequency, 102, 109
 - cooking, 63
 - reheating food, requirements, 63
 - safety standards, 102
- Milk and milk products, dry, fluid, and frozen,
 - pasteurized at receipt, 45
- Milk, fluid, and milk products
 - cooling, 69-70
 - dispensing tube, 91-92, 106
 - raw, consumer advisory, 81-82
 - source, 41
 - temperature at receipt, 45
- Mixing valve, handwashing facility, 119
- Mobile facility, alternative water supply, 148
- Mobile food unit (MFU)
 - definition, 10
 - additional requirements, 146-149
 - readily moveable, 146
 - sewage holding tank, capacity and drainage, 148
 - water tank, inlet, 123-125
 - waste removal, 148
- Mobile water tank and mobile food establishment
 - water tank, 123-125
 - design and construction, 123
 - flushing and disinfection, 125
 - materials, 123
 - numbers and capacities, 125, 147
 - operation and maintenance, 125
- Model inspection form, 168-170
- Modifications
 - Rule application, 158
 - conformance with approved procedures, 159
- Modified atmosphere packaging, definition, 10
 - See Reduce Oxygen Packaging*
- Molluscan shellfish
 - definition, 10
 - lightly cooked or raw, consumer advisory, 81-82
 - original container, requirements, 46
 - packaging and identification, 46-47
 - shellfish, source, 41-42
 - shucked, original container, labeling, 48-49
 - tanks, use limitations, 93
 - tanks, variance, 75, 93
- Molluscan shellstock
 - condition on receipt, 41-42, 44
 - cooling, 69-70
 - identification specifications, 46-49
 - temperature at receipt, 44
- Mollusk. *See Fish*
- Mollusk shells, use limitation, 107
- Mops, drying, 138
- Mop sink. *See Service Sink*
- Mouthwash. *See Personal care items*
- Movability, case lot handling equipment, 97
- Moveable. *See Easily Moveable*
- Multiuse utensils and food-contact surfaces,
 - construction materials, characteristics, 86-88
- Mushrooms,
 - cultivated wild species, source 42
- Mussels, lightly cooked or raw, consumer advisory, 81-82
 - See also Molluscan shellfish*
- Napkins, cloth, laundering frequency, 113-114
 - use limitation, 56
 - See also Linens*
- National Shellfish Sanitation Program
 - certification number, 47
 - Guide, 41
- Nitrates, nitrites, and salt for curing, variance
 - specifications, 75
- Nonconformance with Rules, documentation, 162-163
- Non-continuous cooking
 - definition, 10
 - parameters, 63-64
- Nondrinking water, quality, 118
- Nonfood-contact surfaces
 - cleaning criteria, 87, 90
 - cleaning frequency, 109
 - construction materials, characteristics, 87
 - design and construction, 85
- Non-Time/Temperature Control for Safety food
 - definition, 10-11, 19-20
- Non-Typhoidal *Salmonella* (NTS)
 - employee illness, 24-27
 - reporting, 23
 - restriction/exclusion, 27-34
 - reinstatement, 32
- Norovirus
 - employee illness, 24-27
 - reporting, 23
 - restriction/exclusion, 27-34
 - reinstatement, 31
- Notices, accept, 166 *See also Hearing Notice*
- Notification of inspection report, 163
- Nutrition labeling, 80
- Nuts in shell, storage, 87

- Odors
 - mechanical ventilation, 136
 - multiuse equipment materials, 85
 - refuse removal frequency, 129
 - single-service/use article materials, 88
- Off-premise
 - cleaning services for refuse, recyclables, and returnables, 126
 - delivery and consumption of time/temperature control for safety food, 7
- Oil equipment, hot, "V" threads & filters, 89
- On-site cleaning of returnables, 57
- Openings, to outdoors, protection against insects and rodents, 133
- Openings, vending machines, design & construction, 97
- Operating permit, food establishment
 - conditions for retention, responsibilities, 162-163
 - definition, 11
 - prerequisite, 162
 - posting, 162
 - remodeled establishment, issuance criteria, 162-163
 - timing, 162
- Operating plans and specifications, submission and approval, 159-160
- Operating procedures, standard
 - HACCP, 158-161
 - plans, 158-161
- Operation and maintenance
 - mobile water tank and mobile food establishment water tank, 123-125, 147
 - physical facilities, , 132-139
 - plumbing system, 119-123
 - sewage system, 125-126, 148
 - suspension for imminent health hazard, 171
- Organisms of public health concern
 - destruction, 61-64
 - growth limitation, 67-75
- Ostrich. *See Ratites*
- Outdoor areas, materials, 130
- Outdoor refuse areas, curbed and graded to drain, 135
- Outdoor walking and driving surfaces, graded to drain, 134
- Outfitter operation, definition, 11
 - operations, 154-155
- Outside receptacles for refuse, recyclables, and returnables, design and construction, 127
- Outside storage of refuse, recyclables, and returnables, prohibitions, 128
- Oven
 - cooking temperature, 62, 64-65
 - microwave, 63, 67, 102, 109
- Overhead protection for outdoor food vending and servicing areas, 134, 149
- Overwraps, colored, for food, limitations, 80
- Ownership change, 162
- Oysters, lightly cooked or raw, consumer advisory, 81-82
 - See also Molluscan shellfish*
- Package integrity, 45
- Packaged, definition, 11
- Packaged bottle, 11
- Packaged food
 - labeling, 40
 - labels, compliance with law, 80-81
 - separation and segregation from unpackaged food, 52-53
- Packaging and identification of shucked molluscan shellfish, 46-47
- Packaging, reduced oxygen
 - conditions requiring a variance, 75-79
 - HACCP plan and variance criteria, 75-79, 158-161
- Pallets. *See Case lot handling equipment*
- Parasite destruction in fish by freezing, 65-66
- Parts per million. *See mg/L*,
- Pasteurized milk ordinance, 8
- Patrol dogs, 39, 140
- Performance-based frequency of inspection, 163
- Permit,
 - definition, 11
 - renewal, existing food establishment, 162
 - suspending, revoking, modifying, or restricting, hearing officer's powers, 173
 - operate food establishment, 162
 - failure to have, 162
- Permit holder
 - agreement, replacement of facilities or equipment, 162
 - definition, 11
 - posting in food establishment, responsibility, 162
 - responsibilities for permit retention, 162
 - See also Employee*
- Person, definition, 11
- Person in charge. *See also Employee*
 - assignment, 20
 - definition, 11
 - demonstration of knowledge, 20
 - duties, 23-24
 - employee responsibility for reporting illness, 24, 26
 - responsibility to report certain employee illness, 25, 26
 - responsibilities, rights, and authorities, explanation, 20-33
- Personal care items
 - definition, 12
 - first aid supplies, storage, 145
 - in food establishments, storage, 145
 - labeling and identification, 141
 - medicines, restriction and storage, 145
 - operational supplies and applications, 141-142
 - stock and retail sale, 145
- Personal cleanliness, 35-39
- Personal medications. *See Medicines*
- Personnel, supervision, 20-29

- Pest control, 139
 - outer openings protected, 133-134
 - See also Insect control and Rodent control*
- Pesticides in food establishments
 - application, 142
 - bait stations, 144
 - restricted use pesticide, conditions of use, 141-142
 - restricted use pesticide, criteria, 141-142
 - tracking powders, 144
 - See also Poisonous or toxic materials*
- Pests, dead or trapped, removal, 139
- Pets in group residence dining areas, restrictions, 140
- Pewter, use limitation for food-contact surfaces, 86
- pH
 - definition, 12
 - chemical sanitization of warewashing equipment, 104-106
- Physical facilities
 - cleaning
 - floors, dustless methods, 138
 - frequency and restrictions, 138
 - maintenance tools, preventing contamination, 138
 - ventilation systems, nuisance and discharge prohibition, 138
 - controlling pests, 139
 - definition, 12
 - design, construction, and installation, 130-132
 - dressing rooms and lockers, using, 136, 139
 - drying mops, 138
 - handwashing laboratory, maintaining and using, 119-121, 135
 - location and placement, 131, 136-137
 - maintaining premises, 137
 - maintenance and operation, 132-139
 - materials for construction and repair, 137
 - minimizing attractants and contaminants on floors, 131-132
 - numbers and capacities, 130-137
 - pests, dead or trapped, removal, 139
 - prohibiting animals, 140
 - repairing, 137
 - storage, of maintenance tools, 139
 - toilet room doors, closing, 139
- Pickle barrels. *See Single-use articles*
- Pinning. *See Injected, definition*
- Plant food cooking for hot hold, 63
- Plastic tubs, buckets. *See Single-use articles*
- Plates. 116-117 *See Tableware*
- Plumbing Code, definition, 12
- Plumbing fixture, definition, 12
- Plumbing system
 - approved, 119
 - air gap, 120, 121, 178
 - backflow prevention, 120-121, 178
 - cleanable, 119
 - conditioning device, design, 119
 - construction, 119
 - definition, 12
 - design, 119
 - device, water system, inspection and service, 122
 - filter 119
 - handwashing laboratory, design and construction, 119-120
 - installation, 119
 - location and placement, 121
 - materials, 119
 - numbers and capacities, 120
 - operation and maintenance, 119-123
- Poisonous or toxic materials
 - bait stations, 144
 - boiler water additives, criteria, 143
 - chemical sanitizers, criteria, 142-143
 - chemicals for washing fruits and vegetables, criteria, 143
 - common name, 141
 - containers, prohibition for food use, 142
 - definition, 12
 - drying agents, criteria, 143-144
 - in food establishments, use conditions, 141-144
 - knowledge by person in charge, 20
 - lubricants, incidental food contact, criteria, 144
 - medication, first aid, personal care items, 11, 144-145
 - pesticides, application, 141-142
 - restriction of presence and use in food establishments, 141-142
 - storage, separation, 141, 144, 145
 - tracking powders, 144
 - See also Personal care items*
- Pooled eggs, cooking temperature, 61
- Pork
 - cooking requirements, 61-64
 - customer self-service, 60
 - rare or raw, consumer advisory, 81-82
 - raw, storage, 52
 - use of clean equipment, 107-109
 - use of laundered gloves, 57, 113
- Portable. *See Easily Moveable & Readily Moveable*
- Potable water. *See Drinking water*
- Poultry
 - cooking requirements, 61-64
 - customer self-service, 60
 - definition, 13
 - rare or raw, consumer advisory, 81-82
 - raw, storage, 52
 - use of clean equipment, 107-109
 - use of laundered gloves, 57, 113
- Precleaning equipment and utensils, 110
- Premises. *See also Physical facilities*
 - definition, 13
 - gaining access, 164
 - maintenance, 137
- Presentation of food, 79

Preset tableware, handling, 116
 Pressure, water, 118
 Pressure spray, wet cleaning, 111
 Primal cut, definition, 13
 storage on hooks or racks, 53
 Priority Item. *See also Time frame*
 correction time frame, 170
 definition 13
 report finding, 165
 Priority foundation item. *See also Time frame*
 correction time frame, 170
 definition, 13
 report finding, 165
 Private home, unapproved food source, 40
 food operations prohibited, 23, 135
 Private Water System, definition, 13, 174
 Psychotropic organisms, definition, 13
 Processing at retail, 75-79
 Produce, *See fruits, raw; vegetables, raw*
 Probe-type price and identification tags,
 See Utensil,
 Prosthetic device, 35, 36
 Public health protection, Rule application, 157
 Public information, inspection report, 167
 Public sewage system, disposal through
 approved facility, 126
 Public water system, definition, 13
 Pushcart, *Also see Food Establishment, definition & Mobile Food Establishment*
 definition, 14
 Psychrotrophic organism, definition, 13

 Quaternary ammonium compounds, chemical
 sanitization, 105

 Racks
 case lot handling, 97
 meat storage, 53
 warewasher, 99, 110, 115
 Rainwater, disposal facility, 126. *Also See Sewage*
 Rapid
 cooling, 69-70
 growth. *See Time/temperature control for safety food*
 reheating, 67
 Ratites,
 cooking, 61
 definition, 14
 game animal definition, 7
 Ready-to-eat food, definition, 14-15
 Ready-to-eat foods, consumer self-service, 61
 utensils and dispensers, 60
 Ready-to-eat time/temperature control for safety food
 date marking, 71-72
 disposition, 73-74
 handling, 49

 Reassembly of equipment after cleaning, 115
 Receptacles for refuse, recyclables, and returnables
 capacity and availability, 127-128
 cleaning, 127, 129
 covering, 127, 129
 design and construction, 127
 drain plugs, 129
 equipment and storage, 126-130
 location, 126-127, 129
 maintenance, 129
 Receptacles for removal of refuse, recyclables, and
 returnables, 127
 Reconstituted food cooling, 69
 Records
 availability, responsibility of permit holder, 162
 fish, freezing raw, 65
 HACCP, 158-161
 HACCP plan conformance, failure to
 demonstrate, 159, 160
 molluscan shellstock, 66-67
 water system service schedule, , 118, 175-176
 Recyclables, 126-130, *Also See Refuse*
 Recycling facilities, 130
 Redeeming machines, location, 128
 Reduced oxygen packaging
 conditions not requiring variance, 79
 conditions requiring variance, 75-79
 definition, 15
 HACCP plan & variance criteria, 75-79, 158 -161
 thawing, ROP frozen fish, 69
 Refilling facilities, 130
 Refilling returnables, 57-58
 Refills in consumer self-service, using
 clean tableware, 57
 Refrigeration, cooling and cold holding, 69-71
 Refusal of access
 application for inspection order, 164-165
 reporting, 165
 Refusal to sign acknowledgment of inspection
 report receipt, 166
 Refuse areas and enclosures, maintenance, 128
 Refuse, definition, 15
 Refuse, recyclables, and returnables
 cleaning implements and supplies, 128
 design and construction, 127
 facilities, on the premises, 126-130
 facilities for disposal and recycling, 126-127
 indoor storage area, design, 126
 location, 129
 outdoor enclosure, construction, 127, 130
 outdoor storage areas, construction materials,
 127
 outdoor storage surface, design and
 construction, 127, 130
 removal, 129
 storage, operation, and maintenance, 126-130
 storage areas
 equipment, and receptacles, location, 127-128

- rooms and receptacles, capacity and availability, 127-128
- storage prohibitions, 128
- toilet room receptacle, covered, 128
- Regulatory authority
 - definition, 15
 - responsibilities for permit issuance, 162
- Reheating
 - food from a hermetically sealed container, 67
 - hot holding, temperature requirements, 67
 - immediate service, temperature requirement, 67
 - ready-to-eat food, requirements, 67
- Reinstatement
 - excluded or restricted employee, 27-35, 173
- Releasing food from hold order, 172
- Remedies, administrative, 162-166, 172-173
- Reminder, 15, 81-82
- Remodeling of food establishment, plans and specifications, 159-160
- Removal, refuse, recyclables and returnables, 129-130
- Repair, good, physical facilities, 137
- Reporting, disease and medical condition
 - by food employee and applicant, 24, 26
 - by permit holder, 162, 174
 - by person in charge, 24, 26
- Reporting, imminent health hazard
 - by permit holder, 171, 174-175
- Reservice of unopened packaged food and unused definition 15
 - food, prohibition, 61, 82
 - highly susceptible population 82
- Residence prohibition, 23, 40, 135
- Responsibilities
 - food employees reporting illness, 27, 174
 - permit holder for ceasing operations, 162, 171
 - permit holder for permit retention, 162-163
 - person in charge, duties and authorities, 20-24
 - person in charge, reporting ill employees, 27, 174
 - regulatory authority for permit issuance, 162
- Restaurant. *See Food establishment*
- Restrict, definition, 15
- Restricted egg, definition, 15
- Restricted use pesticide, definition & criteria, 15, 141-142
- Restriction
 - employee, release, 30-35, 174
 - infected or diseased employee, 27-35, 173-174
- Restriction order
 - infected or diseased employee, 173-174
 - service, 173
- Restrictions
 - employees, removal, 30-35, 174
 - ill employees, 24-27, 173-174
- Restroom facilities. *See toilet rooms*
- Resumption of operations, 171
- Retail food store. *See Food establishment*
- Retention tank. *See Sewage, holding tank*
- Retirement home. *See Group residence*

- Returnables, *See also Refuse*
 - on-site cleaning and refilling, 57-58, 130
 - refilling, 57-58
- Reuse of shells, 107
- Rhea. *See ratites*
- Rights, recipients of orders or decisions, 171-172
- Rinsing procedures, equipment and utensils, 111-112
- Risk, definition, 15
- Risk-based frequency of inspection, 163-164
- Roadside Food Vendor, definition, 15
- Roasts, beef and pork
 - minimum holding times for cooking, 62, 65
 - oven parameters for cooking, 62
 - reheating, 67
- Rodent control, 139 *See also Pest control*
 - harborage, free of, 127
 - in food establishments, poisonous or toxic materials, 144
 - outer openings protected, 133
- Rodents, dead or trapped, removal, 139
- Roe. *See Fish*
- Roofs, protective barrier, 134
- Rooms. *See Physical facilities*
- Safe material, definition, 15
- Salad bar, clean tableware sign, 57
- Salad bars, monitoring by food employees, 60
- Salmonella Enteritidis*, 84**
- Salmonella typhi***
 - cause of disease outbreak & employee illness, 24-27
 - employee illness, reporting, 24
 - infection, conditions for employee restriction or exclusion, 24-27
 - reporting responsibility of person in charge, 24-27
 - removal of restriction, 29-34, 174
 - positive specimen culture, 31, 174
- Salmonid fish, 80
- Sample report, private water system, 118, 175-176
- Sampling, water, nonpublic system, 118, 175-176
- Sanitization *See Poisonous or toxic materials*
 - chemical, manual warewashing, 105-106
 - chemical, of warewashing equipment, 104-106, 112
 - definition, 16
 - food contact surfaces, equipment and utensils, 112
 - hot water temperatures, for warewashing equipment, 103-104
 - pressure, mechanical warewashing equipment, 91
 - sanitizers, chemical, determining concentration, 104-106
 - sanitizer test kit, 100, 106
- Sanitizing solutions, equipment and utensil
 - chemical criteria, 142-143
 - concentration 104-106
 - rinsing procedures, 111-112

- testing devices, availability, 100
 - wiping cloth storage, 56
- Sanitizing solutions, hand, 37-38
- Scallops. *See Molluscan shellfish*
- Screening
 - backflow prevention device, 121
 - outer openings protected, 134
 - tank vent, 124
 - vending machines, 97
 - water filter, 120
 - water conditioning device, 120, 121
- Seafood. *See Fish*
- Sealed, definition, 16
- Seeing Eye dog. *See Service animal*
- Self-draining warewashing sinks and drainboards, 96
- Self-service
 - clean tableware for refills, 57
 - consumer, protection from contamination, 60-61
 - handling of single-service and single-use
 - articles, 115-116
 - utensil availability, 106
- Self -Service Food Markets
 - definition, 16
 - requirements, 156
 - shutout, 156
 - signage, 157
 - temperature requirements, 157
- "Sell by" date, 46, 71-72, 79
- Sentry dogs. *See Patrol dogs*
- Service animal
 - care and handling, 39
 - definition, 16
 - handwash after handling, 39
 - single-service and single-use articles, 140
 - presence in dining and consumer area, 140
- Service sinks
 - availability, 120, 137
 - plumbing system, numbers and capacity, 120
 - use limitation, 120
- Servicing area
 - definition, 16
 - outdoor, overhead protection, 134, 149
- Serving dishes. 116-117 *See Tableware*
- Sewage
 - definition, 16
 - disposal, conveying, 125
 - disposal system, approved, design and construction, 125
 - holding tank, mobile, 125
 - other liquid wastes, and rainwater 126
 - backflow prevention, 125
 - conveying, 126, 148
 - disposal facility, 126, 148
 - drainage, 126, 148
 - establishment drainage system, design
 - and installation, 125, 148
 - mobile holding tank, 125
 - removal from mobile food establishment, 125-126
 - retention, 125
- Shatter-resistant light bulbs, 132
- Shelf life, variance specifications, 77
- Shellfish, molluscan. *See Molluscan shellfish*
- Shellfish control authority, definition, 16
- Shells, use limitation, 107
- Shellstock
 - date marking, 49, 72
 - definition, 16
 - maintaining identification, 46-49
- Shielding, light, 132
- Shiga toxin-producing *Escherichia coli*, 16
- Shigella** spp.
 - cause of employee illness and disease
 - outbreak, 24-27
 - employee illness, reporting responsibility of
 - person in charge, 24-27
 - infection, conditions for employee restriction or
 - exclusion, 27-29, 174
 - removal of restriction or exclusion, 29-34, 174
- Shigella** spp.-positive specimen culture, 31, 174
- Shucked shellfish,
 - definition, 17
 - packaging and identification 45
 - display 48
 - self-service 48
- Shutoff device, vending machine, 73, 93-94, 96
- Signs, Buffet Table & Salad Bar 24
- Single-service and single-use articles
 - construction materials, characteristics, 88
 - definition, 17
 - handling, 116
 - prohibitions, 115
 - required use, 106
 - reuse limitation, 106
 - storage after cleaning, 100, 115
- Sink compartment requirements, manual warewashing, 97-98
- Sink, handwashing. *See handwashing facilities*
- Sinks, warewashing
 - cleaning agents, 103
 - cleaning frequency, 102
 - compartments, 98
 - sanitization, 103-106
 - self-draining, 96
 - use limitations, 103
- Slacking
 - definition, 17
 - TCS frozen food, conditions, 68
- Slash resistant gloves, 56-57
- Sleeping quarters. *See Living/sleeping quarters*
- Smoking. *See Tobacco use by employees*
- Smoking food, 75
- Smooth, definition, 17
- Sneeze guards, 60
- Sneezing, coughing, or runny nose by employees,
 - food contamination prevention, 39, 49, 61
- Soap. *See Cleaning agents*

- Soiled tableware, handling, 116
- Solder, use limitation for food-contact surfaces, 86
- Source, approved
 - drinking water, 117, 151-152, 153
 - food, 40-44, 152, 154
 - shellfish, 41-42, 44, 46-49
- Sous vide packaging *See Reduce Oxygen Packaging*
 - definition, 17
- Spacing
 - carpet installation, 131-132
 - count-mounted equipment, 101
 - equipment installation, 100
 - fixed equipment, 100
 - toxic material separation, 141, 145
- Spatulas, use to avoid contaminating food, 24
- Specialized Processes, 17, 75-79
- Specimen analysis, employee transmission
 - of foodborne disease, 174
- Specimen cultures of employee infected with
 - Salmonella typhi***, 174
- Sponges, use limitation, 87
- Spoons, handling, 116-117, *Also See Tableware*
- Spot cleaning. *See Dustless cleaning methods*
- Sprouts, seed, 18, 75, *See Time/temperature control for safety food*
- Stainless steel. *See Cleanability, Easily cleanable*
- Standards of identity, 79
- Stationary food establishments, permit, 162
- Steam
 - cleaning equipment, 128
 - mixing valves, 119
 - tables, temperature measurement, 94
 - ventilation, 136
- Stitch pumping. *See Injected*
- Stirrers. *See Single-service articles*
- Steak tartare, 62
- Steak, whole muscle intact beef, 19, 40, 62
- Stock and retail sale of poisonous or toxic materials and personal care items, storage and display, 145
- Storage
 - clean equipment, utensils, linens, & single-service and single-use articles, 115-116
 - first aid supplies in food establishments, 145
 - food in contact with water or ice, 54
 - maintenance equipment, 139
 - medicines in food establishments, 145
 - methods for soiled linens, 113
 - poisonous or toxic materials, separation, 141
 - refuse, recyclables, and returnables, operation and maintenance, 128-130
- Storage and display of items for stock and retail sale, separation, 145
- Storage areas for refuse, recyclables, and returnables
 - capacity and availability, 127-128
 - designated, 128
 - location, 128
- Storage cabinet location, contamination prevention, 100
- Storing food to prevent cross contamination, 52-54
- Straws. *See Single-service articles*
- Street foods. *See Food establishment, Mobile*
- Studs, joists, and rafters, cleanability, 132
- Stuffing, cooking, 62
- Sulfites & Sulfiting Agents, *See Additives*
- Summary permit suspension
 - disease intervention measure, 172-174
- Summary suspension of operations for imminent health hazard, 171
- Supervision of personnel
 - demonstration of knowledge, 20-22
 - person in charge, 20, 22-35
- Support animal
 - definition, *See Service Animal*,
 - care and handling, 39
 - presence in dining and sales area, 140
- Surface characteristics
 - indoor areas, 130
 - outdoor areas, 130
- Susceptible population
 - exclusion of ill employee serving, 26, 28-30
 - frequency of inspections, 163-164
 - time/temperature control for safety food, 62-63, 75, 82-84
- Sweeping, dust-arresting compounds, 138
- Table-mounted equipment
 - See Counter mounted equipment*
 - definition, 4
 - elevation, 101
- Tablecloths. *See Linens*
- Tableware. *See also Single-service articles*
 - consumer self-service, buffets, 24, 57
 - definition, 17
 - handling, 116-117
 - preset, handling, 116
 - soiled and clean, handling, 57, 116
- Tag on food, shellstock, 46-49
- Tag/label, for molluscan shellstock
 - record keeping, 48, 49
 - requirements, 46-49
- Take-home food containers, refilling, limitations, 57
- TCS food, definition, 18
- Temperature, food
 - cold and hot food holding, 70
 - cooking, 61-65
 - cooking, comminuted meats, 61
 - cooking, microwave, 63
 - cooling, 69-70
 - plant foods, 63
 - receiving, 44-45
 - reheating, 67
 - raw animal foods, 61-65
 - roasts, beef, corned beef, pork, 61-65
 - thawing TCS frozen food
 - conditions, 68-69
 - ROP frozen fish 69

- seared steak, *See* whole-muscle intact 62
- Temperature, Warewashing
 - chemical sanitization, 104-106, 112-113
 - hot water sanitization, 103-104, 112-113
 - sanitization, manual, 103, 112-113
 - sanitization, mechanical, 103-104, 112-113
 - wash water, manual, 103
 - wash water, mechanical, 103
- Temperature measuring devices
 - accuracy, 90
 - calibration, 90
 - definition, 17
 - design and construction, 90, 94-95, 99
 - food, accessibility, 99
 - food storage unit air, 90, 94-95
 - probe, small diameter, 99
 - required & location, 99-100
 - warewashing machines, 99
 - warewashing, manual, accessibility, 100
- Tempered water, handwashing sink, 35
- Temporary facility, water availability, 118, 151
- Temporary food establishment
 - definition, 18
 - construction materials, 151-152
 - permit, 162
- Testing devices for sanitizing solutions, availability, 100
- Thawing TCS frozen food
 - conditions, 68-69
 - ROP frozen fish 69
- Thermistor, thermocouple, thermometer.
 - See* Temperature measuring device
- Three compartment sink. *See* Sink compartments
- Thunnus species, 66
- Time and temperature control, 68-75
- Time/Temperature Control for Safety food (TCS),
 - definition 18, 19-20
- Time as public health control for Time/Temperature Control for Safety food, 73-74
- Time frame
 - correction of core items, 171
 - correction of priority violation, 170
 - correction of priority foundation violation, 170
 - reinspection, 171
- Tobacco use by employees, food contamination
 - prevention, 38, 137
- Tofu, immersion in ice or water, 54
- Toilet rooms
 - convenience and accessibility, 137, 148
 - doors, closing, 139
 - enclosed, design and installation, 133
 - numbers, 120, 136
 - receptacle for sanitary napkins, 128
- Toilet tissue, availability, 136
- Toiletries. *See* Personal care items
- Toilets & urinals
 - number & cleanability, 111, 120, 136
 - not used as service sink 121
- Tongs, use to avoid contaminating food, 24, 49, 109
- Toothpaste. *See* Personal care items
- Toothpicks. *See* Single-service articles
- Towels, availability, 36, 135
- Toxic. *See* Poisonous or toxic materials
- Tracking powder, 144
- Trade secrets, protection, 161
- Training, employee, documentation, 23, 49, 76, 84, 159
- Training plan, food safety, employees and supervisors, HACCP plan, 159
- Transport
 - case lot moving, 97
 - game animals, 43-44
 - insulated containers, 94
 - refuse vehicles, 130
 - sewage vehicles, 126
 - soiled linens, 113
 - transportation vehicle, 7, 15
 - water vehicles, 118
- Trichinosis, reporting, 174
- Trash. *See* Refuse
- Tumblers. *See* Tableware
- Tuna, 66
- Turtle. *See* Fish
- Two compartment sink. *See* Sink compartments
- Unnecessary
 - items, 129, 139
 - ledges, projections and crevices, 90
 - persons, 23
- Urinals, numbers, 111, 120
- USFDA, *See* FDA, definition
- USDA, definition, 18
- "Use by" date, 71-73, 77. *See also* Date marking
- Utensils
 - air-drying, 114
 - cast iron, use limitation, 86
 - ceramic, china, crystal, and decorative,
 - lead limitation, 86
 - cleaning criteria, 89, 107
 - cleaning frequency, 103-104
 - cleaning methods, 110-112
 - consumer self-service, availability, 60, 99
 - definition, 18
 - design and construction, durability and strength, 88
 - galvanized metal, use limitation, 86
 - in-use storage, 55
 - maintenance and operation, 102-106
 - multiuse, construction materials, 85-87
 - sanitization, 95-96, 98, 104-106
 - serving, for consumer self-service operations, 60, 99
 - storage after cleaning, 115-116
 - storage between use, 55
 - wet cleaning methods, 111
 - wood, use limitation, 87
- Utility lines, cleanability, 131

"V" threads, use limitation for food-contact surfaces, 89, 123

Vacuum packaging, 18, *See Reduced oxygen packaging*

Variance

- cooking raw animal foods, 61-64
- conformance with approved procedures, 159
- definition, 18
- documentation and justification, 158
- HACCP plan, 158-159
- modifications & waivers, Rules application, 158
- molluscan shellfish tanks, 93
- rationale, 158
- reduce oxygen packaging, 75
- requirement for specialized food processing methods, 75-79
- shellstock, maintaining identification, 46-47
- sprouting seeds or beans, 75

Vegetables, raw

- clean utensils, use of, 107
- cooking for hot holding, 63
- washing, 54
- whole or cut, immersion in ice or water, 54
- whole, uncut, raw, storage, 52, 54

Vehicles for removal of refuse, recyclables, and returnables, 130

Vending machines

- automatic shutoff, 93, 96
- can openers, design and construction, 93
- condiments, packaging to prevent contamination, 60
- definition, 18
- design and construction of vending stage closure, 92
- doors and openings, design and construction, 97
- liquid waste products, 96
- location, definition, 18
- time/temperature control for safety food, original container, 58
- refuse receptacles in, 127
- temperature, 73

Ventilation, mechanical, 136

Ventilation systems

- capacity, 90, 138
- cleaning, nuisance and discharge prohibition, 138
- exhaust vents, design and installation, 138
- hood, adequacy, 99
- hood filters, 90
- drip prevention, design and construction, 91

Vermin. *See Insect control, Pest control, Rodent control*

Vibrio infection, 174

Violations,

- documentation and verification of correction, 166
- documentation of findings, 165-167
- history of, role in frequency of inspections, 163
- inspection and correction, 161-164
- uncorrected, 171
- timely correction, time frame, 171-172

Virus. *See Disease outbreaks caused by*

Vomiting,

- employee symptom, 25, 27, 31, 33
- clean up of, 39

Waivers

- Rule requirements, 158
- conformance with approved procedures, 159

Walk-in refrigerator, carpeting prohibition, 130

Walking surfaces. *See Surface characteristics*

Wall and ceiling coverings and coatings,

- cleanability, 131-132

Walls, exterior, protective barrier, 134

Warewashing

- definition, 18
- manual, sink compartment requirements, 97-99, 102, 147, 150, 153, 155
- manual, temperature measuring devices, accessibility, 99

Warewashing equipment

- chemical sanitizer concentration, 103-106
- chemical sanitizer test kit, 106
- clean solutions, 103
- cleaning agents, 103
- manual
 - alternative, 98, 103, 111, 150, 155
 - chemical sanitization, 103-104
 - detergent-sanitizers for chemical sanitization, 95, 103, 105-106
 - heaters and baskets, 95
 - hot water sanitization temperatures, 95, 104
 - wash solution temperature, 104
- mechanical
 - chemical sanitization, 104-106
 - hot water sanitization temperatures, 103-104
 - pressure measuring device, 99
 - sanitization pressure, 104
 - wash solution temperature, 103

Warewashing machines

- data plate operating specifications, 95
- drain connection, 125
- flow pressure valve, 95
- internal baffles, 95
- loading of soiled items, 110
- manufacturers' operating instructions, 95, 96
- sanitizer level indicator, 95
- temperature measuring devices, 95

Warewashing sinks

- alternative uses, 98
- drainboards, self-draining, 96

Wash solution temperature, warewashing equipment, 103

Washers/dryers, clothes, availability, 99

Washing

- mechanical methods, linens, 100
- procedures, equipment food-contact surfaces and utensils, 111-112

- raw fruits and vegetables, 54
- times for employees, 35-37
- Waste, liquid. *See Sewage*
- Waste, solid. *See Refuse*
- Waste receptacle for disposable towels, 127, 136
- Waste retention tank, flushing, 126
- Water
 - alternative supply, 119, 151, 155
 - distribution, delivery, and retention, 118-119
 - drinking, definition, 4
 - exemption, 148
 - hot, quantity and availability, 118, 154
 - inlet/outlet, protective device, 124, 125, 148
 - interruption of service, 171
 - lack of, 171
 - non-drinking, 118
 - potable, 4, 117, 148, 149, 155
 - pressure, 96, 118, 175
 - quality, 117, 154, 175, 179
 - sample report, 118, 175
 - sampling, 118, 125, 175
 - standards, 1117
 - quantity and availability, 118, 147, 151, 155
 - source
 - approved system, 117, 146, 151, 175
 - bottled drinking, 117, 119, 151, 176
 - capacity, 118, 146, 175
 - disinfection, 117, 125, 178, 179
 - knowledge by person in charge, 20
 - system flushing, 117, 125
 - storage or display of food in contact with, 54
- Water activity (a_w), definition, 1
- Water conditioning device, 120
- Water reservoir of fogging devices, cleaning, 122-123
- Water supply
 - alternative supply, 119, 151, 175-179
 - system, prohibition of cross connection, 122
- Water system, compressed air filter, 124
- Water system device, inspection and service, 122-123
- Water systems, public and nonpublic, 117
- Water tank (mobile food establishment)
 - hose, construction and identification, 123-125, 147
 - inlet/outlet, 147
 - and hose fitting, protection, 125, 147
 - sloped to drain, 124
 - use limitation of "V" type threads, 123
 - pump, and hoses, dedicated use, 125
 - vent, protected, 124
- Watertight joint, equipment openings, 91
- Water treatment device, 122, 123
- Well Logs, *See sample reports*
- Wet cleaning methods, equipment and utensils, 111
- Wet storage
 - food in contact with water and ice, 56
 - molluscan shellfish, tanks, 93
 - utensils, 56
 - wiping cloths, 56, 104-105
- Wetting agents, 111
- Whole muscle, intact beef, 19, 40, 62
- Wicker wood, 87
- Windows, tight-fitting, 134
- Wiping cloths
 - air-drying locations, 114
 - laundering, 113
 - sanitizers, 104-105, 114, 142
 - use for one purpose, 56
- Wood, use limitation for food-contact surfaces, 87
- Work clothes. *See Clothing, outer*
- Wound, infected. *See Lesion, containing pus*
- Wrapped food *See also Packaged, definition*
 - honestly presented, 79
 - preventing contamination, 54, 59
- Wrapped tableware, handling, 116-117



Version No. 00-02 10/2015

SUMMARY OF CHANGES TO TFER PURPOSE & DEFINITIONS

General:

- Changed Chapter citations from §229 to §228.
- Changed format of definitions to reflect current rulemaking standards
- Updated agency information
- Updated definitions required by State statutes
- As per FDA, eliminated references to PHFs and included Time/Temp Control for Safety (TCS) food where applicable.
- Transition to Priority Item Violation and Priority Foundation Violation from Critical Violation. All terms will appear together.
- Transition from Non-Critical Violation to Core Item Violation. All terms will appear together

Subchapter A. General Provisions

§228.1 Purpose.

Changed purpose to include reference to State statutes and FDA.

§228.2 Definitions.

- (1) Added FDA definition of “Accredited program”
 - (5) Added definition of “Asymptomatic”
 - (7) Added definition of “Balut”
 - (8) Added definition of “Bare hand contact”
 - (9), (10) & (11) Separated definitions of different Bed and Breakfast types.
 - (15) Added Definition “Central Preparation Facility”
- Eliminated definition of “child care center”.

(18) Added definition of “Clostridium botulinum”.

Deleted definition of “Cottage food”.

(20) Added definition of “Color Additive”.

(24) Added definition of “Conditional Employee”.

(27) Added definition of “Controlled atmosphere packaging”.

(28) Added definition of “Cook chill packaging”.

(29) Added definition for “Core Items”.

(31) Added definition of “Counter-mounted equipment”.

(34) Changed definition of “Cut leafy greens” to include "this does not include the harvest cut. See (75) – definition of “Leafy greens”.

As per FDA deleted definition of “Enterohemorrhagic Escherichia coli”.

(43) Added definition of “Egg product”.

(47) Changed the definition of Event to include the terms: civic, political, public or educational and changed wording to include “would” grant permission to clarify the term events.

Eliminated the definition “farmer’s market”.

(52) Amended the definition of food establishment to include micro-markets. (See definition (149) referring to vending machines.)

(53) Added definition of “Food Additive”.

(57)(a) Changed definitions of food establishment to include terms: location, machine, micro-Market

(59) Added definition of “Food Protection Manager Certification”.

(65) Changed the definition of “Handwashing sink” to limit use for handwashing only.

(67) Added definition of “Health Practitioner”.

(75) Added definition of “leafy greens”.

(76) Added definition for “License”.

- (77) Added definition for “License holder”.
- (79) Added definition for “Listeria monocytogenes”.
- (81) Added definition of “Major Food Allergen”.
- (82) Changed definition of “Meat” to remove reference to “wild game animals and to include reference to definition of “game animals”.
- (83) Added definition of “Mechanically tenderized”.
- (85) Added definition for “Mobile Food Unit”
- (86) Added definition of “Modified atmosphere packaging”.
- (87) Added definition of “Molluscan shellfish”.
- (88) Added definition of “Non-continuous cooking”.
- (89) Included definition of Non-Time/Temperature control for safety food (NTCS)
- (95) Added PIC to definition of “Person in charge”.
- (99) Added definition of “Plumbing code”
- Eliminated definition of “Potentially hazardous foods”.
- (106) Added definition of “Priority item”
- (107) Added definition for “Priority Foundation Item”
- (109) Added a definition of “Psychrotrophic organisms”.
- (111) Added “is readily movable by one or two people and this type of mobile unit requires the support of central preparation facility” for “pushcart”.
- (112) Added definition for “ratite”.
- (118) Added Definition for “Re-Service”
- (123) Included roadside food vendor as a mobile food establishment.
- (128) Changed definition of “Service animal” to ADA definition.
- (133) Added acronym “STEC”

- (139) Added a definition of “Sous vide packaging”.
- (140) Added a definition of “Specialized processing method”.
- (144) Added Definition of Time/ Temperature control.
- (147) Added definition of “Vacuum packaging”.
- (149) Changed definition of “Vending machine” and exclude vending machines with NTCS and pre-packaged NTCS foods.

Subchapter B - Management and Personnel

§228.33 Certified Food Protection Manager and Food Handler Requirements

- Added new requirements for Certified Food Protection Manager that requires a CFM on site for each licensed establishment.
- Added a new requirement that all food employees shall successfully complete a food handler training course, accredited by the department, within 60 days of employment. Takes effect on September 1, 2016.
- Added requirements for the “original” certified food protection manager certificate being posted conspicuous to customer’s location.
- Added requirement for food handler certificates to be located on site.

§228.35 Responsibilities and Reporting Symptoms and Diagnosis

- This section was significantly revised to reflect the requirements for Conditions of Exclusions and Restrictions in accordance with the 2013 FDA Model Food Code by grouping together are responsibilities and requirements.
- Responsibility of Permit Holder, Person in Charge, and Conditional Employees now in 6 diagnosed illnesses. Norovirus, Hepatitis A, Shigella, STEC, and Salmonella typhi, now includes nontyphoidal Salmonella.

§228.36 Conditions of Exclusions and Restrictions

- This section was significantly revised to reflect the requirements for Conditions of Exclusions and Restrictions in accordance with the 2013 FDA Model Food Code.

§228.37 Managing Exclusions and Restrictions

- This section was significantly revised to reflect the requirements for Managing Exclusions and Restrictions in accordance with the 2013 FDA Model Food Code.

§228.38 Hands and Arms

- Provision added for the use of a disposable paper towel or similar clean barrier when touching surfaces such as manually operated faucets.
- Inclusion of “surrogate prosthetic devices” for hands and arms.
- Hand antiseptics must now meet specific requirement for use.
- Inclusion of using a “clean barrier” to touch surfaces after proper handwashing.

§228.45 Contamination Events

- Added new Section “Contaminations Events” for the clean-up of vomit and diarrheal events in a food establishment.

Subchapter C - Food

§228.62 Approved Sources

- Inclusion of “wild mushrooms” for sale or service by a food establishment.

§228.63 Specifications for Receiving

- Examples of evidence of previous temperature abuse provided.

§228.64 Molluscan Shellfish, Original Container and Records

- Shellstock tags must now be labeled with date the last shellstock from the container was served and maintain 90 days from that date.

§228.65 Preventing contamination by employees

- Added the requirement that the permit holder must obtain prior approval from the regulatory authority before conducting bare hand contact activities with ready-to-eat foods.

§228.66 Preventing food and ingredient contamination

- Frozen, commercially processed and packaged raw animal foods may now be stored or displayed with or above frozen, commercially processed and packaged ready-to-eat food.

§228.68 Preventing contamination from equipment, utensils, and linens.

- Single use disposable sanitizer wipes may now be used if done in accordance with EPA approved manufacturer's label use instructions. These may not be used in lieu of wash, rinse, and sanitizing.
- Take-home food establishment containers may now be reused if they are constructed for reuse, provided by the food establishment, returned to the food establishment after use, visually inspected by the food establishment before reuse and properly washed, rinsed, and sanitized before refilling.
- Take home containers for beverages may be refilled if it is a non-TCS food, the container is durable for cleaning at home or in food establishment, and is filled by the owner only if a system exists that allows a contamination free refill.

§228.71 Cooking

- Non-continuous cooking now only requires a re-heat, not to 165°F as previously required for all reheats, but only to the required cooking temperature for that particular food.

§228.72 Freezing

- Freezing for parasite destruction includes a new provision allowing storage for destruction at -20°F or below for a minimum of 24 hours.
- If specific fish, listed in (a)(2)(C) of this section, are raised and fed for service or sold as raw, raw-marinated, partially cooked, or marinated-partially cooked fish in ready-to-eat form, a written agreement or statement from the supplier or aquaculturist shall be provided and maintained for 90 days.

§228.75 Temperature and time control

- More requirements were added for “time as a public health control” for cold foods. Cold foods may now be held without temperature control for up to 6 hours or up to 70°F if removed from refrigeration at 41°F, documented and monitored.

§228.77 Clostridium botulinum and Listeria monocytogenes controls

- This section was significantly revised to reflect the requirements for Clostridium botulinum and Listeria monocytogenes control in accordance with the 2013 FDA Model Food Code
- Reduced oxygen packaging (ROP) previously had one category (double barrier) and is now divided into three categories; double barrier, single barrier (cook-chill and sous vide)

and 48 hour ROP. All categories would have previously required a HACCP plan but now 48 hour ROP does not.

§228.79 Labeling

- Added new requirements for food labeling for major food allergens to be in the ingredients unless stated in the common name.

Subchapter D. Equipment, Utensils, and Linens

§228.105 Accuracy of temperature measuring devices, food.

- Pressure measuring devices for mechanical warewashing equipment are now required to register in the range indicated on the manufacturer's data plate instead of previous being required to register in a range of 15-25.

§228.111 Equipment, maintenance and operation.

- Added requirements for sanitizing chemicals, constituted on site at the food establishment, meeting the concentration requirements of this section.

§228.112 Utensils and temperature and pressure measuring devices.

- Food temperature measuring devices now must calibrated in accordance with manufacturer's specifications.

§228.125 Preventing Contamination

- Exposed, unused tableware must now be changed between customers or washed, rinsed and sanitized if used.
- Added language for usage of chemically treated towelettes: "If approved by the regulatory authority, when no food exposure exists and handwashing sinks are not conveniently available, such as in some Mobile Food Units or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing."

Subchapter E. Water, Plumbing, and Waste.

§228.146. Plumbing design, construction, and installation.

- Changed the requirement for plumbing systems from according to law to according to the plumbing code (see definitions section).

§228.147. Plumbing, numbers and capacities.

- Added a restriction that states toilets, urinals, and showers cannot be used as a service sink.

§228.149 Plumbing operations and maintenance.

- Mobile food establishment inlet tanks must now be labeled as "Potable Water".

Subchapter F. Physical Facilities.

§228.173 Floors, walls and ceilings.

- Added words “anti-slip floor coverings” requirements in food establishments.

§228.174. Functionality.

- Added section for toilet room exceptions that do not require a tight-fitting and self-closing door if located outside a food establishment or such as a shopping mall.
- Outdoor servicing areas will now require overhead protection.

§228.175. Handwashing sinks.

- New provisions allowing for automatic hand washing facilities if approved by the regulatory authority.
- For mobile food operations and temporary food operations, if approved by the regulatory authority, when food exposure is limited, employees may use chemically treated towelettes for handwashing.
- Hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures are now allowed.

§228.177 Lighting, intensity.

- Minimum light intensity requirements were changed for walk-in refrigeration units, dry storage areas, buffets, salad bars, reach-in and under counter refrigerators, area for ware washing, equipment storage and toilet rooms.

§228.186 Premises, building, systems, room, fixtures, equipment, devices, and materials.

- New language requiring plumbing fixtures such as handwashing sinks, toilets, and urinals to be cleaned as often as necessary to keep them clean.
- New language requiring the presence of insects, rodents, and other pests be controlled to eliminate their presence

Subchapter G. Poisonous or Toxic Materials.

§228.206 Chemicals.

- Chemicals used to wash or peel raw, whole vegetables must be approved additive and now include Ozone as an approved antimicrobial agent.

§228.210 First aid supplies. Availability.

- Added section requiring a first aid kit in food establishments.

Subchapter H. Requirements Applicable to Certain Establishments.

§228.221. Mobile Food Units, Requirements

- Added a paragraph requiring Mobile Food Units (MFU) to demonstrate they are readily moveable at license renewal.
- During the initial permitting of a mobile food establishment they must provide documentation of a Certified Food Protection Manager Certification, an approved central preparation facility, if needed, a copy of the last central preparation facility inspection report, a servicing area authorization, and a menu.
- MFU's must demonstrate equipment for cooling and heating food, and holding cold and hot food are sufficient in number and capacity to provide food temperatures.
- Mobile food establishment outlet tanks must now be labeled as "Waste Water".
- Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.
- Removed requirement for a signed letter of authorization to “may” require, allowing the regulatory authority the ability to require signed letters of authorization.

§228.222. Temporary Food Establishments.

- Foods that are not prepared on site or that require extensive preparation or cooking must be prepared at a licensed food establishment.
- Temporary establishments may be required by the regulatory authority to have at least one person on site that has an accredited food handler certification.
- Added “tarps” as an example of suitable materials.

§228.223. Bed and Breakfast.

- Title of Section changed from Bed and Breakfast Extended Establishments to Bed and Breakfast.
- Added a Certified Food Manager requirement for Bed and Breakfast Limited Establishments.

§228.225 Micro Markets. - New Section Name change to Self Service Food Market

- New section added for Self-Service Food Markets (Micro Markets) and Requirements.
- Added requirement for providing video surveillance tapes for a period of fourteen (14) calendar days.

Subchapter I. Compliance

§228.244. Facility and Operating Plans

- Added new paragraphs that deal with plan review and the context of plans and specifications. The wording in these sections were changed from shall to may.

§228.249 Inspection Frequency performance-based and risk-based.

- Added new language changing to risk based inspection intervals to allow a risk-based inspection interval other than every 6 months as long as specific provisions are met.
- New language requiring the regulatory authority to periodically inspect temporary food establishments.

§228.251 Report of Findings.

- Critical items changed to “critical violations/priority items, priority foundation and /core/ non-critical items.” Updated to use of priority items, priority foundation items and core items by removing “critical violations and non-critical items”.

§228.253 Priority Item/Priority Foundation Item/Critical violations, time frame for correction.

- New requirement for permit holder to correct violations within 72 hours for priority items. Language changed to reflect three (3) days instead of 72 hours to be consistent throughout the document.

- New requirement for permit holder to correct violations within 10 days for priority foundation items.

§228.254 Core Items violations, time frame for correction.

- New requirement for permit holder to correct violation within 90 days or the next inspections (whichever comes first).

§229.173. Heimlich maneuver Poster. - Section Removed. (TFER 2006)

Subchapter J. Private Water Systems - New Subchapter provisions about Private Water Wells.

- The Texas Food Establishment rules contain no provisions to ensure safe drinking water systems at Food Establishments utilizing private, non-regulated water wells.
- Food Establishments with private water wells not regulated by the Texas Commission on Environmental Quality may need to upgrade their systems to meet new water supply regulations. This may include installing an automatic chlorinator and periodically testing the water quality (every months bacteriological testing estimated to be \$10/month/operating month and \$100/every three years for a chemical analysis).



Texas Department of State Health Services Retail Food Establishment Inspection Report

Date:	Time in:	Time out:	License/Permit #	Est. Type	Risk Category	Page ___ of ___
Purpose of Inspection: ☐ 1-Compliance ☐ 2-Routine ☐ 3-Field Investigation ☐ 4-Visit ☐ 5-Other TOTAL/SCORE						
Establishment Name:			Contact/Owner Name:	* Number of Repeat Violations: ____ ✓ Number of Violations COS: ____		
Physical Address:		City/County:	Zip Code:	Phone:	Follow-up: Yes No (circle one)	
Compliance Status: Out = not in compliance IN = in compliance NO = not observed NA = not applicable COS = corrected on site R = repeat violation Mark the appropriate points in the OUT box for each numbered item Mark '✓' a checkmark in appropriate box for IN, NO, NA, COS Mark an asterisk '*' in appropriate box for R						
Priority Items (3 Points) violations Require Immediate Corrective Action not to exceed 3 days						
Compliance Status		Time and Temperature for Food Safety (F = degrees Fahrenheit)			R	
OUT	IN	NO	NA	COS		
					1. Proper cooling time and temperature	
					2. Proper Cold Holding temperature(41°F/ 45°F)	
					3. Proper Hot Holding temperature(135°F)	
					4. Proper cooking time and temperature	
					5. Proper reheating procedure for hot holding (165°F in 2 Hours)	
					6. Time as a Public Health Control; procedures & records	
		Approved Source				
					7. Food and ice obtained from approved source; Food in good condition, safe, and unadulterated; parasite destruction	
					8. Food Received at proper temperature	
		Protection from Contamination				
					9. Food Separated & protected, prevented during food preparation, storage, display, and tasting	
					10. Food contact surfaces and Returnables ; Cleaned and Sanitized at _____ ppm/temperature	
					11. Proper disposition of returned, previously served or reconditioned	
Compliance Status		Employee Health			R	
OUT	IN	NO	NA	COS		
					12. Management, food employees and conditional employees; knowledge, responsibilities, and reporting	
					13. Proper use of restriction and exclusion; No discharge from eyes, nose, and mouth	
		Preventing Contamination by Hands				
					14. Hands cleaned and properly washed/ Gloves used properly	
					15. No bare hand contact with ready to eat foods or approved alternate method properly followed (APPROVED Y__N__)	
		Highly Susceptible Populations				
					16. Pasteurized foods used; prohibited food not offered Pasteurized eggs used when required	
		Chemicals				
					17. Food additives; approved and properly stored; Washing Fruits & Vegetables	
					18. Toxic substances properly identified, stored and used	
		Water/ Plumbing				
					19. Water from approved source; Plumbing installed; proper backflow device	
					20. Approved Sewage/Wastewater Disposal System, proper disposal	
Priority Foundation Items (2 Points) violations Require Corrective Action within 10 days						
Compliance Status		Demonstration of Knowledge/ Personnel			R	
OUT	IN	NO	NA	COS		
					21. Person in charge present, demonstration of knowledge, and perform duties/ Certified Food Manager (CFM)	
					22. Food Handler/ no unauthorized persons/ personnel	
		Safe Water, Recordkeeping and Food Package Labeling				
					23. Hot and Cold Water available; adequate pressure, safe	
					24. Required records available (shellstock tags; parasite destruction); Packaged Food labeled	
		Conformance with Approved Procedures				
					25. Compliance with Variance, Specialized Process, and HACCP plan; Variance obtained for specialized processing methods; manufacturer instructions	
		Consumer Advisory				
					26. Posting of Consumer Advisories; raw or under cooked foods (Disclosure/Reminder/Buffer Plate)/ Allergen Label	
Compliance Status		Food Temperature Control/ Identification			R	
OUT	IN	NO	NA	COS		
					27. Proper cooling method used; Equipment Adequate to Maintain Product Temperature	
					28. Proper Date Marking and disposition	
					29. Thermometers provided, accurate, and calibrated; Chemical/ Thermal test strips	
		Permit Requirement, Prerequisite for Operation				
					30. Food Establishment Permit (Current & Valid)	
		Utensils, Equipment, and Vending				
					31. Adequate handwashing facilities: Accessible and properly supplied, used	
					32. Food and Non-food Contact surfaces cleanable, properly designed, constructed, and used	
					33. Warewashing Facilities; installed, maintained, used/ Service sink or curb cleaning facility provided	
Core Items (1 Point) Violations Require Corrective Action Not to Exceed 90 Days or Next Inspection , Whichever Comes First						
Compliance Status		Prevention of Food Contamination			R	
OUT	IN	NO	NA	COS		
					34. No Evidence of Insect contamination, rodent/other animals	
					35. Personal Cleanliness/eating, drinking or tobacco use	
					36. Wiping Cloths; properly used and stored	
					37. Environmental contamination	
					38. Approved thawing method	
		Proper Use of Utensils				
					39. Utensils, equipment, & linens; properly used, stored, dried, & handled/ In use utensils; properly used	
					40. Single-service & single-use articles; properly stored and used	
Compliance Status		Food Identification			R	
OUT	IN	NO	NA	COS		
					41. Original container labeling (Bulk Food)	
		Physical Facilities				
					42. Non-Food Contact surfaces clean	
					43. Adequate ventilation and lighting; designated areas used	
					44. Garbage and Refuse properly disposed; facilities maintained	
					45. Physical facilities installed, maintained, and clean	
					46. Toilet Facilities; properly constructed, supplied, and clean	
					47. Other Violations	
Received by: (signature)			Print:			Title: Person In Charge/ Owner
Inspected by: (signature)			Print:			Business Email:



Texas Department of State Health Services
Retail Food Establishment Inspection Report

Corrective Actions to Ensure Safe Food

Page ___ of ___

Item No.

1 Cooling

- TCS* food cooled from 135° F to 70° F more than 2 hours OR 135° F to 41° F (45° F) More than 6 hours; OR prepared food cooled to 41° F (45° F) more than 4 hours:
Action: Voluntary destruction, rapid reheating of cooked foods if less than 4 hours

2 Cold Hold

- TCS food held above 41° F (45° F) more than 4 hours:
Action: Voluntary destruction
- TCS food held above 41° F (45° F) less than 4 hours:
Action: Rapid cool (e.g. ice bath)

3 Hot Hold

- TCS food held below 135° F more than 4 hours:
Action: Voluntary destruction
- TCS food held below 135° F less than 4 hours:
Action: Rapid reheats to 165° F or more

4 Cooking

- TCS food undercooked:
Action: Re-cook to proper temperature

5 Rapid Reheating

- TCS food improperly reheated:
Action: Reheat rapidly to 165° F

7 Approved Source/Sound Condition

- Foods from unapproved sources/unsound condition:
Action: Voluntary destruction

9 Cross-Contamination of Raw/Cooked Foods

- Ready-To-Eat food contaminated by raw TCS food:
Action: Voluntary destruction of ready-to-eat foods

14 Handwashing

- Food employees observed not washing hands:
Action: Instruct employees to wash hands as specified in the Rules.

15 Proper Handling of Ready-to-Eat Foods

- Employee did not properly wash and sanitize hands before touching ready-to-eat food with Bare hands:
Action: Voluntary destruction

19, 23 Water Supply

- Facility does not have water for washing hands, preparing food, or cleaning equipment/utensils:
Action: Voluntary suspension of food preparation

* Time/Temperature Control for Safety (TCS)

Form EH-06 (Revised 09-2015)

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, City Clerk,

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

Consider adopting a resolution setting out number of votes to be cast for nominees for Board of Directors of Tom Green County Appraisal District - (Presentation by City Clerk Bryan Kendrick)

Summary/History:

The nomination and appointment process is set out in Section 6.03 of the State Property Tax Code. Appraisal district board members serve 2-year terms. The current terms of the five board members expire on December 31, 2015.

Nominations have been received from the participating governing bodies. The Council may distribute its 1,293 votes in any manner it desires among the six (6) nominees. Each Council Member is allocated 184.7 votes (1/7 of the total 1,293 votes allocated to the City of San Angelo).

The Council may also choose to cast all its votes for one candidate or may distribute votes equally among any number of the candidates. There is no provision for write-in candidates. The Council must take action by December 15, 2015 by Resolution on the official ballot. The nominees are:

- Begnaud, John (Current Member, has served 3 terms/6 years)
- Conn, John (Current Member, has served 2 terms/4 years)
- DeVore, Russell (Current Member, has served 2 terms/4 years)
- Diaz, Mike (New Nominee)
- Gomez, Louis (Current Member, has served 2 terms/4 years)
- Reeves, Bob (Current Member, has served 2 terms/4 years)

The five newly elected board members will begin serving their two year term of office on January 1, 2016.

Financial Impact:

No financial impact directly associated with this vote.

Other Information/Recommendation:

Letter dated October 19, 2015 and received on October 26, 2015 from the Chief Appraiser provides additional information. A historical summary of the City Council nomination process is also included with this cover memo.

Attachments:

- | | | |
|----|-------------------------|-------------------------|
| 1. | Resolution | CC TGCAD Resolution.doc |
| 2. | Board History | CC TGCAD History.docx |
| 3. | Letter from Bill Benson | Letter.pdf |

Presentation:

verbal

Approvals/Reviews:

Kendrick, Bryan

James, Theresa

Carriger, Tina

James, Theresa

Dunn, Becky

Kendrick, Bryan

Created/Initiated

Approved

Approved

Approved

Approved

Final Approval

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN ANGELO, TEXAS, CASTING VOTES FOR ONE NOMINEE OR DISTRIBUTING THEM AMONG NOMINEES FOR A POSITION ON THE BOARD OF DIRECTORS OF THE TOM GREEN COUNTY APPRAISAL DISTRICT FOR THE JANUARY 1, 2016 THROUGH DECEMBER 31, 2017 TERM OF OFFICE

WHEREAS, Section 6.03, Property Tax Code, State of Texas, allows a municipality that is a taxing unit in an appraisal district a voting entitlement to vote for directors as determined by the chief appraiser for each of the five positions to be filled on the board of directors of the Tom Green County Appraisal District; and

WHEREAS, the City of San Angelo is a taxing unit of the Tom Green County Appraisal District; and

WHEREAS, the City Council as governing body of the City of San Angelo desires to exercise its right of casting votes for one nominee or distribute them among nominees as provided by law for each of the five positions to be filled on the board of directors of the Tom Green County Appraisal District for the two year term of office commencing January 1, 2016, through December 31, 2017;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Angelo, Texas:

Section 1. That the facts and recitations set forth in the preamble of this resolution be, and they are hereby, adopted, ratified, and confirmed.

Section 2. That the City Council of the City of San Angelo, Texas, hereby allocates its total entitlement of 1,293 votes for the Tom Green County Appraisal District Board of Directors for two year terms beginning January 1, 2016 and expiring December 31, 2017, as follows:

Nominee Name:	Number of Votes Cast
1. John Begnaud	
2. John Conn	
3. Mike Diaz	
4. Louis P. Gomez	
5. Louis Hall	
6. Bob Reeves	

Section 3. That the Mayor for the City of San Angelo, as presiding officer, be, and that he is hereby, authorized and directed to deliver or cause to be delivered a certified copy of this resolution to the chief appraiser of the Tom Green County Appraisal District on or before December 15, 2015.

Section 4. That this resolution shall take effect immediately from and after its passage, in accordance with the provisions of the State Statutes of the State of Texas.

Section 5. Open Meetings Act. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, Chapter 551, Texas Government Code.

Motion made by _____, seconded by _____.
Motion carried unanimously.

PASSED, APPROVED AND ADOPTED ON THE 1st DAY OF DECEMBER, 2015.

THE CITY OF SAN ANGELO

Dwain Morrison, Mayor

ATTEST:

Bryan Kendrick, City Clerk

APPROVED AS TO CONTENT

APPROVED AS TO FORM:

Bryan Kendrick, City Clerk

Theresa James, City Attorney

Received in the office of the Chief Appraiser, Tom Green County Appraisal District,
on the _____ day of December, 2015.

Bill H. Benson, Chief Appraiser

NOMINATION OF CANDIDATES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT

The City Manager reviewed the background information. Councilwoman Tucker stated that the current directors have performed well.

Motion, to nominate Mr. Dick Burnett, Mr. A. H. "Chico" Denis, Mr. John Fuentes, Mr. Walter Pfluger, and Mr. John Phillips as candidates for the Board of Directors of Tom Green County Appraisal District for 1993-95, was made by Councilman Izzard and seconded by Councilman Hiebert. Motion carried unanimously.

ADOPTION OF RESOLUTION NOMINATING CANDIDATES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT

The Council discussed the function of the board. The City Manager explained the process for selection of the board.

Motion, to adopt the resolution nominating Mr. Dick Burnett, Mr. A. H. "Chico" Denis, Mr. John Fuentes, Mr. Walter Pfluger, and Mr. John Phillips for the Board of Directors of the Tom Green County Appraisal District, was made by Councilmember Izzard and seconded by Councilmember Burrows. Motion carried unanimously.

Annex F, Page 168, "Resolution"

ADOPTION OF RESOLUTION SETTING NUMBER OF VOTES TO BE CAST FOR NOMINEES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT FOR 1998-2000 TERM

City Clerk Carol Rigby presented the results of each Councilmembers vote. Each Councilmember cast 232.5 votes (1/6 of the 1,395 total votes allocated to the City of San Angelo) among the 6 nominees. Councilmember Shrum cast his votes as follows: Mr. Pfluger - 132.5; Mr. Phillips - 100. Councilmember Burrows cast his votes as follows: Mr. Phillips - 232.5. Councilmember Holguin cast his votes as follows: Mr. Bastardo - 232.5. Councilmember Tucker cast her votes as follows: Mr. Burnett - 232.5. Councilmember Ryon cast her votes as follows: Mr. Bastardo - 46; Mr. Burnett - 46; Mr. Denis - 46; Mr. Pfluger - 46; Mr. Phillips - 48.5. Councilmember Mahon cast his votes as follows: Mr. Fuentes - 77.5; Mr. Pfluger - 77.5; Mr. Phillips - 77.5.

Motion, to adopt a resolution setting the number of votes to be cast for nominees for the Board of Directors of the Tom Green County Appraisal District for the 1998-2000 term as follows: Mr. Richard Bastardo - 278.5; Mr. Dick Burnett - 278.5; Mr. A.H. AChico@, III - 46; Mr. John Fuentes - 77.5; Mr. Walter Pfluger - 256; Mr. John Phillips - 458.5, was made by Councilmember

Holguin and seconded by Councilmember Burrows. Motion carried unanimously.

Annex F, Page 83, AResolution@

Page 610
Vol. 89

Minutes
October 5, 1999

ADOPTION OF RESOLUTION NOMINATING CANDIDATES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT

City Clerk Kathy Keane presented background information, noting that the Appraisal Board has five members up for reappointment, and Council will need to nominate for these five positions. Ms. Keane further noted that everyone currently serving on the board is eligible for reappointment and willing to serve except Mr. John Fuentes.

City Manager Tom Adams noted that this is a two step process.

A discussion followed regarding the qualifications needed.

Responding to a question from Councilmember Holguin, Ms. Keane noted that Mr. Dean had indicated that Mr. Walter Pfluger and Mr. Louis Gomez had expressed interest in holding these positions.

Noting that Mr. Pfluger would be an asset, Councilmember Ryon explained that she had spoken with Mr. Pfluger and she would like to consider him for one of the positions.

Councilmembers Shrum and Holguin agreed.

Responding to a question from Councilmember Bastardo, Ms. Keane stated that she had not made contact with the Chief Appraiser, but had spoken with Mr. Rusty Dean, the attorney for the Appraisal District, who prepared the Resolution.

Noting a possible problem with a Councilmember serving on the Tax Appraisal Board, Councilmember Shrum stated that Louis Gomez was interested as well. Councilmember Shrum further suggested that Mr. Gomez and Mr. Pfluger be substituted for present members John Fuentes and Richard Bastardo.

Councilmember Mahon explained that there is a perceived problem with Mr. Bastardo being able to set the tax rate as a member on this board. While this is legally permissible, it is the perception which could be harmful.

Councilmember Ryon agreed that this is a problem and questioned if Council should make a rule that Councilmembers can not serve on other boards.

Councilmember Shrum noted that some boards have requested City Council representation, however, perception of is the matter of concern.

Mr. Adams noted that involvement in certain areas needs to be watched.

Councilmember Bastardo noted that it was this Council who voted him in as a member of the Tax Appraisal Board. Mr. Bastardo stated that all the present board members are good people, but

explained that he has not been on the board for long and has the time to serve. Serving on the Tax Appraisal Board does not hamper his agenda to stay open-minded and attend all the meetings.

Mayor Fender explained that when Council voted to have Mr. Bastardo serve, he was not on the Council at the time. Mayor Fender further explained that this is not a personal decision.

Councilmember Holguin nominated Councilmember Bastardo.

Council discussed how the vote would take place. Each Councilmember will get five votes.

An initial vote was taken. The nominees received the following number of votes:

Richard Bastardo: 4 votes; Councilmembers Burrows, Holguin, Bastardo and Ryon
Dick Burnett: 4 votes; Councilmembers Shrum, Burrows, Holguin and Mahon
Chico Dennis: 4 votes; Councilmembers Shrum, Burrows, Ryon and Mahon
John Phillips: 4 votes; Councilmembers Shrum, Burrows, Mahon and Mayor Fender
Walter Pfluger: 5 votes; Councilmembers Shrum, Burrows, Ryon, Mahon and Mayor Fender
Louis Gomez: 4 votes; Councilmembers Shrum, Burrows, Mahon and Mayor Fender

Mr. Walter Pfluger was nominated and the Council voted again on the remaining nominees with each Councilmember receiving four votes. The nominees received the following number of votes:

Richard Bastardo: 4 votes; Councilmembers Burrows, Holguin, Bastardo and Ryon
Dick Burnett: 5 votes; Councilmembers Shrum, Burrows, Holguin, Mahon and Mayor Fender
Chico Dennis: 4 votes; Councilmembers Shrum, Ryon, Mahon and Mayor Fender
John Phillips: 7 votes; Full Council
Louis Gomez: 7 votes; Full Council

At this point the following additional persons were nominated: Dick Burnett, John Phillips, and Louis Gomez. Because the number of votes received for Mr. Bastardo and Mr. Dennis were tied, another vote was taken.

Richard Bastardo: 3 votes; Councilmembers Burrows, Holguin, and Bastardo
Chico Dennis: 4 votes; Councilmembers Shrum, Ryon, Mahon, and Mayor Fender

Motion, to adopt a resolution nominating Walter Pfluger, Dick Burnett, John Phillips, Louis Gomez, and Chico Dennis for Board of Directors of the Tom Green County Appraisal District, was made by Councilmember Shrum and seconded by Councilmember Mahon. Aye: Shrum, Mahon, Fender, Burrows, Bastardo, and Ryon. Nay: Holguin. Motion carried 6-1.

Annex B, Page 619, AResolution@

Page 400
Vol. 92

Minutes
October 2, 2001

ADOPTION OF A RESOLUTION NOMINATING CANDIDATES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT

Responding to questions of Councilmembers Holguin and Wardlaw, City Manager Tom Adams

informed that Directors did not have term limits but that the Council was free to nominate their own slate of nominees. He further agreed that future nominations could include information regarding the length of service for each nominee.

Motion, to adopt a Resolution nominating candidates for the Board of Directors of the Tom Green County Appraisal District, as presented, was made by Councilmember Mahon and seconded by Councilmember Darby. Motion carried unanimously.

Annex C, Page 425, AResolution@

Minutes
October 7, 2003

Page 439
Vol. 95

ADOPTION OF A RESOLUTION NOMINATING CANDIDATES FOR THE TOM GREEN COUNTY APPRAISAL DISTRICT BOARD OF DIRECTORS

City Manager Tom Adams presented background information.

Responding to the request of Councilmember Holguin to delay the nomination process, Councilmember Bates noted the Resolution nominating candidates was required to be submitted prior to October 15, 2003.

By consensus, the Council requested a letter be drafted for the Mayor's signature to the Tom Green County Appraisal District requesting the City receive this notice of nomination earlier, perhaps mid August, to ensure sufficient time to more fully consider the nominations to be forwarded to the Chief Appraiser.

Councilmember Holguin advised he had other individuals he would have preferred to bring forward.

Motion, to adopt a Resolution nominating the following individuals for the Tom Green County Appraisal District Board of Directors: Dick Burnett, A.H. "Chico" Denis III, Louis Gomez, Walter Pfluger and John Phillips, as presented, was made by Councilmember Mahon and seconded by Councilmember Rainey. Aye: Mahon, Rainey, Lown, Morrison, Reeves and Bates. Nay: Holguin. Motion carried 6-1.

Annex C, Page 453, "Resolution"

Page 271
Vol. 98

Minutes
December 13, 2005

APPROVAL OF A RESOLUTION SETTING OUT NUMBER OF VOTES TO BE CAST FOR NOMINEES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT FOR 2006-2007

NOTE: Nominations were not made in 2005

City Manager Harold Dominguez presented background information.

Councilmember Holguin commented on the nominations and repeated requests to facilitate the process. General discussion was held on the time provided to submit votes and required turnaround of the nomination process. Mayor Lown requested staff work with Tom Green County Appraisal District on future nominations.

Motion, to divide votes equally among nominees, was made by Mayor Lown and seconded by Councilmember Rainey. AYE: Lown, Bates, Farmer, Morrison, and Rainey NAY: Holguin. Motion carried 5-1.

Annex J, Page 295, "Resolution"

Page 5
Vol. 99

Minutes
September 18, 2007

APPROVAL OF CANDIDATE NOMINATIONS TO SERVE ON THE BOARD OF DIRECTORS OF THE TOM GREEN COUNTY (TGC) APPRAISAL DISTRICT FOR THE 2008-2009 TERM

Mayor Lown suggested the Council consider reviewing the criteria and nominating individuals to serve on the TGC Appraisal District board. He commented the existing board consisted of the same members serving numerous terms. Finance Director Michael Dane stated the nomination process was time sensitive and noted the nomination should be finalized no later than October 15, 2007. Mayor Lown recommended Mr. Louis Hall.

Councilmember Perez-Jimenez requested the item be considered at the Visions meeting on September 27 and 28, 2007. Council concurred. Mayor Lown informed the TGC board meets approximately 7 times a year for 1 to 3 hours.

Mayor Lown recommended the nominees complete an application and forward such to City Clerk Alicia Ramirez.

Page 5
Vol. 100

Minutes
October 2, 2007

ADOPTION OF A RESOLUTION NOMINATING LOUIS HALL AS A CANDIDATE FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT

Motion, to adopt a Resolution nominating Louis Hall as a candidate for Board of Directors of Tom Green County Appraisal District, was made by Mayor Lown and seconded by Councilmember Perez-Jimenez. Motion carried unanimously.

Annex F, Page 25, "Resolution"

Minutes
November 6, 2007

Page 5
Vol. 100

ADOPTION OF A RESOLUTION SETTING OUT THE NUMBER OF VOTES TO BE CAST FOR NOMINEES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT

Councilmembers submitted their votes as follows: Councilmember Farmer, 199 for Louis Hall; Councilmember Hogg, 49.75 each for Dick Burnett, Louis Hall, Chico Denis, and Walter Pfluger; Councilmember Perez-Jimenez, 199 for Louis Hall; Mayor Lown, 199 for Louis Hall; Councilmember Cárdenas, 199 for Louis Hall; Councilmember Morrison, 199 for John Phillips; and Councilmember Fields, 199 for Louis Hall.

Motion, to adopt a Resolution setting out 49.75 votes for Dick Burnett, 49.75 votes for A.H. “Chico” Denis, 0 votes for Louis P. Gomez, 1044.75 votes for Louis Hall, 49.75 votes for Walter W. Pfluger, and 199 votes for John D. Phillips to be cast for nominees for Board of Directors of Tom Green County Appraisal District, was made by Mayor Lown and seconded by Councilmember Farmer. Motion carried unanimously.

Annex G, Page 89, “Resolution”

Minutes
October 6, 2009

Page 505
Vol. 101

ADOPTION OF A RESOLUTION NOMINATING CANDIDATES EMILIO PEREZ-JIMENEZ, TIM EDWARDS, VICKIE BOULDEN, BOB REEVES, AND JOHN BEGNAUD AS CANDIDATES FOR THE BOARD OF DIRECTORS OF THE TOM GREEN COUNTY APPRAISAL DISTRICT FOR THE 2010-2012 TERM

City Clerk Alicia Ramirez presented background information. General discussion and nominations were made by the Councilmembers.

Motion, to close nominations, was made by Councilmember Farmer and seconded by Councilmember Silvas. Motion carried unanimously.

In conclusion, the following nominations were made.

Motion, to adopt a resolution nominating candidates Emilio Perez-Jimenez, Tim Edwards, Vickie Boulden, Bob Reeves, and John Begnaud as candidates for the Board of Directors of the Tom Green County Appraisal District for the 2010-2012 Term, was made by Mayor Pro Tempore Hogg and seconded by Councilmember Adams. Motion carried unanimously.

Annex A, Page, “Resolution”

Page 58
Vol. 103

Minutes
October 4, 2011

ADOPTION OF A [RESOLUTION](#) NOMINATING CANDIDATES FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT (ANNEX E, PAGE 71, RESOLUTION #2011-09-109R)

City Clerk Alicia Ramirez presented background information.

Motion, to adopt the Resolution, as presented, was made by Councilmember Morrison and seconded by Councilmember Adams. Motion carried unanimously.

Nominees: John Begnaud, John Conn, Russell DeVore, Louis Gomez, and Bob Reeves

ADOPTION OF A [RESOLUTION](#) NOMINATING CANDIDATE(S) FOR BOARD OF DIRECTORS OF TOM GREEN COUNTY APPRAISAL DISTRICT (ANNEX E, PAGE 71, RESOLUTION #2011-09-109R)

City Clerk Alicia Ramirez presented background information.

Mayor Morrison suggested nominating the existing members: John Begnaud, John Conn, Russell DeVore, Louis Gomez, and Bob Reeves. Council concurred.

Motion, to adopt the Resolution, as presented, was made by Councilmember Vardeman and seconded by Councilmember Farmer. Motion carried unanimously.



TOM GREEN COUNTY APPRAISAL DISTRICT

2302 Pulliam • P.O. Box 3307 • San Angelo, TX 76902

Office 325-658-5575 • Fax 325-657-8197



October 19, 2015

COPY

Mayor Dwain Morrison
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903

Re: Election of Five Members To The Appraisal District Board of Directors For
The Two Year Term Beginning January 1, 2016.

Dear Mayor Morrison,

The governing bodies have concluded the nomination process and have provided me with a listing of their nominees to be placed on the election ballot. The following six individuals were nominated:

- (1) Begnaud, John
- (2) Conn, John
- (3) DeVore, Russell
- (4) Diaz, Mike
- (5) Gomez, Louis
- (6) Reeves, Bob

Chapter 6 of the Property Tax Code provides for the following procedures during the election process.

- (1) Prior to October 30, 2015, the chief appraiser will prepare and deliver a ballot to the presiding officer of each taxing unit that is entitled to vote.

The ballot for each taxing unit is attached hereto.

- (2) Prior to December 15, 2015, the governing body of each taxing unit shall determine its votes by resolution. The taxing unit may cast all its votes for

Election of Board of Directors – Page 2

one candidate or may distribute the votes among any number of the five candidates. There is no provision for write-in candidates. The board of directors is a five (5) member board.

- (3) Prior to December 15, 2015, the taxing unit shall deliver its completed resolution and ballot to the chief appraiser.
- (4) Prior to December 31, 2015, the chief appraiser shall count the votes, Declare the five (5) candidates who receive the largest vote totals elected and submit the results to the taxing units and the candidates.

The chief appraiser may not count votes cast for someone not listed on the official ballot.

- (5) The five newly elected board members will begin serving their two year term of office on January 1, 2016.

For your information and use, I have attached a schedule of the taxing units eligible to vote their voting entitlement and the ballot for your taxing entity.

Please notify us of any question you may have or of any way we may be of assistance to you.

Respectfully.



Bill H. Benson, Chief Appraiser
Tom Green County Appraisal District

BHB:tc
Encl.

BALLOT

FOR THE SELECTION OF MEMBERS

TO THE BOARD OF DIRECTORS

OF THE TOM GREEN COUNTY APPRAISAL DISTRICT

FOR THE 2016-2017 TERM

COPY

NAME OF THE TAXING UNIT: City of San Angelo

NUMBER OF VOTES TO WHICH THIS UNIT IS ENTITLED: 1,293

NOMINEE NAME:

NUMBER OF VOTES CAST

Begnaud, John (Incumbent).....	_____
Conn, John (Incumbent).....	_____
DeVore, Russell (Incumbent)	_____
Diaz, Mike.....	_____
Gomez, Louis (Incumbent).....	_____
Reeves, Bob (Incumbent).....	_____

TOTAL _____

DATE OF VOTING ACTION: _____

PRESIDING OFFICER SIGNATURE: _____

**TOM GREEN COUNTY APPRAISAL DISTRICT
ORIGINAL TAX LEVIES AND ELIGIBLE VOTES FOR BOARD ELECTION OF 2015**

	<u>ELIGIBLE TAXING UNIT NAME</u>	<u>2014 TOTAL TAX LEVY</u>	<u>2014 PERCENT OF LEVY</u>	<u>2015 ELIGIBLE VOTES</u>
1	Christoval I. S. D.	\$ 2,675,232.47	2.11%	105
2	City of San Angelo	\$ 32,841,960.19	25.86%	1,293
3	Grape Creek I. S. D.	\$ 2,989,789.76	2.35%	118
4	Miles I. S. D. (Tom Green Part)	\$ 417,891.01	0.33%	16
5	San Angelo I. S. D.	\$ 53,268,844.60	41.94%	2,097
6	Tom Green County	\$ 27,949,868.74	22.01%	1,101
7	Veribest I. S. D.	\$ 1,380,768.29	1.09%	55
8	Wall I. S. D.	\$ 3,979,327.99	3.13%	156
9	Water Valley I. S. D.(TGC Part)	\$ 1,503,603.33	1.18%	59
TOTAL TAX LEVY, LEVY PERCENT & ELIGIBLE VOTES		\$ 127,007,286.38	100.00%	5,000

MEMO:

The above is the calculation & schedule of the eligible votes for each taxing unit that is eligible to vote in the election of TGCAD Board of Directors for the two year term beginning on January 01, 2016 and ending on December 31, 2017.

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Walt Wilkinson, Budget Analyst Sr., Budget, 325-481-2757

Meeting Date: November 12, 2015

Item type: Regular Item

Caption:

Discussion and consideration of the possibility of issuing rebates of water fees - (Presentation by Budget Manager Morgan Chegwidden)

Summary/History:

As stated in the water fee ordinance, during the months of April and November of each year the City Council shall review the financial condition of the Water Operations Fund and determine whether a rebate to water customers is appropriate.

If a rebate is determined to be appropriate, such rebate shall be accomplished in May and December or as soon thereafter as practical. The amounts and methodology for providing the rebate shall be determined by the City Council.

Staff will present the estimated Water Operations Fund Balance as of March 31, 2015 in an effort to provide Council with the information necessary to form an opinion.

The Water Operations Fund estimated fund balance as of October 31, 2015 is (\$300,401). The goal for the Water Operations Fund is 75 days of expense budget, or \$4,794,089. Since the estimated fund balance is less than the goal, it would not be fiscally prudent to issue a rebate at this time.

The fund balance in this fund is not at a level where staff would recommend a rebate.

There have been two occasions when this fund balance exceeded 75 days expenditures and Council decided to use that excess. On one occasion the base fees were changed to zero for two months, and for the other occasion the excess was transferred to a capital projects fund to assist with capital improvements.

Financial Impact:

Could result in a reduction in fund balance – depending on the amount directed by City Council

Other Information/Recommendation:

Staff recommends no action at this time.

Attachments:

1. Water Rebate Powerpoint

FIN Water Rebate pres 11-12-15.pptx

Presentation:

Approvals/Reviews:

Wilkinson, Walt

Carriger, Tina

Dunn, Becky

Kendrick, Bryan

Created/Initiated

Approved

Approved

Final Approval

City Council

November 12, 2015

Water Rebate

The water rate ordinance states:

- Biannually (in April and November), the city council reviews the Water Fund's financial condition.
- The Council determines whether a rebate to water customers is appropriate.
- If action is taken, rebates shall occur in May and December or as soon thereafter as practical.
- The amounts and methodology for providing the rebate shall be determined by the city council.

Water Rebate

Since inception, Council has taken action twice:

1. Rebates granted – base fees were waived (changed to zero) for two months; and
2. Capital projects funding – excess fund balance was transferred to a capital projects fund to assist in paying for needed improvements.

Water Rebate

Water Fund

Estimated fund balance 10/31/15	(\$300,401)
------------------------------------	-------------

75 day goal fund balance	\$4,794,089
--------------------------	-------------

- Staff recommends no action at this time

City Council

November 12, 2015

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, Legal,

Meeting Date: November 12, 2015

Item type: Executive Session Item

Caption:

Section 551.071(1)(a) consult with attorney when the governmental body seeks the advice of its attorney about pending or contemplated litigation regarding:

1. 2013 Sealcoating Program Contract;
2. Martifer-Hirschfeld Energy Systems, LLC ET. AL. ; and
3. Templeton Construction, Inc.

Summary/History:

Financial Impact:

Other Information/Recommendation:

Attachments:

Presentation:

Approvals/Reviews:

Kendrick, Bryan
James, Theresa
Kendrick, Bryan

Created/Initiated
Approved
Final Approval

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, City Manager's Office,

Meeting Date: November 12, 2015

Item type: Executive Session Item

Caption:

Section 551.072 to deliberate the purchase, exchange, lease, or value of real property related to drainage

Summary/History:

Financial Impact:

Other Information/Recommendation:

Attachments:

Presentation:

Approvals/Reviews:

Kendrick, Bryan

Created/Initiated

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, Accounting,

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Consideration of and possible action on matters discussed in Executive/Closed Session, if needed

Summary/History:

Financial Impact:

Other Information/Recommendation:

Attachments:

Presentation:

Approvals/Reviews:

Kendrick, Bryan

Created/Initiated

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, Accounting,

Meeting Date: November 12, 2015

Item type: Consent Item

Caption:

Announcements and consideration of Future Agenda Items

Summary/History:

Financial Impact:

Other Information/Recommendation:

Attachments:

Presentation:

Approvals/Reviews:

Kendrick, Bryan

Created/Initiated