

HAYS COUNTY DEVELOPMENT SERVICES
FOOD ESTABLISHMENT REGULATIONS
IN ACCORDANCE WITH CHAPTER 437, TEXAS HEALTH AND SAFETY CODE

ORDER NO. _____

AN ORDER REGARDING THE REGULATION OF FOOD ESTABLISHMENTS
INCLUDING FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE
FOOD UNITS, TEMPORARY FOOD ESTABLISHMENTS, AND ROADSIDE FOOD
VENDORS

As provided by Chapter 437 of the Texas Health and Safety Code, counties and public health districts have the authority to enforce state law and rules concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

Therefore, it is ORDERED, that Hays County Commissioners Court adopts the following order:

Section 1. Enforcement of State Law and Rules and Definitions

Hays County adopts by reference the provisions of Chapter 437 applicable to counties/public health districts and the current rules or rules as amended by The Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228 regarding the regulation of food establishments in this jurisdiction.

A. Definitions

1. The term “food establishment” means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.
2. The word “suspension” means the temporary discontinuance of a permit issued under said sections for an indefinite period of time.
3. The word “revocation” means the termination of a permit issued under said sections for an indefinite period of time.
4. The term “temporary food establishment” means a food establishment operating for a temporary period in connection with a fair, carnival, circus, public exhibition, or other similar gathering. Non-profit fund raising events and related establishments which are opened for business no longer than three (3) days consecutively or for a period longer than ten (10) days in any calendar year are exempt from this definition.
5. The term “Health Official” means the authorized representative of the Hays County Development Services Department.
6. The term "regulatory authority" means the Hays County Development Services Department.
7. The term “area of jurisdiction” means the unincorporated areas of Hays County and the area within the corporate limits of a city with which Hays

County entered into an inter-local cooperation agreement for the inspection of food establishments within that City's incorporated limits.

8. The term "state laws and rules" means the state laws found in Chapter 437 of the Texas Health and Safety Code and the state rules found at 25 Texas Administrative Code Chapter 228.
9. The Term "Person in Charge" is the individual present at a food establishment who is responsible for the operation at the time of inspection. If no employee identifies him/herself as the person in charge then any employee can be considered the person in charge by the health official.
10. The term "alphabetical score" means the letter grade that is given to a food establishment after a routine inspection by the regulatory authority. The letter grade will be in direct correlation with the numeric score given on the inspection form. The scale will be as follows: Zero-ten (0-10) = "A", eleven to twenty (11-20) = "B", twenty-one to thirty (21-30) = "C", thirty-one to one hundred (31-100) = "F" (Failed).

Section 2. Permits and Exemptions

A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferrable from one person to another or from one location to another location, except as otherwise permitted by this order. A valid permit must be posted in or on every food establishment regulated by this order. Permitted food establishments are also required to post an alphabetical score that will be issued by the regulatory authority after each inspection. This alphabetical score must be displayed near the entrance of the establishment, or at the service window of a mobile unit, so that it can be easily viewed by the public.

A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this order, but is not exempt from compliance with state laws and rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

A bed and breakfast establishment with seven or fewer rooms for rent that serves only breakfast to its overnight guests is not a food establishment for purposes of this order. Any other bed and breakfast is a food establishment and shall follow the applicable state rules and must obtain a permit under this order.

Section 3. Application for Permit and Fees

Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application for the proposed food establishment must contain the proper Hays County Food Establishment Application, a menu, a valid Food Manager Certificate from an accredited program, a floor plan of the establishment, a valid Driver's License/Identification Card from the proposed owner/proprietor, and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit.

Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules may be denied a permit or the renewal of a permit.

The following fee schedule applies to permits issued under this order: Based on the number of employees **1-5 = \$100, 6-19 = \$200 & 20 and above = \$300. Plan review fee = one half the permit fee. Re-inspection fee = \$50.**

Section 4. Review of Plans

Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work is begun. Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities (The plans and specifications will be approved by the regulatory authority if they meet the requirements of state law and rules. The approved plans and specifications must be followed in construction, remodeling or conversion. Failure to follow approved plans and specifications, when required, will result in a permit denial, suspension, or revocation.

Section 5. Inspections

- A. **Frequency.** A food establishment permitted under these rules shall be inspected at least once every six (6) months or in response to a formal complaint made to the Regulatory Authority. The owner/proprietor of a food establishment may request a re-inspection from the regulatory authority in an attempt to raise their score from the previous inspection.
- B. **Access.** Health Officials, after proper identification, shall be permitted access to all parts of the establishment for the purpose of making inspections to determine compliance with these rules. The Health Officials shall be permitted to examine records to obtain information pertaining to food and supplies purchased, received or used, or to persons employed.
- C. **Report of inspections.** The Texas Department of State Health Services "Texas Food Establishment Rules" reports the inspection score by using a demerit system, with zero demerits denoting no critical violations. Whenever an inspection of a food service establishment is made, the findings shall be recorded on the inspection report form. The inspection report form shall summarize the requirements of these rules and shall set forth a weighted point value for each requirement. Any violations observed during the inspection will be documented with both the violation observed and any corrective actions that are required to remedy the deviation from the rules. A

copy of the Texas Food Establishment Rules will be on hand with the inspector and available for the responsible party to view should there be a dispute over any violation. A copy of the inspection report form shall be furnished to the person in charge of the food service establishment at the conclusion of the inspection. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

D. Correction of Violations. The inspection report form shall specify a reasonable time period for the correction of the violations found. Correction of the violations shall be accomplished within the period specified, in accordance with the following provisions;

1. If an imminent health hazard exists, such as, but not limited to, complete lack of refrigeration or sewage backup, the food service establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the Health Official.
2. All violations of two (2) and three (3) point weighted items shall be corrected as soon as possible, no later than ten (10) days following the inspection. All violations of one (1) point weighted items shall be corrected as soon as possible, no later than ninety (90) days following the inspection. The holder of the permit may be required to submit a written report stating that the violations have been corrected and a follow up inspection may be conducted to confirm correction.
3. When any food service establishment rating score exceeds thirty (30) demerits, corrective action on all identified violations shall be initiated within forty-eight (48) hours. One or more re-inspections will be conducted at reasonable time intervals to assure correction.
4. If a public health hazard exists, or is imminent, food service shall cease immediately.
5. The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of operations.

Section 6. Enforcement of Order

The regulatory authority may, after giving notice and providing an opportunity for hearing, deny, suspend, or revoke a permit for any violation of this order, the state law, or the state rules.

- A. **Suspension of permit.** The regulatory authority shall suspend a permit based on an imminent health hazard, repeated critical violations, and any other serious violation of State law which the regulatory authority is responsible to enforce.
- B. **Revocation of permit.** The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of these rules. Upon revocation of a permit, operations of the food establishment shall cease immediately. Prior to revocation, the regulatory authority shall notify the permit holder in writing of the reason for the proposed revocation and that the permit shall

be revoked at the end of twenty (20) days following service of such notice unless a written request for a hearing is filed with the regulatory authority.

- C. **Service of Notice.** A notice provided under these rules is properly served when it is delivered to the permit holder, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.
- D. **Hearings.** If a hearing is requested within the twenty (20) day period, the hearing shall be conducted by a hearing officer appointed by the regulatory authority (or some other body, such as the commissioner's court). The hearing officer shall appoint a time, day, and location for the hearing. Both the regulatory authority and the permit holder or applicant shall have the right to present witnesses and evidence in the hearing. Based on the evidence presented at the hearing, the hearing officer shall make a final written decision in the matter and shall notify the regulatory authority and the permit holder or applicant.
- E. **Penalties.** Any permit holder, responsible officer of the permit holder, person in charge, or other person guilty of violating any provision of this chapter may be punished in accordance with state law.
 - 1. A violation of any provision herein shall be classified as a Class C misdemeanor.
 - 2. Each day a violation occurs constitutes a separate offense.
 - 3. Administrative penalties may be assessed pursuant to Texas Health and Safety Code Secs. 437.0185-185.0186
 - a. An administrative penalty assessed under these rules shall not exceed \$500.00 per day.
 - b. The amount of the penalty is to be based on criteria such as history of previous violations, seriousness of the violation, hazard to health and safety of the public, demonstrated good faith efforts to correct, amounts necessary to deter future violations, and any other matter that justice may require.
 - c. Five levels of penalties for food establishments will be imposed.
 - d. The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court. A person who cannot afford to pay the penalty may stay the enforcement by filing an affidavit in the manner required by Texas Rules of Civil Procedure for a party who cannot afford to file security for costs.
 - e. Not later than the 20th day after the date of the notice of the penalty, a permit holder may accept in writing the determination and pay the recommended penalty or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

Section 7. Severability

If any section, subsection, sentence, clause, phrase, or portion of this order is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this order.

Section 8. Effective Date

The provisions of this order shall take effect on: January 19, 2016

INTRODUCED, READ AND PASSED BY AN AFFIRMATIVE VOTE BY THE
COMMISSIONERS COURT OF HAYS COUNTY ON THIS _____ DAY
OF _____, _____.

Albert "Bert" Cobb, Hays County Judge

Debbie Gonzales Ingalsbe, Commissioner, Pct. 1

Mark Jones, Commissioner, Pct. 2

Will Conley, Commissioner, Pct. 3

Ray Whisenant, Commissioner, Pct. 4

Attest:

Liz Gonzalez, County Clerk