

# HAYS COUNTY DEVELOPMENT SERVICES FOOD ESTABLISHMENT REGULATIONS

## AN ORDER ADOPTING THE REGULATION OF FOOD ESTABLISHMENTS INCLUDING FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, TEMPORARY FOOD ESTABLISHMENTS, FARMER’S MARKETS, 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, temporary food establishments, farmer’s markets, 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 Title 25 of the Texas Administrative Code, Chapter 228, and Chapter 229 regarding the regulation of food establishments in this jurisdiction.

#### Definitions

1. The term “Health Official” means the authorized representative of the Hays County Development Services Department.
2. The term "Regulatory Authority" means the Hays County Development Services Department.
3. 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.
4. 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 in Title 25 of the Texas Administrative Code Chapter 228 and Chapter 229.
5. 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.
6. The term “Nonprofit Organization(s)” means civic or fraternal organizations, charity, lodge, association, proprietorship, or corporation possessing a 501 (c) 3 exemption under the Internal Revenue Code, or religious organizations meeting the standard of the Internal Revenue Code, Section 170 (b)(1)(A)(i).
7. The term “Extensive Remodeling” means addition or change to physical structure including but not limited to: work involving demolition to walls, ceiling, or floors on the premises, major equipment addition or addition of equipment due to menu change.
8. The term “Change in Food Operations” means Change in food operations including but not limited to change from the previously permitted operation in type of food establishment, type of food operation, occupancy type, structure, plumbing equipment or floor plan in terms of extensive remodeling.
9. The term “Extensive Food Preparation” means activities including but not limited to thawing of food, reheating of potentially hazardous foods, cutting ingredients needed for cooking or assembly for onsite preparation.
10. The term “Yard Egg Producer” means an egg producer that sells only ungraded eggs from their own flock directly to consumers. Such producer may be exempt from licensing by the Texas Department of Agriculture (TDA) but must be permitted by the retail food authority.

### Section 2. Permits and Exemptions

A person may not operate a food establishment without a permit issued by the regulatory authority. Permits may be

transferrable from one owner to another. Permits are non-transferable 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. All permits must be posted in a conspicuous location and easily visible to the public. The most recent inspection report must be displayed near the entrance of the establishment, or at the service window of a mobile food 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 a nonprofit organization for purposes of this exemption.

A yard egg producer that sells yard eggs at a Farmer's Market would be operating a food establishment and would need to obtain a permit, according to the FDA Food Code. Vendors must label the stock carton with the word "ungraded", producer's name, address, and safe handling instructions. Eggs are a temperature control for safety (TCS) food and must be held and transported at a temperature of 45° Fahrenheit or less. A Yard Egg Producer Permit is non-transferable. A valid permit must be posted in or on every food establishment regulated by this order.

### Section 3. Application for Permit and Fees

Any person desiring to operate a food establishment must submit an application, supporting documents and the associated fee to the regulatory authority. 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.

All Food Establishment Permits expire on December 31<sup>st</sup> of every calendar year. Renewals of permits are required on an annual basis by submitting an application with supplemental documents provided to the regulatory authority.

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

### 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. The plans and specifications shall include but not be limited to, the proposed layout, equipment arrangement, mechanical plans, plumbing 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

1. **Frequency.** A food establishment permitted under these rules shall be inspected at a frequency determined by the regulatory authority 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. Re-inspections will be at the discretion of the regulatory authority and will be an unscheduled inspection.
2. **Access.** The 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 conduct inspections and allowed access to records specified in the code and to which the regulatory authority is entitled according to law during hours of operation and other reasonable times. Access shall be permitted in accordance with the Food and Drug Administration Food Code 2017, Section 8-402.11.

3. **Report of inspection.** Whenever an inspection of a food establishment is made, the findings shall be recorded on the inspection report form. The inspection report form shall summarize the requirements of these rules. Any violations observed during the inspection will be documented with both the violation observed and any corrective actions that are required to remedy the violation. 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 shall be furnished to the Food Establishment. 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.
4. **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.
  - a. If a public health hazard exists or is imminent, such as, but not limited to, lack of adequate refrigeration for daily operations, extended interruption of water service, or sewage backup, the food service establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the Health Official. Food establishments must contact the regulatory authority if hot water is not available.
  - b. All priority violations shall be corrected no later than three (3) days following the inspection, all priority foundation violations shall be corrected no later than ten (10) days following the inspection, all core violations shall be corrected no later than ninety (90) days following the inspection, or unless specifically stated otherwise by the regulatory authority. 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.
  - c. When any food service establishment rating score exceeds thirty (30) percent, 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.

#### 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. For notice, hearing, and penalties, reference procedures in the Food and Drug Administration Food Code 2017, Annex 1, Part 5, Subpart 8-9.

#### 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: June 1, 2023

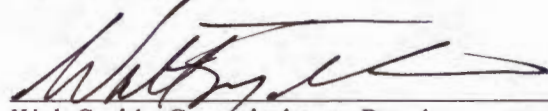
INTRODUCED, READ, AND PASSED BY AN AFFIRMATIVE VOTE BY THE COMMISSIONERS COURT OF HAYS COUNTY ON THIS 23<sup>rd</sup> DAY OF May, 2023.

  
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Ruben Becerra, Hays County Judge

  
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Debbie Ingalsbe, Commissioner, Pct. 1

  
\_\_\_\_\_  
Michelle Cohen, Commissioner, Pct. 2

  
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Lon Shell, Commissioner, Pct. 3

  
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Walt Smith, Commissioner, Pct. 4

Attest:

  
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Elaine Cardenas, Hays County Clerk

