

**ORDER OF COMMISSIONERS COURT ESTABLISHING
AMENDED RULES FOR THE REGULATION OF FOOD
ESTABLISHMENTS IN FORT BEND COUNTY, TEXAS**

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

On this the _____ day of _____, 2006, the Commissioners Court of Fort Bend County, Texas, sitting as the governing body of Fort Bend County, upon motion of Commissioner _____, seconded by _____, duly put and carried:

WHEREAS, the term “food establishment” includes a food service establishment, a retail food store, a mobile food establishment, and/or a roadside food vendor;

WHEREAS, the Texas Health & Safety Code Chapter 437, as amended, provides that Fort Bend County Commissioners Court may enforce state laws and rules adopted under state laws concerning food service establishments, retail food stores, mobile food establishments, and roadside food vendors and may require food establishments in unincorporated areas of Fort Bend County, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from Fort Bend County and may adopt an order requiring such only after conducting a public hearing on the proposed order following at least two weeks’ public notice of a public hearing to be held, said notice required to be published in a newspaper of general circulation in Fort Bend County on three consecutive days, printed in 10 point bold-faced type; and

WHEREAS, Tex. Health & Safety Code Chapter 437 provides that the Commissioners Court of Fort Bend County may do the following: require the annual renewal of a permit; enter the premises of food establishments to conduct inspections to determine compliance with state laws and rules adopted thereunder, and orders adopted by Fort Bend County; require the submission of plans and subsequent inspection and reinspections; require fees for issuing or renewing a permit; and adopt procedures for the denying, suspending, or revoking a permit; and

WHEREAS, 25 Tex. Admin. Code § 229.169(a)(1) provides that Fort Bend County may impose additional requirements on food establishments to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and, when no health hazard will result, may waive or modify requirements pertaining to physical facilities, with exceptions; and

WHEREAS, pursuant to Tex. Health & Safety Code § 437.005, due notice was given of a meeting and public hearing to determine whether the Commissioners Court of

Fort Bend County, Texas, should enter an Order establishing rules for the regulation of food establishments in Fort Bend County, Texas; and

WHEREAS, said meeting and public hearing were held in accordance with the notice thereof, and the evidence and arguments there presented were considered by the Commissioners Court of Fort Bend County, Texas; and

WHEREAS, it appears to the Commissioners Court of Fort Bend County, Texas that the enforcement of state laws and rules, the adoption of rules pertaining to permits, and the imposition of additional requirements pertaining to mobile food establishments would promote the general welfare of the people of Fort Bend County; and

WHEREAS, the Commissioners Court of Fort Bend County, Texas, has considered the matter and deems it appropriate to adopt rules pertaining to obtaining a permit to operate a food establishment and to impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation and to protect against health hazards related to the conduct of a temporary food service establishment.

WHEREAS, the Fort Bend County Commissioners Court intends for the rules adopted by this Order to supersede, and thereby replace, all previous Rules of Food Service Sanitation for Fort Bend County and any amendments thereto.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED, DECREED, RESOLVED, FOUND AND DETERMINED BY THE COMMISSIONERS COURT OF FORT BEND COUNTY, TEXAS SITTING AS THE GOVERNING BODY OF FORT BEND COUNTY, TEXAS:

That the enforcement of state laws and rules, adoption of rules pertaining to obtaining a permit, and imposition of additional requirements for mobile food establishments will promote the general welfare of the people of Fort Bend County and protect them against health hazards;

That the Commissioners Court of Fort Bend County hereby resolves to enforce compliance with Tex. Health & Safety Code Ann. Chapter 437, as amended, and state rules found 25 Tex. Admin. Code Chapter 229, Sections 161-171 and 173-175, as amended:

That the Commissioners Court of Fort Bend County hereby adopts rules specific to Fort Bend County relating to obtaining permits and imposing additional requirements pertaining to mobile food establishments, which rules entitled "Rules for Regulating Food Establishments in Fort Bend County, Texas, " are attached hereto for all purposes and incorporated herein. Officials of Fort Bend County having duties under said Rules and are authorized to perform such duties as required of them.

This Order is hereby adopted and approved by the Commissioners Court of Fort Bend County, Texas, this the _____ day of _____, 2006, and shall take effect on the 1st day of January, 2007. Upon such effective date, the Rules adopted by this Order shall supersede and replace all previous Rules for Food Service Sanitation for Fort Bend County, and amendments thereto.

AMENDED RULES REGULATING FOOD ESTABLISHMENTS IN FORT BEND COUNTY, TEXAS

PREFACE

Fort Bend County has the authority to enforce state laws and rules concerning food service establishments, retail food stores, mobile food establishments, and roadside food vendors and hereby exercises its authority to enforce the provisions of Chapter 437 to the Tex. Health & Safety Code, as amended, applicable to counties and the current rules or rules as amended by the Texas Board of Health found in 25 Tex. Admin. Code Chapter 229, Sections 161-171, 173-175, as amended.

The following shall be regulated and enforced in accordance with the Tex. Health & Safety Code Chapter 437, as amended: the issuance, denial, suspension and revocation of permits to operate a food service establishment, retail food store, mobile food establishment, and/or a roadside vendor; submission of plans, authority to inspect and reinspect; and fees for issuing and renewing a permit.

The following shall be regulated and enforced in accordance with 25 Tex. Admin. Code Chapter 229, Sections 161-171, 173-175, as amended: the definitions, and the inspection of food service establishments, retail food stores, mobile food establishments, and roadside vendors.

Additionally, Fort Bend County imposes additional requirements applicable to the conduct of a food service establishment as a mobile operation in accordance with 25 Tex. Admin. Code 229.169(a)(1), as amended.

Herein, the term “authorized agent or employee or agent” means the employees of the Regulatory Authority; the term “food establishment” includes a food service establishment, a retail food store, a mobile food unit, a roadside food vendor or a pushcart; the term “temporary food establishment” means a food establishment that operates for a period of fifteen (15) consecutive days or less in conjunction with a single event, celebration, or at an establishment permitted by the Regulatory Authority; the term “state laws and rules” means the state laws found in the Tex. Health & Safety Code Chapter 437, as amended, and the state rules found at 25 Tex. Admin. Code §§ 161-171, 173-175, as amended, and the term “Regulatory Authority” means the Fort Bend County Environmental Health Department.

If any section, subsection, clause, phrase, or portion of these Rules 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 these Rules.

The purpose of these Rules is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented by establishing uniform monitoring for food service and retail food operation.

The provisions of these Rules shall be enforced by the Director of the Regulatory Authority (the “Director”) or his authorized representative. It shall be a violation of these Rules for any person in a food establishment to deny access to the Director or his authorized representative in the performance of his duties.

Any suit brought against an officer or employee of Fort Bend County Environmental, because of some act performed by him in the enforcement of any provisions of these Rules, shall be defended by the Fort Bend County Attorney or designated legal counsel of Fort Bend County until final termination of the proceedings.

I. PERMITS

- A. No person shall operate a food establishment without a permit issued by the Regulatory Authority. Only a person who complies with the requirements of state laws and rules and these Rules shall be entitled to such permit.
- B. A valid permit must be posted at all times in an area in the food establishment that is clearly conspicuous to the public upon entry of the food establishment. The Regulatory Authority reserves the right to designate an appropriate place for posting the permit.
- C. A food establishment operated solely by a nonprofit organization is exempt from the permitting fee requirements of these Rules, but is not exempt from compliance with state laws and rules and these Rules. An organization claiming exemption from these Rules as a nonprofit organization shall provide adequate documentation of such status to the Regulatory Authority.
- D. Permits issued under the provisions of this article are not transferable from one person to another person, from one entity to another entity, or from one location to another location.
- E. Permits for food establishments, excluding mobile food establishments, are valid for one year from the date of issuance.
- F. Permits for mobile food establishments are valid from January 1 through December 31 of each year.

II. ISSUANCE OF PERMIT

- A. Any person wishing to obtain a permit for a food establishment shall submit the following: a written application, a description of operations, a risk assessment, a menu for the establishment, scale drawings if applicable, and all applicable fees. The Regulatory Authority will provide all necessary forms upon request. 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.
- B. Renewals of permits are required on an annual basis and updated information is required for a renewal permit as for an initial permit.
- C. A person wishing to obtain a permit for a temporary food establishment shall submit the applicable application. An application for a temporary food establishment permit must be submitted a minimum of three (3) days in advance of the event. If the temporary food establishment fails to make application within the specified period, the Regulatory Authority may consider late applications upon payment of an additional late fee. Temporary permits will be issued for each seventy-two (72) hours maximum interval.
- D. Prior to the issuance 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 and these Rules. A food establishment that does not comply with state laws and rules and these Rules may be denied a permit or the renewal of a permit.
- E. The Regulatory Authority shall issue a permit to the applicant if all required documentation has been submitted and the Regulatory Authority's inspection reveals that such food establishment complies with requirements of state laws and rules and these Rules.
- F. There shall be no refunds or credits of fees.

III. REVIEW OF PLANS

- A. When a food establishment is initially constructed, remodeled, or when an existing structure is converted to use as a food establishment, the food establishment shall submit one (1) set of scaled plans, blueprints, or contractors' drawings to the Regulatory Authority for review and approval.
- B. The submitted plans shall indicate the proposed food equipment layout, mechanical and plumbing plans, the type and model of proposed fixed equipment, and the finish schedule materials for such construction, remodeling or conversion.

- C. The Regulatory Authority shall approve the submitted plans if the plans and specifications meet the requirements of state laws and rules and any additional requirements imposed by the Regulatory Authority. Such review and approval of plans and specifications shall be made in coordination with the review and approval of any related matters submitted to the Regulatory Authority.
- D. Once the Regulatory Authority has approved the submitted plans, the food establishment may begin construction, remodeling, or conversion.
- E. The approved plans and specifications must be followed when performing construction, remodeling or conversion. Failure to construct, remodel, or convert the food establishment in accordance with the approved plans may result in the denial or revocation of a permit.
- F. When a food establishment is constructed, remodeled, or an existing establishment is converted to a food establishment, a minimum of two (2) pre-opening inspections shall be performed by the Regulatory Authority to insure compliance with the approved submitted plans, state laws and rules, and orders adopted by the County. No permit shall be issued until the Regulatory Authority determines by inspection that all construction, remodeling, or conversion has been performed in accordance with the approved plans.

IV. RISK ASSESSMENT & INSPECTIONS

- A. The Regulatory Authority shall conduct a risk assessment for each food establishment that applies for or seeks renewal of a permit. The Regulatory Authority will determine the food service rating according to the "Fort Bend County Environmental Health's Establishment Risk Assessment" form. The minimum number of routine inspections a food establishment receives each year is determined by the results of the risk assessment as follows:
 - 1. **High Risk.** Food establishments will be rated high risk if the establishments are at a higher risk for possible food-borne illness outbreaks. These include food establishments that serve large amounts and volumes of potentially hazardous foods (PHF) especially PHF that require extensive amounts of handling or PHF that are prepared in bulk. High risk food establishments will receive a minimum of four (4) routine inspections per year.
 - 2. **Medium Risk.** Food establishments will be rated medium risk if the food establishments serve PHF that require minimal handling or prepares them in individual portions. Medium risk food establishments will receive a minimum of three (3) routine inspections per year.
 - 3. **Low Risk.** Food establishments will be rated low risk if the establishments serve small amounts of PHF and/or pre-packaged individually wrapped food. Low risk

- food establishments will receive a minimum of two (2) routine inspections per year.
- B. The Regulatory Authority shall be granted entry to the premises of a food establishment, or temporary food establishment under the jurisdiction of the Regulatory Authority at any reasonable time to conduct inspections to determine compliance with state laws and rules and these Rules. The Regulatory Authority shall be permitted to examine the records of the food establishment to obtain information pertaining to food and supplies purchased, received, and used, or to persons employed.
 - C. Whenever an inspection of a food establishment is made, the findings and observations shall be recorded on an inspection report form. The inspection report form shall summarize the violations and shall set forth a weighted point and demerit value for each classification of violation. The rating score of the food establishment shall be the total of the weighted point demerit values for all violations, subtracted from 100. A copy of the inspection report form shall be furnished to and signed by the person in charge, any employee or agent of the food establishment at the conclusion of the inspection.
 - D. The most recent Regulatory Authority's inspection form must be posted at all times in an area in the food establishment that is clearly visible to the public upon entry of the food establishment. The Regulatory Authority reserves the right to designate an appropriate place for posting the inspection form to ensure adequate visibility and notice to the public. Temporary food establishments shall not be subject to the requirement of posting the inspection form.
 - E. The food establishment inspection report form shall specify a reasonable period of time for the correction of any violations found. Failure to correct the specified violations may result in the suspension or revocation of a permit as provided in Section VII. Additional fees may be assessed for re-inspections to determine if violations have been corrected.
 - F. The Regulatory Authority shall require mandatory food safety training classes if a food establishment's inspections indicate a lack of knowledge of basic food safety principles.

V.

ADDITIONAL REQUIREMENTS FOR FOOD ESTABLISHMENTS

- A. All food establishments issued a permit and utilizing an On Site Sewage Facility requiring secondary treatment of the effluent shall be checked and maintained monthly by a contracted maintenance provider. A chlorine residual or fecal coliform test shall be made at each site visit where disinfection is required. One BOD₅ and TSS Grab Sample test shall be conducted per year. The minimum acceptable test results shall be those outlined by the applicable State rules. All test results and

maintenance reports shall be sent to the Regulatory Authority within 14 days after the test is performed.

- B. When a visual and audible alarm is required for an on site sewage facility servicing a food establishment, an additional visual and audible alarm shall be located or installed inside the facility, in an area conspicuous to view by employees.
- C. At least one floor mounted curbed cleaning facility (mop sink) shall be provided and used for the cleaning of mops, disposal of cleaning chemicals and the storage of cleaning equipment. The mop sink shall not be installed in a manner that could allow for cross contamination.
- D. A mechanical fan properly vented to the exterior of the food establishment shall be installed above mop sinks and where chemicals, toxic items and cleaning agents will be stored.
- E. There shall be at least one (1) food preparation sink, separated from utensil and hand wash sinks for the washing and preparation of fruits, vegetables, meats and other raw food products.
- F. Grease traps, interceptors or sample wells shall be exterior to the establishment.
- G. Water used for human consumption or that services the food establishment shall be from an approved public water source.
- H. Food establishments utilizing individual water wells as a water source shall maintain a daily chlorine reading log.
- I. All pest control shall be conducted by a licensed commercial pest control company.
- J. Restrooms shall not open directly into dining, food preparation, or food storage areas.
- K. At least 50 ft candles of shielded or shatterproof lighting shall be provided above food preparation, dishwashing and utensil handling areas. At least 30 ft candles of shielded or shatterproof lighting shall be provided in walk-in freezers, coolers, restrooms and under venting hoods.

VI.

ADDITIONAL REQUIREMENTS FOR MOBILE FOOD ESTABLISHMENTS

- A. In addition to the requirements set forth in Section II.A., mobile food establishments shall submit documentation evidencing the make, model, license plate number and existence of proof of vehicle liability insurance of each vehicle.
- B. All motor vehicles operating as mobile food establishments upon open roads, streets, and highways, shall maintain a current Texas motor vehicle inspection sticker, a

current Texas motor vehicle license plate registration sticker, and proof of vehicle liability insurance.

- C. All mobile food establishments shall be readily identifiable by business name and telephone number, printed in bold letters not less than two (2) inches in height, not less than one and a half (1 ½) inches in width, permanently affixed, and prominently displayed on the driver side, passenger side, and the rear of the vehicle.
- D. All mobile food establishments' potable water systems must be subject to an annual bacteriological test.
- E. When a mobile food establishment parks at one fixed location and toilet facilities are not provided on the mobile food establishment, a toilet facility shall be available within 200 ft. of the unit.
- F. Consumer seating shall not be provided at mobile food establishments.
- G. Mobile food establishments shall be capable of mobility at all times and shall not remove tires or axles. All connections of electrical, water and sewer shall have quick disconnects and shall not have permanent connections.
- H. For the purpose of these rules, an ice cream truck is a mobile food establishment. The following additional requirements are imposed on ice cream trucks:
 - 1. The ice cream truck shall have displayed warning signs that state **“CAUTION CHILDREN”** that are visible from the front and the rear of the unit. The letters shall be at least six (6) inches in height, and at least three (3) inches in width, with bold black lettering on a yellow background, placed at the top, center portion of the truck, in front of, but not obstructing the view of any flashing lights.
 - 2. The mobile food establishment, while in operation, shall have flashing yellow lights that are clearly visible from the front of the unit and flashing red lights clearly visible from the rear of the unit. These lights shall be placed on both sides of the **“CAUTION CHILDREN”** sign.

VII.

PROCEDURES FOR DENYING, SUSPENDING, OR REVOKING A PERMIT

- A. In addition to other available remedies, the Regulatory Authority may refuse to issue a permit or may suspend or revoke a permit if the food establishment is not in compliance with state laws and rule, or these Rules, or the operation of the establishment otherwise constitutes a substantial hazard to public health.
- B. The Regulatory Authority shall suspend the license of a food establishment or order the immediate closing of the food establishment if the Regulatory Authority finds that the food establishment is operating in violation of state laws and rule and these

Rules, and the violation creates an immediate threat to the health and safety of the public. An order suspending a license or closing a food establishment under this section is effective immediately upon receipt of notice by the food establishment. An order suspending a license or ordering the immediate closing of a food establishment under this section is valid for ten (10) days after the effective date of the order.

- C. Excepted as provided in Section VII.B., a permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing.
- D. A notice provided for in these Rules is properly served when it is delivered to the holder of the permit or person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice must be filed in the records of the Regulatory Authority.
- E. The food establishment has three (3) working days within which to request a hearing following receipt of notice of the Regulatory Authority's intent to deny, suspend, or revoke a permit. The request must be in writing and delivered to the Fort Bend County Environmental Health Department. A hearing must be held within seven (7) working days of the request. If no request for a hearing is made within the time limits provided, the denial, suspension, or revocation will be final.
- F. The hearing provided for in Section VII.D. shall be conducted by the Regulatory Authority. Based upon the recorded evidence of such hearing, the Regulatory Authority shall make a final finding. The Regulatory Authority shall furnish a written report of the hearing decision to the food establishment.
- G. Whenever a permit is suspended or revoked, written notice shall be given to the food establishment. The Regulatory Authority shall physically remove the permit from the food establishment. Prior to suspension or revocation, the Regulatory Authority shall notify the food establishment in writing of the reason for which the permit has been suspended or revoked.

VIII. APPLICATION AFTER REVOCATION

Whenever a revocation of a permit has become final, the food establishment shall make written application for a new permit, and, if necessary, the establishment may be required to submit plans and have a pre-opening inspection. Operations shall not be resumed until authorized by the Department. One or more re-inspections will be conducted at reasonable time intervals to ensure compliance or corrections.

IX. CRIMINAL PENALTY

- A. A person in Fort Bend County commits an offense if the person operates a food establishment without a permit from the Regulatory Authority.
- B. An offense under this Section is a Class C Misdemeanor.
- C. Each day on which a violation occurs constitutes a separate offense.

**X.
INJUNCTION**

The County Attorney may sue in district court to enjoin a food establishment from operating without a permit if a permit is required.

**XI.
FEES**

- A. Fee Schedules:

Annual Food Establishment Permit	0 to 1000 SQ FT: \$200 Over 1000 SQ.FT \$300
Re-Inspections	\$150
Day Care Facilities & Schools	\$150
Requested Facility Inspection	\$150
Temporary Food Establishment <u>PROFIT (Permit Fee)</u>	
1 st 72 hours	\$40 (each)
Additional consecutive 72 hr terms	\$20 (each)
Late Fee	\$10
Temporary Food Establishment <u>NON PROFIT</u>	Exempt
Food Handlers Course	\$20 per student
Chemical Test Strips	\$5
Heimlich Maneuver Poster	\$10
Variance Request	\$100

XII.
SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or provision of these Rules shall for any reason be held to be invalid or unconstitutional, as applied to a particular application or part of an application, by decree or decision of a court of competent jurisdiction, such decree or decision shall be limited to the particular application or part of an application and the general applicability of these Rules to other applications or part of applications shall not be affected.

XIII.
EFFECTIVE DATE

The effective date of this ordinance shall be January 1, 2007.

Honorable Robert E. Hebert, County Judge
Fort Bend County, Texas

ATTEST:

Honorable Dianne Wilson, Ph.D., County Clerk
Fort Bend County, Texas

Signatures on file with the County Clerk's Office