

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 by the Madison County Commissioners Court to adopt the following order:

Section 1. Enforcement of State Law and Rules and Definitions

Madison County adopts by reference the provisions of Chapter 437 applicable to the current rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction.

Section 2. Definitions

The words “authorized agent” mean the employees appointed by the regulatory authority, including County Food Establishment Inspector also referred to as County Health Inspector.

The words “food establishment” mean a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor. In addition, a food establishment includes an establishment that contains more than 100 square feet of display space of commercially prepackaged non-potentially hazardous food products; or childcare centers that care for 13 or more children and which prepare food for consumption by the children other than ready to eat snacks and drinks.

The word “DSHS” means Texas Department of State Health Services.

The words “frozen food” shall mean food kept in a solid frozen state in cooling equipment that maintains an air temperature of zero degree Fahrenheit or below, except for defrost cycles and brief periods of loading or unloading from the cooling equipment when the air food temperature shall not exceed 41 degrees Fahrenheit.

The words “Non-profit Organization” shall mean an organization with a 501(c)(3) exemption or an exemption as a "church" in section 170(b)(1)(A)(I) of the Internal Revenue Code.

The words “Regulatory Authority” mean the Madison County Judge

The words “state laws and rules” mean 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 229, Sections 161 through 171 and Sections 173 through 175.

The words “hearing officer” appointed by the regulatory authority means the Justice of the Peace of the Precinct in which the Food Establishment is located.

Section 3. Permits and Exemptions

A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this order. A valid permit must be posted in or on every food establishment regulated by this order.

A food establishment operated solely by a nonprofit organization is 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 4. Application for Permit, Fees, and Permit Renewals

Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority to the Authorized Agent. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority through its Authorized Agent, 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. A permit cannot be issued or renewed if the food establishment has critical violations, imminent health hazards, or previously identified violations not corrected. A permit will not be issued, renewed or reissued if required permit fees have not been paid or if any late or delinquency fees have not been paid.

Before issuing a permit, the Regulatory Authority may require an applicant to provide plans of the food establishment prior to construction, extensive remodeling or conversion of an existing structure. The plans must indicate the proposed layout, equipment arrangement, mechanical

plans, construction of materials of work areas, and the type and model of proposed fixed equipment and facilities.

The following fee schedule applies to permits issued under this order:

Permit Fee:

The Permit Fees are based upon the Gross Annual Sales of the Establishments:

\$0.00 - \$49,999 =	\$150.00 per year
\$50,000 – \$149,000=	\$260.00 per year
\$150,000 – or more=	\$370.00 per year

Temporary Permit Fee:

Temporary Permit is \$52.00 per event

School Inspection Fee:

\$300.00 per school (covers two inspections per year)

Fines:

The fine is \$600.00 for closing of the establishment due to violations

The fine is \$350.00 for 3 or more infractions not corrected within the allotted time given by the authorized agent.

Renewals of permits are required on an annual basis, except for temporary establishments. It is the responsibility of the applicant, owner, permit holder or person in charge of each food establishment to renew the permit before the expiration date of the permit. The renewal must include any information that has changed from that provided on the original application. Any owner, permit holder or person in charge may be required to cease operations or temporarily close, if found operating without a valid permit.

Section 5. Restrictions, Not Proper Facilities

Food service establishments that do not have facilities for the proper cleaning and sanitizing of utensils and food equipment shall not be allowed to prepare, package or dispense any type of unpackaged food (other than raw and uncut fruits and vegetables) or potentially hazardous food or beverages.

Section 6. Food Transportation

All food transported or delivered from a food establishment to another place shall be protected from contamination by the use of packaging or covered containers with lids except for raw, uncut

fruits and vegetables. All food and food equipment being transported shall meet the applicable requirements of the food establishment rules relating to food protection, food storage, and food temperatures. Food and food equipment may not be transported exposed or open to the elements. The compartment or area inside the vehicle that the food and food equipment is being transported in shall be kept clean, free of accumulation of dust, dirt, food particles, and any other debris. All surfaces of the compartment are to be smooth, durable, non-porous, and easily cleanable. Articles not associated with the food and food equipment being transported are not to be stored in the same compartment containing the food and food equipment.

Section 7. Customer Restroom Facilities

Restroom facilities, if provided for customers, or required to be provided by law, must meet all of the provisions of the food establishment rules for restroom, toilet and hand-wash facilities. Customers may not enter food preparation, food storage, ware washing, and security sensitive areas of the food establishment to gain access to restroom facilities.

Section 8. Hand Wash Facilities

Hand Wash signs shall be posted and maintained to be easily readable at all hand wash sinks and restroom facilities used by employees of a food establishment. When hand wash facilities are not available at a bulk food display and self service area, customers, upon request, are permitted access to hand washing facilities located in employee rest rooms, provided that access to employee restrooms do not allow customers into unauthorized areas such as food preparation, ware washing, and security sensitive areas.

Section 9. Mobile Food Establishments and Roadside Vendors

In addition to the requirements set forth in the Texas Food Establishment Rules, vehicles used for and as a mobile food establishment or roadside vendor shall comply with the following:

- A. Identification. Each vehicle permitted as a mobile food establishment or roadside vendor shall have printed on each side of the vehicle the name of the owner or assumed name under which the owner operates, together with the owner's telephone number. That lettering shall not be less than 2 inches in height and not less than 5/16 stroke in width. The lettering must be maintained and legible at all times. The lettering shall be made in a permanent and durable material or manner. If faded or chipped, the lettering shall be replaced or repaired.
- B. A valid food establishment permit is required for each vehicle or mobile unit. The permit must be visible to customers and inspectors at all times. If a mobile food establishment operates its own central preparation facility, the central preparation facility must be permitted separately.
- C. All vehicles shall be free of dirt or rubbish and maintained in a clean and sanitary condition. The compartment(s) of the vehicle carrying food and food equipment and the food contact surfaces and non-food contact surfaces of the food equipment used in and with the vehicle shall be maintained and cleaned in accordance with the Texas Food Establishment Rules.
- D. Drivers and assistants with the drivers are to adhere to the same requirements as a

- food employee and have in their possession a valid food handler certificate. The driver is responsible for maintaining the cleanliness of the vehicle and food equipment as often as is necessary while on duty.
- E. Food equipment shall meet same design criteria and temperature criteria as a regular food establishment. The vehicle shall be equipped with a permanent power supply for the food equipment used for heating, cooking, cooling, refrigeration, freezing and holding of hot and cold foods. Plug in adapters to cigarette lighters are not allowed.
 - F. Mobile food establishments and roadside vendors including snow cone stands that prepare food on the vehicle or on location must also:
 - 1) Comply with all requirements of a food establishment including hand wash and dishwashing sinks, cleaning operations, hot water and pest control.
 - 2) Must have a letter of permission from the owner of the property upon which the sales are to take place to operate from that location.
 - 3) Must have a letter of permission from the owner of that property or immediately adjacent to the property for use of restroom facilities.
 - 4) Comply with employee food education requirements for food handlers and food managers as appropriate.

Section 10. Exemptions for Temporary Food Establishments

Provided it is operated in full compliance with the provisions of this ordinance and the Texas Food Establishment Rules, a temporary food establishment permit is not required for events or celebrations that meet one of the following conditions:

- A. The event is exclusively for specific identified participants of a specific group or Membership and not open to the general public.
- B. The meeting, function, event or celebration is catered from a permitted food establishment and does not require further food preparation on site.
- C. The event is operated on the physical property of a permitted food establishment by the permitted food establishment with support facilities for food services operations available for use within the permitted food establishment.
- D. A fund raiser for nonprofit organizations is supervised by a certified food manager or by a minimum of two individuals with food safety certification who must be in charge and have authority and responsibility to correct problems or violations.
- E. A bake sale is conducted for a nonprofit organization consisting of only non-perishable foods, such as cakes and cookies, but not including pies.
- F. The event provides only commercially prepackaged and no potentially hazardous foods and beverages or dispensed beverages.
- G. The event provides only whole, uncut, fresh fruits and vegetables.
- H. The food and beverages are provided by a mobile vendor permitted by the Regulatory Authority.

Section 11. Jurisdictions Outside of the Regulatory Authority

Food from food establishments outside the Regulatory Authority may be sold or served within the jurisdiction of the Regulatory Authority if such food establishments conform to the provisions of this food code and the Texas Food Establishment Rules, including permitting and

transportation requirements. A valid food establishment permit from the regulatory authorities in another jurisdiction where such food establishment is located must be presented to the Regulatory Authority.

Section 12. Employee Food Education

A. Food Establishment Employees

- 1) A food handler certificate must be obtained by any person employed in a food Establishment with duties that require the individual:
 - (a) to receive, handle, prepare, cook, display, serve, dispense or store food or drink, whether the food or drink is packaged or unpackaged, potentially hazardous or not potentially hazardous; or
 - (b) to handle, store or clean food equipment and rooms that contain food used in the food establishment.
- 2) Any person required to obtain a food handler certificate must do so within thirty (30) calendar days of employment. The permit holder or person in charge of a food establishment is responsible to ensure that an individual has obtained the food handler certificate within the required time period.
- 3) Persons not required to obtain a food handler certificate are persons whose only duty is to:
 - (a) cashier
 - (b) assist customers in carry out of food items
 - (c) provide direct delivery of a food order
 - (d) assist children and infants with their foods or meals at a childcare center
 - (e) volunteer at a temporary event or temporary fund raiser
 - (f) a person at a food establishment who volunteers for a particular event or project no more than once a month.
- 4) Persons possessing a food manager certification accredited by DSHS are not required to obtain a food handler certificate.
- 5) Food establishments selling only prepackaged foods and do not dispense foods and beverages are not required to have employees with food manager or food handler certificates.
- 6) To receive a food handler certificate, a person must pay a fee and successfully complete the training class either over the internet or in an instructor conducted class. The primary purpose of the class is to orient the person to food establishment operations, sanitation, and employee practices. It is not a substitute for extensive training which is the responsibility of each food establishment's permit holder, manager or supervisor.
- 7) If a person holding a food handler certificate does not demonstrate acceptable personal hygiene, food handling, or food safety practices to the satisfaction of the Regulatory Authority, the person may be required to retake the class within seven (7) calendar days.
- 8) Food handler certificates must be on display in a conspicuous location at the food establishment or readily available for review by the health inspector.
- 9) Food handler certificates are valid for two years. Renewal requirements are the same as that for the original certification.

B. Childcare Food Employees

- 1) Any person employed at a childcare center whose duties include the handling, preparing, or cooking of food or cleaning of food equipment shall possess a food handler certificate.
- 2) Individuals who help serve or assist children and infants with their foods or meals are not required to obtain a food handler certificate.
- 3) To receive a food handler certificate, an individual must successfully complete the food safety class.
- 4) The requirements to obtain, maintain, or renew a food handler certificate are the same as stated for a food establishment employee, unless specifically stated otherwise in this section.
- 5) A food handler certificate or food manager certificate is acceptable at a childcare facility.

C. Food Managers

- 1) All permanent and mobile food establishments that prepare, cook, serve, or hold Potentially hazardous foods, packaged or unpackaged, shall have an individual who possesses a valid food manager certification on duty at the food establishment during the hours that the foods are handled, prepared, cooked or served. The certified food manager shall have authority to oversee and implement procedures, requirements, instructions and other measures to provide for the safe storage, handling, preparation, and serving of all food products and food equipment.
- 2) A person employed to serve as a food manager who does not possess a food manager certificate must acquire the certificate within thirty (30) calendar days of employment. The food establishment permit holder or person in charge of the food establishment is responsible to ensure that the person has obtained the required certificate within that required time.
- 3) Certification and re-certification shall meet the criteria established by Texas Health and Safety Code, Chapter 438, Subchapter D, and requirements established by DSHS.
- 4) A person who possesses a valid food manager certification is not required to obtain a food handler certificate or a childcare food manager certificate.
- 5) Food establishments that provide only commercially prepackaged foods, including limited heating, dispensing, and preparing by the consumer, are not required to have a certified food manager.

D. Childcare Food Managers

All childcare centers shall have a person who possesses a food manager certificate. The childcare food manager must be on duty during the times that foods, other than snacks, are handled, prepared, cooked or served.

Section 13. Enforcement of Order

The Regulatory Authority may, through its appointed Hearing Officer, 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.

The notice of the reasons for the denial, suspension, or revocation of the permit shall be in writing and mailed by certified mail, return receipt requested, to the permit holder or applicant at the address as shown on the permit application or renewal. The reason for the denial, suspension, or revocation shall be stated in the notice. The permit holder or applicant shall have twenty days from the receipt of the notice letter to request a hearing on the denial, suspension or revocation. If no request for hearing is received by the Authorized Agent after twenty days of receipt of the notice by the permit holder, or applicant, the regulatory authority may take the proposed action without a hearing.

If a hearing is requested within the twenty day period, the hearing shall be conducted by a hearing officer appointed by the regulatory authority. 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.

Whenever the Regulatory Authority finds conditions in the operation of the food establishment which in its judgment constitutes a substantial or imminent health hazard, the Regulatory Authority may issue a written notice to the permit holder or person in charge citing such conditions, specifying the corrective actions to be taken, and, if deemed necessary, stating that the permit is suspended and that all food service operations are to be immediately discontinued.

Reinstatement of suspended permits: Any permit holder or person in charge whose permit has been suspended, after making all corrections, may request a re-inspection during normal business hours of the Regulatory Authority for the purpose of reinstatement of the permit.

Section 14. 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 15. Effective Date

The provisions of this order shall take effect on : _____

INTRODUCED, READ AND PASSED BY AN AFFIRMATIVE VOTE BY THE
COMMISSIONERS COURT OF MADISON COUNTY ON THIS _____ DAY
OF _____, 2009.

Arthur M. Henson
Madison County Judge

Ricky Driskell
Precinct 1 Commissioner

Phillip Grisham
Precinct 2 Commissioner

Tommy Cornelius
Precinct 3 Commissioner

Mary Andrus
Precinct 4 Commissioner