

**STATE OF TEXAS
KENDALL COUNTY**

**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**

WHEREAS, pursuant to Chapter 437, Texas Health and Safety Code, counties have authority to enforce state laws and rules concerning food service establishments, retail food stores, mobile food units, and roadside food vendors; and

WHEREAS, pursuant to Section 437.003, Texas Health and Safety Code, the Commissioners Court has the authority to require food service establishments, retail food stores, mobile food units, and roadside food vendors in the unincorporated area of the county, including areas in the ETJ of a municipality to obtain a permit from the county; and

WHEREAS, pursuant to Section 437.0057, Texas Health and Safety Code, counties may require certification under Subchapter D, Chapter 438, Texas Health and Safety Code, for each food handler who is employed by a food service establishment in which food is prepared on-site for sale to the public and which holds a permit issued by the county; and

WHEREAS, pursuant to Section 437.0076, Texas Health and Safety Code, counties may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public and which holds a permit issued by the county to employ a food manager certified under Subchapter G, Chapter 438, Texas Health and Safety Code; and

WHEREAS, pursuant to Section 437.012, Texas Health and Safety Code, counties may require the payment of a fee for issuing or renewing a permit issued under Chapter 437, Texas Health and Safety Code, subject to the provisions and limitations set out therein; and

WHEREAS, pursuant to Section 437.0185, Texas Health and Safety Code, the Commissioners Court may impose an administrative fee on a person the county requires to hold a permit issued under Chapter 437, Texas Health and Safety Code, if the person violates the provisions of Chapter 437, Texas Health and Safety Code, or a rule or order adopted under such chapter, such fee not to exceed \$500 per day, with each day that a violation continues or occurs being a separate violation for the purposes of imposing a penalty; and

WHEREAS, previous orders adopted by the Commissioners Court require amendments in order to remain current with state laws and rules; and

WHEREAS, the fees contained within this Order were approved by the Commissioners Court on October 1, 2019, and became effective January 1, 2020.

NOW THEREFORE, the following **ORDER** is adopted and effective the 1st day of January 2020.

Section 1. Enforcement of State Law and Rules and Definitions:

- A. Kendall County adopts the provisions of Chapter 437, Texas Health and Safety Code, as applicable to counties, and the "TEXAS FOOD ESTABLISHMENT RULES" adopted by the State of Texas as published in 25 TAC 228.
- B. As used in this Order:
 - (1) The words "authorized agent or employee" mean the employees or agents of Kendall County.
 - (2) The words "foodborne illness" mean an in episode which two (2) or more persons experience a similar illness, usually gastrointestinal in nature, after ingestion of a common food and epidemiological analysis implicates the food as the source of the illness.
 - (3) 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.
 - (4) The words "food manager" mean an individual who conducts, manages, or operates a food establishment.
 - (5) The words "food handler" mean any employee working at a food establishment who cooks, prepares, packages, or un-packages food, or who serves food to the consumer.
 - (6) The words "regulatory authority" mean the Kendall County Commissioners Court and officers or employees of Kendall County acting under the authority of the Commissioners Court.
 - (7) The words "state laws and rules" mean the state laws contained in Chapter 437, Texas Health and Safety Code and the rules contained in 25 Texas Administrative Code Chapter 228.
 - (8) The words "supervisory personnel" mean individuals having supervisory responsibilities and any other person working in a food establishment who is in charge of food preparation service.

Section 2. Permits Required and Exemptions:

- A. A person may not operate a food establishment in the unincorporated areas of Kendall County, including areas located within the extra-territorial jurisdiction ("ETJ") of a municipality, without a permit issued by the county. Permits are not transferable from one entity or person to another entity or person, or from one location to another location, except as otherwise permitted by this Order. A valid and current permit must be posted in or on every food establishment regulated by this Order.
- B. 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.
- C. 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 laws and rules and must obtain a permit under this Order.

Section 3. Application for Permit and Applicable Fees:

- A. Any person desiring to operate a food establishment in Kendall County shall make written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed food,

establishment, the square footage of the establishment, and any other pertinent information required by the regulatory authority, and be signed by each applicant. One (1) food permit shall be issued for one (1) location, even if the establishment is a combination of a food establishment and a retail food store. 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. Renewal of permits is required on an annual basis and the same information is required for renewal of a permit as for an initial permit.

- B. Prior to the approval of an initial 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 shall be denied a permit. If the inspection indicates that the proposed food establishment complies with the requirements of this Order, and has paid the required fee, the regulatory authority shall issue a food permit.
- C. A permit is valid for one year and must be renewed annually. A permit shall begin on January 1 of each year and expire on December 31 each year at which time the permit must be renewed. Temporary food service permits for outdoor events shall be valid only for the duration of the event and temporary food service permits for indoor events shall be valid for four (4) days from the date of issuance. Food permits which have been issued after January 1 of the current year shall be valid through December 31 of the current year and must be renewed prior to January 1 of the succeeding year. Temporary permits issued during the current year and prior to the effective date of this Order, shall be valid through the effective date on the permit.
- D. The following fee schedule applies to permits issued under this Order:

| <u>Gross Annual Income of Food Establishment</u> | <u>Fee</u> |
|--|------------|
| \$0.00 - \$24,999.99 | \$125.00 |
| \$25,000.00 - \$49,999.99 | \$175.00 |
| \$50,000.00 - \$99,999.99 | \$250.00 |
| \$100,000.00 - \$199,999.99 | \$300.00 |
| \$200,000.00 - \$399,999.99 | \$400.00 |
| \$400,000.00 - \$749,999.99 | \$500.00 |
| \$750,000.00 or more | \$600.00 |

| <u>Fees - Other Food Establishments/Late Charges</u> | |
|--|-----------------|
| Re-inspection | \$ 50.00 |
| Mobile Vendors | \$150.00 |
| Day Care Center | \$125.00 |
| Late Fee Assessment | \$ 5.00 per day |
| Foster Homes Inspection Fee | \$ 50.00 |
| Hotel/Motels (providing breakfast for guest only) | \$125.00 |
| New Establishments | \$125.00 |
| Temporary Events | \$ 25.00 |

(Note: Fee for Temporary Events shall be paid before event)

Nonprofit organizations are exempt from paying fees but must comply with state law, rules and applicable provisions of this Order.

Section 4. Review of Plans:

Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted for use as a food establishment, 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 twenty percent (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 shall 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 the construction, remodeling or conversion. Failure to follow approved plans and specifications will result in a permit being denied, suspended, or revoked.

Section 5. Enforcement of Order, State Law and Rules:

A. Denial of Permit Application, Suspension or Revocation of Existing Permit:

- (1) The regulatory authority may, after giving notice and providing an opportunity for hearing, deny issuance of a permit, or suspend or revoke a permit for failure to be in compliance with this Order, any violation of this Order or for any violation of the state law or rules.
- (2) Notice for the denial of the issuance of a permit or the suspension or revocation of a permit shall be in writing and mailed by first class mail, certified mail, return receipt requested, to the permit holder or applicant at the address as shown on the current permit, application for permit, or application for permit renewal. The reason for the denial, suspension, or revocation shall be stated in the notice. The permit holder or applicant shall have ten (10) business days from the receipt of the notice to request a hearing to appeal the denial, suspension, or revocation of the permit. The request shall be in writing, addressed to the County Judge, and hand delivered to the office of the County Judge or mailed by first class mail, certified mail, return receipt requested to: "County Judge, Kendall County, Texas, Kendall County Courthouse, 201 East San Antonio, Boerne, Texas 78006". If no request for hearing is received by the regulatory authority within ten (10) business days of receipt of the notice by the permit holder or applicant; the regulatory authority may take the proposed action without a hearing. (Note: The procedure for the conduct of a hearing will be provided to the appealing permit holder or applicant by the regulatory authority within five (5) business days following receipt of the request for a hearing.)

B. Immediate Suspension of Food Permit:

- (1) The regulatory authority may, without advance notice or hearing, immediately suspend a food permit if the holder of the permit does not comply with the requirements of this Order, or if the operation of the subject food establishment does not comply with the requirements of state law or rules, **and** if, in the determination of the regulatory authority, the violation creates an immediate threat to the health and safety of the public. Suspension of the food permit is effective upon service of notice, which may be given orally or in writing by the regulatory authority to the permit holder or to officers or employees of the permit holder on the premises of the subject food establishment. When a food permit is suspended, food service operations at the subject food establishment shall cease immediately and shall not be resumed until authorized by the regulatory authority or other competent authority.
- (2) If the condition that results in the immediate suspension of a food permit is not corrected within twenty-four (24) hours of the effective time of the suspension to the satisfaction of the regulatory authority, and the permit holder desires to appeal the suspension, the permit holder shall have five (5) business days from the receipt of the notice to request a hearing to appeal the suspension of the permit. The request shall be in writing, addressed to the County Judge, and hand delivered to the office of the County Judge or mailed by first class mail, certified mail, return receipt requested to: "County Judge, Kendall County, Texas, Kendall County Courthouse, 201 East San Antonio, Boerne, Texas 78006". If no request for hearing is received by the regulatory authority within five (5) business days of receipt

of the notice by the permit holder or applicant, and the condition that results in the suspension is not corrected to the satisfaction of the regulatory authority, the subject permit shall remain suspended until the condition resulting in the suspension is corrected to the satisfaction of the regulatory authority. (Note: The procedure for the conduct of a hearing will be provided to the appealing permit holder by the regulatory authority within five (5) business days following receipt of the request for a hearing.) The regulatory authority may terminate the suspension of the permit at any time if the reason for suspension of the permit no longer exists.

C. Administrative Penalty:

- (1) The regulatory authority may impose an administrative penalty on a permit holder if the permit holder violates this Order or state law or rules. The penalty may not exceed \$500 per day and each day that a violation occurs or continues is a separate violation for the purpose of imposing a penalty.
- (2) The amount of the penalty shall be based on: (a) the seriousness of the violation; (b) the history of prior violations by the permit holder; (c) efforts to correct the violation by the permit holder; and (d) any other matter that justice may require. Enforcement of the penalty may be stayed during the time the imposition of the penalty is under judicial review in accordance with the provisions set out in Section 437.0185, Texas Health and Safety Code.

D. Criminal Penalty:

- (1) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by the regulatory authority.
- (2) An offense is a Class C misdemeanor. Each day on which a violation occurs constitutes a separate offense.

E. Injunction: The Criminal District Attorney or attorney with enforcement authority in the county may sue in district court to enjoin a food service establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit if a permit is required by this Order.

Section 6. Inspections:

- A. Inspection Frequency: Depending on the workload of the County Health Sanitarian and assistants, an inspection of a food establishment should be performed at least once every twelve (12) months by the regulatory authority. Additional inspections of a food establishment may be performed as often as necessary for the enforcement of this Order.
- B. Access: Agents of the regulatory authority, including the County Health Sanitarian and assistants, upon presentation of proper identification, shall be permitted to enter any food establishment at any reasonable time for the purpose of making inspections in accordance with this Order and to determine compliance with this Order, state law and rules. The agents shall be permitted to examine the records of a food establishment to obtain information pertaining to food and supplies purchased, received, or used, and/or to identify persons employed at the food establishment.
- C. Report of Inspections: When an inspection of a food establishment is made by the regulatory authority, the findings shall be recorded on an inspection report form and a weighted point value demerit for each requirement violated shall be recorded. Remarks shall be written with reference to any violation and shall state the corrective action to be taken. The score for the inspection shall

be calculated by subtracting all demerits awarded from a perfect score of one hundred (100).

- D. Correction of Violations: The inspection report form shall specify a period of time for correction of any violations found. Correction of violations shall be accomplished within the period specified, in accordance with the following provisions:
- (1) If an immediate threat to the health and safety of the public exists as determined by the regulatory authority or as defined by the state law or rules (For example: complete lack of refrigeration or sewage backup into the establishment), the food establishment shall immediately cease food service operations. Food service operations shall not be resumed until the immediate threat to the health and safety of the public no longer exists as determined by the regulatory authority.
 - (2) Violations awarded three (3) demerits or more shall require immediate corrective action. Within three (3) business days after the inspection, the holder of the food permit shall submit a written report to the regulatory authority stating that such violations have been corrected. A follow-up inspection shall be conducted by the regulatory authority to confirm the correction of such violations.
 - (3) Violations awarded three demerits or less, shall require corrective action within ten (10) business days of the inspection.
 - (4) When the inspection score of a food establishment is less than seventy (70) points, the food establishment shall initiate corrective action on all identified violations within twenty-four (24) hours of the inspection. One (1) or more re-inspections will be conducted at reasonable time intervals as determined by the regulatory authority to confirm that corrective action is initiated and completed.
 - (5) Any violations by temporary food service establishments shall be corrected immediately. If violations are not corrected, the food establishment shall cease food service operations and operations shall not resume until authorized by the regulatory authority.
- E. Cessation of Food Service Operations, Appeal and Hearing: Failure to comply with any time limits for corrective action to be taken may result in an order to cease food service operations. A permit holder may appeal inspection findings and/or an order to cease food service operations as set out in Section 5.B.
- F. Resuming Operations: Whenever a food establishment is required under the provisions of this Order to cease food service operations, operations shall not be resumed until the regulatory authority determines by re-inspection that conditions responsible for the requirement to cease operations no longer exist. Opportunity for re-inspection shall be offered by the regulatory authority within twenty-four (24) hours of the initial inspection.

Section 7. Examination and Condemnation of Food:

- A. Hold Order and Destruction of food: When inspections are being conducted of food establishments by the regulatory authority, food may be examined or sampled by the regulatory authority as often as necessary for enforcement of this Order and state law and rules. The regulatory authority may, upon notice to the owner or person in charge of the food establishment specifying the reasons therefor, place a hold order on any food found in violation of this Order, state law or rules concerning food service sanitation. The regulatory authority shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or removed from the food establishment. Storage of food under a hold order may be permitted under conditions specified by the regulatory authority unless storage is not possible without risk to the public health. If storage is not possible, immediate destruction of the food shall

be ordered by the regulatory authority and accomplished by the food establishment.

- B. Appeal: A permit holder may appeal a hold order and/or destruction of food by following the procedure set out in Section 5.B.

Section 8. Possibility of Disease Transmission by an Employee of a Food Establishment:

When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food establishment employee, the food establishment shall provide the regulatory authority with a medical history of the subject employee. The regulatory authority shall make any other investigation as may be necessary and take appropriate action including any or all of the following measures:

- A. Immediate exclusion of the employee from all food establishments;
- B. The immediate closing of the food establishments concerned until, in the opinion of the regulatory authority, no further danger of disease transmission exists;
- C. Restriction of the employee's services to some area of the food establishment where there would be no danger of disease transmission;
- D. Medical and laboratory examination of the employee, other employees of the food establishment and/or examination and analysis of their bodily fluids.

Section 9. Certified Food Protection Manager and Food Handler Requirements:

- A. Unless exempt, a food establishment in which food is prepared on-site for sale to the public shall comply with the following requirements:
 - (1) 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. Such employee shall be on-site at all times when food services are being provided to the public. It shall be unlawful for any person owning, operating, or managing a food establishment to allow the establishment to provide food services to the public without a certified food protection manager on-site.
 - (2) The original food protection manager certificate shall be posted in a location in the food establishment that is conspicuous to the consumers.
 - (3) Except in a temporary food establishment, at least one certified food protection manager shall be employed by each food establishment.
 - (4) Except in a temporary food establishment, all food employees except the certified food protection manager shall successfully complete an accredited food handler training course within sixty (60) days of employment at the food establishment.
 - (5) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee.
- B. Exemption from Requirements: Certified food protection managers will not be required in the following situations:
 - (1) Food establishments that serve, sell, or distribute only prepackaged foods and/or only beverages. This exemption does not apply to an establishment where potentially

hazardous food is packaged on the premises or where packaging of food is altered or removed by employees of the establishment.

- (2) Food establishments which limit displays or service of unpackaged foods to only those which are not potentially hazardous such as candies, nuts, and produce.
- (3) Nonprofit organizations which only serve food to their members.
- (4) Food establishments inspected at least once each week by state or federal food sanitation inspectors.
- (5) Child care facilities as defined by Section 42.002, Human Resources Code.

C. Educational Requirements in lieu of Certification: The following establishments may be exempt from the requirement to have a certified food protection manager if they comply with the educational requirements indicated:

- (1) State licensed child care centers and/or private schools which prepare meals for children shall be exempt if all cooks employed at the location attend training and testing administered by a city health department.
- (2) Temporary food service establishments (indoor events) shall be exempt if they either: (a) have one individual who is responsible for food preparation at the event attend training and testing administered by a city health department; or (b) retain a certified food protection manager to advise on the minimal standards of operation needed for the event and who shall be responsible for hygienic operations at the event.
- (3) Temporary food service establishments (outdoor events) shall be exempt if they either: (a) have one individual who is responsible for food preparation at the event attend training and testing administered by a city health department; or (b) retain a certified food protection manager to advise on the minimal standards of operation needed for the event and who shall be responsible for hygienic operations at the event; or (c) the food establishment undergoes periodic inspection by the regulatory authority during the event.

D. Responsibilities of a Certified Food Protection Manager: Responsibilities of a certified food protection manager include:

- (1) Identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;
- (2) Developing or implementing specific policies, procedures or standards to prevent food borne illness;
- (3) Supervising or directing food preparation activities and ensuring appropriate corrective actions are taken as needed to protect the health of the consumer;
- (4) Training the food establishment employees on the principles of food safety as set out herein;
- (5) Performing in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety have been implemented and are being followed;
- (6) Training food handlers under their supervision which shall include instruction on the critical aspects of food handling as defined in the Texas Department of Health rules on food

service sanitation, including, but not limited to: (a) temperature requirements for potentially hazardous foods, including storage, preparation, display, and transportation; (b) common sources of contamination and prevention of cross contamination; (c) personal hygiene and application of good hygienic practices; (d) proper methods for sanitizing equipment and utensils; and (e) proper labeling, storage, and use of toxic chemicals.

E. Additional Training Requirements: The regulatory authority may require certified food protection managers and food handlers to successfully complete additional training when:

- (1) The employing food establishment has repeated or persistent violations of this Order, state laws or rules, code requirements, and/or effective corrective action has not been taken within a reasonable period of time;
- (2) The food establishment has been determined by the regulatory authority to be the source of food borne illness; or
- (3) There is evidence, during an inspection by the regulatory authority that food handlers are not being properly trained by certified food protection managers. (A score of seventy (70) or less on the inspection report shall be considered evidence of a lack of sufficient training).

All costs associated with additional training shall be the responsibility of the owner or operator of the food establishment concerned.

Section 11. Severability: If any section, subsection, sentence, clause, phrase, or portion of this Order is, for any reason, held invalid or unconstitutional by any court or agency 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 12. Repeal of Prior Orders: Previous orders adopted by the Commissioners Court concerning the subject of this Order are hereby repealed and replaced by this Order.


Section 13: Effective Date: The provisions of this Order shall take effect on January 1, 2020.

Approved by the Commissioners Court on the 27 day of July 2020.



Darrel L. Lux, County Judge

Attest:



Darlene Herrin, County Clerk