

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

WHEREAS, 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, and

WHEREAS, on August 4, 1984, the City of Waco and McLennan County entered into a Cooperative Agreement to provide the administration of a local public health program through the Waco-McLennan County Public Health District, and

WHEREAS, said Cooperative Agreement was amended and joined by all of the municipalities located in McLennan County on June 21, 1988, and

WHEREAS, the Commissioner’s Court finds it necessary and in the best interest of the public health and welfare of the citizens of McLennan County to adopt the regulations set forth herein, to set fees for issuing or renewing food establishment permits, and to authorize the Waco-McLennan County Public Health District to collect and retain those fees to fund the inspection and permitting activities of the Waco-McLennan County Public Health District pursuant to the Cooperative Agreement and this Order.

Therefore, it is ORDERED, that the McLennan County Commissioner’s Court adopts the following Order:

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

McLennan County adopts by reference the provisions of Chapter 437 of the Texas Health and Safety Code applicable to counties/public health districts and the current rules or rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 228, Subchapters A through J (“Texas Food Establishment Rules”) regarding the regulation of food establishments in this jurisdiction, including any applicable amendments thereto. This Order applies to the unincorporated areas of McLennan County, Texas. McLennan County appoints the Waco-McLennan County Public Health District as the regulatory authority to enforce this Order and the applicable Food Establishment Rules in the unincorporated areas of McLennan County.

The words “authorized agent or employee” mean the employees of the regulatory authority.

The words “food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

- (A) a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, (machine), self-service food market, conveyance used to transport people, institution, or food bank;
- (B) an establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers; and

- (C) includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.
- (D) food establishment does not include an establishment that offers only prepackaged foods that are not time / temperature controlled for safety food, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold or offered for human consumption, a Bed and Breakfast Limited facility as defined in this chapter, or a private home that receives catered or home-delivered food.

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 228, Subchapters A through J, including any applicable amendments thereto.

The words “regulatory authority” means the Waco-McLennan County Public Health District.

The words “non-profit organization” means an organization described in 25 U.S.C. §501(c)(3), (4), (8), (10), (13), or (19), an organization defined as a church in §170(b)(1)(A)(1) of the Internal Revenue Code, an organization set up for a charitable, educational, or religious purpose if organized and operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment or compensation, other than reasonable compensation for services rendered by persons who are not members of the organization, or realization of any other form of private gain or distribution of net earnings for the benefit of a member or private individual. The term shall also include organizations engaged exclusively in providing athletic competition among persons under 19 years of age, organizations engaged exclusively in providing volunteer fire protection or emergency medical services, and parent-teacher association/organizations, if no financial benefit goes to an individual or shareholder.

## **Section 2. Permits and Exemptions**

A person may not operate a food establishment in the unincorporated areas of McLennan County, Texas, without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location (no location restriction for mobile food unit or roadside food vendor), except as otherwise permitted by this Order. A valid permit must be conspicuously posted in or on every food establishment regulated by this Order.

A food establishment operated solely by a nonprofit organization as defined herein 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.

As a condition of retaining a permit, the permit holder must comply with the applicable Texas Food Establishment Rules, and all conditions of 25 T.A.C. § 228.248, including providing access to the regulatory authority to the food establishment’s operations.

### **Section 3. Application for Permit and Fees**

Any person desiring to operate a food establishment in an unincorporated area of McLennan County, Texas must make a 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 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, except for temporary permits, 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 regulatory authority shall process an application and inform the applicant as to whether a permit will be issued or denied within ten (10) business days of receipt of the application, unless time is extended by emergency circumstances or by the agreement of the applicant.

The Regulatory Authority may charge and collect fees including a fee for permits and permit renewals at the time of application in accordance to the fee schedule approved by the Commissioner's Court including any applicable amendments thereto.

### **Section 4. Review of Plans**

Before issuing a permit, the regulatory authority may require an applicant to provide plans for the food preparation, storage, and sales areas to determine if the applicant is in compliance with state law and the rules adopted under state law governing the applicant. If, after initial inspection, it is determined that the applicant is not in compliance with the plans approved by the regulatory authority, the regulatory authority may deny the applicant a permit on that basis. If, after reinspection, the applicant is found to be in compliance, a permit will issue, if the applicant is otherwise eligible for the permit.

### **Section 5. 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.

The notice of the reasons for the proposed denial, suspension, or revocation of the permit shall be in writing and mailed by certified mail return receipt requested, or personally delivered to the permit holder or applicant at the address as shown on the permit application or renewal. The refusal to accept personal delivery of the notice or to accept or pick up the certified letter shall be considered a receipt of the letter. The reason for the proposed 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, in writing, a hearing on the proposed denial, suspension, or revocation. If no request for hearing is received by the regulatory authority within twenty days of receipt of the notice by the permit holder, or applicant, the regulatory authority may take the proposed action without a hearing. A suspended permit may be reinstated upon application, correction of all violations, payment of the reinspection fee, and verification of compliance by reinspection.

If a hearing is requested within the twenty-day period, the hearing shall be conducted by a hearing officer appointed by the regulatory authority within ten (10) business days of the regulatory authority's receipt of a written request for hearing. The hearing officer shall appoint a time, day, and location for the hearing and shall notify permit holder or applicant thereof. 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 within five (5) business days from the hearing date, and shall notify the regulatory authority and the permit holder or applicant. Any decision of the hearing officer may be appealed by the permit holder or applicant to the Commissioner's Court if a request for appeal is presented to the County Judge, in writing, within five (5) business days after notification by the hearing officer of his/her decision. The review by the Commissioner's Court will be limited to a determination of whether the hearing officer's decision was arbitrary or capricious, or whether the hearing officer has not properly applied this Order. If the Commissioners Court determines that the hearing officer's decision was arbitrary, capricious, or did not properly apply this Order, the Commissioners Court may either: (1) remand the matter to the regulatory authority with instructions to have the matter heard by a different hearing officer, which hearing officer may be appointed by the Commissioners Court; or (2) direct that the decision of the regulatory authority on which the hearing was based to be reversed or modified.

In enforcement of this Order and the Food Establishment Rules adopted hereunder, the regulatory authority shall have all powers of enforcement and administration provided by this Order, applicable State law and applicable provisions of the Food Establishment Rules, except where contrary to the Health and Safety Code or this Order with relation to County regulation of food establishments.

A person commits an offense under § 437.016 of the Health & Safety Code if the person operates a food service establishment, retail food store, mobile food unit or roadside food vendor without a permit required by the County. Each day of violation constitutes a separate offense. An offense under § 437.016 of the Health and Safety Code is a Class C misdemeanor.

#### **Section 6. Reinspection Fees**

If an establishment requires a reinspection for failure of the establishment to provide immediate correction of ~~multiple critical~~ inspection report items or imminent health hazards, failure to correct specific violations identified from any previous routine inspection, or when the total cumulative demerit values of an inspection report exceeds more than 30 demerits, a reinspection fee will be charged in the amount set out in the fee schedule.

#### **Section 7. Severability**

If any section, subsection, sentence, clause, phrase, or portion of this Order is, for any reason, held invalid or unconstitutional by a 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 passage. Food establishments that, on the date this Order is passed, hold a current, unexpired permit from the regulatory authority must apply for a renewal permit under this Order prior to expiration of the current permit. Food establishments in operation at the date this Order is passed, which are required to obtain a permit from the regulatory authority by this Order, and which do not hold an unexpired permit issued by the regulatory authority

at the date this Order is passed, will be allowed a sixty (60) day grace period to apply for the required initial permit. In that circumstance, after application, the Regulatory Authority shall make an initial inspection of the existing entity. The existing entity may continue to operate pending the initial inspection. If the Regulatory Authority determines on inspection that an entity does not meet the standards of the state laws and rules adopted by this Order, it may start revocation proceedings as if the entity had obtained a permit. Operation without a permit is a violation of this Order and applicable state law.

PASSED BY AN AFFIRMATIVE VOTE BY THE COMMISSIONER'S COURT OF  
McLENNAN COUNTY THIS 10<sup>th</sup> DAY OF FEBRUARY,  
2016.



Scott M. Felton, County Judge, for and on  
behalf of the Commissioner's Court of  
McLennan County, Texas

ATTEST:

The foregoing Order was passed on the Motion of Commissioner Jones, the  
Second of Commissioner Snell and the vote of 3 ayes to  
0 nays. The meeting at which the foregoing Order was adopted was open to the public and  
was preceded by 72 hours or more posted notice.



J.A. "Andy" Harwell, County Clerk  
McLennan County, Texas, by and through  
his Deputy, Myrcetez Gowan