

Galveston County Health District
Food Service Establishments Policy
ESTABLISHING PERMITTING AND ENFORCEMENT
OF STATE LAW AND RULES FOR
FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES,
MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS

WHEREAS, the Galveston County United Board of Health (Board) is a policy-making board of public health district, established under Chapter 121. §121.002 of the Texas Health and Safety Codes encompassing fourteen (14) local governments: Galveston County, Bayou Vista, Clear Lake Shores, Dickinson, Friendswood, Galveston (city), Hitchcock, Jamaica Beach, Kemah, La Marque, League City, Santa Fe, Texas City and Tiki Island; and

WHEREAS, Chapter 437 of the Texas Health and Safety Code provides public health districts with authority to enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors;

NOW THEREFORE, BE IT ORDERED by the Galveston County United Board of Health of the Galveston County Health District as follows:

Section 1. Mission and Purpose

The Galveston County Health District's (District's) food safety program will operate in the jurisdiction of the public health district to assure public food safety and prevent food-borne disease outbreaks. The mission of the food safety program is to assure food safety in food service establishments, retail food stores, mobile food units and roadside food vendors is safe and unadulterated. Public health activities provided through the District's food safety program will include inspections, permitting, complaint investigations, food-borne disease investigations, and enforcement.

Section 2. Authority to Enforce State Law and Rules and Definitions

It is the intent that this Board policy/order is written in accordance with and pursuant to the Texas Food, Drug, and Cosmetic Act (Chapter 431 of the Tex. Health and Safety Code), and Chapters 432-439 of the Tex. Health and Safety Code regarding the regulation of food establishments in this jurisdiction. In addition, the Board hereby adopts the Texas Department of State Health Services, Division of Regulatory Services, "Texas Food Establishment Rules," 25 Tex. Admin. Code §§228 and §§229.701-704.

The Board has the authority to adopt policies/orders for the public health district. In accordance with board bylaws, the Chief Executive Officer has the delegated authority to implant the policy/order within the public health district. The Chief Executive Officer may delegate public health functions to Galveston County Health District staff to carry out the responsibilities outlined in this policy/order.

The words "Authorized Agent or employee" mean the employees of the regulatory authority.

The words "District or Health District" mean the Galveston County Health District.

The words “farmer/producer” mean a person who has ownership of, or financial and/or productive responsibility for producing, an agricultural product intended for use as a food or raw material. The term usually applies to people who do some combination of raising field crops, orchards, vineyards, poultry, aqua-culture or some other form of livestock. A farm is usually owned by that person or under direct control of that person.

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 vendor.

The words “food manager” mean an individual who conducts, manages, or operates a food establishment.

The words "Regulatory Authority" mean the Chief Executive Officer and Health Authority of the Galveston County Health District or his or her designee.

The words “state law and rules” mean the state laws found in Chapter 437 of the Texas Health and Safety Code and state rules found at 25 Texas Administrative Code Chapter 228.

Section 3. Risk Assessments

The public health district has elected to assess food establishments based on the risk posed for possible food-borne illness outbreaks. The Regulatory Authority will conduct a risk assessment for each food establishment that applies for or renews a permit. The Regulatory Authority will determine the method of rating food establishments; such will be rated according to their food preparation and handling processes which pose a risk of food-borne illness varying from high, to medium, to low risk.

High Risk - includes 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.

Medium Risk - includes food establishments that serve PHF that require minimal handling or prepares them in individual portions.

Low Risk - includes food establishments that serve small amounts of PHF and/or pre-packaged individually wrapped food.

Each food establishment will be rated according to the "Galveston County Health District's Establishment Risk Assessment."

Section 4. Permits and Exemptions

(a) No person shall operate a food establishment without a valid permit issued by the Regulatory Authority. Only a person who complies with the requirements of state law, rules adopted under state law, and policy/orders adopted by the district shall be entitled to receive or retain a permit. Permits are not transferable from person to person. Permits for food service establishments and retail food stores are not transferable from one location to another. No food service establishment or retail food store may be required to obtain more than one permit for each location under this order. A valid permit shall be posted in 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 policy/order, but is not exempt from compliance with state laws and rules. The Regulatory Authority may require an organization to provide information necessary to determine non-profit status for purposes of claiming an exemption from the permitting process.

(c) Temporary food operations that present minimal risk of causing foodborne illness are not required to obtain a permit. These operations would include such operations as the pouring of non-potentially hazardous beverages from protected commercially filled and labeled containers into single use cups. (e.g. Beer, wine, liquor, water etc.)

Section 5. Farmers Market Permitting

(a) Farmers Market is an organized entity/operation that allows a group of farmers/producers to primarily market and sell their farm produce and products in a specific location. These products would include herbs and spices in their natural or dried state, vegetables, fruits, nuts, berries, grains, honey, watermelons and other melons, and cantaloupes in their natural state as well as farm produce, shelled peas or legumes, yard eggs and packaged foods processed or manufactured by a farmer/producer in a licensed food establishment and packaged and labeled according to law.

- i. A Farmers Market must be certified by the Texas Department of Agriculture and have more than 50% of its vendors be farmers/producers.
- ii. A Farmers Market is allowed to sell farm goods under this permit. No food preparation may be done at a Farmers Market other than the sampling of properly packaged, labeled farm goods and properly operated and permitted Farmers Market Multi-temporary Food service operations.
- iii. All utensils used must be single service disposable products.
- iv. A proper temporary handwashing facility must be present where samples are prepared for public consumption. Disposable gloves must be worn by employees presenting food to be sampled.
- v. Restroom facilities must be available to the vendors and customers

(b) Farmers/producers are generally not required to obtain a food service permit unless the products sold are potentially hazardous items. Vendors of potentially hazardous other than farm products are required to obtain a permit. These vendors would have to obtain a non-refundable Farmers Market Multi-temporary Food Service Permit issued by the Health District. This permit would allow a temporary vendor of approved other than farm product foods at the Farmers Market for up to one year as long as the vendor is registered with the Farmers Market, has a space set up within the Farmers Market and complies with all Health District regulations regarding temporary food service safety.

(c) Farmers Market Permitting Fees are established by the Board and can be found in the separate fee schedule.

Section 6. Application for Permit and Fees

(a) Any person desiring to operate a food establishment shall make written application for a permit on forms provided by the Regulatory Authority. Such application shall include the name

and address of each applicant, the location and type of proposed food establishment and an applicable permit fee as established by the Board in a separate Fee Schedule. An incomplete application will not be accepted. No food establishment shall operate without a valid permit.

(b) Prior to approval of an application for a permit, the Regulatory Authority shall inspect the proposed food establishment to determine compliance with state law and rules and policy/orders adopted by the Board.

(c) Prior to approval of an application for a permit, a proposed food establishment shall employ a food service manager certified in accordance with Section 9 of this policy/order.

(d) The Regulatory Authority will issue a permit to the applicant provided an inspection reveals that the proposed food establishment complies with the requirements of state law and rules and policies/orders adopted by the Board, and employs a certified food service managers to operate the establishment.

(e) Temporary permits will be issued for a period of no more than 14 consecutive days in conjunction with a single event or celebration. Any person desiring to operate a temporary food establishment shall make written application for a permit on forms provided by the Regulatory Authority. Persons applying for a permit to operate a temporary food establishment shall be exempt from food service manager's certification

(f) The Regulatory Authority has elected to require that all permits shall be renewed on an annual basis.

(g) A person shall renew a permit by making written application on forms provided by the Regulatory Authority. Such application shall include the information described in subsection (a) of this section.

(h) A notice shall be sent to the permit holder of a food establishment that has not renewed their permit by the expiration date. The notice provided for in this policy/order is properly served when it is delivered to the permit holder, applicant, or the person in charge, or when it is sent by certified mail, return receipt requested, to the last known address. A copy of the notice shall be filed in the records of the Regulatory Authority.

(i) The Regulatory Authority may publish in a newspaper of general circulation within Galveston County a notice of any food establishment that has not paid the permit renewal fee required in this policy/order after giving sufficient notice.

(j)The public health district requires the payment of a fee based upon a variable scale according to the risk designation for issuing and renewing a permit.

(k)All fees collected shall be deposited to the General Fund and expended only to defray the cost of issuance of permits, plan reviews and inspections of facilities regulated under this policy/order.

(l) All fees associated with the cost of issuance of permits, plan reviews and inspections of facilities regulated under this policy/order shall be approved by the Board and shall be published in a documented fee schedule outlining each service and the fee required for that service. This fee schedule shall be reviewed and approved by the Board on an annual basis.

(m) The public health district has elected to adopt a variable scale to determine the fee charged for a permit under this section. In adopting a policy/order under this section, the public health district considered the relative risk posed for possible food-borne illness outbreaks as the determining factor in adjusting the variable scale. The fee charged under this section may not exceed \$300. The fee charged to a child care facility under this section may not exceed \$150.

(n) The health district has adopted an administrative late fee for food service permit fees not paid by the due date. This fee can be found in the fee schedule of the Galveston County Health District.

Section 7. Denial, Suspension, or Revocation of Permit

(a) The Regulatory Authority may refuse to issue a permit, or may suspend, or revoke a permit for violation of any of the requirements of state law and rules or policies/orders adopted by the Board.

(b) Prior to denial, suspension, or revocation, the Regulatory Authority shall notify the applicant, permit holder, or the person in charge, in writing, of the reason for which the permit is subject to denial, suspension, or revocation, and that the permit shall be denied, suspended, or revoked at the end of ten (10) days following service of such notice unless a written request for a hearing is filed with the Regulatory Authority by the permit holder. If no request for hearing is filed within the ten-day period, the denial, suspension, or revocation of the permit becomes final.

(c) Procedures for denying, suspending, or revoking a permit that affords due process to the applicant or permit holder.

(1) A notice provided for in this order is properly served when it is hand delivered to the applicant, permit holder, or the person in charge, or when it is sent by registered mail, return receipt requested, to the last known address of the applicant or permit holder. A copy of the notice shall be filed in the records of the Regulatory Authority.

(2) Persons aggrieved by an action or decision of the Health District may appeal such action or decision to the Director of Environmental Health Programs of the Galveston County Health District. Any such appeal shall be submitted in writing within ten (10) days of the action or decision being appealed. The Director of Environmental Health Programs will hear the appeal.

(3) The appeal provided for in this Order at the request of an aggrieved party shall be conducted by the Director of Environmental Health Programs. The appeal shall be conducted within ten (10) business days. Based on the evidence presented at such appeal, the Director of Environmental Health Programs shall make a finding, and shall sustain, modify or rescind any notice or order considered in the appeal. The person requesting the hearing may appeal the decision of the Director of Environmental Health Programs to the

Chief Executive Officer of Galveston County Health District who will defer policy matters to the United Board of Health.

(4) Any such appeal shall be submitted in writing within ten (10) days of the action or decision being appealed to the Director of Environmental Health Programs, Galveston County Health District, PO Box 939, La Marque, Texas 77568.

(5) Information concerning the denial, suspension or revocation may be published in a newspaper of general circulation within Galveston County and may be published on the District's web site.

(6) Whenever a denial or revocation of a permit has become final, the denied or revoked permit holder may make written application for a new permit. The holder of the denied or revoked permit must meet all requirements of state law, rules adopted under state law, and policies/orders adopted by the district before a permit will be issued.

(d) The Regulatory Authority shall immediately suspend or revoke a permit once a threat to food safety has been identified and documented in any food establishment. The Regulatory Authority shall notify the permit holder or person in charge of this decision and the reasons for the suspension or revocation. The Regulatory Authority will notify the permit holder or person in charge by telephone or in person. The procedures outlined in section 7, subsection (c) are waived in this situation. The Regulatory Authority may request that the permit holder, or person in charge voluntarily close until such time that the threat has ceased and has been sufficiently corrected to reduce the risk to the general public.

Section 8. Review of Plans

(a) Whenever a food establishment is initially constructed, or when an existing structure is converted to use as a food establishment a set of plans and specifications for such construction or conversion shall be submitted to the Regulatory Authority before the work is begun for review to determine if the applicant is in compliance with state law and rules adopted under state law

(b) The permit holder shall contact the Regulatory Authority prior to the remodeling of a food establishment so the Regulatory Authority may determine if plans and specifications of the remodeling are necessary to determine compliance with this order.

(c) 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.

(d) The Regulatory Authority shall approve the plans and specifications providing they meet the requirements of state law, rules adopted under state law, and orders adopted by the district. It is the responsibility of the food establishment to construct according to the requirements of state law and rules and policies/orders adopted by the Board.

(e) No food establishment shall be constructed, remodeled, or converted except in accordance with plans and specifications approved by the Regulatory Authority. If the regulatory authority

finds on inspection that an applicant is not in compliance with state law and rules and policies/orders adopted by the Board, the public health district may re-inspect the applicant at a later date to determine if the applicant is in compliance.

Section 9. Inspections

(a) Authorized Agents of the Galveston County Health District may enter the premises of a food establishment under the district's jurisdiction during normal operating hours to conduct inspections to determine compliance with state law, rules adopted under state law, and orders adopted by the district.

(b) All inspections, including both compliance and complaint-driven, are conducted and completed by an authorized agent and in accordance with the “Texas Food Establishment Rules”

(c) All inspections are documented on forms supplied by the Regulatory Authority. The Regulatory Authority or his or her designee will review inspections for completeness, accuracy, consistency in enforcement, etc. The data collected from these forms are captured in an environmental data management system approved by the Regulatory Authority.

(d) All authorized agents conducting inspections are employed and trained by the District.

Section 10. Stakeholder Feedback

The general public may attend any meeting of the Galveston County United Board of Health and provide comment on any aspect of the food safety program. These meetings comply with Government Code, Chapter 551, Open Meetings (Texas Open Meetings Act) and are held in accordance with this code.

Section 11. Criminal Penalty

(a) 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 public health district in which the establishment or store is operating.

(b) A person commits an offense if the person violates a rule adopted by this policy/order.

(c) An offense under this section is a Class C misdemeanor.

(d) Each day on which a violation occurs constitutes a separate offense.

Section 12. Injunctive Relief

The Regulatory Authority may ask the Galveston County Legal Department to 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.

Section 13. 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 14. Effective Date

The provisions of this order shall take effect thirty (30) days from adoption by the Galveston County United Board of Health.

INTRODUCED, READ AND PASSED BY AN AFFIRMATIVE VOTE BY THE GALVESTON COUNTY UNITED BOARD OF HEALTH of the GALVESTON COUNTY HEALTH DISTRICT on this the 27th day of May 1992, and amended on the second reading on the 13th day of December, 1995, and amended on the second reading on the 29th day of September, 1999, and amended on the second reading on the 30th day of August, 2006, reviewed and approved with no changes 29th day of August 2007, reviewed and approved with no changes 25th day of May 2011. Revised "Appeal Process" and approved on 24th day of April 2013. Amended and approved on the 27th day of January 2016.

PASSED AND APPROVED on the 27th Day of January.

APPROVED :

Chairman,
Galveston County United Board of Health

Signed before me this _____ day of _____, 2016

Notary Public for the State of Texas