WILLIAMSON COUNTY AND CITIES HEALTH DISTRICT

RETAIL FOOD ORDER

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. The Williamson County and Cities Health District is the regulatory authority for food establishments located within its jurisdiction.

Therefore, it is ORDERED, by the Williamson County and Cities Health District Board of Health that the following definitions, requirements, and rules are adopted for regulation of food establishments within the jurisdiction of the Williamson County and Cities Health District (WCCHD):

Section 1. Enforcement of State Law and Rules and Definitions

WCCHD adopts by reference the provisions of Texas Health and Safety Code, Chapter 437 applicable to public health districts and the current rules or rules as adopted, amended, supplemented, or replaced, from time-to-time, by The Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments in the jurisdiction of the WCCHD, including the rules found in 25 Texas Administrative Code, Chapter 229, Subchapter K, regarding certification of food managers.

"Authorized agent or employee" means the employees of the WCCHD.

"Certified Food Protection Manager" means an individual who conducts, manages, or operates a food establishment and who holds a valid and current food manager certificate obtained by passing an examination approved by the Texas Department of State Health Services and meeting all requirements of Texas Health and Safety Code, Chapter 438, Subchapter G, and 25 TAC §229.176 (relating to Certification of Food Managers).

"Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

(1) 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;

(2) 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;

(3) 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 WCCHD 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; and
(4) food establishment does not include an establishment that offers only prepackaged foods that are not time/temperature control 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 25 Texas Administrative Code, Chapter 228, or a private home that receives catered or home-delivered food.

“Food handler” or “food employee” means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

“Nonprofit organization” means a civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing a 501(C) exemption under the Internal Revenue Code, or religious organizations meeting the definition of a “church” under the Internal Revenue Code, Section 170(b)(1)(A)(I).

"State laws and rules" means the state laws found in Chapter 437 of the Texas Health and Safety Code and the state rules found at 25 Texas Administrative Code Chapters 228 and 229, as amended, supplemented, or replaced from time-to-time.

Section 2. Permits and Exemptions

A person may not operate a food establishment without a permit issued by the WCCHD. Permits are not transferrable 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 the permitting requirements of this order, but is not exempt from compliance with state laws and rules or payment of inspection fees. The WCCHD 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 3. Permit Required

It shall be unlawful for any person to operate a food establishment in WCCHD’s jurisdiction without having a currently valid and unrevoked permit issued by WCCHD. The authorized agent shall be and is hereby authorized to issue permits to any person making application therefor, authorizing the operation of a food establishment in WCCHD’s jurisdiction; provided that only a person who complies with the requirements of the state laws and rules and this order shall be entitled to receive and retain such permit. Permits are not transferable from one person to another or from one location to another, except as otherwise permitted by this order. All permits expire on December 31 of each year, with the exception of permits issued to schools (K-12). School food establishment permits are valid September 1 through
August 31. A valid permit must be posted in or on every food establishment regulated by this order.

Section 4. Application for Permit and Fees

Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the WCCHD. 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, an authorized agent of the WCCHD 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.

All applications for permits and inspections shall be accompanied by the appropriate fee(s) as adopted by the WCCHD Board of Health in accordance with Texas Health and Safety Code §121.006(c-1).

Section 5. Review of Plans

A permit applicant or permit holder shall be required to submit to the WCCHD properly prepared plans and specifications for review and approval before;

1. The construction of a food establishment
2. The conversion of an existing structure for use as a food establishment, or
3. The remodeling of a food establishment or a change of type of food establishment or food operation, or under the conditions set by the WCCHD, if the WCCHD determines plans and specifications are necessary to determine compliance with the provisions of state law and the rules adopted by this order.

The plans and specifications shall indicate the proposed layout, mechanical schematics, construction materials and finish schedules, proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities and installation specifications. The plans shall contain an intended menu and the anticipated volume of food to be stored, prepared, and sold or served. The plans and specifications will be approved by the WCCHD if they meet the requirements of the rules adopted by this order. The approved plans and specifications must be followed in construction, remodeling or conversion.

The plans must include information and evidence of standard procedures that ensure compliance with the requirements of the State rules are developed or are being developed. Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.
Section 6. Food Handler Requirements

It shall be unlawful for any person operating any food establishment to work as a food handler or food employee or employ a food handler or food employee until such food handler or food employee has received a certificate of completion of a food handler training course (a “food handler’s certificate”) issued by WCCHD, which is valid at the time of such employment in accordance with the following provisions.

1. Food Handler Training Required. All food employees shall successfully complete a food handler training course within 60 days of employment.

2. Issuance of Food Handler’s Certificates and Payment of Fees. WCCHD will issue food handler's certificates to food handlers who receive approved training and pay the appropriate fee. The food handler’s certificate will be valid for two (2) years.

3. Display of Food Handler's Certificate. The food handler's certificate issued to each individual shall be posted at the place of employment in a location readily visible and accessible to the WCCHD for verification.

4. Managers and Supervisory Personnel. Managers and supervisory personnel who have received a certification document from an accredited certified food managers training program shall be exempt from obtaining a food handler's certificate. The food manager certificate shall be posted at the place of employment in a location readily visible and accessible to the WCCHD for verification.

5. Food Employees of Temporary Food Establishments. Food employees employed at a temporary food establishment shall be exempt from completing a food handler training course and shall be exempt from obtaining and displaying a food handler's certificate.

Section 7. Certified Food Protection Manager Requirement

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.

1. At least one certified food protection manager must be employed by each food establishment.

2. The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

3. A certified food protection manager is not required to be employed by a temporary food establishment.
Section 8. Inspection of Food Establishments

1. The WCCHD shall inspect every food establishment located within the jurisdiction of WCCHD. The frequency of inspection shall be determined by the WCCHD based upon assessment of the food establishment’s history of compliance and the potential for causing foodborne illness. An assessment will be completed by the WCCHD to rank the food establishment as high, medium, or low risk for the potential for causing foodborne illness. The inspection frequency will vary by risk and will be determined by the WCCHD.

2. Upon request of the WCCHD, the person operating the food establishment shall permit access to all parts of the food establishment and shall permit inspection and copying of all records of food purchased. The WCCHD shall be allowed to take photographs as part of the inspection process.

3. The WCCHD may take and examine samples of food, drink and other substances found on the premises for the detection of unwholesomeness and adulteration and may condemn and forbid, and cause to be removed or destroyed, any food or drink which is unwholesome, adulterated, or any potentially hazardous food held at temperatures which allow the growth of dangerous organisms.

Section 9. Violations and Penalties

Any permit holder, responsible officer of the permit holder, or other person who violates any provision of Texas Health and Safety Code, Chapter 437 or a rule or order adopted under Chapter 437 shall be subject to enforcement and penalties in accordance with state law.

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 WCCHD. An offense under this section is a Class C misdemeanor. Each day on which a violation occurs constitutes a separate offense

2. Administrative penalties may be assessed pursuant to Texas Health and Safety Code, Chapter 437, Secs. 437.0185-437.0186,

   (a) The Executive Director of WCCHD is authorized to impose an administrative penalty on a person that WCCHD requires to hold a permit under Section 437.004 if the person violates Chapter 437 or a rule or an order adopted under Chapter 437;

   (b) The amount of the penalty may not exceed $500.00 (five hundred dollars) per day, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty is to be based on:

   - The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation
   - The history of previous violations
   - The amount necessary to deter a future violation
   - Efforts to correct the violation, and
   - Any other matter that justice may require.
(c) The enforcement of the penalty may be stayed during the time the order is in judicial review if the person pays the penalty to the clerk of the court. A person who cannot afford to pay the penalty may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Procedure for a party who cannot afford to file security for costs.

(d) Not later than the 20th day after the date the person receives notice of the penalty, the person in writing may:
   • Accept the determination and pay the recommended penalty of the director or
   • Make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) The justice of the peace for the justice precinct in which the retail food establishment is located or the mobile food establishment is based shall hold a hearing requested under Subsection (d).

(f) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(g) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(h) If the person paid the penalty to the clerk of the court and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court’s judgment becomes final, that the appropriate amount be remitted to the person.

3. Assessment of Administrative Penalty. An administrative penalty may be imposed for a violation of Chapter 437, Health and Safety Code, by the state under 437.018 or by the director of a public health district under Section 437.0185, but not both.

Section 10. Denial, Suspension, or Revocation of Permit; Administrative Hearing

The WCCHD 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 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 WCCHD after twenty days of receipt of the notice by the permit holder, or applicant, the WCCHD 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 WCCHD. The hearing officer shall appoint a time, day, and location for the hearing. Both the WCCHD 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 WCCHD and the permit holder or applicant.

Section 11. Posting Notice of Unsatisfactory Inspections

If, during an inspection, the WCCHD discovers violations of state laws and rules or this order
that earn more than 30 demerits on one or more inspections during a 12-month period, then
based upon the results of the inspection the WCCHD shall post a certificate of grade as
follows:

1 First failure. An "UNSATISFACTORY" placard shall be posted on the front door
or front window, or if the food establishment does not have a front door or front
window, then upon a wall of the food service area inside the food establishment, and
said placard shall be displayed in clear view to the public and shall not be covered
from sight, defaced or removed except by the WCCHD after an inspection is
performed earning 30 or fewer demerits. The follow-up inspection shall occur within
two business days of the failed inspection. A Compliance Inspection fee must be
paid prior to the inspection and removal of the placard.

2 Second failure. When a second failed inspection occurs within 12 months of the first
failed inspection, an "UNSATISFACTORY" placard shall be posted on the front
door or front window, or if the food establishment does not have a front door or front
window, then upon a wall of the food service area inside the food establishment, and
said placard shall be displayed in clear view to the public and shall not be covered
from sight, defaced or removed except by the WCCHD after an inspection is
performed earning 30 or fewer demerits. The permit shall be suspended and the
operations of the establishment shall cease immediately. The food establishment
shall remain closed for a minimum of 48 hours and fulfill the following requirements
before reopening:
   a. The management of the food establishment must meet with and submit a written
      plan of action to the director of the environmental division of WCCHD or his
      appointee. The plan of action shall address critical violations of the previously
      failed inspections.
   b. A reinstatement fee as currently established or as hereafter adopted from time-
      to-time by the WCCHD Board of Health or by the city council of the city in
      which the food establishment is located, shall be paid to the WCCHD
      Environmental Division located at 303 Main, Georgetown, Texas 78626.
   c. A follow-up inspection will be conducted within one business day of fulfillment
      of the requirements listed in subsections (2) (a) and (b) of this section. A
      Compliance Inspection fee must be paid prior to the inspection.
   d. The food establishment shall be placed on a 30-day inspection schedule until
two consecutive inspections result in a score of 30 or fewer demerits.

3 Third failure. When a third failed inspection occurs within 12 months of the first
failed inspection, an "UNSATISFACTORY" placard shall be posted on the front
door or front window, or if the food establishment does not have a front door or front
window, then upon a wall of the food service area inside the food establishment, and said placard shall be displayed in clear view to the public and shall not be covered from sight, defaced or removed except by the WCCHD. The person in charge shall be provided written notice of the intent of WCCHD to permanently revoke the permit.

Section 12. 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 13. Effective Date

The provisions of this order shall take effect immediately upon approval and adoption by the WCCHD Board of Health.

APPROVED AND ADOPTED this 21 DAY OF JANUARY, 2016.

[Signature]
Chair
Williamson County and Cities Health District Board of Health

ATTEST:

[Signature]
Secretary
Williamson County and Cities Health District Board of Health