

PROPOSED POLICY/ORDER

A Galveston County United Board of Health Policy

AN ORDER 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 §§229.161-171, 229.173-175.

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 "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 229, Sections 161 through 171 and Sections 173 through 175

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.

Section 5. 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 the food service manager's certification in accordance with Section 9 of this policy/order

(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 shall 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.

(h) 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.

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

(j) 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.

(k) 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.

Section 6. 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) The hearings provided for in this order shall be conducted by the Director of the Environmental Health Services Division (Director) at a time and place designated by the Director. Based on the evidence presented at such hearing, the Director shall make a finding, and shall sustain, modify, or rescind any notice or order considered in the hearing. The Director shall furnish to the applicant or permit holder and to the Regulatory Authority a written report of the hearing decision.

(3) The applicant or permit holder may appeal the decision of the Director by notifying in writing the Regulatory Authority within five (5) days of the Director's findings. The decision of the Regulatory Authority is final and shall sustain, modify, or rescind the decision of the Director. 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.

(3) 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 7. 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 8. 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 9. Certified Food Manager

(a) As provided by Texas Health and Safety Code 437.0076, the Regulatory Authority requires each fixed or mobile food establishment in which food is prepared on-site for sale to the public that holds a permit issued by the public health district to employ a food manager certified under Health and Safety Code, Chapter 438, Subchapter G.

(b) One certified food manager shall be employed by each permitted food establishment. All food service managers must successfully complete a Food Manager's Certification program given by the Regulatory Authority or by a food managers training program accredited by the Texas Department of State Health Services. Training required of food managers can be no more extensive than that specified under Subchapter D, Chapter 438, of the Texas Health & Safety Code. The Regulatory Authority will issue a card to each individual who successfully completes its Food Service Manager's Certification Program.

(c) The following food establishments are exempt from the requirements of the Certified Food Manager:

- (1) A food service establishment that handles only prepackaged food and does not prepare or package food.
- (2) Child-care facilities, as defined in Section 42.002, Human Resources Code.
- (3) Establishments that do not prepare or handle exposed potentially hazardous foods as defined in 25 TAC 229.162 (66)
- (4) Nonprofit organizations as defined in 25 TAC 229.371(9) (relating to Permitting Retail Food Establishments)
- (5) In accordance with 437.0076 (e), the Regulatory Authority reserves the right to exempt other establishments if it is determined that the application of those requirements to those establishments is not necessary to protect public health and safety.

Section 10. Audited Statement

(a) The public health district shall file an audited statement with the Texas Department of State Health Services on or before January 15 of each year.

(b) The statement must include the receipts of funds collected under this policy/order, all expenditures of funds, and fund balances.

(c) A public health district that fails to timely file the statement may not require the payment of a fee for issuing or renewing a permit until the statement is filed.

Section 11. Public Information

All records subject to the Government Code, Chapter 552, Public Information (Texas Public Information Act) will be made available to the public in accordance with this code. In addition, the public health district reports inspection scores to a newspaper of general circulation within Galveston County.

Section 12. Stakeholder Feedback

The public health district participates in an annual environmental summit process in which the district invites members of the environmental community including food establishment owners/responsible person to provide feedback on the services provided within the food safety inspection program and to discuss current environmental issues. The invited members of the environmental community provide feedback to the public health district. The general public may also 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 13. 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 14. 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 15. 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 16. 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

Ben G Raimer, MD Signature on file

Vice Chair person

Galveston County United Board of Health

Signed before me on this the 31st day of October, 2006.

Nancy Morecraft (Signature on file)
Notary Public for the State of Texas

My Commission expires: _____