

**ORDER NUMBER:**

**ORDER OF THE COMMISSIONERS' COURT OF ECTOR COUNTY, TEXAS, PURSUANT TO AND UNDER THE AUTHORITY OF CHAPTER 121, HEALTH AND SAFETY CODE, VTCA, ALSO KNOWN AS THE "LOCAL PUBLIC HEALTH REORGANIZATION ACT", ECTOR COUNTY ADOPTS BY REFERENCE THE PROVISIONS OF THE CURRENT RULES OR RULES AS AMENDED BY THE TEXAS BOARD OF HEALTH FOUND IN TITLE 25 TEXAS ADMINISTRATIVE CODE, CHAPTER 229, SECTIONS 161 THROUGH 171 AND 173 THROUGH 175 REGARDING THE REGULATION OF FOOD ESTABLISHMENTS IN THIS JURISDICTION.**

WHEREAS, the Texas Legislature authorizes (Chapter 121, Health & Safety Codes, VTCA) counties to promulgate, establish and adopt reasonable regulations to protect the public's health; and,

WHEREAS, the Texas Department of State Health Services has established minimum sanitation and food protection regulations entitled the 'Texas Food Establishment Rules' to protect citizens from food borne illness; and,

WHEREAS, the Commissioners' Court of Ector County, Texas, has considered the matter and deems it appropriate to enact an Order adopting the Texas Food Establishment Rules to prevent injury to the public's health in Ector County, Texas; and,

WHEREAS, the Commissioners' Court of Ector County, Texas, finds that it is reasonable and prudent for the Ector County Health Department to enforce the Texas Food Establishment Rules to insure an effective and uniform level of food service regulation for the public's protection against disease.

**NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF ECTOR COUNTY, TEXAS.**

Section 1. Adoption of Texas Food Establishment Rules

- A. The Ector County Commissioners' Court adopts by reference the providers of the current rules amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction.
- B. Definitions

The words "regulatory authority" mean the Ector County Health Department.

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

The words “county” in this ordinance shall be understood to refer to Ector County.

The words “state rules” mean the regulations found at 25 Texas Administrative Code, Chapter 229, Section .161 through 171 and Sections 173 and 175. These rules are also known as the Texas Food Establishment Rules.

Authorized Agent or employee. The employees of the regulatory authority.

Base of Operation. An operating base to which a mobile food establishment vehicle returns for such things as discharging liquid or solid waste, refilling water tanks and ice bins, and boarding food

Commissary. A fixed catering establishment, restaurant, or any other fixed, licensed place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored. A commissary includes a location where food services are outsourced by an entity or facility in that location that serves the facilities’ students, inmates, detainees, residents, patients or customers.

Food Establishment. An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption.

Food grade materials. Materials and utensils used in food service and preparation that are approved by the U.S. Food and Drug Administration as safe for food handling and storage. Generally, material that will not transfer or allow the transfer of noxious or toxic substances to food.

Food Handler. A food establishment employee who works at any time with unpackaged food, food equipment or utensils, or food contact surfaces.

Mobile food establishment. A self-propelled mounted food establishment designed to be readily moveable. This includes vehicles in which food is prepared on site within the vehicle. A mobile food establishment equipped with food preparation equipment must meet regulations applicable to a fixed food establishment and regulations applicable to mobile food establishment.

Packaged. Bottled, canned, cartoned, securely bagged, or securely wrapped, and packaged in a fixed, licensed food establishment or a food processing plant. Packaged does not include food or drink in a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

Potentially hazardous food (PHF). A food that requires time and temperature control for safety to limit pathogen growth or toxin production which consist in whole or in part of milk, or dairy products, eggs, poultry, uncooked beef, pork, fish shellfish, edible crustacean, or other ingredients including synthetic ingredients, in a form

capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

**Public Water System.** A system for the provision to the public of water for human consumption. Defined in Texas Administrative Code 30 TAC 290.38 (32)... Human Consumption...uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

**Pushcart.** A non-self-propelled mobile food establishment limited to serving only prepackaged, non-potentially hazardous food or prepackaged ice cream.

**Single-service articles.** Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

**Roadside Food Vendor.** A person who sells or serves whole, uncut, and unprocessed fruits or vegetables from a temporary location adjacent to a public road or highway. Food shall not be prepared or processed by a roadside food vendor. A roadside food vendor is classified as a mobile food establishment.

**Site Plan.** A drawing, not necessarily to scale, depicting the existing conditions at the proposed location of the mobile food establishment and the proposed location of the mobile food establishment on the property.

**State rules.** The regulations found at 25 Texas Administrative Code, chapter 229, sections 161 through 171 and sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

**Temporary food establishment.** A food establishment that operates for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

The Ector County Health Authority

The Ector County Health Authority shall be a physician that satisfies the requirements of the state and performs the duties prescribed by state law.

Supplements Regulations:

- (1) Doors to walk-in units must be of solid tight fitting material with hinges and latches. Air curtains may not substitute for solid doors.

(2) Deli meats, once opened, must be date-marked indicating when the package was opened.

(3) No soft ice cream or ice cream mixes, including yogurt, may be served from mobile snow cone units. All ice cream must originate from commercial manufactured sources.

(4) All outdoor tent or frame food establishments built on-site for events lasting more than three (3) days and serving potentially hazardous food (PHF) must have a two-compartment sink for washing table and kitchen utensils and a separate hand-washing sink. Sinks must have hot and cold running water with a drainage system approved by the regulatory authority.

(5) All outdoor tent or frame food establishments serving potentially hazardous food (PHF) must have a controlled heat source and refrigeration adequate to maintain hot food at least 135 degrees Fahrenheit and to maintain cold food at least 41 degrees Fahrenheit. The use of sterno equipment at outdoor events is prohibited.

(6) Use of utensils and surface materials that are not food grade materials is prohibited. The regulatory authority may evaluate the safety of materials that are not marked as food grade material or designated as such by the U.S. Food and Drug Administration. The opinion of the regulatory authority shall be the final determination as to whether the use of the material is prohibited.

(7) Operation of more than two (2) food establishments from the same commercial kitchen is prohibited. Each food establishment must obtain a separate permit. The kitchen must have sufficient lighting and be of suitable size, construction, and design to facilitate maintenance and sanitary operations of each food establishment business.

(8) A Snow cone stand must have a two-compartment sink with a drain board on both sides of the sink. A snow cone stand must have a separate hand-washing sink with hot and cold running water.

(9) Resale of deli or restaurant food intended for single sale is prohibited.

(10) Food establishments' water systems shall meet the requirements of Texas Food Establishment Rules §229.166(b)(1)(A)(B). Water from a nonpublic water system such as private water wells in the county shall meet all the requirements of a Public Water System. A food establishment that cooks, prepares and sells open food products must have a three compartment sink with hot and cold running water available for all three compartments. Food establishments that use only single service articles only must have a two compartment sink. Compartments must be large enough to immerse the establishment's largest piece of equipment for washing, rinsing and sanitizing. Water temperature for hand washing and

equipment washing must be 120 degrees Fahrenheit. The establishment must have a potable system under pressure. The establishment must have a separate hand washing sink with hot and cold running water by mixer faucet.

(11) Commissary kitchen units preparing and cooking perishable foods must have a minimum of a two-compartment sink with drain boards on both sides of the sink, a hand sink and hot water provided to all sinks in unit. Food establishment kitchens must also meet all other food code requirements to obtain a county health department permit.

(12) Food Establishments must provide hand sanitizing gel or foam, in a separate unit from hand soap, and disposable hand drying towels in the food production area.

(13) Salad bar sneeze guards must be installed over self-serve buffet style food service units in a restaurant or food service operation. Installation must meet the requirements of the regulatory authority as illustrated in the county health department's "Installation Guide of Food Protective Devices."

(14) Door-to-door vendors of potentially hazardous food (PHF) must obtain an Ector County health Department permit.

(15) Door-to-door sale of tamales is prohibited.

(16) At the final health inspection for an initial permit, adequate food for a business opening must be stocked in cold storage units. The food establishment must have facilities and equipment ready for test cooking by the regulatory authority and its agents.

(17) All Food Establishment owners must obtain food handler cards for owners or managers and assistant managers working in food establishments. Owners or managers and assistant managers must obtain food handler cards from entities certified to provide food handler classes by the Texas Department of State Health Services (TDSHS) in Austin, Texas. The food handler cards must be displayed with the health department permit. At least one food handler card holder must be on the premises of a food establishment at all times. Food service owners, managers, or assistant managers will have one year from this update requirement to obtain food handler cards. A registry of accredited programs is posted on the Texas Department of State Health Services Website.

(18) Children in diapers or training pants are prohibited from entering a food preparation area at any time during setup or operation. Changing or removing diapers or training pants in any area in any food establishment where food is served is prohibited.

(19) Produce stands selling “produce only” will not require a county health department permit. The selling, distribution or serving of perishable foods such as dairy items, meats, poultry products, canned goods or processed foods will require the operator to obtain a county health department permit.

(20) All Seasonal permits are limited to 6 uses during the year.

(21) All Temporary permits are limited to 14 consecutive days or 1 event.

(22) The water temperature of hot water heaters shall be required to be set at a minimum of one hundred twenty (120) degrees Fahrenheit for manual ware-washing and hand-washing. The hot water temperature of dishwashers shall be set according to state law and regulations.

(23) A replacement health permit fee will be in the amount of \$50.00.

#### Mobile Food Establishments:

##### (a) Initial/Renewal Permit Applications:

(1) All mobile food establishments serving food and/or drink in Ector County must be inspected and permitted by the Ector County Health Department prior to serving food to the public.

(2) Mobile food establishments shall comply with the requirements of the Texas Food Establishment Rules, §229.169 and §229.161 through 229.171.

(3) No more than twenty-five (25) mobile food establishment permits shall be in effect at any time within Ector County. Permits will be issued on a first-come, first-served basis, are non-transferable and are valid for multiple private property locations if a site plan for each location is provided and approved during the permitting process.

(4) Roadside food vendors and all other Initial and Renewal Applications for a mobile food establishment permit shall include:

(A) A site plan depicting the location(s) of the mobile food establishment. The site plan shall depict the assigned mobile food establishment parking space location, total number of parking spaces on the site, and the square footage of the property.

(B) Written and notarized permission of the owner of the property or business where the mobile food establishment will be located to allow the operation of the mobile food establishment.

(C) A notarized statement from that business or from a business within 150 feet that employees of the mobile food establishment may use its restroom facilities during hours of the mobile food establishments operation.

(D) A notarized statement from the owner of a commissary stating that the mobile food establishment uses the facility as its base of operation.

(E) Name of the mobile food establishment vehicle, make, model, license plate and vehicle identification numbers of the vehicle.

(F) Name, address and telephone number of the owner of the mobile food establishment.

(G) Name, address and telephone number(s) of operators and drivers of the mobile food establishment.

(b) Appeal:

If the issuing officer denies a mobile food establishment permit to any person or revokes a mobile food establishment permit, the office shall immediately convey the decision to the applicant or permit holder, and provide the applicant a written report of the reason for the denial within seventy-two (72) hours. The applicant or permit holder shall have ten (10) days from the date of written notice of revocation or denial to file a notice of his appeal from the order denying or revoking their permit. The applicant shall have, at his option, a hearing on their appeal.

(c) Judicial Review:

If the applicant or permit holder requests a hearing under Section (b), the hearing shall be held in accordance with the Administrative Procedure Act of the State of Texas, and review from the decision (on the record of the hearing) shall be had to the county court in which the city is located. The hearing shall also be subject to the Texas Open Meetings and Records Law.

(d) Operating Restrictions:

(1) Commissary; base of operations. Mobile food establishments, except roadside food vendors selling only whole, uncut fruits or vegetables, shall operate from a commissary or other fixed food establishment and shall report at least once daily to such location for all supplies and for all cleaning and servicing operations. The commissary shall keep a daily log of the mobile food establishments' supply, cleaning and servicing operations, and have the log available to the regulatory health authority for inspection.

(2) The commissary or other fixed food establishment used as a base of operation for a mobile food establishment shall be constructed and operated in compliance with the

requirements of this chapter or by the approval of the Ector County Health Department.

(3) Mobile food establishments that serve only whole, uncut fruits or vegetables or food that is prepared and packaged in individual servings at a fixed, licensed food establishment and transported to and stored at the mobile food establishment under conditions meeting requirements of these sections, or beverages that are not potentially hazardous and are dispensed from covered urns or protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization exits at the mobile food establishments' base of operations.

(4) The hours of operation of a mobile food establishment shall be from 6:00 AM to 8:00 PM. No mobile food establishment shall be in operation within the County limits before 6:00 AM. or after 8:00 PM.

(5) No mobile food establishment shall operate in a public park.

(6) The mobile food establishment sales area shall not exceed six hundred square feet in area. At no time may the required number of parking spaces for the principal use of the property be rendered nonconforming due to mobile food establishment location at or use of the site.

(7) One (1) mobile food establishment shall be permitted per site. The site shall be the physical address where the mobile food establishment locates to conduct operations.

(8) During periods of non-use, a mobile food establishment and equipment must remain locked and secured. Food items, utensils and equipment must be stored according to the requirements of this chapter.

(e) Potable Water:

For food preparation and water for hand washing. Mobile food establishments' water systems shall meet the requirements of Texas Food Establishment Rules §229.166 (i)(6). A mobile food establishment that cooks, prepares and sells open food products and dispenses them via single service articles must have a two compartment sink with hot and cold running water available for both compartments. Compartments must be large enough to immerse the establishment's largest piece of equipment for washing, rinsing and sanitizing. The establishment must have a potable water system under pressure. The establishment must have a separate hand washing sink with hot and cold running water by mixer faucet and properly plumbed to a waste water tank. The unit must have a minimum ten (10) gallon water heater or any instantaneous water heater.

(f) Waste Retention:

If liquid waste results from the operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is at least fifteen (15%) percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the tank when the mobile food unit is in motion. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system. Liquid waste shall be disposed of in accordance with existing laws. Mobile food establishment operators shall be prohibited from discharging fat, oil, grease or wastewater into sanitary sewer system.

(g) Hot and Cold Food Units:

A mobile food establishment serving potentially hazardous food (PHF) must have equipment to keep hot food at least 135 degrees Fahrenheit at all times. A mobile food establishment serving potentially hazardous food (PHF) must have equipment to keep cold food at most 41 degrees Fahrenheit at all times.

(h) Servicing Area:

A commissary that services a mobile food establishment vehicle must have a servicing area that has overhead protection for any supplying, cleaning or servicing of the vehicle. Within the servicing area, there shall be a location provided for the flushing and draining of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. The surface of the servicing area shall be constructed of smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean and be graded to drain.

(i) Food Handler Cards:

Mobile food establishment owners must obtain food handler cards for owners or managers and assistant managers working in mobile food establishments. Owners or managers and assistant managers must obtain food handler cards from entities certified to provide food handler classes by the Texas Department of State Health Services (TDSHS) in Austin, Texas. The food handler cards must be displayed with the health department permit. At least one food handler card holder must be on the premises of a mobile food establishment at all times. Food service owners, managers or assistant managers will have one year from this updated requirement to obtain food handler cards. A registry of accredited programs is posted on the Texas Department of State Health Services website.

## Section 2. Permits and Exemptions

A. A person may not operate a food establishment in Ector County without a permit issued by the regulatory authority. Permits are non transferable 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.

- B. 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 the 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.
- C. The City of Odessa or Ector County is exempted from buying a health permit unless the City of Odessa or Ector County outsources food services for a building or facility such as for a city jail or the county detention facilities or the senior citizen facilities. The private company which is accepting an outsourcing contract will be responsible for obtaining a health permit. Nursing homes, day cares, and foster homes will be required to obtain a health permit. Non-profit organizations will not be charged for a health permit or church kitchens (members only). The Ector County Independent School District Cafeterias will be exempt from purchasing health permits. However, non-profit organizations must otherwise comply with the applicable provisions of the health code.

Section 3. Application for Permits and Fees

Any person desiring to operate a food establishment must take a written application on a form provided by the regulatory authority. The application must contain the name and address of the applicant, the location and the type of 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 exiting permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with local ordinance and state law. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.

The following fee schedule applies to permits issued under this ordinance:

<u>Employees</u>	<u>Fee</u>
1-10	\$ 140.00
11-35	\$ 175.00
35+	\$ 300.00

Special Permit fees:

- (A) Mobile/Commissary concessions \$100.00

(B) A mobile/tent food establishment kitchen with the same owner may have two additional units for the standard commissary/concession fee. Any additional units will be charged sixty dollars (60.00)

- (i) Seasonal : \$100.00
- (ii) Temporary: \$60.00
- (iii) Snow cone stands: \$100.00
- (iv) Foster Homes : \$100.00
- (v) Day Cares: \$150.00
- (vi) Nursing Homes: \$300.00
- (vii) Plan Review Fee: \$150.00
- (viii) Replacement Health Permit: \$50.00

#### Renewal of Permit

Ector County Health Department permits for the operation of all food establishments with the exception of temporary permits shall be renewed January 1<sup>st</sup> of each year with a penalty of twice the permit fee if not renewed by January 31<sup>st</sup>.

#### Section 4. Review Plans

- A. Whenever a food establishment is constructed or extensively remodeled or when an existing structures is converted to use as a food establishment, properly prepared 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 20% or greater of the area of the food establishment is to be remodeled. The plans and specification shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specification will be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. The approved plans and specifications must be followed in construction, remodeling or conversion. Failure to follow approved plans and specifications when required will result in permit denial, or suspension, or revocation.
- B. Failure to follow the approval plans and specifications will result in a permit denial, suspension, or revocation.

### Section 5 Suspension of Permit

- A. The regulatory authority may, without warning, notice or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by Paragraph (5)(B) of this ordinance. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing in 10 days of receipt of a request for a hearing.
- B. When a permit is suspended, the holder of the permit or the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

### Section 6. Revocation of Permit

- A. The regulatory authority may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subjected to revocation and that the permit shall be revoked at the end of ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten day period.
- B. If no request for hearing is filled within ten day period, the revocation of the permit becomes final.

### Section 7. Administrative Process

- A. A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filled in the records of the regulatory authority.
- B. The hearing provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the record evidence of such hearing, the regulatory authority shall make final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

Section 8. Remedies

- A. Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than one thousand dollars.
- B. The regulatory authority may seek to enjoin of these rules.

Section 9. Severability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance 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 ordinance.

Section 10. Effective Date

The provision of this ordinance shall take effect on July 28, 2014.

**The motion to promulgate and establish was made by Ector County Commissioner \_\_\_\_\_ and seconded by \_\_\_\_\_. A vote was called for by Ector County Judge Susan Redford and the motion passed by a vote of \_\_\_\_\_. The foregoing ordinance regulating food establishments in Ector County is hereby entered into the minutes of the proceeding of the Commissioners' Court of Ector County, Texas.**

\_\_\_\_\_  
**Susan Redford, Ector County Judge**

**(S E A L)**

\_\_\_\_\_  
**Linda Haney, Ector County Clerk**

**Date:**\_\_\_\_\_