

**GILLESPIE COUNTY, TEXAS
FOOD ESTABLISHMENT REGULATIONS**

THIS ORDER IS AN AMENDED AND RESTATED ORDER THAT COMBINES THE ORIGINAL GILLESPIE COUNTY, TEXAS FOOD ESTABLISHMENT REGULATIONS, ADOPTED BY THE GILLESPIE COUNTY COMMISSIONERS COURT ON DECEMBER 4, 2000, WITH ALL SUBSEQUENT AMENDMENTS THAT HAVE BEEN APPROVED BY SAID COMMISSIONERS COURT, TOGETHER WITH CURRENT AMENDMENTS THAT UPDATE STATE LAW REFERENCES TO THE TEXAS ADMINISTRATIVE CODE, INTO THIS DOCUMENT AS FOLLOWS:

AN ORDER REGARDING THE REGULATION OF FOOD ESTABLISHMENTS INCLUDING FOOD SERVICE ESTABLISHMENTS (INCLUDING RESTAURANTS, SCHOOL FOOD SERVICES, AND CERTAIN BED AND BREAKFAST ESTABLISHMENTS), RETAIL FOOD STORES, TEMPORARY FOOD ESTABLISHMENTS, MOBILE FOOD UNITS AND ROADSIDE FOOD VENDORS, ADOPTING THE STATE MINIMUM STANDARDS FOR THE SAME, PROVIDING FOR PERMITS AND FEES, PROVIDING FOR ENFORCEMENT AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Commissioners Court of the County of Gillespie, Texas (Commissioners Court) has determined that it is in the best interests of the citizens of Gillespie County, Texas to establish a local Regulatory Authority governing food establishments and to adopt the state minimum standards for the safe operation of food establishments within the County for enforcement by the Regulatory Authority; and,

WHEREAS, the Commissioners Court has become aware that the Texas Administrative Code (TAC), as it relates to Food Establishment Regulations, has been amended and that the references thereto in this Order should be amended.

NOW THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF THE COUNTY OF GILLESPIE, TEXAS that the following Order be and is hereby adopted.

I. Adoption of Texas Food Establishment Rules

- A. The Commissioners Court adopts by reference the provisions of the current rules or regulations as may be amended from time to time by the Texas Department of State Health Services (Tx. DSHS), or its successor, found in 25 Texas Administrative Code, Chapter 228 regarding the regulation of food establishments in this jurisdiction.

The adoption of said Regulations shall include but are not limited to the provisions of 25 Texas Administrative Code 229.176 regarding the requirements

of a Certified Food Manager and the same shall be required for all Food Establishments within the unincorporated areas of the County of Gillespie, Texas, to the extent of, and under the same conditions as therein provided, and with the same responsibilities as therein provided, also as the same may be amended from time to time.

- B. Unless amended by this Order, all definitions and requirements will be the same as the TAC or State Rules, as the same may be amended from time to time. If a provision in this Order is more stringent than the comparable provision of the TAC, the provision in this Order will be applicable.

Definitions:

1. Authorized Agent or Employee means the employees of the Regulatory Authority.
2. Food Establishment - see 25 TAC 228.2 (57) (A-D).
3. Institutional Food Service Establishments are food establishments for all purposes of this Order except with regard to the cost of a permit, for such purposes include child care centers licensed by the Regulatory Authority to receive thirteen (13) or more children for care which prepares food for on-site consumption, hospitals which serve food to the general public, correctional facilities (jails) which contract with professional food management corporations for food preparation or are privately owned correctional facilities, and schools where food is prepared and intended for service primarily to students in institutions of learning, including, but not limited to public and private kindergartens, preschool and elementary schools, junior high schools, high schools, colleges and universities (excluding those located on federally owned property, which are exempt from the terms of this Order).
4. Municipality of Fredericksburg in this Order shall be understood to refer to the City of Fredericksburg.
5. State Rules means the state rules found at 25 Texas Administrative Code, Chapter 228. These rules are also known as the Texas Food Establishment Rules.
6. Regulatory Authority means the Gillespie County Health Division.
7. County in this Order shall be understood to refer to Gillespie County, Texas.
8. "Certified Food Manager" shall have the same meaning as found in 25 Texas Administrative Code 229.176(b)(4). A person holding a certificate

issued to him or her who successfully completes an examination approved by the Texas Department of State Health Services shall be accepted as meeting the training and testing requirements under the Texas Health and Safety Code and the Texas Administrative Code.

9. “Reinspection” means any inspection performed by the Regulatory Authority other than the annual inspection and/or any routine unannounced inspection initiated by the Regulatory Authority. All reinspections requested by Food Establishments shall be performed within a reasonable time following the request subject to the scheduling of the Regulatory Authority.
10. Owners, operators, person in charge: This Order and the terms owners, operator(s), person in charge shall apply to any person or entity who or which owns, manages (including the certified food manager and food handlers when applicable), directs or supervises the activities at a food establishment. Without limiting the responsibility for any of the foregoing for complying with this Order, any person who executes the application for a permit shall be a person responsible for compliance, and shall also be subject to penalties for non-compliance.

II. Permits and Exemptions

- A. A person or entity may not operate a food establishment without a permit issued by the Regulatory Authority. Permits are not transferable from one person or entity 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 location regulated by this Order.
- B. One-time events in homes or those events attended by private guests, invitees, church socials and the like shall not be subject to the terms of this Order, it being the intent of this Order to regulate public vendors of food and large-scale gatherings to which the public is invited, and not to exempt those of whatever size or patronage who regularly provide food service. Without limitation, individual vendors at public fairs and festivals are specifically subject to the terms of this Order. The determination of whether or not an establishment is exempt shall be made by the Director in accordance with the definitions set out in the State Rules, which determination is subject to appeal, as provided in Section VII., below.
- C. Regarding food establishments operated in connection with festivals, events and the like, the sponsoring organization shall be responsible for requiring that all individual vendors at its festival or event are properly permitted. Such sponsoring organization shall be permitted to apply for permits on behalf of its individual vendors and/or pay permit fees and may allocate them among vendors in any manner deemed suitable to the sponsoring organization.

- D. A food establishment which is permitted and regulated directly by the United States Department of Agriculture (USDA) or the State of Texas (State) is exempt from the provisions of this Order except in the event of an imminent hazard to public health the Regulatory Authority may require immediate cessation of operations with the notice required in Section VII., Paragraph A. Operations may be resumed at any time by any representative of the USDA or the State.

III. Application for Permit and Fees

- A. Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the Regulatory Authority. The application must contain the name and address of each applicant, the location and type of the proposed food establishment, name, address and phone number of the owner of the establishment, the name and a copy of the state certificate or registration card for the Certified Food Manager for such establishment and the signature of each applicant 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. The same information is required for a renewal permit as for an initial permit. Renewals of permits shall be required during the month of January of each calendar year beginning January 2005.
- B. Prior to the approval of an initial permit, the Regulatory Authority shall inspect the proposed Food Establishment to determine compliance with state laws and rules. The Regulatory Authority shall inspect all renewing food establishments at least once annually. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit, provided however, that with regard to individual vendors at a festival or other event an initial inspection shall not be required; the Regulatory Authority may inspect such vendors at any time before or during the event at its discretion. Each food establishment must submit renewals of food manager certifications within ninety (90) days after their expiration or within ninety (90) days following cessation of employment by the Certified Food Manager listed in its permit application. If the same is not submitted within the time period, the food establishment shall have its permit revoked under the method provided in Section VI. below.
- C. The following fee schedule applies to permits issued under this Order:
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|----|---|-------------------|
| 1. | Institutional Food Service Establishments | \$100.00 per year |
| 2. | Retail Food Establishments and Food Service Establishments: | |
| | a. with 1 to 5 average annual employees | \$175.00 per year |
| | b. with 6 to 19 average annual employees | \$250.00 per year |
| | c. with 20 or more average annual employees | \$300.00 per year |

3.	Portable/Mobile/Roadside Food Units	\$110.00 per year
4.	Temporary Food Service Establishments (good for 14 days when application is made on or before the tenth (10 th) day before the event)	\$ 50.00 per event
5.	Temporary Food Service Establishments (good for 14 days when application is made after the tenth (10 th) day before the event)	\$ 70.00 per event
6.	Temporary Food Service Establishments (one year permit running from January 1 – December 31, with no prorations, when application is made on or before the tenth (10 th) day before the event)	\$100.00 per year
7.	Temporary Food Service Establishments (one year permit running from January 1 – December 31, with no prorations, when application is made after the tenth (10 th) day before the event)	\$130.00 per year

A fee of \$5.00 is hereby imposed for the issuance of any copy of a Permit which has been issued pursuant to these Regulations.

There shall be no refund of fees or proration of permit fees.

A late fee of \$50.00 per calendar month, or portion thereof, shall be imposed on all renewing applicants for all permit fee payments made after 10 days following the due date of the fee, and the new or renewed permit shall not be issued until all fees, late charges and any outstanding fines or reinspection fees are paid. Individuals or organizations that do not regularly (i.e. more than four times per year) sponsor or provide food service, or directly or indirectly operate, or permit the use of its facilities to do so, such as an institutional kitchen, are exempt from the payment of such fees. Provided, however, this exemption applies only to the initial permit fee with accompanying inspection. Any reinspection, required or requested, shall be paid for in accordance with these Food Establishment Regulations.

- D. The fee for all reinspections is \$50.00, except the first reinspection by the Health Officer which is required as a follow-up due to failure of an inspection or which is otherwise required by state law which will be performed at no charge. All reinspections requested by any Food Establishment shall be paid for in advance. All other reinspections shall be paid for within thirty (30) days following the reinspection. If not paid timely, a late fee of \$25.00 per calendar month, or portion

thereof, shall be imposed, and the Food Establishment shall have its permit revoked under the method provided in Section VI. below.

IV. Review of Plans

- A. Whenever a food establishment is constructed or extensively remodeled, and whenever an existing structure 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 for food health and safety issues only before work is begun. Extensive remodeling means that twenty percent (20%) or greater of the area of the food establishment is to be remodeled. The plans and specifications 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 specifications will be approved by the Regulatory Authority if they meet the requirements of the health and safety rules adopted by this Order. The approved plans and specifications must be followed in construction remodeling or conversion.
- B. Failure to follow the approved plans and specifications will result in a permit denial, suspension or revocation or the exercise of any other remedies hereunder.

V. Immediate Revocation or Suspension of Permit - Imminent Hazard

- A. The Regulatory Authority may, without warning, notice or hearing, revoke or suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Revocation or suspension is effective upon service of the notice required by Section V. B. of this Order. When a permit is revoked or suspended, food operations shall immediately cease. Whenever a permit is revoked or suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten (10) days of receipt of a written request for a hearing.
- B. Whenever a permit is revoked or suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately revoked or 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 (10) days. If no written request for hearing is filed within ten (10) days, the revocation or suspension is sustained. The Regulatory Authority may end the suspension at any time if reasons for suspension no longer exist.

VI. Revocation or Suspension of Permit - No Imminent Hazard

- A. The Regulatory Authority may, after providing opportunity for a hearing, revoke or suspend a permit for serious or repeated violations of any of the requirements

time of these rules or for interference with the Regulatory Authority in the performance of its duties or if the Food Establishment has ceased operations for a period of longer than thirty (30) days. Prior to revocation or suspension, 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 subject to revocation or suspension and that the permit shall be revoked or suspended at the end of the ten (10) 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 (10) day period.

- B. If no written request for hearing is filed within the ten (10) day period, the revocation or suspension of the permit becomes final.

VII. 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, as noted on the permit or as changed from time to time by the holder of the permit by written notice, delivered as herein set out to the Regulatory Authority at his/her address. A copy of the notice shall be filed in the records of the Regulatory Authority.
- B. The hearings provided for in these rules shall be conducted by the City Council of the City of Fredericksburg, in the case of an establishment within or violation occurring within the city limits of the City of Fredericksburg or the Commissioners Court of Gillespie County, Texas in the case of an establishment in or violation occurring within the limits of Gillespie County but outside of the city limits of the City of Fredericksburg at a time and place designated by it. Based upon the recorded evidence of such hearing, the City Council or Commissioners Court shall make final findings, 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.
- C. The hearing shall be held within ten (10) days following the receipt of the written request for hearing by the Regulatory Authority. The respective Council or Commissioners Court shall establish rules for such hearings.

VIII. Food Handler's Certificate

- A. It shall be unlawful for any person to accept any person for employment in any food establishment or to accept such employment unless such person should have obtained a valid food handler's certificate.
- B. The Regulatory Authority shall enforce this Section.

- C. As an administrative charge for the issuance of a food handler's certificate, a non-refundable fee of \$10.00 shall be paid to the Regulatory Authority before the issuance of a food handler's certificate.
- D. The Regulatory Authority shall prepare or arrange for the food handler's course, and shall issue and publish cleanliness and sanitary food handling practice rules and regulations for all food handlers, and shall amend them as needed.

IX. Posting Requirements for Permits, Inspection Reports and Food Manager's Certificates

- A. Each person or entity having a permit under these Food Establishment Regulations shall post his, her or its current permit, the most recent inspection report, and all current food manager's certificates in a conspicuous place, which is visible to the public, within the premises where such Food Establishment is authorized to operate.
- B. No person shall, and it is unlawful to, move, remove, deface, camouflage, alter or conceal from public view any current permit, most recent inspection report or current food manager's certificate.
- C. It shall be unlawful to operate a Food Establishment unless the posting requirements of this Section are met and continue to be met.

X. Remedies

Any person who violates a provision of these Regulations, 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 Regulations, and any responsible officer of that permit holder or those persons, shall be fined not more than the maximum fine allowable.

The Regulatory Authority may seek to enjoin violations of these Regulations, and the election to do so shall not preclude any other action or remedy hereunder.

XI. Severability

If any section, subsection, 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.

XII. Effective Date

The provisions of this Order shall be effective from and after the date of its passage and publication in accordance with the law.

PASSED AND APPROVED this 22nd day of February, 2016.



ATTEST

Mary Lynn Rusche
Mary Lynn Rusche
County Clerk

Mark Stroehrer
County Judge