

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. Food service establishments include restaurants, cafeterias, retail food stores, mobile food units, farmers markets, temporary food establishments serving food at temporary events, self-service markets, bed and breakfast food establishments, food competitions for public consumption, and roadside food vendors. Williamson County and Cities Health District is the regulatory authority for food establishments located within its jurisdiction.

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

Section 1. Enforcement of State Law and Rules and Definitions

For the purpose of regulating food establishments within WCCHD's jurisdiction, WCCHD adopts by reference the provisions of the U.S. Food and Drug Administration Food Code as adopted from time-to-time by The Executive Commissioner of the Health and Human Services Commission, the provisions of Texas Health and Safety Code, Chapters 341, 437, and 438 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 and 229.

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

"Bed and Breakfast food establishment" means a location with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests. Bed and breakfast food establishments may also provide food service to any customer regardless of if they stay overnight.

"Bed and breakfast limited" means a location that does not require a food permit because there are seven or fewer rooms for rent and only breakfast is provided to only overnight guests.

"Certified Food 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 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" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human

consumption, or chewing gum.

“Food establishment” means an operation that stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption. Food establishments relinquish 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. Food establishment 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 regulatory authority; and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless of if there is a charge for the food.

Examples of food establishment include but are not limited to a restaurant, cafeteria, 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 machine location, self-service market, conveyance used to transport people, institution, food bank, mobile food unit, farmers market, temporary food establishments serving food at a temporary event, bed and breakfast food establishment, food competition for public consumption, and roadside food vendor.

Food establishment does not include an establishment that offers only prepackaged foods that are not time and temperature control for safety foods, nor a produce stand that only offers whole uncut fresh fruits and vegetables, nor a food processing plant including one that is located on the premises of a food establishment, nor a cottage food production operation, nor a bed and breakfast limited as defined in this section, nor 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).

“Person” means any individual, trustee, corporation, limited liability company, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

"State laws and rules" means the state laws found in Chapters 341, 437, and 438 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.

“Temporary Food Establishment” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

Section 2. Permits and Exemptions

A Person may not operate a food establishment without a permit issued by 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 shall obtain and post a WCCHD Permit Exemption Certificate. In order to obtain a Permit Exemption Certificate, the nonprofit organization must (1) confirm its nonprofit status, (2) confirm that its food handlers have received food safety education, and (3) pass an inspection of the planned food establishment prior to operating. Nonprofit organizations are not exempt from compliance with state laws and rules or payment of inspection fees. 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 an 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 an online application for a permit on forms provided by WCCHD and the permitting software. The application must contain the name and address of each applicant, the location and type of the proposed food establishment, any required documents requested by WCCHD during the application process (including Texas Certificate of Filing and Texas Sales and Use Tax), and the applicable fees. 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. The permit holder is required to update WCCHD with any changes including business closure and change of ownerships to avoid continued liability for food safety.

Prior to the approval of an initial permit or the renewal of an existing permit, an authorized agent of 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 Williamson County Board of Health in accordance with Texas Health and Safety Code §121.006 and §437.012.

Section 5. Review of Plans

A permit applicant or permit holder shall be required to submit to 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 WCCHD, if 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 be proportional and accurately scaled to 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 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 an accredited program, 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 30 days of employment.
2. 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 accessible to WCCHD for verification.
3. 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 WCCHD for verification.
4. 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 a food handler's certificate.

Section 7. Certified Food 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 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 manager must be employed by each food establishment and a certified food manager shall be present at the food establishment during all hours of operation.
2. The food manager certificates shall be posted in a location in the food establishment that is conspicuous to consumers.
3. A unique certified food manager is required to operate each mobile food unit.
4. A certified food manager is not required to be employed by a temporary food establishment.

Section 8. Inspection of Food Establishments

1. WCCHD shall inspect every food establishment located within the jurisdiction of WCCHD. The frequency of inspection shall be determined by 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 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 WCCHD.
2. Upon request of 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. WCCHD shall be allowed to take photographs and/or video as part of the inspection process.
3. 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 time and temperature controlled for safety foods 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 this order or 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. **Criminal Enforcement.** A person commits an offense if the person operates a food service establishment 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. (Section 437.01 and 437.016, Texas Health and Safety Code)
2. **Administrative Penalty.** 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 this order, Chapter 437, or a rule or an order adopted under Chapter 437. (Section 437.0185, Texas Health and Safety Code)
3. **Assessment of Administrative Penalty.** An administrative penalty may be imposed for a violation of this order or 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 437.0186, Texas Health and Safety Code)

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

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. (Section 437.014, Texas Health and Safety Code)

The notice of the denial, suspension, or revocation of the permit shall be provided in writing to the permit holder or applicant. The reason for the denial, suspension, or revocation shall be stated in the notice. The permit holder or applicant shall have five business days from the receipt of the written notice to request a hearing on the denial, suspension, or revocation. If no request for hearing is received by WCCHD after five business days of receipt of the notice by the permit holder or applicant, WCCHD may take the proposed action without a hearing.

If a hearing is requested within the five-day period, the hearing shall be conducted by a hearing officer appointed by WCCHD. The hearing officer shall appoint a time, day, and location for the hearing. Both 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 WCCHD and the permit holder or applicant.

Section 11. Posting Notice of Unsatisfactory Inspections

If, during an inspection, 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 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 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 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/her appointee. The plan of action shall address critical violations of the previously failed inspections and repeat violations.
 - b. A reinstatement fee as currently established or as hereafter adopted periodically by Williamson County Board of Health, shall be paid to WCCHD Environmental Health Division.
 - 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.
4. 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 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

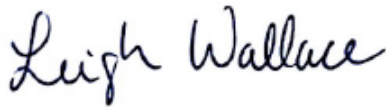
The provisions of this order shall take effect immediately upon approval and adoption by Williamson County Board of Health.

APPROVED AND ADOPTED THIS 14TH DAY OF JUNE 2023.



Chair
Williamson County Board of Health

ATTEST:



Secretary
Williamson County Board of Health