

**SMITH COUNTY PUBLIC HEALTH DISTRICT ORDER**

**ESTABLISHING THE PERMITTING AND ENFORCEMENT OF STATE LAW AND STATE RULES FOR FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, ROADSIDE FOOD VENDORS, AND TEMPORARY FOOD SERVICE ESTABLISHMENTS.**

**WHEREAS**, the Texas Health and Safety Code, Sec. 437.001 et. seq. provides public health districts with authority to enforce state rules adopted under state statutes concerning food service establishments, retail food stores, mobile food units, roadside food vendors and temporary food service establishments; and

**WHEREAS**, public health districts may require permits, plan review, inspections, and may deny, suspend or revoke the permit of the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment if not in compliance with state laws or state rules; and

**WHEREAS**, public health districts may establish permit fees to be deposited in a special fund for the enforcement of this order; and

**THEREFORE, BE IT RESOLVED** that Smith County Public Health District Board hereby adopts the following Smith County Public Health District Food and Food Service Establishments Rules and Regulations and orders as follows:

**PART I: SMITH COUNTY PUBLIC HEALTH DISTRICT**

**FOOD AND FOOD SERVICE ESTABLISHMENTS RULES AND REGULATIONS**

**SECTION 1. Definitions; relationship to state regulations.**

The definitions, the inspection of food service establishments, retail food stores, mobile food units, roadside food vendors and temporary food service establishments, the issuance, suspension

and revocation of permits to operate food service establishments, retail food stores, mobile food units, roadside food vendors and temporary food service establishments, the prohibiting of the sale of unsound or mislabeled food or drink, and the enforcement of sections 1 through 8 shall be regulated in accordance with the following, and three (3) certified copies of each shall be on file at the Smith County Public Health District (SCPHD):

- a. Texas Department of Health, Division of Food and Drugs "Rules on Food Service Sanitation", Rules 229.161-171;
- b. Texas Department of Health, Rules for Permitting Retail Food Stores, Food Service Establishments, Mobile Food Units, Roadside Food Vendors and Temporary Food Service Establishments, Rules 229.370-229.374;
- c. Rules on Retail Food Store Sanitation, Rules 229.231-239;
- d. Texas Health & Safety Code Section 431.001 through Section 438.061 (Vernon 1992 and Vernon Supp. 1994) and pertinent amendments thereto.

The words "regulatory authority" shall be understood to refer to the Smith County Public Health District, hereafter referred to as SCPHD. The word "suspension" shall be understood to mean the temporary discontinuance of a permit issued under said sections for an indefinite period of time. The word "revocation" shall be understood to mean the discontinuance of a permit issued under said sections for an indefinite period of time.

## **SECTION 2: Compliance procedures--Permits, licenses or certificates**

Violations of the "Rules on Food Service Sanitation", the "Rules on Retail Food Store Sanitation", the permitting rules or the relevant state law provisions are subject to the penalties and remedies listed in Sections 1 through 8 and otherwise provided by state law. Employees of the SCPHD are hereby authorized to enforce provisions herein and to issue citations for any violations

of this chapter.

Compliance procedures for permits, licenses or certificates are as follows:

- a. **General.** No person shall operate a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishments who does not have a valid permit, license or certificate issued by the SCPHD. Only a person who complies with the requirements of these rules shall be entitled to receive or retain such a permit, license or certificate. Permits, licenses or certificates are not transferable. A valid permit, license or certificate shall be posted in every food service establishment, retail food store, or mobile food unit.
- b. **Permits.**
  1. **Required.** Prior to obtaining a permit, a permit application must be obtained, completed, and returned to SCPHD before the pre-opening inspection. No person shall operate any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment within Smith County who does not possess a current and valid permit from the SCPHD that is posted in a conspicuous place for the public to see. A valid permit is one not revoked or suspended. The permit shall not be defaced, removed or otherwise altered without written permission from the SCPHD. Food service establishments, retail food stores, mobile food units, roadside food vendors, and temporary food service establishments shall be inspected by the SCPHD immediately prior to the issuance of a permit. Permits shall be nontransferable. Any permit may be revoked or suspended by the SCPHD at any time it is deemed any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment is

not operating in compliance with the provisions of Sections 1 through 8 or in any emergency when, in the judgment of the SCPHD, any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment has become a public health nuisance or menace. It shall be the privilege of the SCPHD to publish the name and address of any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment, the permit of which has been revoked or suspended, together with the reasons for revocation or suspension.

2. **Permit fees. General.** With each permit, a permit fee shall be required to cover a twelve-month period from date of issuance, and such fee must be renewed and shall be payable in advance for each twelve-month period thereafter, except for temporary food service establishments. Failure to pay the annual permit renewal fee on a timely basis shall result in a late charge in the amount of \$50.00. Thirty (30) days following the expiration of a permit, the establishment shall cease operation until they obtain a valid permit.
3. **Temporary food service establishments. Defined.** A temporary food service establishment is a food service establishment that operates at a fixed location for a period of time of not more than fourteen (14) consecutive days in conjunction with a single event or celebration. Prior to operating a temporary food service establishment, a temporary event permit application form must be obtained from the SCPHD and returned with the required fee. The application shall contain such information necessary for the SCPHD to determine if a permit should be issued and under what conditions the application shall be approved or disapproved. Temporary

permit applications must be received by SCPHD at least 48 hours prior to the event.

**4. Fee schedule.** The schedule for permit fees shall be determined as follows:

(a) Food service establishment.

For 5 food handlers or fewer than 5	\$37.50
For more than 5 food handlers and not more than 12	\$56.25
For more than 12 food handlers and not more than 24	\$75.00
For more than 24 food handlers and not more than 48	\$93.75
For more than 48 food handlers and not more than 100	\$122.25
For more than 100 food handlers	\$150.00

The number of food handlers shall be computed on the basis of the maximum number of food handlers working or to work per month during the twelve-month period covered by the permit.

(b) Temporary food service establishment--Per Event/ Per Unit \$25.00

(c) Retail food store (same as food service establishments in (4)(a) above

(d) Mobile food unit--Must have a commissary base with a valid permit- \$37.50

**5. Permit renewal following establishment closure for more than three months.**

Any person who voluntarily discontinues the operation of any food service establishment, retail food store, or mobile food unit for not longer than three (3) consecutive months may secure a renewal of an existing permit by meeting all of the requirements of Sections 1 through 8 with the exception of an additional permit fee.

**6. Non profit organizations exempt.** Food service establishments, the net earnings of which are used in whole for charity, church funds or public welfare, shall meet all requirements of Section 1 through 8 with the exception of the fee and permit.

However, written proof of such nonprofit status shall be provided to SCPHD prior to commencement of any operations.

**7. Outside County Units. Rules for Permitting.** Any person whose food service establishment, retail food store, mobile food unit, or other source of food is located outside the County of Smith and who conveys, sends or furnishes food for the purpose of selling, offering or exposing for sale, exchanging or bartering in the County or area covered by the Smith County Public Health District shall pay an annual permit fee of forty dollars (\$40.00) regardless of the number of food handlers employed; provided that food which is wholesaled and handled exclusively through wholesale house, jobbers or brokers which are located within the County and which do not change the conditions or package, wrapping or container of such food shall not be subject to the permit fee. Further provided, that persons who produce all of the raw food or who raise live animals or birds, none of which are changed from the raw or living state prior to marketing by such person, shall not be subject to the permit fee.

**8. Permit issuance on compliance with rules.** The regulatory authority shall issue a permit, license or certificate to the applicant if its inspection reveals that the proposed food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment complies with the requirements of these rules.

**c. Revocation or suspension of permit, license or certificate.** The SCPHD may, after providing opportunity for a hearing, revoke or suspend a permit, license or certificate 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. Upon revocation or suspension of a permit, license or certificate, operations of the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment shall cease immediately. Prior to revocation or suspension, the regulatory authority shall notify the holder of the permit, license or certificate, or the person in charge, in writing of the reason for which the permit, license or certificate is subject to revocation or suspension and that the permit, license or certificate 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, license, or certificate within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation or suspension of the permit, license or certificate becomes final.

- d. Service of notices.** A notice provided for in these rules is properly served when it is delivered to the holder of the permit, license or certificate, 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 permit, license, or certificate holder (owner) . A copy of the notice shall be filed in the SCPHD records.
- e. Hearings.** The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make a 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, license or certificate by the regulatory authority. The SCPHD Director will conduct hearings under this section.
- f. Application after revocation or suspension.** Whenever a revocation or suspension of a

permit, license or certificate has become final, the holder of the revoked or suspended permit, license or certificate may make written application for a new permit, license or certificate.

- g. Immediate Cessation of Operations.** Nothing in this section shall prevent the regulatory authority from requiring a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment to cease operations immediately pursuant to law.

### **SECTION 3. Inspections.**

Compliance procedures concerning inspections are as follows:

- a. Inspection frequency.** An inspection of a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment shall be performed at least once every six (6) months. Additional inspections of the food service establishment, retail food store, or mobile food unit shall be performed as often as are necessary for the enforcement of these rules.
- b. Access.** SCPHD agents, after proper identification, shall be permitted to enter any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment at any reasonable time, for the purpose of making inspections to determine compliance with these rules. The agents shall be permitted to examine records to obtain information pertaining to food and supplies purchased, received or used, or to persons employed.
- c. Report of inspections.** Whenever an inspection of a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishments is made, the findings shall be recorded on the inspection report form set out in paragraph (e) of this section. The inspection report form shall summarize the requirements of these rules



and shall set forth a weighted point value for each requirement. Inspection remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The rating score shall be the total of the weighted point values for all violations, subtracted from one hundred (100). A copy of the inspection report form shall be furnished to the person in charge of the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment at the conclusion of the inspection. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law. The inspection report from the most recent inspection shall be posted in a conspicuous place for the public to see in the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment.

**d. Correction of violations.**

1. The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:
  - (a) If an imminent health hazard exists, such as, but not limited to, complete lack of refrigeration or sewage backup, the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority.
  - (b) All violations of four- or five-point weighted items shall be corrected as soon as possible, but in any event, within ten (10) days following the inspection. Within fifteen (15) days after the inspection, the holder of the permit, license

or certificate shall submit a written report to the regulatory authority stating that the four- or five-point violations have been corrected. A follow up inspection shall be conducted to confirm correction.

- (c) All one- or two-point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.
- (d) When the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment rating score is less than sixty (60) corrective action on all identified violations shall be initiated within forty-eight (48) hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.
- (e) In the case of temporary food service establishments, all violations shall be corrected within twenty-four (24) hours. If violations are not corrected within twenty-four (24) hours, the temporary food service establishment shall cease food service operations until authorized to resume by the regulatory authority.
- (f) If a public health hazard exists, or is imminent, food service shall cease immediately.

2. The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of operations. An opportunity for appeal from the inspection findings and time limitations will be provided if a written request for a hearing is filed with the regulatory authority within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within twenty (20) days of receipt of that request.

3. Whenever a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment is required under the provisions of this rule to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirements to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

e. **Inspection report form.** An inspection report form based on the requirements of these rules is appended to the "Rules on Food Service Sanitation" and "Rules on Retail Food Store Sanitation".

#### **SECTION 4. Examination and condemnation of food. Maintenance of equipment.**

Procedures concerning examination, condemnation and equipment maintenance are as follows:

a. **General.** Food may be examined or sampled by SCPHD as often as necessary for enforcement of these rules. The SCPHD may, upon written notice to the owner or person in charge specifying reasons with particularity, issue a hold order on any food which it believes is in violation of any of the "Rules on Food Service Sanitation", or other relevant state or local regulations. The regulatory authority shall tag, label or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served or moved from the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment. The regulatory authority shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for a hearing may be filed within ten (10) days and that if no hearing is requested, the food shall be destroyed. A hearing shall be

held if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of these rules.

- b. Equipment.** All equipment used in the preparation, storage, and serving of food shall be kept in good repair and in proper working condition. The regulatory authority may tag any equipment found to be in violation of this subsection, and it shall be unlawful to use any equipment that has been so tagged by the regulatory authority, until approved to do so by the regulatory authority.

**SECTION 5. Review of building plans. New Construction or Reconstruction.**

- a. Submission of plans.** Whenever a food establishment within Smith County is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment or retail food store, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority or its designated agent or involved local authority shall approve the plans and specifications if they meet the requirements of these rules. Any plan review for an establishment located outside the City limits will focus on whether the plans satisfy food service rules and regulations only. For an establishment within the city limits, all construction, including electrical plumbing and structural soundness, must be in compliance with local building codes. Wastewater maintenance or septic systems in the

county must be permitted and verified by the designated agent for Smith County or the appropriate municipality. No food service establishment or retail food store shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the regulatory authority.

- b. Preoperational inspection.** Whenever plans and specifications are required by paragraph a. of this section to be submitted to the regulatory authority, the regulatory authority or its designated agent or expert shall inspect the food service establishment or retail food store prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of these rules.

**SECTION 6. Procedure when disease transmission or infection is suspected.**

When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment employee, it may secure the morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:

- a.** The immediate exclusion of the employee from all food service establishments, retail food stores, mobile food units, roadside vendors, or temporary food service establishments;
- b.** The immediate closing of the food service establishment, retail food store, mobile food unit, roadside vendor or temporary food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists;
- c.** Restriction of the employee's services to some area of the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment where there would be no danger of transmitting disease; and

- d. Adequate medical and laboratory examination of the employee, or other employees and of the employee's and the other employees' bodily discharges.

**SECTION 7. Remedies.**

- a. **Penalties.** Any permit holder, responsible officer of the permit holder, or other person found guilty of violating any provision of this chapter shall be punished in accordance with state law. Each and every violation of any provision herein shall be classified as a Class C misdemeanor and violators are subject to up to \$2,000.00 per violation per day for each violation.
- b. **Continuing violations.** Each day or fractional part thereof that such violation shall continue shall constitute a separate offense.
- c. **Injunction.** Whenever the regulatory authority has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful or in violation of this chapter, said regulatory authority may bring an action pursuant to state law against each such person to restrain any such unlawful act or practice by temporary restraining order, temporary injunction, or permanent injunction.

**SECTION 8. Food handler's certificate.**

- a. **Required.** It shall be unlawful for any person to work in a food service establishment, retail food store, or mobile food unit within the Smith County Public Health District or its police jurisdiction without having a food handler's certificate, or for any person in control of a food service establishment, retail food store, or mobile food unit to allow an employee to work in the food service establishment within the Smith County Public Health District or its police jurisdiction without the employee having a food handler's certificate.

- b. Application.** Each person, within sixty (60) days of becoming an employee of a food service establishment, retail food store, or mobile food unit shall obtain certification by satisfactorily completing a food handler's training course approved or conducted by the SCPHD.
- c. Food hygiene training course.** The SCPHD shall conduct a food handler's training course, consisting of courses of instruction as prescribed by the director, including but not limited to sanitary food handling, state statutes and SCPHD orders defining rules and regulations relating to food handling, food-borne disease, prevention of disease, personal hygiene, good housekeeping practices and other related information, said course to be conducted as needed.
- d. Fee.** The certificate fee shall be ten dollars (\$10.00) for a three (3) year certification period.
- e. Issuance.** A food handler's certificate applied for under this section shall be issued by the SCPHD initially upon the payment of the fee and satisfactory completion of the food handler's training course. Said certificate shall be valid for a period of three (3) years and shall be in the form of an identification card. After the expiration of three (3) years, an application must be processed for a new certificate which will not be issued until the satisfactory completion of the food handler's training course.

**SECTION 9. Appeals of decisions made under sections 1 through 8.**

- a.** Any person aggrieved by a decision of an employee of the SCPHD concerning the granting or refusal to grant a permit, certificate or license or any privilege as provided in sections 1 through 8 may appeal such decision. Such appeal must be made in writing to the director of the SCPHD within ten (10) days after the decision is rendered. The director shall render a decision within thirty (30) days after receipt of the appeal, either affirming the decision of the employee or entering an appropriate decision.

- b. The immediate closing of the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists.

**PART II.**


That if any provision or any section of this Order shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this Order, which shall remain in full force and effect.

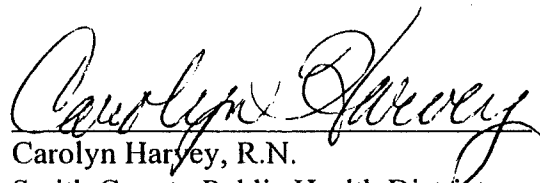
**PART III.**

That any person, firm, or corporation violating any of the provisions of this Order shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided by law. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this Order has a penalty for violation, its shall become effective upon proper notice to the public by publication of the notice that the order exists.


Signed this 22 day of September, 1994.

ATTEST:


  
Dianne Moore  
Smith County Public Health District  
Board Secretary

  
Carolyn Harvey, R.N.  
Smith County Public Health District  
Board Chair

Recommended:

  
D.E. Sciarrini  
Smith County Public Health District Director

Approved:

  
Sharon K. Fisher  
Sr. Assistant City Attorney and to Board