RULES FOR REGULATION OF FOOD ESTABLISHMENTS
IN THE UNINCORPORATED AREAS OF HARRIS COUNTY, TEXAS

Preface

Harris County is authorized to enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors pursuant to Health and Safety Code Section 437.002(a), as amended. TEX. HEALTH & SAFETY CODE ANN. §§ 437.001 et seq., as amended. 25 TEX. ADM. CODE §§ 229.161 – 229.171, 229.173 – 229.175, as amended.

To enforce state law and rules adopted under state law, Harris County by order may require food service establishments, retail food stores, mobile food units, and roadside food and farmers' market vendors in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from the county. TEX. HEALTH & SAFETY CODE ANN. § 437.003, as amended. 12 TEX. ADM. CODE § 229.373, as amended.

Pursuant to Texas Administration Code Title 25, Chapter 229, Section 169(a) (1), Harris County may impose additional requirements to protect against health hazards related to the conduct of food establishments as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify certain requirements relating to physical facilities. 25 TEX. ADM. CODE § 229.169(a) (1), as amended.

I. PURPOSES

The purpose of these Rules is to safeguard public health and better assure that consumers obtain food that is safe, unadulterated, and honestly presented by establishing uniform monitoring for food establishments in the unincorporated areas of Harris County, including areas in the extraterritorial jurisdiction of a municipality.

II. DEFINITIONS

Words and phases used in these Rules shall have the meanings provided in Health and Safety Code, Chapter 437 and Texas Administrative Code Title 25, Chapter 229. TEX. HEALTH & SAFETY CODE ANN. §§ 437.001 et seq., as amended. 25 TEX. ADM. CODE §§ 229.161 – 229.171, and 229.173 – 229.175, as amended.

III. PERMITS

A. No person shall operate a food establishment in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, without having a permit issued by Harris County Public Health and Environmental Services ("HCPHES"). Permits are not transferable from one person to another or from one location to another location, except as permitted by these Rules. A valid permit must be posted in or on every food establishment in a conspicuous place. Only a person
who complies with the requirements of state law and regulations and these Rules shall be entitled to a permit.

B. A food establishment operated solely by a nonprofit organization is exempt from the permitting requirement of these Rules, but is not exempt from compliance with state law and regulations. An organization claiming exemption from these Rules as a nonprofit organization shall provide HCPHES with such documentation as HCPHES deems necessary to prove the establishment’s current tax-exempt status as a nonprofit organization.

C. An establishment is not a food establishment for the purposes of these Rules if it is excluded from the definition of food establishment under Texas Administrative Code Title 25, Chapter 229, Section 162(40), as amended. 25 TEX. ADM. CODE § 229.162(40), as amended.

IV. ISSUANCE OF PERMIT

A. Any person desiring to operate a food establishment must make a written application for a permit on forms provided by HCPHES. The application must contain the name and address of each applicant, the location and type of the proposed food establishment, the applicable fee, and signature of applicant(s). An incomplete application will not be processed, even if initially accepted. Failure to provide all required information or falsifying information required may result in denial or revocation of the permit. Payment for a permit by a check that is returned for insufficient funds may result in 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.

B. Prior to the approval of an initial permit or the renewal of an existing permit, HCPHES shall inspect the proposed food establishment to determine compliance with state law and regulations.

C. A person desiring to operate a temporary food establishment shall make application by mail four (4) weeks in advance of the event or such shorter time frame as specified in HCPHES procedures or in person at least two (2) full business days prior to the event. Fees for applications made in person must be paid in cash, cashier’s check, certified check, credit card, or money order. If the temporary food establishment fails to make application within the specified period, HCPHES may consider later applications upon payment of the fee established for untimely applications.

D. Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, three (3) sets of properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to HCPHES for review and written approval before
work is begun. Extensive remodeling means that at least 20 percent of the area of
the food establishment is to be remodeled. The plans and specifications shall be to
scale and shall indicate the proposed layout, equipment arrangement, mechanical
plans, and construction materials of work areas, and the type and model of proposed
fixed equipment and facilities. Before HCPHES reviews the plans and specifications,
the applicant shall pay a new facility inspection fee. HCPHES shall approve the
plans only if the plans and specifications meet the requirements of state law and
regulations and any additional requirements imposed by Harris County. Such review
and approval of plans and specifications shall be made in coordination with the
review and approval of any related matters submitted to the Harris County Engineer.
The approved plans and specifications must be substantially complied with when
performing construction, remodeling, or conversion. No permit shall be issued until
HCPHES determines by inspection that all construction, remodeling, or conversion
has been performed in accordance with the approved plans and specifications.

E. Whenever a food establishment is constructed or extensively remodeled, or
whenever an existing establishment is converted to a food establishment, at least one
pre-opening inspection shall be made. The purpose of the pre-opening inspection(s)
is to ensure compliance with the approved submitted plans, state law, and
regulations, and rules adopted by Harris County.

F. There shall be an annual renewal of a permit issued under these Rules. The renewal
process shall be initiated by the submission of a new application and shall be
conducted in the same manner as an original application process.

G. Any false statement made in an application is a basis for denial or revocation of the
permit.

H. Prior to the issuance of a permit, the applicant or permit holder must pay all
applicable fees, which may include a new facility inspection fee.

I. HCPHES shall issue a permit to the applicant only if its inspection reveals that the
food establishment complies with requirements of these Rules and state law and
regulations.

J. A trained food manager must be on duty during the operating hours of the food
establishment. A food service establishment that handles only prepackaged food and
does not prepare or package food is not required to have a trained food manager.

K. The food establishment must utilize at least one of the two following health
condition reporting strategies:

1. Post the approved signage that alerts employees about their
   responsibilities to report certain health conditions to their
   employer;
2. Require that each employee sign the written agreement form that is approved by the Texas Department of State Health Services.

L. An applicant or permit holder that does not comply with state law and regulations may be denied a permit or the renewal of a permit.

V. PROCEDURES FOR DENYING, SUSPENDING, OR REVOKING A PERMIT

A. Permit Hearings: Harris County Public Health & Environmental Services may deny, suspend, or revoke any permit to operate a food establishment if the holder of the permit does not comply with state law and regulations and these rules or if the operation of the establishment otherwise constitutes a substantial hazard to public health. Denying, suspending, or revoking a permit for a food establishment is usually initiated as a result of a series of inspections. A permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing, as described in this Section, have been given.

B. Service of Notice: A notice of the right to request a hearing, provided for in these rules, is properly served when it is hand delivered to the permit holder or 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 must be filed in the records of Harris County Public Health & Environmental Services.

C. Right to Request a Hearing: The permit holder or person in charge may request a hearing to appeal the findings that conditions are not acceptable for continuing operation as a food establishment. Upon the receipt of the notice, the permit holder has three (3) business days to request such a hearing. This request must be in writing and may be delivered or faxed to the offices of Environmental Public Health (EPH), Harris County Public Health & Environmental Services; sent by registered or certified mail, return receipt requested; or delivered to EPH by other documentable means. Upon request for the hearing by the permit holder, a hearing will be scheduled at a date and time specified by EPH. The hearing must be held within ten (10) working days of the receipt of the permit holder’s request for a hearing. Written notification of the hearing date and time will be delivered to the permit holder. If the permit holder fails to request a hearing or fails to appear at a scheduled hearing, then the permit will be denied, suspended, or revoked.

D. Hearing Procedures: A Hearing Examiner will preside over the proceedings, including the administration of oath to all parties giving testimony. Representatives of PHES, the permit holder and/or representatives of the permit holder including attorneys, and the Hearing Examiner may be present at the hearing. The proceedings of the hearing will be electronically recorded.

At the hearing, representatives of Harris County Public Health & Environmental Services will review each inspection report leading to the denial, suspension, or revocation of the permit demonstrating the food establishment’s lack of compliance
with state law, rules adopted under state law, or rules adopted by the county. The permit holder or person in charge of the food establishment may present facts or circumstances as to why the permit should not be denied, suspended, or revoked. Both parties may call witnesses to testify and may cross examine each other's witnesses.

E. **Findings of the Hearing**  The Hearing Examiner will prepare a written summary of the hearing, a recommendation to the Executive Director of HCHPES stating measures to be taken, and a letter to be addressed and delivered to the permit holder or person in charge detailing the Executive Director's orders for the establishment. Two copies of the letter are written for the Executive Director's approval and signature.

Based upon the findings and recommended orders of the Hearing Examiner, the Executive Director of HCHPES shall make a final finding and shall sustain, modify, or rescind any notice or order considered in the hearing. Upon the Executive Director's approval and signature, the permit holder or person in charge will receive a copy of the letter and a copy of the hearing proceedings/findings. The compliance coordinator/field inspector will return a signed copy of the letter to HCHPES to be placed along with the hearing proceedings/findings in the establishment’s permanent file.

If the Executive Director orders a formal permit denial or suspends or revokes the permit, the establishment must cease all operations. If the food establishment continues to operate during the permit denial, suspension, or revocation period, the compliance manager and the Director of Environmental Public Health will seek further enforcement action through the use of citations and/or referral to the County Attorney’s Office for civil penalties or injunctive relief.

F. **Approval to Resume Food Operations:** The establishment will be re-inspected on the date specified in the Executive Director's orders for a permit denial or suspension. All conditions specified with the Executive Director's orders must be met before the permit application is issued or the permit suspension is removed and the food establishment is allowed to resume operations. If the establishment does not meet the requirements specified in the Executive Director's orders, the permit denial or suspension will remain in effect until a re-inspection reveals full compliance.

**VI. APPLICATION AFTER REVOCATION**

Whenever a revocation of a permit has become final, the holder of the revoked permit shall make written application for a new permit, and the food establishment may be required to submit plans and be subject to a pre-opening inspection.

**VII. CRIMINAL PENALTY**

A. A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by Harris County. **TEX. HEALTH & SAFETY CODE ANN. § 437.016**, as amended.
B. An offense under this Section is a Class C Misdemeanor.

C. Each day on which a violation occurs constitutes a separate offense.

VIII. INJUNCTION

The County Attorney may sue in district court to enjoin a food establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit, if one is required.  
TEX. HEALTH & SAFETY CODE ANN. § 437.015, as amended.

IX. ADDITIONAL REQUIREMENTS FOR MOBILE FOOD ESTABLISHMENTS.  
25 TEX. ADM. CODE § 229.169

A. All mobile food establishments, including pushcarts and roadside food vendors, shall be readily identifiable by business name, printed in bold black letters not less than three (3) inches in height, no less than one and a half (1½) inches in width, permanently affixed, and prominently displayed upon at least two (2) sides of the units.

B. A pushcart unit shall not exceed four (4) feet in width, eight (8) feet in length, and eight (8) feet in height including a unit's shade umbrella. In the event of an emergency situation, the unit shall be easily movable, controllable, and maneuverable by one (1) person when the unit is fully loaded. The bottom of the unit shall be at least one (1) foot from the ground. The unit shall not be self-propelled.

C. Live animals shall be excluded from the immediate adjacent surrounding areas of all mobile food establishments.

D. If toilet facilities are not provided on a mobile food establishment, a toilet facility shall be located within 300 feet. However, this provision does not apply to restricted mobile units (i.e., mobile units that do not engage in any food preparation.). Upon application for a permit hereunder, a mobile unit operator must provide HCPHES with written permission by the owner of the toilet facility for use of restrooms by the permit holder. A mobile unit may not operate when the facility providing the toilet facilities is not open for business. Restroom facilities must be located within a business establishment and must include a flush-type toilet and hand lavatory supplied with hot and cold running water under pressure. If the toilet facilities are Port-a-cans or similar facilities, the permit will not be approved.

E. All motor vehicles operating as mobile food establishments upon open roads, streets, and highways, shall maintain a current Texas motor vehicle inspection sticker and a current Texas motor-vehicle license-plate registration sticker.
X. FEES

The following fees are to be paid in connection with applications submitted pursuant to these Rules for the issuance or renewal of a permit.

<table>
<thead>
<tr>
<th>Food Establishment Permit Fee</th>
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<tbody>
<tr>
<td>Permanent Food Establishment Category A</td>
<td>$250</td>
</tr>
<tr>
<td>Permanent Food Establishment Category B</td>
<td>$175</td>
</tr>
<tr>
<td>Permanent Food Establishment Category C</td>
<td>$100</td>
</tr>
<tr>
<td>Permanent Food Establishment Category D</td>
<td>$50</td>
</tr>
<tr>
<td>Farmers’ Market Vendor</td>
<td>$125</td>
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<tr>
<td>Mobile Food Establishment</td>
<td>$250</td>
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<tr>
<td>Roadside Food Vendor</td>
<td>$100</td>
</tr>
<tr>
<td>Temporary Food Establishment Category A, B, C, or D [14 Days]</td>
<td></td>
</tr>
<tr>
<td>For timely application</td>
<td>$50</td>
</tr>
<tr>
<td>For untimely application or on-site issuance</td>
<td>$100</td>
</tr>
<tr>
<td>New Facility Inspection Fee</td>
<td>$30</td>
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<tr>
<td>Duplicate or Replacement Permit</td>
<td>$20</td>
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</tbody>
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Temporary Event (14 days) Category A, B, C, or D:

- Separate businesses occupying the same booth must purchase individual permits.
- A business or individual who operates more than one booth at an event must designate the specific location of each booth at the event and must purchase a separate permit for each booth location.
- The business may operate only in conjunction with a single event or celebration.

Farmers’ Market Vendor

- Separate businesses occupying the same booth must purchase and maintain individual vendor permits.
- A business or individual who operates more than one booth must purchase and maintain a separate vendor permit for each booth location.
- The business may operate only in conjunction with a farmers’ market.

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Category A: any place where raw, potentially hazardous food is processed or prepared.

Category B: any place where food preparation involves only reheating and/or serving of potentially hazardous food or the processing of non-potentially hazardous food or precooked potentially hazardous food.

Category C: any place where only non-potentially hazardous foods and/or prepackaged potentially hazardous foods are served or sold. No food preparation or processing is involved.

Category D: any place, permanent or seasonal, serving or offering for sale crushed or shaved ice made in conjunction with a sugar and water–based syrup that is essentially a non-potentially hazardous food.

Farmers’ Market Vendor – one who operates a food establishment at a designated location used by farmers and producers primarily for the distribution and sale of raw and custom shelled agricultural products and products made by farmers and producers from their agricultural products directly to consumers. The sale of other food products at such market shall not disqualify it as a farmers’ market provided that such food products meet all applicable federal, state, and local health laws regulating the manufacture and sale of such food products. A Farmers’ Market is not an event.
XI. ENFORCEMENT

The provisions of these Rules shall be enforced by the Executive Director of Harris County Public Health and Environmental Services (the “Executive Director”) or the Executive Director’s authorized representative. It shall be a violation of these Rules for any person in a food establishment to deny access to the Executive Director or the Executive Director’s authorized representatives in the performance of the Executive Director’s duties.

HCPHES employees who are not police officers but who have been trained to enforce the health and safety laws relating to food, water, waste control, general sanitation, or vector control are authorized pursuant to Sections 121.031 and 121.032 of the Texas Health and Safety Code, by Order of Harris County Commissioners Court of February 24, 1998, and by these Rules to issue citations for violations occurring in the unincorporated areas of Harris County, including areas in the extraterritorial jurisdiction of a municipality. Such citations must state the name of the person cited, the violation charged, and the time and place the person is required to appear in court.

XII. SEVERABILITY

If any section, subsection, clause, phrase, or portion of these Rules 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 these Rules.