

**AN ORDER ESTABLISHING PERMITTING AND ENFORCEMENT OF STATE LAWS AND RULES
FOR FOOD SERVICE ESTABLISHMENTS,
RETAIL FOOD STORES, MOBILE FOOD VENDING UNITS, AND ROADSIDE VENDORS
TO BE KNOWN AS THE EL PASO COUNTY FOOD SAFETY ORDER**

WHEREAS, Chapter 437 Vernon's Texas Codes Annotated, Health and Safety Code, provides counties with authority to enforce state laws and rules adopted under state law concerning food service establishments, retail food stores, mobile food establishments, roadside food vendors; and

WHEREAS, counties may require permits or authorizations, plan review and inspections, and may deny, suspend or revoke the permit or authorization of the food establishment, retail food store, mobile food establishment or roadside food vendor if not in compliance with State laws or State rules or orders adopted by the County; and

WHEREAS, the El Paso County Commissioner's Court desires to protect the health of her citizens and prevent the spread of disease by unwholesome food and unsanitary conditions; and

WHEREAS, counties may establish permit fees to be deposited in a special fund for the enforcement of this Order;

THEREFORE BE it ordered by the El Paso County Commissioner's Court that the following Order establishing permitting and enforcement of State Laws and Rules for food service establishments, retail food stores, mobile food establishments, and roadside vendors said Order to be known as the El Paso County Food Safety Order is hereby adopted.

SECTION 1. Enforcement of State Law and Rules

The enacted definitions, the inspection of food service establishments, retail food stores, mobile food establishments, and roadside food vendor; the prohibiting of the sale of adulterated or misbranded food or drink; and the enforcement of this Order shall be regulated in accordance with

Delia B. Brown
COUNTY CLERK
EL PASO COUNTY, TEXA
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OP-07-402

Vernon's Texas Codes Annotated, Chapter 437 and Chapter 438 of the Texas Health and Safety Code, and applicable Rules promulgated thereunder. The words "Regulatory Authority" shall be understood to refer to the El Paso Health Department or its authorized agent or employees. The words "Authorized Agent or Employees" shall be understood to refer to authorized personnel of the Regulatory Authority who have satisfactorily completed a Texas Department of Health training exercise on the interpretation and application of state food sanitation rules. The words "Roadside food vendor" shall be understood to be an owner or a temporary unit designed to be readily movable, which handles only prepackaged and non-potentially hazardous foods. The words "Roadside food vending unit" shall be understood to be a temporary unit designed to be readily movable, which handles only prepackaged and non-potentially hazardous foods.

SECTION 2. PERMITS

(a) General. No person shall operate a food service establishment, retail food store, mobile food establishment, or roadside food vending unit without a valid permit issued by the Regulatory Authority. Temporary permits or authorizations shall not exceed fourteen consecutive days and must be in conjunction with a single event or celebration. Only a person who complies with the requirements of State Laws, Rules and this Order shall be entitled to receive or retain a permit or authorization. Permits or authorizations for food service establishments and retail food stores are not transferable from one location to another or from person to person. No food service establishment, retail food store, mobile food establishment, or roadside food vending unit may be required to obtain more than one permit or authorization for a single establishment at a single location under this Order. A valid permit or authorization shall be conspicuously posted in every establishment, store or vending unit regulated by this Order. A facsimile will not be considered a valid permit or authorization.

(b) Exemptions. Food service establishments, retail food stores, mobile food establishments and roadside food vending units operated solely by non-profit organizations are exempt from the permitting requirement of this Order, but must comply with all other applicable State Laws, Rules and requirements of this Order. Applicants from non-profit organizations will provide any information necessary to determine whether an organization is non-profit for the purpose of this Order. Non-profit organizations are otherwise required to provide equivalent information for the purposes of enforcement.

(c) Issuance of Permits.

(1) Any person desiring to operate a food service establishment, retail food store, mobile food establishment or roadside food vending unit shall make written application for a permit annually or authorization on forms provided by the Regulatory Authority. Each application shall include at a minimum: the name and address of each applicant, the location and type of proposed food service establishment, retail food store, mobile food establishment or roadside food vending unit; and a permit fee as established by the El Paso County Commissioner's Court.

(2) Prior to approval of an application, the Regulatory Authority shall inspect the proposed food service establishment, retail food store, mobile food establishment or roadside food vending unit to determine compliance with State Laws, Rules and this Order.

(3) The Regulatory Authority shall issue a permit or authorization to the applicant providing an inspection reveals that the proposed food service establishment, retail food store, mobile food establishment or roadside food vending unit complies with all the requirements of State Laws, Rules and this Order and appropriate fees have been paid.

(4) All permittees shall apply for permit or authorization renewal no less than thirty (30) days prior to expiration of the permit or authorization. A person may renew a permit or authorization

by making written application on forms provided by the Regulatory Authority. Such application shall include at a minimum the information described in Subsection (c), paragraph (1) of this Section, and shall include an annual renewal fee as established by the El Paso County Commissioner's Court.

(5) Upon expiration of a food operation permit or authorization, an application for a new permit or authorization must be submitted as prescribed by this Order. Such applications must comply with all Laws and Rules effective on the date of the new application.

(d) Denial, Suspension or Revocation of Permit. The Regulatory Authority may, after providing opportunity for a hearing, deny, suspend or revoke a permit or authorization for violations of any of the requirements of State Laws, Rules of this Order or for interference with the Regulatory Authority in the performance of official duties. Prior to denial, suspension or revocation, the Regulatory Authority shall notify the permit or authorization holder, or the person in charge of the permitted or authorized establishment, in writing of the reason or reasons for which the permit or authorization is subject to denial, suspension, or revocation, and that the permit or authorization shall be denied, suspended or revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the Regulatory Authority by the permit or authorization holder. If no request for hearing is filed within a ten-day period, the denial, suspension or revocation of the permit or authorization becomes final.

(1) Permit or authorization denial shall occur when the food operation cannot be approved due to non-compliance with State Law, Rules or this Order.

(2) Permit or authorization suspension is immediate when:

(a) Written notice has been issued concerning conditions existing in the establishment that constitute a substantial hazard to public health, or

(b) The establishment has serious or repeated violations of any of the requirements of State Law, Rules or this Order.

(c) Any establishment employee substantially interferes with the Regulatory Authority in the performance of duty.

(d) In lieu of permit or authorization suspension, an establishment may choose to voluntarily cease food operations until such time as all imminent health hazards and violations pertaining to the establishment sanitation and condition are in compliance. The establishment may not resume food operations until authorized by the Regulatory Authority through re-inspection. Inspection personnel shall obtain approval for the voluntary closure through the program manager or designee in the program manager's absence.

(3) Corrective measures must be outlined in the written suspension notice with a time for correction specified. A permit or authorization will be reinstated after the Regulatory Authority confirms through inspection that the requested corrective measures have been completed.

(4) Permit or authorization revocation is immediate when:

(a) Written notice has been issued to the holder of the permit or authorization, manager or the person in charge for continuing to operate after the permit or authorization has been suspended, or

(b) The establishment has serious or repeated violations of any of the requirements of State Law, Rules or this Order.

(5) Written notice of revocation shall be issued to the holder of the permit or authorization, manager, or person in charge that the permit or authorization is immediately revoked, food operations are to cease immediately, and such notice shall set out the reasons for revocation.

Requests for appeal hearings must be made by the permit or authorization holder in written form within ten days following service of notice.

(e) Service of Notice. A notice provided for in this Order is properly served when it is delivered to the permit or authorization holder or the person in charge, or when it is sent by registered mail, return receipt requested, to the last known address of the permit or authorization holder. A copy of the notice shall be filed in the records of the Regulatory Authority.

(f) Hearings. The hearings provided for in this Order shall be held within a reasonable time after the request for hearing and shall be conducted by a Hearing Officer designated by the El Paso County Commissioner's Court. Such hearing shall be held at a time and place designated by the Hearing Officer. Based on the evidence presented at such hearing, the Hearing Officer shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. Upon written request, a written report of the hearing decision shall be furnished to the permit holder by the Regulatory Authority.

(g) Application after Denial or Revocation. Whenever a denial or revocation of a permit or authorization has become final, the permit or authorization holder may make written application for a new permit or authorization.

SECTION 3. Review of Plans

Whenever a food service establishment, retail food store, mobile food establishment, or roadside food vending unit is initially constructed, or extensively remodeled, or when an existing structure is converted for use as a food service establishment, retail food store, mobile food establishment, or roadside food vending unit, a set of plans and specifications for such construction, remodeling or conversion shall be submitted to the Regulatory Authority for review before

construction, remodeling or conversion is begun. Plans and specifications shall indicate the proposed layout, seating capacity, equipment arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Regulatory Authority shall approve the plans and specifications provided they meet the requirements of State Laws, Rules and this Order. No food service establishment, retail food store, mobile food establishment, or roadside food vending unit shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the Regulatory Authority. No permit or authorization will be issued by the Regulatory Authority until plans are submitted, reviewed and approved.

SECTION 4. Fees

The following fee schedule shall become applicable on the effective date of this Order. All fees collected pursuant to this Order are non-refundable and shall be deposited to a special account and expended only to defray the cost of issuance of permits and inspections of facilities regulated under this Order. Authorized copies of a valid food permit or authorization may be obtained from the Regulatory Authority for a fee of fifteen dollars. An audited statement detailing the receipts of funds collected under this Order and all expenditures of funds and fund balance shall be filed with the Texas Department of State Health Services on or before the 15th day of January each year. Permits or authorizations must be renewed annually at least 30 days prior to expiration. Fees for issuance of a permit or the renewal of a permit shall be as follows:

- (a) \$150.00 for food service establishment or retail food stores under 3,000 square feet.
- (b) \$300.00 for food service establishments or retail food stores 3,000 square feet or over.
- (c) \$150.00 for mobile food establishment handling exposed foods;

- (d) \$100.00 for mobile food establishment handling unexposed foods;
- (e) \$150.00 for roadside vending units
- (f) \$75.00 for temporary establishments handling exposed foods;
- (g) \$50.00 for temporary establishments handling unexposed food.
- (h) \$75.00 per year for an establishment operating as a home child care facility to provide care for twelve (12) or less care recipients.
- (i) \$150.00 per year for an establishment operating as a day care center to provide care for more than twelve (12) care recipients.
- (j) \$75.00 per year for any adult foster care home/private care home in which care is provided for twenty four (24) hours a day for four or less care recipients.
- (k) \$100.00 per year for any personal care home in which care is provided for twenty four (24) hours a day for five to eight care recipients.
- (l) \$150.00 per year for any personal care home in which care is provided twenty four (24) hours a day for nine to eighteen care recipients. Fees for care facilities caring for nineteen or more care recipients shall be computed according to square footage.
- (m) All renewal fees are equal to those described in this Section, (a) thru (l).

SECTION 5. PERMIT OR AUTHORIZATION RESTRICTIONS

Restrictions are based on type of equipment to be utilized. Permits or authorization will be issued subject to the following class restrictions:

- (a) CLASS 1 – No restrictions. Establishment meets all minimum physical requirements.
- (b) CLASS 2 – Restricted to pre-packaged food, exposed food with limited preparation and based on equipment; complex preparation of potentially hazardous food is limited.

- (c) CLASS 3 – Restricted to pre-packaged food only.
- (d) CLASS 4 – Restricted to pre-packaged food only, no potentially hazardous food.
- (e) CLASS 5 – Restricted to pre-packaged and exposed non-potentially hazardous food.
- (f) CLASS 6 – Restricted to the operation of a care facility utilizing prepackaged food and exposed food requiring no further cooking with limited preparation. Food service activities other than those required for the care facility are prohibited.
- (g) CLASS 7 – Restricted to the operation of a care facility utilizing prepackaged and exposed non-potentially hazardous food requiring no further cooking with limited preparation. Food service activities other than those required for the care facility are prohibited.
- (h) CLASS 8 – Full food service operations limited to those required for the care facility.

SECTION 6. Penalties

- (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food establishment, or roadside food vending unit without a valid permit or authorization required by the Regulatory Authority in whose jurisdiction the establishment, store, unit, or vending unit is operating.
- (b) An offense under this section is a Class C misdemeanor.
- (c) Each day on which a violation occurs constitutes a separate offense.

SECTION 7. Injunctive Relief

In addition to and cumulative of all other penalties, the County Attorney may sue in District Court to enjoin a food service establishment, retail food store, mobile food establishment, or roadside food vending unit from operating without a permit or authorization.

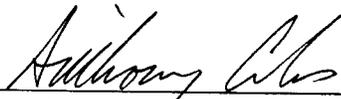
SECTION 8. Severability

If any section, sub-section, 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 9. Effective Date

The provisions of this Order shall be effective on January 1, 2008.

ORDERED BY AN AFFIRMATIVE VOTE BY THE EL PASO COMMISSIONER'S COURT ON THIS THE 17TH DAY OF DECEMBER, 2007.



County Judge Anthony Cobos

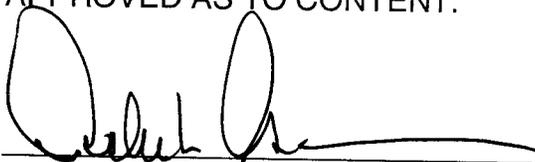
ATTEST:

APPROVED AS TO CONTENT:



Delia Briones
El Paso County Clerk





Robert Galvan, Dr. PH, MPH, MS, DAAS
Interim Director
El Paso Health Department