



MINUTES

APRIL 4, 2017

BRAZOS COUNTY COMMISSIONERS COURT

WORKSHOP SESSION

1. Call to Order

The Commissioners' Court of Brazos County, Texas met in a Workshop Session in the Commissioners' Courtroom in the Brazos County Administration Building in Bryan, Brazos County, Texas, beginning at 10:30 a.m. on Tuesday, April 4, 2017 with the following members of the Court present:

Duane Peters, County Judge, Presiding;
Steve Aldrich, Commissioner of Precinct 1;
Sammy Catalena, Commissioner of Precinct 2;
Nancy Berry, Commissioner of Precinct 3;
Irma Cauley, Commissioner of Precinct 4;
Karen McQueen, County Clerk, Absent.

Attached is a list of the citizens and officials in attendance.

The County Judge called the meeting to order at 10:35 a.m. and invited others to speak.

2. Discussions about the possible adoption of a Brazos County Food Establishment Order.

Brazos County Health Department Director Ken Bost spoke about the food establishment rules and introduced Shelly Cmajdalka who is the Inspector and Environmental Specialist with the Health Department.

Mrs. Cmajdalka discussed the proposal for the Brazos County Food Establishment Order. She said that the food establishment rules were last updated in 2015, and all establishments are required to have a Food Manager Certification as well as Food Handler Cards for all employees. Mrs. Cmajdalka said that the Health Department also

conducts septic inspections for Brazos County establishments. They are currently able to close an establishment for untreated sewage issues threatening public health, but they are unable to close an establishment for health code violation without a County Food Order. Mrs. Cmajdalka also spoke about penalties and fees associated with the County Food Order.

Commissioner Catalena questioned why there would be the same rules for a "mom and pop" establishment in the county versus big chain restaurants in Bryan and College Station. He said he is afraid the extra fees may cause the smaller establishments to close down.

Dr. Eric Wilke with the Health Department stated that there are also "mom and pop" establishments within the city and they are inspected the same as all establishments. He said they are not trying to add undue pressure on smaller establishments. Dr. Wilke said their concern is with improper food preparation and the safety of the public.

Commissioner Aldrich asked how many establishments are out in the county.

Dr. Wilke answered there are 30 to 35 establishments.

Commissioner Aldrich asked how establishments would know about notice of the changes.

Bill Ballard, Civil Counsel stated that a Public Hearing would be needed to notify establishments of the County Food Order.

Commissioner Aldrich said he would like for a draft copy of the order sent out to establishments prior to the Public Hearing. He said he would also like to have a more detailed list of fees before he votes yes or no. He also questioned if there are other counties that have a comparable order.

Commissioner Berry said she appreciates the Health Department and thanked them for the work they do for the community.

Judge Peters said the next step would be to schedule a Public Hearing.

There being no further business to discuss the meeting was adjourned.

3. Adjourn

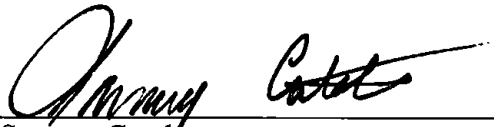
The foregoing minutes of the Commissioners Court Workshop Session held April 4,
2017, have been examined and are approved in open Court this the 2nd day of
May, 2017, in Bryan, Brazos County, Texas.



Duane Peters
County Judge



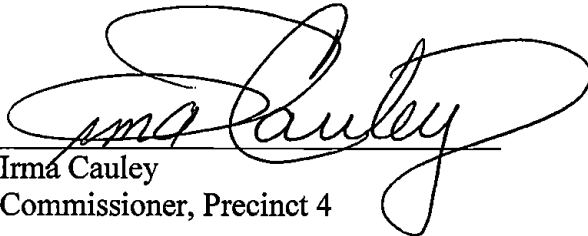
Steve Aldrich
Commissioner, Precinct 1



Sammy Catalena
Commissioner, Precinct 2

Absent

Nancy Berry
Commissioner, Precinct 3



Irma Cauley
Commissioner, Precinct 4

Attest:



Karen McQueen
County Clerk



**BRAZOS COUNTY
BRYAN, TEXAS**

FILED

2017 MAR 30 A 10: 52

MARIE MCGUIRE, COUNTY CLERK
BRAZOS COUNTY, BRYAN, TEXAS

Just Remy

NOTICE OF MEETING AND AGENDA

WORKSHOP SESSION

BRAZOS COUNTY COMMISSIONERS COURT

BRAZOS COUNTY COMMISSIONERS WILL MEET IN A WORKSHOP SESSION AS FOLLOWS:

MEETING DATE: April 4, 2017
MEETING TIME: 10:30 AM
MEETING PLACE: Commissioners Courtroom of the County Administration
Building, 200 South Texas Ave., Suite 106, Bryan, TX 77803

-
1. Call to Order
 2. Discussions about the possible adoption of a Brazos County Food Establishment Order.
 3. Adjourn

The Commissioners Courtroom of the County Administration Building, 200 South Texas Ave., Suite 106, Bryan, TX 77803 is wheelchair accessible. Handicap parking spaces are available. Any request for sign interpretive services must be made two working days before the meeting. To make arrangements, please call (979) 361-4102.

April 4, 2017 @ 10:30 AM

Sign In Sheet - Workshop

Katie Conner

Auditor

Sheilly Engdalka

BCHD

ERIC WILKE

BCHD

DON PRITT

BCHD

Sandra Bernal

Student

Cindy Barahona

Student

Ker Bost

BCHD

Bill Ballard

County Attorney

Candy Gallego

Comm. Court



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT:

NUMBER:

DATE OF COURT MEETING: 4/4/2017

ITEM: Discussions about the possible adoption of a Brazos County Food Establishment Order.

TO: Commissioners Court

DATE: 03/02/2017

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

Description

Type

No Attachments Available

Proposal for adoption of a Brazos County Food Order

Currently: The County is inspected under the Texas Food Establishment Rules (TFER). TFER was last updated by the Department of State Health Services (DSHS) in 2015, and now requires a Food Manager Certification for every establishment. All employees are also now required to have Food Handler Cards from a licensed program. (BCHD is licensed)

BCHD holds the On-Site Sewage Facility permit for Brazos County establishments. We currently have the responsibility of enforcing violations relating to septic issues. We can close a food establishment by revoking their OSSF permit for violations resulting in untreated sewage threatening the public health, but without a County Food Order, we cannot close an establishment for health code violations.

A County Food Order would include the same content as the current Bryan and College Station Food Ordinances.

This goes beyond TFER in compliance and enforcement provisions, which is required to meet Standard 1 of the FDA National Voluntary Standards Program, for which we are a participant.

What would change:

- A penalty may be assessed for operating without a permit (BCHD issues a warning for the 1st violation)
- A re-inspection fee is assessed if the same violation is marked on 3 consecutive inspections (needed if the establishment is content to lose points for the violation rather than correcting it). 3 consecutive violations would generally take 1 ½ years.
- A re-inspection fee and a minimum of a 24 hour closure upon permit suspension for a factor affecting public health (2nd closure within a calendar year results in a 72 hour closure, and the 3rd closure within a calendar year results in a permit revocation). A 24 hour closure is needed for the establishment to truly remedy the violations resulting in the closure; for example, roach/rodent infestations, and low scores necessitating time for re-training of employees.
- Failure to pay permit fees, re-inspection fees, and late charges may result in a permit suspension.

Benefits:

- Consistency in requirements throughout the County benefits all parties involved.
- BCHD would meet the requirements for Standard 1 of the FDA National Voluntary Standards Program, for which the essential goal is the Standardization of all health departments across the Nation.
- **Public health issues are addressed!**

Drawbacks:

Additional costs for the owner/operator of food establishments would only result from noncompliance with food safety rules or failure to pay for permits/fees. The cost of the permit is regulated by the State and will remain the same. (\$150 in the County, as compared to \$400 in the Cities.)

ORDER NO. _____

AN ORDER REGARDING THE REGULATION OF FOOD ESTABLISHMENTS INCLUDING FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, TEMPORARY FOOD ESTABLISHMENTS, AND ROADSIDE FOOD VENDORS

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, retail food stores, mobile food units, and roadside food vendors.

Therefore, it is ORDERED, that Brazos County Commissioner's Court adopts the following order:

FOOD ESTABLISHMENTS

A. TEXAS DEPARTMENT OF STATE HEALTH SERVICES. "RULES ON TEXAS FOOD ESTABLISHMENTS 25 TEX. ADMIN. CODE 228

INTRODUCTION

The County adopts by reference and incorporates into this order the regulations adopted by the Texas Department of State Health Services, Division of Food and Drugs as they now exist and as hereafter amended, found in 25 Texas Administrative Code Chapter 228: provided, that the word "County" in said regulations shall be understood to refer to Brazos County, Texas and the words "Regulatory Authority" shall be understood to refer to Brazos County, Texas or its authorized representative. The authorized representative for enforcement of this order shall be the Brazos County Health District ("BCHD") and the County.

B. PERMIT

(1) General

No person shall operate a food establishment who does not have a valid permit issued to him or her by the Regulatory Authority. Only a person who complies with the requirements of this order shall be entitled to receive or retain such a permit. It shall be unlawful to interfere with the Regulatory Authority in the performance of his duties as described in this order.

(2) Issuance of Permit

- (a) Any person desiring to operate a food establishment shall make written application for a permit on the forms provided by the Regulatory Authority. Prior to approval of an application for a permit, the Regulatory

Authority shall inspect the proposed food establishment to determine compliance with the requirements of this order. The Regulatory Authority shall issue a permit if its inspection reveals that the proposed food establishment complies with the requirements of this order. A valid permit shall be posted in public view in every food establishment. The applicant shall pay to the Regulatory Authority a fee to be set by the Brazos County Board of Health at the time of renewal, prior to opening a new establishment and when a change of ownership occurs.

- (b) Permits shall be issued for a period not to exceed one year expiring on December 31st of each year. The application to renew a permit and the accompanying fee must be received by the Regulatory Authority on or before January 7th of the calendar year for which the permit renewal is sought. If such application and fee are not received by the date herein specified, the Regulatory Authority may charge the food establishment up to an additional twenty percent (20%) of the fee due and owing as a late penalty for failure to comply with the requirements of subsection (a) above. The charging of such late fee will have no effect on the Regulatory Authority's right to seek criminal penalties permitted by the enforcement provision of this order. Any application and permit fee not received by January 15th may result in immediate closure of the food establishment.
- (c) If an establishment is found to be operating without a permit, the establishment must immediately close operations until such time as a permit may be issued by the Regulatory Authority. A re-inspection fee, as determined by the Board of Health, may be charged to the establishment.

(3) Transfer of Permit

A permit may not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application and the change in operation is not approved.

C. PLAN REVIEW

- (1) 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 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, model, location and size of proposed fixed equipment of facilities. The Regulatory Authority shall approve the plans and specifications, if they meet the requirements of this order. No food establishment shall be constructed, extensively remodeled, or converted, except in

accordance with the plans and specifications approved by the Regulatory Authority.

- (2) Preoperational Inspection. Whenever plans and specifications are required by Paragraph (1) of Subsection C of this order to be submitted to the Regulatory Authority, the Regulatory Authority shall inspect the food establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this order.

D. INSPECTIONS

(1) Inspection Frequency

Inspections of food establishments shall be performed as often as are necessary for the enforcement of this order based on public health risks posed by the establishment and the establishment's past compliance history. Inspections may also be made where consumer complaints and/or reports of foodborne illness outbreaks warrant a need to perform inspections.

(2) Access

Agents of the Regulatory Authority, after proper identification, shall be permitted to enter any food establishment during normal hours of operation or at any reasonable time, for the purpose of making inspections, to determine compliance with this order. The agents shall be permitted to examine the records of the establishments to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed. If a person denies access to the Regulatory Authority, the Regulatory Authority shall:

a. Inform the person that:

- The permit holder is required to allow access to the Regulatory Authority as specified under subsection D(2) of this order,
- Access is a condition of the acceptance and retention of a food establishment permit to operate under subsection B(1), and
- If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, maybe obtained according to law; and

b. Make a final request for access.

(3) Report of Inspections

(a) Whenever an inspection of a food establishment is made, the findings shall be recorded in the inspection report form. The inspection report form shall summarize the requirements of this order and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from one hundred. A copy of the inspection report form shall be furnished to the person in charge of the 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. An inspection report form is based on the requirements of this order and is on file in the Regulatory Authority's office.

(b) The most current scored inspection report form must be displayed in a BCHD-supplied holder inside each permitted establishment. The establishment is responsible for duplicate replacement holders (available at BCHD). The encased scored inspection report form must be displayed within ten (10) feet of the establishment's main public entrance or other location agreed upon by the inspector and representative of the establishment, and must be visible at eye level (48-66 inches) to patrons of the establishment. Patrons should be advised to direct questions about the report to BCHD. Failure to post the most current scored inspection report in the manner described or facilitating its removal may result in a re-inspection fee.

(4) Correction of Violations

(a) The inspection report form shall specify a reasonable period of time for the correction of the violation found, and the correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

(i) If the Regulatory Authority determines an imminent health hazard exists, the establishment shall immediately cease food operations. Operations shall not be resumed until authorized by the Regulatory Authority. An imminent health hazard exists under conditions including but not limited to:

- Lack of potable water
- Inadequate refrigeration
- Sewage backup
- Lack of sanitation; defined as a score of 69 or below
- Lack of hot water
- Extended interruption of electricity or water
- Misuse of poisonous/toxic chemicals
- Onset of an apparent food-borne disease outbreak

- Fire/Flood
- Failure to exclude an infectious employee
- Other conditions that affect public health

(ii) All violations must be corrected in a timely matter, not to exceed the timeframe specified on the inspection report.

(iii) In the case of temporary food establishments, all violations shall be corrected immediately. If violations are not corrected immediately, the establishment shall immediately cease food operations, until authorized to resume by the Regulatory Authority.

(b) Any violation documented on three (3) consecutive inspections will require a follow-up inspection within five (5) business days and a re-inspection fee determined by the Brazos County Board of Health (BCBH) will be invoiced. If the invoice has not been paid after thirty (30) days, there will a twenty (20%) percent additional fee collected, and after sixty (60) days the permit may be suspended.

E. SUSPENSION OF PERMIT

(1) The Regulatory Authority may without warning, notice, or hearing suspend any permit to operate a food establishment if the holder of the permit or person in charge or the operation of the food establishment: (a) does not comply with the requirements of this order; and (b) the operation of the food establishment otherwise constitutes an immediate hazard to public health. Suspension is effective upon service of the notice required by subsection G of this order. When a permit is suspended, food operations shall immediately cease. Unless otherwise provided in this order, within one (1) calendar year, the first permit suspension will result in a mandatory twenty-four (24) hour closure. The second permit suspension will result in a seventy-two (72) hour mandatory closure. After a third permit suspension within a 12 month period the permit will be revoked, and the owner must reapply for a new permit, pay the yearly fee plus the re-inspection fee, and score a ninety (90) or higher on the re-inspection.

(2) Whenever a permit is 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 suspended and notified of the right to appeal such suspension as provided in subsection H. If no written request for the hearing is filed within ten (10) days of the service of notice, the suspension is sustained. The Regulatory Authority may end the suspension at any time if reasons for suspension no longer exist.

(3) Whenever a food establishment's permit is suspended, a re-inspection fee shall be invoiced. The establishment shall not resume operations until such time as a re-

inspection determines that conditions responsible for the suspension no longer exist.

- (4) Failure to pay any and all permit fees, re-inspection fees, late charges and any other fees owed to the Regulatory Authority, when due may result in a permit suspension until such time as all fees and/or late charges have been paid.

F. REVOCATION OF PERMIT

The Regulatory Authority may, after providing opportunity for a hearing as provided in subsection H, revoke a permit for serious or repeated violations of any of the requirements of this order or for interference in the Regulatory Authority's performance of its duties. Prior to revocation, the Regulatory Authority shall notify the holder of the permit or person in charge, in writing, of the reason for which the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed as provided in subsection H by the holder of the permit. If no request for hearing is filed within the ten day period, the revocation of the permit becomes final.

G. SERVICE OF NOTICES

A notice provided for in this order is properly served when it is delivered to the holder of the permit, 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 shall be filed in the records of the Regulatory Authority.

H. HEARINGS

- (1) A person may request a hearing to contest the Regulatory Authority's denial of an application for a permit or a suspension or revocation of a permit or a hold order, except that a hearing request does not stay the Regulatory Authority's order for the suspension of a permit, revocation or hold order.
- (2) A person desiring a hearing in response to a denial of an application for permit, a suspension or revocation shall submit a request for a hearing to the County within ten (10) calendar days of the date of the Notice.
- (3) A request for hearing shall be in writing and contain the following:
 - (a) A statement that a genuine and material issue of fact exists for which the hearing is requested;
 - (b) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact;
 - (c) A statement indicating whether the presence of witnesses for the Regulatory Authority is required; and

- (d) The name and address of the respondent's or requester's legal counsel, if any.
- (4) The hearings provided for in this order shall be conducted by the County's _____ at a time and place designated by same. Based upon the recorded evidence of such hearing, the _____ shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written decision shall be furnished to the holder of the permit by the County.

I. APPLICATION AFTER REVOCATION

Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

J. EXAMINATION AND CONDEMNATION OF FOOD

Food may be examined or samples may be taken for laboratory analysis by the Regulatory Authority as often as necessary for enforcement of this order. The Regulatory Authority may, upon written notice to the owner or person in charge, place a hold order on any food which it believes is in violation of this order. The Regulatory Authority shall tag, label, or otherwise identify any food subject to the hold order, stating the specific reasons for placing the food under the hold order with reference to the applicable provisions of the Texas Food Establishment Rules (TFER) and the hazard or adverse effect created by the observed condition. The Regulatory Authority shall completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, Regulatory Authority's tag or identification, and location. No food subject to a hold order shall be used, served, or moved from the 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 public health, in which case immediate destruction shall be ordered and accomplished. If the Regulatory Authority has reasonable cause to believe that the hold order will be violated, or finds that the hold order is violated, the Regulatory Authority may remove the food that is subject to the order to a place of safe keeping. The hold order shall state that a request for 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 this order. The Regulatory Authority may seek an administrative or judicial remedy to achieve compliance with the provisions of this order if a person operating a food establishment or employee fails to comply with a hold order as specified in this section.

K. PROCEDURE WHEN INFECTION IS SUSPECTED

When the Regulatory Authority has reasonable cause to suspect the possibility of disease transmission from any food establishment employee, it may secure 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:

- (1) The immediate exclusion of the employee from all food establishments.
- (2) The immediate closing of the food establishment concerned until, in the opinion of the Regulatory Authority, no further danger of disease outbreak exists.
- (3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease.
- (4) Adequate medical and laboratory examination of the employee, of other employees, and of his or her body discharges.

L. FOOD HANDLER'S CARD

Each person working in a food establishment handling food or dishware shall obtain a valid food handler's card. It is an offense for an employee to begin work or for an employer to hire any person who does not have a food handler's card by the first day of employment. This card is to be issued by an accredited food handler program. The card shall be valid for such a time as the issuer may designate. The original or a copy of the food handler's card shall be posted or kept on-site by management and made available to the Regulatory Authority.

M. FOOD MANAGER CERTIFICATION

- (1) A food establishment shall employ at least one (1) person who is a full-time, on-site supervisory employee who is responsible for food preparation and service and who has a valid and current food manager certification that is recognized by the Texas Department of State Health Services. Food establishments that serve, sell, or distribute only pre-packaged foods, non-potentially hazardous foods or beverages, or temporary food events are exempt from the provisions of this section.
- (2) If a food establishment cannot meet the requirements of subsection M(1) because of the termination, expiration, or permanent transfer of a certified food manager, the food establishment shall:
 - (a) Hire another employee with a current food manager certification; or

- (b) Register a current employee for a food manager class within ten days of the termination, expiration, or permanent transfer. The approved course must be successfully completed within thirty (30) days.
- (3) Non-compliance with this section will result in a follow-up fee to be determined by the Brazos County Board of Health.
- (4) If it is determined that lack of knowledge is a factor in a permit suspension, the current food manager can be required by the BCHD to retake an approved food manager class.

N. PENALTIES; FEES; INJUNCTIONS

- (1) The Brazos County Board of Health shall adopt rules to charge fees and setting the fee amount necessary to the administration and enforcement of the provisions of this order including, but not limited to; permit fees, class fees, inspection fees, and re-inspection fees. The Brazos County Board of Health shall provide an updated fee schedule to the County within thirty (30) days of any fee changes that have been approved.
- (2) Any person who violates any section of this order is guilty of a misdemeanor and upon conviction is punishable in accordance with _____. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such a violation occurs shall constitute a separate violation.

Effective Date

The provisions of this order shall take effect on: _____ 2017.

INTRODUCED, READ AND PASSED BY AN AFFIRMATIVE VOTE BY THE COMMISSIONERS COURT OF BRAZOS COUNTY OR ON THIS _____ DAY OF _____, 2017.

(SIGNATURES OF COMMISSIONERS)

APPROVED:

By: _____
Duane Peters, County Judge

APPROVED:

By: _____
Steve Aldrich, Precinct 1

APPROVED:

By: _____
Sammy Catalena, Precinct 2

APPROVED:

By: _____
Nancy Berry, Precinct 3

APPROVED:

By: _____
Irma Cauley, Precinct 4

DRAFT