



TEXAS
Health and Human
Services

**TEXAS DEPARTMENT OF STATE HEALTH SERVICES
DIVISION FOR CONSUMER PROTECTION
POLICY, STANDARDS, AND QUALITY ASSURANCE SECTION
PUBLIC SANITATION AND RETAIL FOOD SAFETY UNIT**

Texas Department of State
Health Services

**PUBLIC SANITATION AND RETAIL FOOD SAFETY UNIT
REGULATORY CLARIFICATIONS**

January 6, 2016 (Revised: September 19, 2019)

PSRFSGRC – No. 17

SUBJECT: Children’s Beverage Stands (Lemonade Stands)

Applicable Laws and Rules:

Local Government Code Sec. 250.009, Property Code Sec. 202.020, and Texas Food Establishment Rules (TFER) §228.222(a).

Question:

Do children’s neighborhood beverage stands, including lemonade stands, have to be permitted?

Response:

The Department of State Health Services (DSHS) does not believe that children’s beverage stands pose a significant public health risk. Therefore, in areas served by DSHS regional offices, permits will not be required for children’s neighborhood beverage stands. In addition, House Bill 234 prohibits the permitting or regulation of children’s beverage stands.

Background:

Children's beverage stands, specifically lemonade stands, have come to the forefront with the recent closing of a lemonade stand because the children did not have a permit. When an operator sets up a temporary booth and performs open handling of food or drink with the intent to sell to the public, it is considered a temporary retail food establishment (TFE), which generally requires a permit. Children’s beverage stands do meet the definition of a TFE because they perform open handling of food, equipment, and utensils and require a potable water source for preparation of the product prior to sale. However, the types and volumes of beverages typically sold by children, including lemonade, present a minimal risk to the public as long as good hygiene practices are observed and the food is protected from contamination, such as: dirt, dust, insects, and other sources of contamination. For this reason, DSHS has determined that children’s beverage stands in areas served by DSHS regional offices, will not be required to have a permit.

Support:

During the 86th Legislature, House Bill 234, was passed into law which amended Local Government Code and Property Code. Local Government Code Sec. 250.009 was added for certain sales of beverages by children. Notwithstanding any other law, a municipality, county, or other local public health authority may not adopt or enforce an ordinance, order, or rule that prohibits or regulates, including by requiring a license, permit, or fee, the occasional sale of lemonade or other nonalcoholic beverages from a stand on private property or in a public park by an individual younger than 18 years of age. Property Code Sec.202.02 was added for certain sales of beverages by children. A property owners’ association of a residential subdivision may not adopt or enforce a restrictive covenant that prohibits or regulates, including by requiring a permit or fee, the occasional sale of lemonade or other nonalcoholic beverages from a stand on property located in the subdivision by an individual younger than 18 years of age who has the permission of a property owner in the subdivision for the sale. A property owners’ association: does not owe a duty of care to persons participating in a beverage sale; and is not liable for any injury to persons participating in a beverage sale, except for wilful or wanton acts or gross negligence of the association. TFER, §228.222 (a) states ‘The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all time/temperature controlled for safety (TCS) foods, and when no health hazard will result, such as children’s neighborhood beverage stands, may waive or modify requirements of these rules.’

Agree to form and substance:



Joe Williams, R.S.

Manager

Public Sanitation and Retail Food Safety Unit

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