

Food Establishments

Order No. 2016-2



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ENVIRONMENTAL HEALTH DEPARTMENT

DISTRICT ORDER 2016-2
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DISTRICT ORDER No. 2016-2

NORTHEAST TEXAS PUBLIC HEALTH DISTRICT

REVISING THE PROVISIONS OF DISTRICT ORDER No. 2016-1

AN ORDER OF THE BOARD OF DIRECTORS OF THE NORTHEAST TEXAS PUBLIC HEALTH DISTRICT ESTABLISHING THE PERMITTING AND ENFORCEMENT OF STATE LAW AND STATE RULES FOR FOOD ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, ROADSIDE FOOD VENDORS, AND TEMPORARY FOOD ESTABLISHMENTS; ESTABLISHING A VARIABLE FEE SCHEDULE FOR ISSUING OR RENEWING PERMITS; AND REQUIRING EMPLOYMENT OF CERTIFIED FOOD MANAGERS AND CERTIFIED FOOD WORKERS BY CERTAIN FIXED OR MOBILE LOCATION RETAIL FOOD ESTABLISHMENTS IN WHICH FOOD IS PREPARED OR OFFERED TO THE PUBLIC; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the Northeast Texas Public Health District to work with the Mobile Food Truck Industry in a cooperative manner to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.”

WHEREAS, Texas Health and Safety Code, Section 437.002 et. seq. provides public health districts with authority to enforce state law and rules adopted under state law concerning food establishments, retail food stores, mobile food units, roadside food vendors and temporary food establishments; and

WHEREAS, Texas Health and Safety Code, Section 437.010 provides that public health districts may require permits, plan reviews, and inspections; and may deny, suspend or revoke the permit of the food establishment, retail food store, mobile food unit, roadside food vendor, and temporary food establishment if not in compliance with state laws or state rules; and

WHEREAS, Texas Health and Safety Code, Section 437.012 (c) and (d) provides that fees collected by a public health district shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates. Fees deposited as provided by this section may be spent only for conducting inspections required by this chapter and issuing permits; and

WHEREAS, Texas Health and Safety Code, Section 437.012 (a) and (f), and the rules approved and adopted by the Health and Human Services Commission titled, “Inspection Fees for Retail Food Establishments – 25 Texas Administrative Code (TAC), Chapter §229, Subchapter Z,” allow for the collection of a fee for providing food establishment inspections to child care center food establishments and school food establishments; and

WHEREAS, Texas Health and Safety Code, Section 437.0185 provides public health districts with

authority to impose an administrative penalty on a person the district requires to hold a permit under Chapter 437.004 if the person violates state law and rules adopted under state law concerning food establishments, retail food stores, mobile food units, roadside vendors, and temporary food service establishments; and

WHEREAS, Texas Administrative Code Title 25. Part 1. Chapter §228, Subchapter B, in accordance with Texas Health and Safety Code, Chapter 438, Subchapter G, Certification of Food Managers, supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques; and

WHEREAS, Texas Health and Safety Code, Section 437.010 provides for the submission of plans and subsequent inspections necessary to determine if the applicant is in compliance with state law and rules adopted under state law governing the applicant; and

WHEREAS, “Texas Food Establishment Rules,” 25 TAC §228.222(a) provides that 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 foods requiring time or temperature control for safety (TCS foods), and when no health hazard will result, may waive or modify requirements of these rules; and

WHEREAS, “Texas Food Establishment Rules,” 25 TAC §228.242 provides for additional requirements to prevent health hazards and for conditions not addressed by “Texas Food Establishment Rules;” and

WHEREAS, “Texas Food Establishment Rules,” 25 TAC §228.244 and §228.247 requires a permit as a prerequisite for operation of a food establishment, the regulatory authority permit is non-transferable and in the event a food establishment plans to remodel, change ownership, or change the nature of the operation, the permit holder shall contact the Northeast Texas Public Health District prior to a remodel, a change of ownership, or a change in the nature of the operation including, but not limited to a change in menu, processing style, or concept;

THEREFORE, BE IT RESOLVED that the Northeast Texas Public Health District Board hereby adopts the following Northeast Texas Public Health District Food Establishment Rules, Regulations, Fees and orders as follows:

PART I. RETAIL FOOD ESTABLISHMENTS

SECTION 1. Definitions and 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 this Order shall be regulated in accordance with the following, and three (3) certified copies of each shall be on file at the Northeast Texas Public Health District (NET Health):

A. State Regulations:

- 1) Texas Department of State Health Services (TX DSHS), Division of Regulatory Services, Food Establishment Group: "Texas Food Establishment Rules," 25 TAC §228;
- 2) Texas Health & Safety Code Chapters 431 through 438 and amendments thereto.

B. Definitions:

- 1) **Accredited Food Handler Certification** – certification is obtained by completing a two (2) hour TX DSHS approved course teaching the principles of food safety to produce safe food products and prevent food borne illness.
- 2) **Accredited Food Safety Manager Certification** – certification is obtained by passing a TX DSHS approved certified food manager certification examination. Certification is valid for five (5) years.
- 3) **Administrative Hearing** – a non-judicial hearing conducted between the complainant and NET Health Chief Executive Officer or designated Appointees.
- 4) **Administrative Penalty** – a civil penalty imposed by NET Health for a contravention of an Act, regulation or by-law. It is regulatory in nature, rather than criminal, is intended to secure compliance with a regulatory scheme, and can be employed with the use of other administrative sanctions such as demerit points and license suspensions.
- 5) **Bake Sale** – a fundraising event selling baked goods allowed by law of which all proceeds go toward the nonprofit organization.
- 6) **Baked Good** – foods that do not require time or temperature control for safety, such as breads, cakes and pastries that are cooked in an oven.

- 7) **Catered Event** – a catered feeding location where food is provided by a food establishment permitted by NET Health to provide a contracted amount of food directly to a private and pre-determined number of consumers. A catered event is not prepared for an unknown number of consumers or provided for retail sale or service by the plate to consumers at a public event.
- 8) **Caterer** – a permitted food establishment, under inspection by NET Health, hired or contracted to provide food service for a pre-determined number of consumers at a private event. A caterer must undergo a plan review to provide information to NET Health for the catering operations including: menu, processing style, transportation equipment, service equipment and storage.
- 9) **Central Preparation/Commissary Facility** – a facility that is an approved and permitted retail food establishment at which food is prepared, stored, and prepackaged for sale or service at another location. Mobile Food Units return daily: to be supplied with fresh potable water and ice; to dispose of waste water into a proper waste disposal system; and to be cleaned and serviced, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in the Mobile Food Unit utensil-washing sink. The central preparation/commissary facility, also contains required parking and maintenance needs for a mobile food unit when not in operation.
- 10) **Child Care Center/Facility** – any facility licensed by the regulatory authority to receive thirteen (13) or more children for child care which prepares or serves food for on-site consumption. A child care center is classified as a food establishment. 25 TAC Chapter §229 Subchapter Z, §229.471.
- 11) **Core Item** – a provision that is not designated as a Priority item or a Priority Foundation item and includes an item that usually relates to general sanitation, operational controls, sanitation operating procedures, facilities or structures, equipment design or general maintenance.
- 12) **Cottage Food Production Operation** – an individual, not a food establishment, operating out of the individual's home, who produces a baked good that is not a potentially hazardous food now termed a TCS food requiring time or temperature control for safety as defined by Section 437.0196 of the Texas Health and Safety Code. Menu items are strictly limited to those approved by and in compliance with Texas Health and Safety Code, Section 437.001.
- 13) **Chief Executive Officer** – the director of the public health district.

- 14) **Event** – commonly termed as a “single event or celebration;” a unique public gathering of persons at which food products will be served directly to consumers, such as a festival, bazaar, carnival, circus, fund-raiser, public exhibition, celebration, sporting event, or other mass public gathering which can be civic, political, public or educational for which an appropriate regulatory authority would grant permission for the operation of the event. An event shall have a promoter, sponsor or coordinator that is responsible for the organization and facilitation of utilities to vendors throughout the event.
- 15) **Event Coordinator/Promoter** – person responsible for sponsoring or organizing and/or advertising the activities of the event and for facilitation of utilities to vendors throughout the event.
- 16) **Farm Stand** – a premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described by Subdivision 2-b (A) of Section 437.001 of the Texas Health and Safety Code.
- 17) **Farmers’ Market** – an organized event sponsored and coordinated by a farmers’ market manager at a designated location used primarily for the distribution and sale directly to the consumers of food by farmers and other producers.
- 18) **Floor Plans** – a professionally drawn to scale diagram or drawing of a room or building drawn as if seen from above. Equipment schedules; finish schedules; plumbing and electrical diagrams; and calculations may be requested along with any other information to complete a proper plan review.
- 19) **Food Establishment** – an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption. Food Establishment includes but is not limited to food service establishments, retail food stores, mobile food units, roadside food vendors and temporary food service establishments.
- 20) **Harvest Cut** – the raw cut to remove produce from the field and any erroneous foliage.
- 21) **Hazard Analysis Critical Control Point (HACCP) Plan** – a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- 22) **Hold Order** – temporary detainment of foods believed to have been compromised or tampered with that must not be moved or destroyed until cleared by NET Health.

- 23) **Imminent Health Hazard** – significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury. Examples include, but are not limited to: sewage or wastewater backup or improper discharge, breakdown of refrigeration system, lack of water, no hot water, an outbreak of foodborne illness, lack of electricity, pest infestation, lack of sanitation and control.
- 24) **Northeast Texas Public Health District (NET Health)** – a Public Health District established in 1994 by the City of Tyler and Smith County. All other incorporated cities of Smith County have opted in as a member of the Northeast Texas Public Health District for the services of the retail food inspection program.
- 25) **No Bare Hand Contact** – the use of a physical barrier between clean bare hands and ready to eat food items is required when handling foods (examples include, but are not limited to spoons, tongs, tissue paper, disposable food grade gloves, etc.).
- 26) **Out of County Caterer** – a permitted food establishment from an area outside of NET Health jurisdiction. Before food service may begin in NET Health jurisdiction a food establishment permit must also be obtained from NET Health.
- 27) **Preliminary Inspection** – a site visit and inspection conducted in preparation for submittal of an application for a Retail Food Establishment Permit.
- 28) **Priority Foundation Item** – a provision whose application supports, facilitates, or enables one or more priority items.
- 29) **Priority Item** – a provision that contributes directly to the elimination, prevention, or reduction of hazards associated with food borne illness or injury to an acceptable level.
- 30) **Promoter** – person responsible for sponsoring or organizing and/or advertising the activities of an event and for facilitation of utilities to vendors throughout an event.
- 31) **Public Health District** – a special district government entity established by two (2) or more counties and/or cities, as per Texas Health and Safety Code, Title 2, Subtitle F, Chapter 121, Subchapter E. Any government entity including a school district may become a member of a public health district. A public health district will at a minimum provide the essential public

health services listed for a local health department. A public health district may perform any public health function that any of its members may perform unless restricted by law.

- 32) **Producer** – defined pursuant to 19 USCS Section 2401 (2). [Title 19. Customs Duties; Chapter 12. Trade Act of 1974; Relief from Injury Caused by Import Competition; Adjustment Assistance for Farmers]. The term agricultural commodity producer means a person that shares in the risk of producing an agricultural commodity and that is entitled to a share of the commodity for marketing, including an operator, a sharecropper, or a person that owns or rents the land on which the commodity is produced.
- 33) **Ready to Eat Food** – foods that are in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer. These foods are intended for immediate consumption either for on-premises consumption or carry-out and it is reasonably expected to be consumed in that form.
- 34) **Remodel** – to change the structure, finishes, layout or design of the originally approved floor plan of any retail food establishment.
- 35) **Revocation** – the termination for an indefinite period of time of a permit issued.
- 36) **Risk Category** – a hierarchical scale of the likelihood of foodborne illness to occur based on the menu, processing style and history of operations inside the food establishment.
- 37) **School Food Establishment** – A food establishment where food is prepared or served and intended for service primarily to students in institutions of learning including, but not limited to, public and private schools, including kindergarten, preschool and elementary schools, junior high schools, high schools, colleges, and universities. A school food establishment is classified as a food establishment. 25 TAC §229, Subchapter Z, §229.471.
- 38) **Suspension** – the temporary discontinuance or withdrawal of a permit issued by NET Health for the period of suspension.
- 39) **Temporary Food Establishment** – a food establishment that operates at a fixed location for a period of time of not more than fourteen (14) consecutive days in conjunction with a coordinated event.
- 40) **Time/Temperature Control for Safety (TCS) Food** (previously defined as Potential Hazardous Food) – food that requires time/temperature control for safety to limit pathogenic microorganism

growth or toxin formation.

41) Variable Risk Categories:

- (a) Process 1 (Minimal to low risk).** This process involves the vending or service of food and beverages with or without preparation and involves no cooking. Generally, the steps in this process are: Receive-Store-Prepare-Hold-Serve-Vend.
- (b) Process 2 (Moderate Risk).** This process involves food preparation for same day service. Generally, the steps in this process are: Receive-Store-Prepare-Cook-Hold-Serve.
- (c) Process 3 (High Risk).** This process involves complex food preparation. Generally, the steps in this process are: Receive-Store-Prepare-Cook-Cool-Reheat-Hot Hold-Serve. Additionally, Process 3 risk is assigned for:
 - (i)** Any prepared foods that require a HACCP Plan as defined by 25 Texas Administrative Code §228.2 (64);
 - (ii)** Any foods prepared for highly susceptible populations; or
 - (iii)** Foods determined by NET Health to be very high risk.

42) Variance – a written document issued by NET Health that authorizes a modification or waiver of one or more requirements of the Texas Food Establishment Rules if, in the opinion of NET Health, a health hazard or nuisance will not result from the modification or waiver.

SECTION 2: Requirements for Different Types of Food Establishments

A. Temporary Event Requirement: A single event or celebration that offers food or beverages to the public is responsible for the health and welfare of the consumers. There are two (2) components required to organize such an event:

1) Coordinator Application for a Single Event or Celebration.

- (a) Application Required.** The purpose of the application is to verify the activity is a “single event or celebration.” When food vendors are invited to participate in the event, the event coordinator defined in Part I, Section 1, B, (15) of this District Order must make application to NET Health at least two (2) weeks prior to the date of the event. **Applications received within two (2) weeks of the event date may be denied or charged a late fee as described in Section 4, H, (6) of this District Order.**

- (b) **Responsibility of Event Coordinator.** The event coordinator shall provide a written statement describing the event and listing all proposed temporary food establishments. The event coordinator of an event at which a temporary food establishment is operated shall assure a permit from NET Health is obtained for each temporary food establishment. The event coordinator must identify and ensure each vendor has utilities including but not limited to maintaining access to potable water connections, backflow prevention, proper wastewater and grease disposal, electrical needs of vendors, toilet facilities, crowd control, trash control, securing qualified temporary food vendors and coordinating the health and safety of the invited guests.
- (c) **Limitations.** Events shall occur once a month or less frequently per property. Events that occur daily, weekly or more frequently than once a month are considered continuous operations and thus do not constitute a “single event or celebration.”
- (d) **Location Exception.** For city or county owned locations, such as parks, or convention centers and like venues with Food Establishment Permits, more than one “single event or celebration” may occur at that location per month so long as the fees are paid for each event per Section 4, G, (2) and the appropriate “single event or celebration” Coordinator’s Application and a Temporary Food Establishment Permit Application and city or county issued special use permit verifies each “single event or celebration” is unique in the fact the single event or celebration is the only one of its kind.

2) **Temporary Food Establishments Operating at a Single Event.**

- (a) **Permit Required.** A temporary food establishment shall obtain a permit with NET Health prior to offering foods or beverages to the public. The single event permit is valid for one individual food booth or unit at one specific event, and is valid for the dates and times of the coordinated event up to a maximum of fourteen (14) consecutive days from the initial effective date. After being secured as a food vendor for a “single event or celebration” contact must be made with NET Health to submit a Temporary Food Establishment Permit Application. Exception: A temporary event set up at a farmers’ market may be permitted to set up for the dates of the farmers’ market up to a maximum of one year.

- (b) **Application.** Prior to operating a temporary food establishment, a Temporary Food Establishment Permit Application form must be obtained from NET Health and returned with the required fee as per Section 4, G, (2). The application shall contain such information necessary for NET Health to determine if a permit should be issued and under what conditions the application shall be approved or disapproved. The Temporary Food Establishment Permit Application must be received by NET Health at least seven (7) calendar days prior to the event. **Applications accepted less than seven (7) calendar days prior to an event must pay a one hundred dollar (\$100.00) late application fee.**
- (c) **Liability.** The owner/operator of a temporary food establishment has a liability for the operation of the temporary food establishment. The owner/operator may be responsible should a patron/customer be harmed by the operation of the temporary food establishment. The owner and the operators involved in food preparation must take extraordinary care to prevent risk/hazard to the community.
- (d) **Pressurized Water.** Hot and cold running potable water under pressure is required to be properly plumbed to sinks located in each temporary food establishment.
- (e) **Complex Menu at a Temporary Food Establishment.** Process 2 or Process 3 foods received raw and prepared for service in a temporary food establishment presents a higher risk of contamination. Additional requirements shall be required to protect the health of the public.
- (f) **Additional Requirements.** NET Health may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishments, and may prohibit the sale of some or all food that requires time/temperature control for safety.
- (g) A temporary food vendor attending greater than twelve (12) events per year is required to obtain a permit for a central food preparation/commissary with servicing area for equipment cleaning, storage and supply storage.

B. Nonprofit Organizations Exempt. Food establishments, the net earnings of which are used **in whole** for charity, church funds or public welfare, **shall meet all requirements of this District Order with the exception of the fee and permit.** However, written proof of such nonprofit status shall be provided to

NET Health prior to commencement of any operations. The inspection report posted at the site of operations will serve as documentation.

- C. Permit Renewal Following Establishment Closure for More Than Three (3) Months.** Any person who voluntarily discontinues the operation of any food establishment for no longer than three (3) consecutive months may secure a renewal of an existing permit before the permit expiration date by meeting all of the requirements of this District Order. Under this provision, an additional permit fee will not be required. Upon discontinuing the operation of a food establishment or if there is a change of ownership, the owner shall notify NET Health in writing at least thirty (30) calendar days prior to the discontinuing of operations or change of ownership.

SECTION 3. Plan Review and Preliminary Inspections of Retail Food Establishments.

- A. General.** The required plans and specifications related to the proposed layout shall include: site plan, overall building layout, equipment arrangement, plumbing plans, mechanical plans, lighting and finish materials of food areas, and the type and model of proposed fixed equipment and facilities. Every commissary shall additionally submit plans showing refrigerated and dry storage areas reserved for mobile food unit use. The prepared plans and specifications shall be submitted to NET Health with any supporting documentation required by NET Health for review and approval before construction, remodeling or conversion begins. 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.

- B. Submission of Plans Required.** No food establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by NET Health. The National Science Foundation (NSF) Plan Review Guidance Document shall be used to prepare plans and specifications for submittal to NET Health with a plan review application, menu and appropriate fee before any food establishment within NET Health jurisdiction shall:

- 1) be constructed;
- 2) undergo a major remodel;
- 3) change equipment arrangement or food flow;
- 4) change ownership; or
- 5) convert an existing structure, not previously used as a food establishment, into a food establishment or retail food store, fee specified in Section 4 of this District Order.

- C. Size and Scale of Floor Plans.** Floor Plans must be submitted on at least 11 inch x 17 inch paper. Floor Plans submitted on paper larger than 11 inch x 17 inch paper must include an electronic copy. All Floor Plans must be scaled to ¼ inch. Enlarged plans accompanying the ¼ inch scaled floor plan are optional.
- D. Revisions.** Changes to the original permitted design approved by NET Health must be submitted in like manner as the original set.
- E. Scalable and Readable Floor Plans.** Each new permit application must have an approved floor plan to submit for plan review. When an Architect or Engineer Stamp of approval is not required by the Texas Architectural Board or local ordinance, a floor plan that has been professionally drawn to a ¼ (one quarter) inch scale by draftsman or other similar credential must be submitted to NET Health to fulfill the needs for a proper and accurate plan review.
- 1) The floor plan, scaled to ¼ inch, must include detail as indicated in (F) of this section.
 - 2) Hand drawings, drawings that are not accurate, drawings that are incomplete or that are not scaled are prohibited and shall not be accepted or approved for plan review.
- F. Floor Plan Details:**
- 1) **Required Detail.**
 - (a) Seating capacity, projected daily meal volume and menu;
 - (b) The location of the refuse, recyclable, and/or returnable containers;
 - (c) Location of all food equipment. Each piece of equipment must be clearly labeled, marked, or identified. Food equipment schedule which includes the make and model numbers and listing of equipment that is certified or classified for sanitation by an ANSI accredited certification program (when applicable) must be submitted. Elevation drawings may be requested by NET Health;
 - (d) Identify auxiliary areas such as storage rooms, garbage rooms, toilets, employee storage/breakroom, mop sink and/or curbed cleaning facility, any outlying wait stations or satellite food service areas in relation to the food service and kitchen area must be detailed;
 - (e) Entrances, exits, loading/unloading areas and delivery docks;
 - (f) Complete finish schedules for each room including floors, walls, ceilings and covered juncture bases;

- (g) Plumbing schedule including location of floor drains, floor sinks, water supply lines, overhead waste-water lines, hot water generating equipment with capacity and recovery rate, backflow prevention, wastewater line connections;
 - (h) Calculations are required for sizing grease interceptor;
 - (i) Location and type of lighting fixtures;
 - (j) Source of water and method of sewage disposal; and
 - (k) The design must be compliant with plumbing, electrical and structural regulations to include the applicable provisions under the American Disabilities Act.
- 2) **Flow Chart.** A color coded flow chart may be requested by NET Health demonstrating flow patterns for:
- (a) Food (receiving, storage, preparation, service);
 - (b) Dishes (clean, soiled, cleaning, storage); and
 - (c) Trash and garbage (service area, holding, storage, disposal).
- 3) **Ventilation Schedule.** A schedule of the location of vent hoods may be requested by NET Health.

G. Remodel.

- 1) **Minor Remodel.** A Minor Remodel as described herein does not require a plan review application to be submitted to NET Health. Examples of a minor remodel would be the “like-for-like” exchange of equipment, for similar equipment in design, function, use, and maintenance that requires no additional alteration or modification of existing layout or fixtures to install and occupies the same or similar foot-print of the replaced equipment; or the basic repair of the finishes of the floors, walls, ceilings or lights.
- 2) **Major Remodel.** A Major Remodel meeting this definition requires a Plan Review Application to be submitted in compliance with Section 3.F. A project for the proposed remodel of a food establishment rises to the level of requiring a major remodel permit when: such work requires a permit from the building authority; the food establishment is adding new permanent plumbing, drainage or direct electrical connections; installation of new equipment is proposed; the modification of existing structure to accommodate the new equipment is required; the food flow or order of operations is changing; extensive replacement of finishes such as wall, floor or ceiling

materials or fixtures are planned; or other qualifying events are deemed a Major Remodel by NET Health. A Major Remodel made to the original approved floorplan without proper application for plan review by NET Health is subject to an administrative penalty

3) Changing Food Flow or Location of Equipment. The original floor plan approved and permitted shall not be changed or altered without submitting proposed changes for review to NET Health.

H. Plan Review. The NET Health plan review will focus on whether the plans satisfy food service rules and regulations only. The NSF Plan Review Guidance Document will be referenced to ensure food establishments are constructed, extensively remodeled or converted in accordance with plans and specifications approved by NET Health. A plan review and preliminary inspection is required on all food establishments. A plan review fee as described in Section 4.H.(4) is due at the time of the plan review submittal. The plan review will be processed by NET Health within 10 business days of receipt of a complete plan review application. A preliminary inspection will then be scheduled to assess the proposed food establishment. The initial plan review application for a food establishment is valid for one (1) year. If the plans are not implemented in the one (1) year period, the plans must be resubmitted for approval along with a plan review fee as described in Section 4.H.(4) prior to the building of the proposed food establishment. A plan review is a prerequisite for the issuance of an application for a retail food establishment permit.

I. Preliminary Inspection. The preliminary inspection will identify what repairs or modifications are necessary to meet the requirements for a commercial retail food establishment. 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 representative for the appropriate county or municipality. One (1) requested preliminary inspection is included in a plan review. Additional inspection(s) shall be subject to a re-inspection fee(s) as described in Section 4.H.(8).

J. Permit Approval/Opening Inspection. Formerly termed pre-operational/opening inspection. Whenever plans and specifications are required to be submitted to the regulatory authority, NET Health or its designated agent or expert shall inspect the food establishment prior to operation to determine compliance with the approved plans and specifications and with the requirements of these rules. Request for a permit

approval/opening inspection must be made at least three (3) business days prior to the opening of the food establishment. One (1) permit approval/opening inspection is included in the cost of the plan review. If the food establishment does not meet the rules within this District Order, a permit will not be approved. Any additional permit approval/opening inspection shall be assessed a re-inspection fee as set forth in Section 4.H.(8).

SECTION 4. Permits and Fees.

- A. Permit Requirement, Prerequisite for Operation.** No person shall operate a food establishment in NET Health jurisdiction without a valid permit issued by NET Health. Only a person who complies with these rules shall be entitled to receive or retain such a permit. No person holding a permit shall sell, lend, lease or in any manner transfer a food establishment permit.
- B. Permit Issuance.** Food establishments shall be inspected by NET Health immediately prior to the issuance of a permit. Upon successful completion of a permit approval/opening inspection, NET Health shall issue a permit to the applicant if its inspection reveals that the proposed food establishment complies with these rules.
- C. Valid permit.** A valid permit is one that is not expired, revoked or suspended. The permit shall not be defaced, removed or otherwise altered without written permission from NET Health. Any permit may be revoked or suspended by NET Health at any time if it is deemed food establishment is not operating in compliance with the provisions of this District Order or in any emergency when, in the judgment of NET Health, any food establishment has become a public health nuisance or menace.
- D. Conditions of Retention, Responsibilities of the Permit Holder.** The permit holder shall comply with the provisions of TFER and the NET Health District Order; and
- 1) If required, submit and comply with HACCP plan or variances;
 - 2) Immediately contact the regulatory authority to report an illness of and employee as required by the Texas Food Establishment Rules;
 - 3) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist;
 - 4) Allow representatives of the regulatory authority access to the food establishment;
 - 5) Replace existing facilities and equipment, as required by the Texas Food Establishment Rules, with acceptable replacements;

- 6) Comply with NET Health directives including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued to the permit holder's food establishment or in response to community emergencies;
- 7) Accept notices issued and served by NET Health according to law;
- 8) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with these rules or a NET Health directive, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and
- 9) Notify customers that a copy of the most recent establishment inspection report, valid framed food establishment permit, and other required signage and documents are available and/or posted in a conspicuous location visible to consumers.

E. Permit Renewal. With exception of the initial permit issued, each permit fee shall be required and will cover a twelve (12) month period from date of issuance. Such fee must be renewed and shall be payable in advance for each twelve (12) month period thereafter, except for temporary food establishments.

F. Late Fee. Failure to pay the annual permit renewal fee on a timely basis shall result in a late charge indicated in Section 4 (H) (6) of this order. The annual renewal permit fee and the late charge must be paid prior to the expiration of the permit or the establishment shall cease operations.

G. Variable Permit Fees Based on Risk Category.

1) Food Establishment.

- (a) Child Care Center Food Establishment.....\$150.00
- (b) Process 1 (Minimal to Low Risk)\$225.00
- (c) Process 2 (Moderate Risk)\$275.00
- (d) Process 3 (High Risk)\$300.00
- (e) School.....\$250.00

2) Temporary Food Establishment.

- (a) Per event/per unit; first three (3) days.....\$50.00
- (b) Per subsequent consecutive day(s) thereafter
with a maximum of fourteen (14) days\$15.00 per day
- (c) Temporary food vendors who want to sell TCS foods at a farmers' market must obtain a permit from NET Health prior to beginning food service.

H. Other Associated Fees.

- 1) **Initial Permit Proration Calculation.** Annual Fee divided over 12 (twelve) months and adjusted to align the initial permit expiration date with any other existing permit expiration date for other inspection services at the same establishment. Examples include but are not limited to: A hotel with a Commercial Pool/Spa Permit and a continental breakfast food establishment.
- 2) **Annual Variance/HACCP Plan Review**\$100.00
 - (a) If the food establishment is required to operate under a HACCP plan; or is granted a variance, an annual document review and inspection of establishment is required to verify compliance.
- 3) **Nonprofit. Requests for Inspection.** Organizations that are exempt from federal tax liability under 26 U.S.C 501(c) are exempt from inspection fees, unless inspections are requested by the nonprofit organization.
 - (a) Requested Inspection Fee\$50.00
- 4) **Plan Review**\$175.00
 - (a) Cost includes review of plans, documents, consultations plus preliminary inspection of a New Food Establishment or Conversion of a building into a food establishment and applies to (b) through (d) herein.
 - (b) Major remodel that requires construction plan review.
 - (c) Change of Ownership Application with no menu change or remodel.
 - (d) Concept change that requires change of food flow, change of menu, and change of equipment.
- 5) **Duplicate Permit Fee**.....\$20.00
- 6) **Late Fee.**
 - (a) Annual food establishment permit late fee.....\$75.00
 - (b) Temporary Event permit application late fee\$100.00
 - (c) Event Coordinator permit application late fee\$100.00
- 7) **Re-instatement Fee of Suspended Permit**.....\$150.00
- 8) **Re-inspection Fee** for each additional inspection as a result of a failed inspection.....\$100.00

SECTION 5. Certifications.

- A. General.** It shall be unlawful for any person to work or accept employment in a food establishment, within NET Health jurisdiction without securing a food handler's training certificate. It shall be unlawful for any person in control of, operating or managing any food establishment, to employ or allow any person to work as a food handler within NET Health jurisdiction unless that person has obtained a valid training course registration receipt issued under C.(3)(a) of this section or a current food handler's training certificate.
- B. Administration.** NET Health may administer a food handler's training course and certified food manager's training course and examination. Any person who is required to have a certificate shall attend and successfully complete a training approved by NET Health, TX DSHS, or a course accredited by the American National Standards Institute (ANSI). It is the responsibility of the person in charge of the food establishment to keep a certificate of completion of the training course for all employees of the food establishment available on site for compliance review by the inspector.
- C. Food Handler/Worker Certification Requirement.**
- 1) Required.** Each person, within sixty (60) calendar days of becoming an employee, conditional or otherwise, of a food establishment shall obtain a valid certification by satisfactorily completing a food handler's training course approved or conducted by NET Health.
 - 2) Valid Certificate.** Is one that is not expired and is approved by NET Health.
 - 3) Issuance.** Upon successful completion of the training course, NET Health will issue a food handler's training certificate, which shall expire two (2) years from the date of the completion of the food handler's training course and payment of the administration fee.
 - (a) Temporary Issuance.** When a certificate is required, application must be submitted to NET Health, and then a training course registration receipt will be issued to the applicant to allow the applicant to continue employment at a food establishment while completing the food handler's training certificate course. If an applicant has not successfully completed the food handler's training course by the sixtieth calendar day of employment, the applicant cannot continue employment as a food handler.
 - (b) Expired Certificates.** After the expiration of two (2) 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.

- 4) **Exemptions.** An employee of a food establishment that has satisfactorily passed an accredited Certified Food Manager examination approved by the TX DSHS shall be exempt from this requirement for a food worker certification.

D. Certified Food Manager Certification and Requirement.

- 1) **Required.** At least one certified food manager must be present during all hours of operation at each permitted food establishment. At the time a food establishment permit is issued, the appropriate number of certified food managers must be employed to cover all operation hours of the food establishment. The number of certified food managers is to be determined by the operating hours of the food establishment and the number of operating shifts. Certification must be obtained by passing an examination approved by the Texas Department of State Health Services and meeting all requirements in Health and Safety Code, Chapter 438, Subchapter G, and 25 TAC §228.33 (relating to Certification of Food Managers). The words “food manager” means an individual who conducts, manages, or operates a food establishment. Failure to maintain at least one Certified Food Manager per establishment shall be cause for a permit to be suspended.
- 2) **Responsibilities of a Certified Food Manager.** Any food manager or person in charge of a food establishment within NET Health jurisdiction that holds a valid Certified Food Manager’s certificate has responsibilities that include but are not limited to:
 - (a) Identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;
 - (b) Developing or implementing specific policies, procedures or standards to prevent foodborne illness;
 - (c) Supervising or directing food preparation activities and ensuring appropriate corrective actions are taken as needed to protect the health of the consumer;
 - (d) Training the food establishment employees on the principles of food safety;
 - (e) Performing in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety have been implemented and are being followed;
 - (f) Demonstration of knowledge of 25 TAC §228; and
 - (g) Maintaining active managerial control.

- 3) **Registration Application.** Registration is required for all Certified Food Manager Certificates.
 - (a) Each food establishment required to have certified food managers on duty present during operational hours shall register the certified food managers with NET Health.
 - (b) A maintenance fee is required upon registration of a certificate.
 - (c) Individuals certified by attending the NET Health accredited Certified Food Manager Program and successfully passing the certified food manager test will be automatically registered into the registry system by NET Health.
- 4) **Certificate Reciprocity.** A certificate issued to an individual who successfully completes an examination approved by the Texas Department of State Health Services shall be accepted as meeting the training and testing requirements under Health and Safety Code, 438.046(b). Note: NET Health is accredited to conduct a Certified Food Manager Program.
- 5) **Certificate Posting.** The original food manager certificate(s) shall be posted together with the NET Health registration certificate in a location in the food establishment that is conspicuous and visible to consumers.
- 6) **Exemptions.**
 - (a) The following food establishments are exempt from the food manager certification requirements of this order:
 - (i) Establishments that offer only prepackaged foods that are not time/temperature control for safety (TCS);
 - (ii) Child care facilities, as defined by Section 42.002, Human Resources Code;
 - (iii) Establishments that do not prepare or handle exposed time/temperature control for safety (TCS) foods as defined in 25 TAC §228.2(144); or
 - (iv) Nonprofit organizations as defined in 25 TAC 229.371(9) (relating to Permitting Retail Food Establishments).

SECTION 6. Inspections.

Compliance procedures concerning inspections are as follows:

- A. **Inspection Report Form.** NET Health will use an inspection report form based on the requirements of the “Texas Food Establishment Rules.”
- B. **Inspection Frequency.** An inspection frequency of a food establishment shall be based on a risk category

associated with the types of foods and the food preparation procedures. Before a food establishment is placed into a risk category, a food establishment risk assessment must be assigned. Additional inspections of the food establishment shall be performed as often as are necessary for the enforcement of these rules.

C. Access. NET Health agents, after proper identification, shall be permitted to enter any food 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.

D. Report of Inspections. The TX DSHS “Texas Food Establishment Rules” reports the score by using a demerit system, with zero (0) demerits denoting no Priority Item/Priority Foundation Item/Core Item violations. This means that there may be violations that are not assigned point values. Whenever an inspection of a food establishment is made, the findings shall be recorded on the inspection report form set out as described 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. The score will be reported in demerits. Inspection remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. A copy of the inspection report form shall be furnished to the person in charge of the food 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 establishment.

E. Correction of Violations.

1) The food establishment shall, at the time of the inspection or as soon as possible, implement appropriate corrective actions for violation items found during an inspection.

2) The inspection report form shall indicate a notice of violation and specify a reasonable time period 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 surfacing wastewater, lack of electricity, pest infestation or sewage backup, the food establishment shall immediately cease food service operations and contact NET Health. Operations shall not be resumed until authorized by NET Health.

The food establishment shall cease operations for a minimum of twenty four (24) hours.

- (b) All Priority Item violations of three (3) point weighted items shall be corrected as soon as possible, but in any event, within three (3) calendar days following the inspection.
- (c) All Priority Foundation Item violations of two (2) point weighted items shall be corrected as soon as possible, but in any event, within ten (10) calendar days following the inspection.
- (d) All **Core Item** violations of one (1) point weighted items shall be corrected by the date and time agreed to or specified by NET Health, but no later than ninety (90) calendar days after inspection.
- (e) NET Health may approve a longer time frame or a compliance schedule exceeding the time limitations specified under this section if the potential hazard involved, the complexity of the corrective action needed, or it is deemed no health hazard exists or will result from allowing an extended schedule of compliance.
- (f) When the food establishment rating score exceeds thirty (30) demerits, corrective action on all identified violations shall be initiated immediately and corrected within forty-eight (48) hours. One (1) or more re-inspections will be conducted at reasonable time intervals to assure correction.
- (g) In the case of temporary food establishments, all violations shall be corrected within twenty four (24) hours. If violations are not corrected within twenty four (24) hours, the temporary food establishment shall cease food service operations until authorized to resume by NET Health.
- (h) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of operations.

F. Continuing Violations. Each day or fractional part thereof that such violation(s) continue shall constitute a separate offense.

- 1) **Re-inspection.** At the end of the specified period of time, NET Health shall verify corrections of the violations, document the information on an inspection report, and submit the inspection report into NET Health records. Subsequent re-inspections required due to non-compliance may be subject to a re-inspection fee.

- 2) **Written Plan of Corrective Action.** NET Health may require a written schedule of compliance is submitted by the food establishment.
- 3) **Repeat Violations.** Repeated violations that occur over several routine inspections are subject to the application of administrative penalties.
- 4) **Inspection Frequency Risk Assessment.** The assigned inspection frequency can be increased or decreased based on the previous inspection history.
- 5) **Suspension of Permit.** NET Health shall suspend a permit based on an imminent health hazard, repeated critical violations, lack of a Certified Food Manager, and/or any other serious violation of State law for which NET Health is responsible to enforce. A suspended food establishment permit shall remain suspended for a minimum of twenty four (24) hours in order to remediate the imminent health hazard.
 - (a) A supervisor at the regulatory authority will confirm the hazard before suspension is effective when possible. Suspension is effective upon service of the written notice. When a permit is suspended, food operations shall immediately cease and shall not resume operations until such time as a re-inspection NET Health determines that the suspension should be lifted.
 - (b) Whenever a permit is suspended, the holder of the permit or the person in charge of the food establishment at the time of suspension shall be notified in writing that the permit is, upon service of the notice, immediately suspended.
- 6) **Immediate Cessation of Operations.** Upon receipt of a notice of permit suspension the food establishment shall immediately cease operations. Nothing in this section shall prevent NET Health from requiring a food establishment to cease operations immediately pursuant to law. This is equivalent to a suspension.
- 7) **Re-inspection Required After Permit Suspension.** Prior to resuming operation after a permit suspension, the food establishment must be inspected to verify correction of any violations and for compliance with these rules.
- 8) **Re-instatement.** Upon successful completion of a re-inspection and payment of a permit re-instatement fee, NET Health shall re-instate the food establishment permit for the permit holder if its inspection reveals that the food establishment complies with these rules.

SECTION 7. Examination and Condemnation of Food; and Maintenance of Equipment.

- A. Procedures Concerning Examination and Condemnation of Food.** Food may be examined or sampled by NET Health as often as necessary for enforcement of these rules. NET Health shall issue a receipt for the samples. NET Health 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 “Texas Food Establishment Rules” or other relevant federal, state or local regulations. NET Health 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 establishment. NET Health 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) calendar 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 these rules.
- B. Maintenance of Equipment and Utensils.** All equipment and utensils used in the preparation, storage, and serving of food shall be kept in good repair and in proper working condition. NET Health may tag, which means to mark, identify or otherwise forbid the use of equipment or utensils found to be in violation of this subsection, and it shall be unlawful to use any equipment or utensils that have been so tagged, until approved to do so by NET Health.

SECTION 8. Procedure When Disease Transmission or Infection is Suspected.

- A. Necessary Actions.** When NET Health has reasonable cause to suspect the possibility of disease transmission from any food establishment, retail food store, mobile food unit, roadside food vendor or temporary food establishment employee, it may secure the morbidity history of the suspected employee or make any other investigation as needed and shall take appropriate action. NET Health 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 NET Health, no further danger of disease outbreak exists;
 - 3) Restriction of the employee’s services to some area of the food establishment, where there would

be no danger of transmitting disease; and

4) Adequate medical and laboratory examination of the employee(s) and their bodily discharges.

B. Removal of Restriction or Exclusion. NET Health shall release a food employee or conditional employee from restriction or exclusion according to Health and Safety Code 438.033, and the conditions of the Texas Food Establishment Rules, Section §228.256(d).

C. Reporting of Communicable Diseases. Certain persons shall report certain confirmed and suspected foodborne diseases to NET Health as required in 25 TAC 97.2 through 97.6 and the Texas Food Establishment Rules §228.257.

SECTION 9. Enforcement and Administrative Penalty Procedures.

A. Remedies. Violations of the Texas Food Establishment Rules, the permitting rules or relevant federal, state or local laws are subject to the penalties and remedies listed in this District Order and otherwise provided by state law. NET Health employees are hereby authorized to enforce provisions herein and to issue citations for violations of this District Order.

B. Penalties. Any permit holder, responsible officer of the permit holder, or other person found guilty of violating any provision of this District Order shall be punished in accordance with applicable law.

1) **Fines.** A violation of any provision herein shall be classified as a Class C misdemeanor and violators are subject to a fine of up to two thousand dollars (\$2,000.00) per violation per day for each violation.

2) **Administrative Penalties.** Administrative penalties may be assessed pursuant to Texas Health and Safety Code, Sections 437.0185-185.0186, which:

(a) Authorizes the Chief Executive Officer of NET Health to impose an administrative penalty on a person NET Health requires to hold a permit under Texas Health and Safety Code, Section 437.003 or 437.004 if the person violates this District Order;

(b) Prohibits the amount of the penalty from exceeding five hundred dollars (\$500.00) per day, and provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty is to be based on certain factors set forth by criteria such as history of previous violations, seriousness of the violation, hazard to the health and safety of the public, demonstrated good faith efforts to correct, economic harm to property or the environment, amounts necessary to deter future

violations, enforcement costs relating to the violation, and any other matter justice may require.

- (c) The violations shall be categorized by severity level from those with minor health and safety significance to the most serious violations.
- (d) Five Levels of penalties for retail food establishments will be imposed not to exceed five hundred dollars (\$500.00).
 - (i) Level 1.....\$100.00
 - (ii) Level 2.....\$200.00
 - (iii) Level 3.....\$300.00
 - (iv) Level 4.....\$400.00
 - (v) Level 5.....\$500.00
- (e) Authorizes the enforcement of the penalty to be stayed during the time the order is in judicial review if the person pays the penalty of the clerk of the court. Authorizes a person who cannot afford to pay the penalty to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Procedure for a party who cannot afford to file security for costs.
- (f) Authorizes a person, not later than the twentieth (20th) calendar day after the date the person receives notice of the penalty, to accept in writing the determination and pay the recommended penalty of the Chief Executive Officer or make a request for a hearing on the occurrence of the violation, the amount of the penalty or both.
- (g) Requires a court to order that penalty is not owed if the court does not sustain the findings that a violation occurred.
- (h) Requires a court to order, when the court’s judgment becomes final, that the appropriate amount be remitted to the person if the person paid the penalty to the clerk of the court and if the amount of the penalty is reduced or the penalty is not upheld by the court.
- (i) Authorizes an administrative penalty to be imposed for a violation of this District Order under Chapter 437, Texas Health and Safety Code, by the state under 437.018, or by the director of a public health district of a county under Section 437.015, but not both.

3) Service of Notice. A notice provided for in these rules is properly served when it is delivered to

the holder of the permit, 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 holder (owner). A copy of the notice shall be filed in NET Health records.

- 4) **Hearing.** NET Health shall conduct hearings provided for in this Section 9 at a time and place designated by NET Health. Based on evidence of such hearing, NET Health shall make final findings and shall sustain, modify or rescind any notice or order considered in the hearing. Within ten (10) calendar days, NET Health shall furnish a written report of the hearing decision to the holder of the permit.
- 5) **Revocation of a Permit.** NET Health may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of these rules requirements of this District Order or for interference with NET Health in the performance of its duties. Upon revocation of a permit, operations of the food establishment shall cease immediately. Prior to revocation, NET Health shall provide written notice to the holder of the permit, or the person in charge of the food establishment at the time of revocation, stating the reason(s) for the proposed revocation and that the permit shall be revoked at the end of ten (10) calendar days following service of such notice unless the holder of the permit files a written request for a hearing with NET Health within such ten (10) calendar day period. If no request for a hearing is filed within the ten (10) calendar day period, the revocation of the permit becomes final.
- 6) **Application after Revocation.** Whenever a revocation of a permit has become final, the holder may make written application for a new permit. The applicant is required to meet any conditions of a new food establishment.
- 7) **Injunction.** Whenever NET Health 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, NET Health may bring an action pursuant to state law against each such person to restrain the unlawful act or practice by temporary restraining order, temporary injunction, or permanent injunction.
- 8) **Public Record.** NET Health may publish the permit, name, and address of any food establishment whose permit has been revoked or suspended, together with the reasons for the revocation or suspension.

SECTION 10. Appeals of Decisions Made Under Part 1, Sections 1 through 9.

Any person aggrieved by a decision of a NET Health employee concerning the granting or refusal to grant a permit, or any privilege as provided in Sections 1 through 9 may appeal such decision in writing to the Chief Executive Officer of NET Health within ten (10) calendar days after the decision. The Chief Executive Officer shall render a decision within thirty (30) calendar days after receipt of the appeal, either affirming the decision of the employee or entering an appropriate decision.

PART 2. MOBILE FOOD UNITS

SECTION 1. Definitions and 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 this Order shall be regulated in accordance with the following, and three (3) certified copies of each shall be on file at the Northeast Texas Public Health District (NET Health):

A. State Regulations:

- 1) Texas Department of State Health Services (TX DSHS), Division of Regulatory Services, Food Establishment Group: “Texas Food Establishment Rules,” 25 TAC §228;
 - (a) Under Section 228.247 of the Texas Food Establishment Rules, a person may not operate a food establishment without a valid permit or license to operate issued by the regulatory authority.
 - (b) Mobile Food Units shall also comply with the provisions of Subchapter H, Section § 228.221(a) of the Texas Food Establishment Rules and shall meet the requirements of the District Order of the Northeast Texas Public Health District.
 - (c) Mobile food units shall meet all other applicable local requirements in order to offer food for human consumption on private or public property, including any applicable zoning restrictions of the municipality in which the operation occurs.
- 2) Texas Health & Safety Code Chapters 431 through 438 and amendments thereto.

B. Definitions:

- 1) **Accredited Food Handler Certification** – certification is obtained by completing a two (2) hour TX DSHS approved course teaching the principles of food safety to produce safe food products and prevent food borne illness.
- 2) **Accredited Food Safety Manager Certification** – certification is obtained by passing a TX DSHS approved certified food manager certification examination. Certification is valid for five (5) years.
- 3) **Administrative Hearing** – a non-judicial hearing conducted between the complainant and NET

Health Chief Executive Officer or designated Appointees.

- 4) **Administrative Penalty** – a civil penalty imposed by NET Health for a contravention of an Act, regulation or by-law. It is regulatory in nature, rather than criminal, is intended to secure compliance with a regulatory scheme, and can be employed with the use of other administrative sanctions such as demerit points and license suspensions.
- 5) **Central Preparation/Commissary Facility** – a facility that is an approved and permitted retail food establishment at which food is prepared, stored, and prepackaged for sale or service at another location. Mobile Food Units return daily: to be supplied with fresh potable water and ice; to dispose of waste water into a proper waste disposal system; and to be cleaned and serviced, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in the Mobile Food Unit utensil-washing sink. The central preparation/commissary facility also contains required parking and maintenance needs for a mobile food unit when not in operation.
- 6) **Commercially Manufactured Mobile Food Unit** – a vehicle that was originally manufactured or converted by a commercial food truck manufacturer who employs licensed professionals to design and install each system onboard the mobile food unit to meet the specifications of the Texas Food Establishment Rules, local building code and this District Order. The systems include, but are not limited to: electrical, plumbing, mechanical, structural, etc. A commercially manufactured mobile food unit must have a letter of authenticity from the commercial builder certifying the work.
- 7) **Conversion** – a motor vehicle not previously designated as a mobile food unit, received at a commercial food truck manufacturer employing licensed professionals, with intent to modify substantially the motor vehicle for use as a commercial mobile food unit.
- 8) **Converter** – a licensed professional who assembles, installs, or affixes a body, cab or special equipment to a chassis, or who substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle.
- 9) **Core Item** – a provision that is not designated as a Priority item or a Priority Foundation item and includes an item that usually relates to general sanitation, operational controls, sanitation operating procedures, facilities or structures, equipment design or general maintenance.
- 10) **Chief Executive Officer** – the director of the public health district.

- 11) **Event** – commonly termed as a “single event or celebration;” a unique public gathering of persons at which food products will be served directly to consumers, such as a festival, bazaar, carnival, circus, fund-raiser, public exhibition, celebration, sporting event, or other mass public gathering which can be civic, political, public or educational for which an appropriate regulatory authority would grant permission for the operation of the event. An event shall have a promoter, sponsor or coordinator that is responsible for the organization and facilitation of utilities to vendors throughout the event.
- 12) **Event Coordinator/Promoter** – person responsible for sponsoring or organizing and/or advertising the activities of the event and for facilitation of utilities to vendors throughout the event.
- 13) **Floor Plans** – a drawn to scale diagram of an area drawn as if seen from above.
- 14) **Food Establishment** – an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption. Food Establishment includes but is not limited to food service establishments, retail food stores, mobile food units, roadside food vendors and temporary food service establishments.
- 15) **Food Truck Park** – An area designed to accommodate two or more mobile food units that has been improved with an all-weather surface, with access to running water and restrooms, offering food and/or beverages for sale to the public as the primary use of the property, and functioning as a single business.
- 16) **Full Service Mobile Food Unit** – a motorized vehicle manufactured for retail food service upon which food is cooked, wrapped, packaged, processed, or portioned for service or sale in a fully equipped Texas Food Establishment Rules compliant unit. A common term is an unrestricted mobile food unit or a Gourmet Food Truck.
- 17) **Hazard Analysis Critical Control Point (HACCP) Plan** – a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- 18) **Hold Order** – temporary detainment of foods believed to have been compromised or tampered with that must not be moved or destroyed until cleared by NET Health.
- 19) **Imminent Health Hazard** – significant threat or danger to health that is considered to exist when

there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury. Examples include, but are not limited to: sewage or wastewater backup or improper discharge, breakdown of refrigeration system, lack of water, no hot water, an outbreak of foodborne illness, lack of electricity, pest infestation, lack of sanitation and control.

- 20) **Limited Service Mobile Food Unit** – a motorized vehicle manufactured for retail food service that is equipped with Texas Food Establishment Rules compliant equipment designed to hold and transport pre-packaged prepared food. Foods sold from a limited service mobile food unit shall be prewrapped, bottled, or packaged in individual servings. Beverages shall not require time/temperature control for safety and shall be dispensed from a covered urn or other protected equipment. Food shall not be prepared or processed by the vendor due to limited equipment onboard the truck. A common term is a Catering Truck.
- 21) **Mobile Food Unit** – a term used in the Texas Health and Safety Code to describe all types of permitted mobile food establishments mounted on a vehicle. This is synonymous with the term Mobile Food Establishment used in the Texas Food Establishment Rules. This term is used by NET Health to describe a single Full Service Mobile Food Unit, Limited Service Mobile Food Unit, Roadside Vendor, Process 1 Pushcart, or Process 2 Pushcart.
- 22) **Northeast Texas Public Health District (NET Health)** – a Public Health District established in 1994 by the City of Tyler and Smith County. All other incorporated cities of Smith County have opted in as a member of the Northeast Texas Public Health District for the services of the retail food inspection program.
- 23) **No Bare Hand Contact** – the use of a physical barrier between clean bare hands and ready to eat food items is required when handling foods (examples include, but are not limited to spoons, tongs, tissue paper, disposable food grade gloves, etc.).
- 24) **Preliminary Inspection** – a site visit and inspection conducted in preparation for submittal of an application for a Mobile Food Unit Permit.
- 25) **Priority Foundation Item** – a provision whose application supports, facilitates, or enables one or more priority items.

- 26) **Priority Item** – a provision that contributes directly to the elimination, prevention, or reduction of hazards associated with food borne illness or injury to an acceptable level.
- 27) **Promoter** – person responsible for sponsoring or organizing and/or advertising the activities of an event and for facilitation of utilities to vendors throughout an event.
- 28) **Public Health District** – a special district government entity established by two (2) or more counties and/or cities, as per Texas Health and Safety Code, Title 2, Subtitle F, Chapter 121, Subchapter E. Any government entity including a school district may become a member of a public health district. A public health district will at a minimum provide the essential public health services listed for a local health department. A public health district may perform any public health function that any of its members may perform unless restricted by law.
- 29) **Pushcart** – a non-self-propelled mobile food unit limited to serving foods or beverages requiring a limited amount of preparation as authorized by NET Health. The pushcart must be self-contained and all food products, supplies and equipment must be on the pushcart. A pushcart is classified as a mobile food unit.
- 30) **Ready to Eat Food** – foods that are in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer. These foods are intended for immediate consumption either for on-premises consumption or carry-out and it is reasonably expected to be consumed in that form.
- 31) **Remodel** – to change the structure, finishes, layout or design of the originally approved floor plan of any mobile food unit.
- 32) **Revocation** – the termination for an indefinite period of time of a permit issued.
- 33) **Risk Category** – a hierarchical scale of the likelihood of foodborne illness to occur based on the menu, processing style and history of operations inside the mobile food unit or central preparation/commissary facility.
- 34) **Roadside Vendor** – a motorized vehicle manufactured for operation as a packaged retail food store. A roadside vendor mobile food unit is equipped with Texas Food Establishment Rules compliant equipment designed to hold and transport packaged food labeled for retail sale. Food shall not be prepared or processed by a roadside food vendor. A roadside food vendor is classified as a mobile food unit.

- 35) **Servicing Area** – a base location to which a mobile food unit or transportation vehicle returns regularly for such things as vehicle cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food. No food preparation, service or utensil/warewashing is conducted at a servicing area.
- 36) **Suspension** – the temporary discontinuance or withdrawal of a permit issued by NET Health for the period of suspension.
- 37) **Time/Temperature Control for Safety (TCS) Food** (previously defined as Potential Hazardous Food) – food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.
- 38) **Valid permit.** A valid permit is one that is not expired, revoked or suspended. The permit shall not be defaced, removed or otherwise altered without written permission from NET Health. Any permit may be revoked or suspended by NET Health at any time if it is deemed that the mobile food unit is not operating in compliance with the provisions of this District Order or in any emergency when, in the judgment of NET Health, any mobile food unit has become a public health nuisance or menace.
- 39) **Variable Risk Categories:**
- (a) **Process 1 (Minimal to low risk).** This process involves the vending or service of food and beverages with or without preparation and involves no cooking. Generally, the steps in this process are: Receive-Store-Prepare-Hold-Serve-Vend.
 - (b) **Process 2 (Moderate Risk).** This process involves food preparation for same day service. Generally, the steps in this process are: Receive-Store-Prepare-Cook-Hold-Serve.
 - (c) **Process 3 (High Risk).** This process involves complex food preparation. Generally, the steps in this process are: Receive-Store-Prepare-Cook-Cool-Reheat-Hot Hold-Serve. Additionally, Process 3 risk is assigned for:
 - (i) Any prepared foods that require a HACCP Plan as defined by 25 Texas Administrative Code §228.2 (64);
 - (ii) Any foods prepared for highly susceptible populations; or
 - (iii) Foods determined by NET Health to be very high risk.

- 40) **Variance** – a written document issued by NET Health that authorizes a modification or waiver of one or more requirements of the Texas Food Establishment Rules if, in the opinion of NET Health, a health hazard or nuisance will not result from the modification or waiver.

SECTION 2. Operational Requirements of Mobile Food Units.

- A. Certifications.** All employees are required to maintain valid food handler certifications unless they possess a certified food manager certificate.
- B. Contact Information.** All mobile food units shall keep a current primary and secondary contact person, telephone number, and social media contact information on file with NET Health. It is the responsibility of the mobile food unit operator to notify NET Health if this information changes.
- C. Electrical Systems and Components.** Mobile food unit owners/ operators are responsible for assuring the safety of the electrical systems of the mobile food unit. Remote compressor units that are not an integral part of the food equipment, auxiliary engines, generators, and similar equipment shall be installed on the mobile food unit in an area that is completely separated from the food preparation and food storage and that is accessible for proper cleaning and maintenance. Extension cords shall not be a substitute for permanent wiring. Extension cords shall only be used with small portable appliances. Extension cords shall be properly rated for use according to manufacturer's requirements and shall be free from any visible signs of damage. A power supply cord, sized according to the vehicle's electrical demands with corresponding connections, will be allowed to connect to shore power at a central preparation/commissary facility, temporary event, or food truck park. NOTE: With regard to electricity, wiring and electrical components, mobile food units operating within the Tyler City limits are also required to comply with any applicable requirements of the current edition of the International Fire Code or successor as adopted by the City of Tyler, Texas, and as enforced by the Tyler Fire Department.
- D. Equipment.** Layout of all equipment, including dispensing units, shall be consistent with the Texas Food Establishment Rules at Section § 228.110 (b), and as amended.
- E. Floors, Walls, and Ceilings.** Floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable. All junctures must be properly sealed.
- F. Identification.** The business name, city, state, and ZIP Code shall be legible, clearly visible to consumers, and permanently affixed on two sides of the mobile food unit.
- G. Mobility.** Mobile food units are designed to be readily movable, controllable, and maneuverable. Mobile

food units must completely retain their mobility at all times during operating hours. NET Health prohibits alteration, removal, attachments, additions, placement or change in, under, or upon the mobile food unit that would prevent or otherwise reduce ready mobility.

- 1) Mobile food units shall not be separated from its form of propulsion during operating hours unless located at a food truck park that has submitted application to and has been approved by NET Health as a food truck park;
- 2) Mobile food units shall be readily movable upon request.
- 3) Pushcarts shall be movable by one person when the unit is fully loaded.
- 4) Mobile food units operating at a coordinated event that does not allow removal of the mobile food unit daily shall obtain a temporary food establishment permit for the duration of the event.

H. Plumbing. Mobile food unit owners/operators are responsible for assuring the safety of the plumbing of the mobile food unit.

- 1) **Potable Water** – The potable water system shall be compliant with Section 228.149 (f) of the Texas Food Establishment Rules. The tank must be permanently mounted. The mobile food unit tank inlet shall be $\frac{3}{4}$ inch inner diameter or less; and be provided with a hose connection of a size or type that will prevent its use for any other service. The fill hose and water holding tank shall be labeled as “Potable water.”
- 2) **Waste Water Disposal.** Unauthorized dumping of waste water or grease into the sanitary sewer system, storm drains or on the ground in conjunction with the operation of a mobile food unit in any way is strictly prohibited and is unlawful. Sewage and other liquid wastes shall be removed from the mobile food unit at the permitted servicing area. Waste water tanks need to be at least 15% larger than the total potable water capacity and the tank shall be a permanently mounted retention tank such as those installed on a recreational vehicle (RV). The liquid waste holding tank shall be labeled as “waste water.”

I. Restroom Access. Toilet rooms shall be located within 500 feet of the mobile food unit and accessible to employees during all hours of operation.

J. Utilities. Any connection to utilities such as: electricity, potable water, or sewer is prohibited unless located at an approved food truck park in accordance to the park’s rules or while the mobile food unit is being serviced or stored at its permitted central preparation facility.

SECTION 3. Types of Mobile Food Units.

A. Full Service Mobile Food Unit. Food is cooked, wrapped, packaged, processed, or portioned for service or sale on the mobile food unit. Menu changes and equipment changes are subject to prior approval from NET Health. The permit fee is determined by risk category. The three (3) risk categories are:

1) **Process 1 (minimal to low risk)** – this process involves the vending or service of food and beverages with or without preparation and involves no cooking. Type 1 permit fee. Generally, the steps in this process are: *Receive-Store-Prepare-Hold-Serve-Vend.*

2) **Process 2 (moderate risk)** – this process involves food preparation for same day service. Type 2 permit fee. Generally, the steps in this process are: *Receive-Store-Prepare-Cook-Hold-Serve.*

3) **Process 3 (high risk)** – this process involves complex food preparation. Type 3 Permit Fee. Generally, the steps in this process are: *Receive-Store-Prepare-Cook-Cool-Reheat-Hot Hold-Serve.*

B. Limited Service Mobile Food Unit. Foods sold from a limited service mobile food unit shall be prewrapped, bottled, or packaged in individual servings. Beverages shall be served from a covered urn prepared in the permitted central preparation/commissary facility or from commercially packaged bottles or cans from a licensed manufacturer. This is a process 1 risk category with a type 1 permit fee.

C. Roadside Vendor. Retail foods must be obtained from an approved source, labeled appropriately for retail sale by a licensed manufacturer, and sold in packaged form. This is a process 1 risk category with a type 1 permit fee.

D. Pushcart. Not to exceed six (6) feet in length, including any handles measuring six (6) inches or more in length, three (3) feet in width (exclusive of wheels), or eight (8) feet in height (including the unit's umbrella or roof if provided.) The bottom of the food service or storage unit should be at least six (6) inches above the ground. The pushcart must be self-contained and must be able to maintain a system to provide proper food temperature. All supplies and equipment necessary for the operation of the pushcart shall be contained on the pushcart or at the central preparation/commissary facility. Permit fee is determined by risk category. The two risk categories are:

1) **Process 1** – Foods sold from a process 1 pushcart shall be prewrapped, bottled, or packaged in individual servings and labeled for resale. This requires a process 1 pushcart permit fee.

2) **Process 2** – The pushcart shall contain an adequate water supply and sinks. The pushcart shall not

contain a grill. This process involves food preparation for same day service. This requires a process 2 pushcart permit fee. Generally, the steps in this process are: *Receive-Store-Reheat-Hot Hold-Serve*.

SECTION 4. Central Preparation/Commissary Facility.

The central preparation/commissary facility or other fixed food service establishment permitted for use as a base of operation for mobile food units shall be constructed and operated in compliance with the requirements of Subchapter F of the Texas Food Establishment Rules. Mobile food units shall operate from a permitted central preparation/commissary facility or other fixed food establishment and shall report to such location daily for supplies, cleaning, and servicing operations.

- A.** All food shall be stored at the central preparation/commissary facility at the end of the operating day.
- B.** The person in charge of a central preparation/commissary facility is responsible for:
 - 1)** designating all equipment, storage, and preparation areas used by a mobile food unit;
 - 2)** maintenance and operations of the facility; and
 - 3)** keeping a log of each mobile food unit's daily activities including time of arrival and departure.
- C.** A signed letter of authorization is required to be filed with NET Health to verify facility use if the central preparation/commissary facility is not owned by the mobile food unit operator.
- D.** All out of county units shall operate from a permitted central preparation/commissary facility that has similar requirements as other central preparation/commissary facilities in NET Health jurisdiction for the menu items for which the NET Health permit was issued.
- E.** A mobile food unit servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operation. Those areas used only for the loading of water and/or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

SECTION 5. Process for Obtaining a Mobile Food Unit Permit.

No person, firm, or corporation shall be allowed to operate a mobile food unit where food or beverages are served to the public without a permit or license from the Northeast Texas Public Health District (NET Health) per Texas Food Establishment Rules § 228.247. Permits are non-transferable. No person holding a permit shall sell, lend, lease or in any manner transfer a mobile food unit permit.

- A. Plan Review.** A plan review is required on all mobile food units that are constructed, converted or

remodeled. Mobile food units that have a valid permit from another jurisdiction for the same menu may be exempt from a plan review and may proceed directly to inspection unless NET Health determines that a plan review is necessary to ensure compliance. The plan review will be processed by NET Health within five (5) business days of receipt of a complete plan review application. A plan review is a prerequisite for scheduling a preliminary inspection of a mobile food unit.

- 1) **Plan Review Application.** Operators seeking approval for a mobile food unit must submit a plan review application with the appropriate fee to NET Health for assessment of the proposed business plan and vehicle. The initial plan review application for a mobile food unit is valid for one (1) year. If the plans are not implemented in the one (1) year period, the plans must be resubmitted for approval along with a plan review fee as described in Section 5.J.(3). If operation is to occur within the Tyler City limits, such plan shall be forwarded by NET Health to the Tyler Fire Department.
- 2) **Menu.** A listing of all types of foods and beverages offered will be requested to evaluate the business plan. The food production steps will also be important to discuss the equipment upon the mobile food unit, in the central preparation facility and the operation between both of these permitted areas.
- 3) **Floor Plans.** A set of plans will be requested for review consistent with the criteria provided in TFER 228.244(b) and 228.149(f), as applicable. The plans and specifications should include all information necessary to demonstrate conformance with, and an understanding of, food safety provisions within the Texas Food Establishment Rules. All Floor Plans must be clear, easily readable and scaled on a minimum of ¼ inch, preferably on an 11 inch x 17 inch piece of paper and/or a digital copy. Changes to the original permitted design approved by NET Health during plan review shall be submitted in like manner as the original set.
- 4) **Operating Plans.** NET Health may determine that a variance and/or a HACCP plan is necessary based on the type of proposed operation, proposed menu items processed or proposed equipment to be used; or may restrict the menu based upon the limitations of the mobile food unit.

B. Preliminary Inspection – Completion of Plan Review Process. A preliminary inspection is the final step of the plan review process and is required for all mobile food units. A preliminary inspection will be scheduled to assess the proposed mobile food unit within five (5) business days after plan review

completion. The preliminary inspection will identify what repairs or modifications are necessary to meet the requirements for a Texas Food Establishment Rules compliant mobile food unit. One (1) requested preliminary inspection is included in a plan review. Additional inspection(s) shall be subject to a re-inspection fee(s) as described in Section 5.J.(7). The mobile food unit permit application will be issued by the inspector to the person in charge for all mobile food units that have successfully completed the plan review process. A mobile food unit operator that has completed a plan review for a commercially manufactured mobile food unit that is being constructed, converted, or remodeled by a commercial manufacturer will be exempt from a preliminary inspection.

- C. **Mobile Food Unit Permit Application.** This application is required to be filled out and submitted by the mobile food unit owner. This application is a pre-requisite for the “opening” inspection.
- D. **Pre-Operational Inspection.** One (1) permit approval/opening inspection is included in the cost of the plan review. If the mobile food unit does not meet the rules within this District Order, a permit will not be approved. Any additional permit approval/opening inspection shall be assessed a re-inspection fee as set forth in Section 5.J.(7).
- E. **Issuance.** Mobile food units shall be inspected by NET Health immediately prior to the issuance of a permit. Upon successful completion of a permit approval/opening inspection, NET Health shall issue a permit to the applicant if its inspection reveals that the proposed mobile food unit complies with these rules.
- F. **Conditions of Retention, Responsibilities of the Permit Holder.** The permit holder shall comply with the provisions of the Texas Food Establishment Rules and the NET Health District Order; and
 - 1) If required, submit and comply with HACCP plan or variances;
 - 2) Immediately contact the regulatory authority to report an illness of an employee as required by the Texas Food Establishment Rules;
 - 3) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist;
 - 4) Allow representatives of the regulatory authority access to the mobile food unit;
 - 5) Replace existing facilities and equipment, as required by the Texas Food Establishment Rules, with acceptable replacements;
 - 6) Comply with NET Health directives including time frames for corrective actions specified in

inspection reports, notices, orders, warnings, and other directives issued to the permit holder's mobile food unit or in response to community emergencies;

- 7) Accept notices issued and served by NET Health according to law;
- 8) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with these rules or NET Health directives, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and
- 9) Notify customers that a copy of the most recent establishment inspection report, valid framed food establishment permit and other required signage and documents, are available and/or posted in a conspicuous location visible to consumers.
- 10) Notify NET Health immediately if changes are made to the primary or secondary contact person on file, and telephone number.
- 11) Obtain approval from NET Health before changing the type of service or the location of equipment; or before a major remodel.

G. Permit Renewal. With exception of the initial permit issued, each permit fee shall be required and will cover a twelve (12) month period from date of issuance. Such fee must be renewed and shall be payable in advance for each twelve (12) month period thereafter. Failure to pay the annual permit renewal fee on a timely basis shall result in a late charge as indicated in J.(5) of this Section. The annual renewal permit fee and the late charge must be paid prior to the expiration of the permit or the mobile food unit shall cease operations. The mobile food unit owner shall notify NET Health in writing if owner permanently discontinues operation of the mobile food unit.

H. Inspections and Appeals. The inspection and appeal process is the same for all food establishments, including mobile food units. Please refer to Part 2, Sections 8 through 12.

I. Permit Fees

- | | |
|---------------------------------------|----------|
| 1) Process 1 Pushcart..... | \$150.00 |
| 2) Process 2 Pushcart..... | \$250.00 |
| 3) Type 1 – Minimal to Low Risk | \$225.00 |
| 4) Type 2 – Moderate Risk | \$275.00 |
| 5) Type 3 – High Risk | \$300.00 |

J. Other Associated Fees.

- 1) **Initial Permit Proration Calculation.** Annual Fee divided over twelve (12) months and adjusted to align the initial permit expiration date with any other existing permit expiration date for other inspection services at the same establishment.
- 2) **Annual Variance/HACCP Plan Review** \$100.00
If the food establishment is required to operate under a HACCP plan, or is granted a variance, an annual document review and inspection of establishment is required to verify compliance.
- 3) **Plan Review** \$175.00
 - (a) Cost includes review of plans, documents, consultations plus preliminary inspection of a New, Converted or Remodeled Mobile Food Unit and applies to (b) through (d) herein.
 - (b) Major remodel that requires construction plan review.
 - (c) Change of Ownership Application with no menu change or remodel.
 - (d) Concept change that requires change of food flow, change of menu, and change of equipment.
- 4) **Duplicate Permit Fee**..... \$20.00
- 5) **Late Fee**..... \$75.00
- 6) **Re-instatement Fee of Suspended Permit**..... \$150.00
- 7) **Re-inspection Fee** \$100.00
(for each additional inspection as a result of a failed inspection)
- 8) **Registration of Central Preparation/Commissary Facility**..... \$50.00
- 9) **Temporary Event Permit Fee for a Mobile Food Unit**..... \$50.00

SECTION 6. Food Truck Parks.

An area designed to accommodate two or more mobile food units, that has been improved with an all-weather surface, with access to running water and restrooms, offering food and/or beverages for sale to the public as the primary use of the property, and functioning as a single business. All food truck parks shall comply with all applicable federal state and local laws. All mobile food units shall be removed from the food truck park upon closing of the park unless the central preparation/commissary facility is located in the food truck park. Any property owner and/or food truck park manager desiring to open a food truck park shall make application to NET Health. The application shall include the following:

A. Site Plan.

- 1) the location and description of each proposed permanent structure on the site, restrooms, and pads for mobile food units.
- 2) the surface material of driving lanes and mobile food unit pads;
- 3) location and enclosure of refuse containers;
- 4) Location and type of electrical outlets provided for each corresponding pad site; and if water is supplied for use by a mobile food unit, then a sanitary sewer connection is also required.

B. Food Truck Park Manager. There must be a designated on-site manager that is responsible for the orderly organization of mobile food units, the cleanliness of the site, and the site's compliance with all rules and regulations during business hours. The on-site manager shall not allow a public health nuisance to exist.

C. Restrooms. At least one permanent restroom within 500 feet of each mobile food unit must be made accessible to mobile food unit operators at all hours. Restroom(s) shall be equipped with flush type toilets that are properly plumbed according to law to a sanitary sewage system with sufficient capacity to meet the needs of the mobile food units. Restrooms shall be equipped with hand sinks; hot and cold water; soap and paper towels.

SECTION 7. Certifications.

A. General. It shall be unlawful for any person to work or accept employment in a food establishment, within NET Health jurisdiction without securing a food handler's training certificate. It shall be unlawful for any person in control of, operating or managing any food establishment, to employ or allow any person to work as a food handler within NET Health jurisdiction unless that person has obtained a valid training course registration receipt issued under C.(3)(a) of this section or a current food handler's training certificate.

B. Administration. NET Health may administer a food handler's training course and certified food manager's training course and examination. Any person who is required to have a certificate shall attend and successfully complete a training approved by NET Health, TX DSHS, or a course accredited by the American National Standards Institute (ANSI). It is the responsibility of the person in charge of the food establishment to keep a certificate of completion of the training course for all employees of the food establishment available on site for compliance review by the inspector.

C. Food Handler/Worker Certification Requirement.

- 1) **Required.** Each person, within sixty (60) calendar days of becoming an employee, conditional or otherwise, of a food establishment shall obtain a valid certification by satisfactorily completing a food handler's training course approved or conducted by NET Health.
- 2) **Valid Certificate.** Is one that is not expired and is approved by NET Health.
- 3) **Issuance.** Upon successful completion of a training course conducted by NET Health and payment of the fee, a food handler's training certificate, which shall expire two (2) years from the date of completion of the course, will be issued by NET Health.
 - (a) **Temporary Issuance.** When a certificate is required, application must be submitted to NET Health, and then a training course registration receipt will be issued to the applicant to allow the applicant to continue employment at a food establishment while completing the food handler's training certificate course. If an applicant has not successfully completed the food handler's training course by the sixtieth calendar day of employment, the applicant cannot continue employment as a food handler.
 - (b) **Expired Certificates.** After the expiration of two (2) 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.
- 4) **Exemptions.** An employee of a food establishment that has satisfactorily passed an accredited Certified Food Manager examination approved by the TX DSHS shall be exempt from this requirement for a food worker certification.

D. Certified Food Manager Certification and Requirement.

- 1) **Required.** At least one certified food manager must be present during all hours of operation at each permitted food establishment. At the time a food establishment permit is issued, the appropriate number of certified food managers must be employed to cover all operation hours of the food establishment. The number of certified food managers is to be determined by the operating hours of the food establishment and the number of operating shifts. Certification must be obtained by passing an examination approved by the Texas Department of State Health Services and meeting all requirements in Health and Safety Code, Chapter 438, Subchapter G, and 25 TAC §228.33 (relating to Certification of Food Managers). The words "food manager" means

an individual who conducts, manages, or operates a food establishment. Failure to maintain at least one Certified Food Manager per establishment shall be cause for a permit to be suspended.

2) Responsibilities of Certified Food Manager. Any food manager or person in charge of a food establishment within NET Health jurisdiction that holds a valid Certified Food Manager's certificate has responsibilities that include but are not limited to:

- (a) Identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;
- (b) Developing or implementing specific policies, procedures or standards to prevent foodborne illness;
- (c) Supervising or directing food preparation activities and ensuring appropriate corrective actions are taken as needed to protect the health of the consumer;
- (d) Training the food establishment employees on the principles of food safety;
- (e) Performing in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety have been implemented and are being followed;
- (f) Demonstration of knowledge of 25 TAC §228; and
- (g) Maintaining active managerial control.

3) Registration Application. Registration is required for all Certified Food Manager Certificates.

- (a) Each food establishment required to have certified food managers on duty present during operational hours shall register the certified food managers with NET Health.
- (b) A maintenance fee is required upon registration of a certificate.
- (c) Individuals certified by attending the NET Health accredited Certified Food Manager Program and successfully passing the certified food manager test will be automatically registered into the registry system by NET Health.

4) Certificate Reciprocity. A certificate issued to an individual who successfully completes an examination approved by the Texas Department of State Health Services shall be accepted as meeting the training and testing requirements under Health and Safety Code, 438.046(b). Note: NET Health is accredited to conduct a Certified Food Manager Program.

- 5) **Certificate Posting.** The original food manager certificate(s) shall be posted together with the NET Health registration certificate in a location in the food establishment that is conspicuous and visible to consumers.
- 6) **Exemptions.** The following food establishments are exempt from the food manager certification requirements of this order:
 - (a) Establishments that offer only prepackaged foods that are not time/temperature control for safety (TCS);
 - (b) Child care facilities, as defined by Section 42.002, Human Resources Code;
 - (c) Establishments that do not prepare or handle exposed time/temperature control for safety (TCS) foods as defined in 25 TAC §228.2(144); or
 - (d) Nonprofit organizations as defined in 25 TAC 229.371(9) (relating to Permitting Retail Food Establishments).

SECTION 8. Inspections.

Compliance procedures concerning inspections are as follows:

- A. **Inspection Report Form.** NET Health will use an inspection report form based on the requirements of the “Texas Food Establishment Rules.”
- B. **Inspection Frequency.** An inspection frequency of a food establishment shall be based on a risk category associated with the types of foods and the food preparation procedures. Before a food establishment is placed into a risk category, a food establishment risk assessment must be assigned. Additional inspections of the food establishment shall be performed as often as are necessary for the enforcement of these rules.
- C. **Access.** NET Health agents, after proper identification, shall be permitted to enter any food 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.
- D. **Report of Inspections.** The TX DSHS “Texas Food Establishment Rules” reports the score by using a demerit system, with zero (0) demerits denoting no Priority Item/Priority Foundation Item/Core Item violations. This means that there may be violations that are not assigned point values. Whenever an inspection of a food establishment is made, the findings shall be recorded on the inspection report form set out as described 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. The score will be reported in demerits. Inspection remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. A copy of the inspection report form shall be furnished to the person in charge of the food 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 establishment.

E. Correction of Violations.

- 1) The food establishment shall, at the time of the inspection or as soon as possible, implement appropriate corrective actions for violation items found during an inspection.
- 2) The inspection report form shall indicate a notice of violation and specify a reasonable time period 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 surfacing wastewater, lack of electricity, pest infestation or sewage backup, the food establishment shall immediately cease food service operations and contact NET Health. Operations shall not be resumed until authorized by NET Health. The food establishment shall cease operations for a minimum of twenty four (24) hours.
 - (b) All Priority Item violations of three (3) point weighted items shall be corrected as soon as possible, but in any event, within three (3) calendar days following the inspection.
 - (c) All Priority Foundation Item violations of two (2) point weighted items shall be corrected as soon as possible, but in any event, within ten (10) calendar days following the inspection.
 - (d) All **Core Item** violations of one (1) point weighted items shall be corrected by the date and time agreed to or specified by NET Health, but no later than ninety (90) calendar days after inspection.
 - (e) NET Health may approve a longer time frame or a compliance schedule exceeding the time limitations specified under this section if the potential hazard involved, the complexity of the corrective action needed, or it is deemed no health hazard exists or will

result from allowing an extended schedule of compliance.

- (f) When the food establishment rating score exceeds thirty (30) demerits, corrective action on all identified violations shall be initiated immediately and corrected within forty-eight (48) hours. One (1) or more re-inspections will be conducted at reasonable time intervals to ensure correction.
- (g) In the case of temporary food establishments, all violations shall be corrected within twenty four (24) hours. If violations are not corrected within twenty four (24) hours, the temporary food establishment shall cease food service operations until authorized to resume by NET Health.
- (h) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of operations.

F. Continuing Violations. Each day or fractional part thereof that such violation(s) continue shall constitute a separate offense.

- 1) **Re-inspection.** At the end of the specified period of time, NET Health shall verify corrections of the violations, document the information on an inspection report, and submit the inspection report into NET Health records. Subsequent re-inspections required due to non-compliance may be subject to a re-inspection fee.
- 2) **Written Plan of Corrective Action.** NET Health may require a written schedule of compliance is submitted by the food establishment.
- 3) **Repeat Violations.** Repeated violations that occur over several routine inspections are subject to the application of administrative penalties.
- 4) **Inspection Frequency Risk Assessment.** The assigned inspection frequency can be increased or decreased based on the previous inspection history.
- 5) **Suspension of Permit.** NET Health shall suspend a permit based on an imminent health hazard, repeated critical violations, lack of a Certified Food Manager, and/or any other serious violation of State law for which NET Health is responsible to enforce. A suspended food establishment permit shall remain suspended for a minimum of twenty four (24) hours in order to remediate the imminent health hazard.
 - (a) A supervisor at the regulatory authority will confirm the hazard before suspension is

effective when possible. Suspension is effective upon service of the written notice. When a permit is suspended, food operations shall immediately cease and shall not resume operations until such time as a re-inspection NET Health determines that the suspension should be lifted.

- (b) Whenever a permit is suspended, the permit holder or the person in charge of the food establishment at the time of suspension shall be notified in writing that the permit is, upon service of the notice, immediately suspended.
- 6) **Immediate Cessation of Operations.** Upon receipt of a notice of permit suspension the food establishment shall immediately cease operations. Nothing in this section shall prevent NET Health from requiring a food establishment to cease operations immediately pursuant to law. This is equivalent to a suspension.
- 7) **Re-inspection Required After Permit Suspension.** Prior to resuming operation after a permit suspension, the food establishment must be inspected to verify correction of any violations and for compliance with these rules.
- 8) **Re-instatement.** Upon successful completion of a re-inspection and payment of a permit reinstatement fee, NET Health shall re-instate the food establishment permit for the permit holder if its inspection reveals that the food establishment complies with these rules.

SECTION 9. Examination and Condemnation of Food; and Maintenance of Equipment.

- A. **Procedures Concerning Examination and Condemnation of Food.** Food may be examined or sampled by NET Health as often as necessary for enforcement of these rules. NET Health shall issue a receipt for the samples. NET Health 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 “Texas Food Establishment Rules” or other relevant federal, state or local regulations. NET Health 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 establishment. NET Health 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) calendar 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 these rules.

- B. Maintenance of Equipment and Utensils.** All equipment and utensils used in the preparation, storage, and serving of food shall be kept in good repair and in proper working condition. NET Health may tag, which means to mark, identify or otherwise forbid the use of equipment or utensils found to be in violation of this subsection, and it shall be unlawful to use any equipment or utensils that have been so tagged, until approved to do so by NET Health.

SECTION 10. Procedure When Disease Transmission or Infection is Suspected.

- A. Necessary Actions.** When NET Health has reasonable cause to suspect the possibility of disease transmission from any food establishment, retail food store, mobile food unit, roadside food vendor or temporary food establishment employee, it may secure the morbidity history of the suspected employee or make any other investigation as needed and shall take appropriate action. NET Health 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 NET Health, no further danger of disease outbreak exists;
- 3) Restriction of the employee's services to some area of the food establishment, where there would be no danger of transmitting disease; and
- 4) Adequate medical and laboratory examination of the employee(s) and their bodily discharges.

- B. Removal of Restriction or Exclusion.** NET Health shall release a food employee or conditional employee from restriction or exclusion according to Health and Safety Code 438.033, and the conditions of the Texas Food Establishment Rules, Section §228.256(d).

- C. Reporting of Communicable Diseases.** Certain persons shall report certain confirmed and suspected foodborne diseases to NET Health as required in 25 TAC 97.2 through 97.6 and the Texas Food Establishment Rules §228.257.

SECTION 11. Enforcement and Administrative Penalty Procedures.

- A. Remedies.** Violations of the Texas Food Establishment Rules, the permitting rules or relevant federal, state or local laws are subject to the penalties and remedies listed in this District Order and otherwise provided by state law. NET Health employees are hereby authorized to enforce provisions herein and to issue

citations for violations of this District Order.

B. Penalties. Any permit holder, responsible officer of the permit holder, or other person found guilty of violating any provision of this District Order shall be punished in accordance with applicable law.

1) Fines. A violation of any provision herein shall be classified as a Class C misdemeanor and violators are subject to a fine of up to two thousand dollars (\$2,000.00) per violation per day for each violation.

2) Administrative Penalties. Administrative penalties may be assessed pursuant to Texas Health and Safety Code, Sections 437.0185-185.0186, which:

(a) Authorizes the Chief Executive Officer of NET Health to impose an administrative penalty on a person NET Health requires to hold a permit under Texas Health and Safety Code, Section 437.003 or 437.004 if the person violates this District Order;

(b) Prohibits the amount of the penalty from exceeding five hundred dollars (\$500.00) per day, and provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty is to be based on certain factors set forth by criteria such as history of previous violations, seriousness of the violation, hazard to the health and safety of the public, demonstrated good faith efforts to correct, economic harm to property or the environment, amounts necessary to deter future violations, enforcement costs relating to the violation, and any other matter justice may require.

(c) The violations shall be categorized by severity level from those with minor health and safety significance to the most serious violations.

(d) Five Levels of penalties for retail food establishments will be imposed not to exceed five hundred dollars (\$500.00).

- (i) Level 1.....\$100.00
- (ii) Level 2.....\$200.00
- (iii) Level 3.....\$300.00
- (iv) Level 4.....\$400.00
- (v) Level 5.....\$500.00

(e) Authorizes the enforcement of the penalty to be stayed during the time the order is in

judicial review if the person pays the penalty of the clerk of the court. Authorizes a person who cannot afford to pay the penalty to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Procedure for a party who cannot afford to file security for costs.

- (f) Authorizes a person, not later than the twentieth (20th) calendar day after the date the person receives notice of the penalty, to accept in writing the determination and pay the recommended penalty of the Chief Executive Officer or make a request for a hearing on the occurrence of the violation, the amount of the penalty or both.
- (g) Requires a court to order that penalty is not owed if the court does not sustain the findings that a violation occurred.
- (h) Requires a court to order, when the court's judgment becomes final, that the appropriate amount be remitted to the person if the person paid the penalty to the clerk of the court and if the amount of the penalty is reduced or the penalty is not upheld by the court.
- (i) Authorizes an administrative penalty to be imposed for a violation of this District Order under Chapter 437, Texas Health and Safety Code, by the state under 437.018, or by the director of a public health district of a county under Section 437.0185, but not both.

3) **Service of Notice.** A notice provided for in these rules is properly served when it is delivered to the permit holder, 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 holder (owner). A copy of the notice shall be filed in NET Health records.

4) **Hearing.** NET Health shall conduct hearings provided for in this Section 11 at a time and place designated by NET Health. Based on evidence of such hearing, NET Health shall make final findings and shall sustain, modify or rescind any notice or order considered in the hearing. Within ten (10) calendar days, NET Health shall furnish a written report of the hearing decision to the permit holder.

5) **Revocation of a Permit.** NET Health may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of these rules requirements of this District Order or for interference with NET Health in the performance of its duties. Upon revocation of a permit, operations of the food establishment shall cease immediately. Prior to revocation, NET Health

shall provide written notice to the holder of the permit, or the person in charge of the food establishment at the time of revocation, stating the reason(s) for the proposed revocation and that the permit shall be revoked at the end of ten (10) calendar days following service of such notice unless the permit holder files a written request for a hearing with NET Health within such ten (10) calendar day period. If no request for a hearing is filed within the ten (10) calendar day period, the revocation of the permit becomes final.

- 6) **Application after Revocation.** Whenever a revocation of a permit has become final, the holder may make written application for a new permit. The applicant is required to meet any conditions of a new food establishment.
- 7) **Injunction.** Whenever NET Health 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, NET Health may bring an action pursuant to state law against each such person to restrain the unlawful act or practice by temporary restraining order, temporary injunction, or permanent injunction.
- 8) **Public Record.** NET Health may publish the permit, name, and address of any food establishment whose permit has been revoked or suspended, together with the reasons for the revocation or suspension.

SECTION 12. Appeals of Decisions Made Under Part 2, Sections 1 through 11.

Any person aggrieved by a decision of a NET Health employee concerning the granting or refusal to grant a permit, or any privilege as provided in Sections 1 through 11 may appeal such decision in writing to the Chief Executive Officer of NET Health within ten (10) calendar days after the decision. The Chief Executive Officer shall render a decision within thirty (30) calendar days after receipt of the appeal, either affirming the decision of the employee or entering an appropriate decision.

PART 3.

That if any provision or any section of this District 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 District Order, which shall remain in full force and effect.

PART 4.

That any person, firm, or corporation violating any of the provisions of this District Order shall be deemed guilty of a class C 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. Any person, firm, or corporation violating any of the provisions of the District Order may also be subject to appropriate administrative penalties, if applicable. Since this District Order has a penalty for violation, it shall not become effective until proper notice to the public by publication of the notice that the District Order exists. Furthermore, the revisions to District Order No. 2016-1 shall not become effective until October 17, 2016.

