

**DISTRICT ORDER No. 2010-1**

**NORTHEAST TEXAS PUBLIC HEALTH DISTRICT**

**REVISING THE PROVISIONS OF DISTRICT ORDER No. 2007-1**

**ESTABLISHING THE PERMITTING AND ENFORCEMENT OF STATE LAW AND STATE RULES FOR FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, ROADSIDE FOOD VENDORS, AND TEMPORARY FOOD SERVICE ESTABLISHMENTS; ESTABLISHING A VARIABLE FEE SCHEDULE FOR ISSUING OR RENEWING PERMITS; AND REQUIRING EMPLOYMENT OF A CERTIFIED FOOD MANAGER BY CERTAIN FIXED OR MOBILE LOCATION RETAIL FOOD ESTABLISHMENTS IN WHICH FOOD IS PREPARED FOR THE SALE TO THE PUBLIC.**

**WHEREAS**, Texas Health and Safety Code, Sec. 437.001 et. seq. provides public health districts with authority to enforce state rules adopted under state statutes concerning food service establishments, retail food stores, mobile food units, roadside food vendors and temporary food service establishments; and

**WHEREAS**, public health districts may require permits, plan review, inspections, and may deny, suspend or revoke the permit of the food service establishment, retail food store, mobile food unit, roadside food vendor, temporary food service establishment if not in compliance with state laws or state rules; and

**WHEREAS**, public health districts may establish permit fees to be deposited in a special fund for the enforcement of this order; and

**WHEREAS**, Texas Health and Safety Code, Chapter 437, and the new 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 Administrative Code Title 25. Part 1. Chapter 229, Subchapter K, 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, Sec. 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 229.170(a) provides 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 potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of these rules; and

**WHEREAS**, “Texas Food Establishment Rules,” 25 TAC 229.171(b) provides for additional requirements, preventing health hazards, provision for conditions not addressed, a food establishment shall cease operation for a minimum of 24 (twenty four) hours when the food establishment permit has been suspended due to an imminent health hazard at the food establishment; and

**WHEREAS**, “Texas Food Establishment Rules,” 25 TAC 229.171(f) 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 is remodeled, a change of ownership occurs, or the nature of the operation changes, the permit holder shall contact the Northeast Texas Public Health District;

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

**PART I: NORTHEAST TEXAS PUBLIC HEALTH DISTRICT**

**FOOD AND FOOD SERVICE ESTABLISHMENTS RULES AND REGULATIONS**

**SECTION 1. Definitions; 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 3 (three) certified copies of each shall be on file at the Northeast Texas Public Health District (NETPHD):

**A. State Regulations:**

- 1) Texas Department of State Health Services, Division of Regulatory Services, Food Establishment Group: “Texas Food Establishment Rules,” 25 TAC 229.161 - 229.171, 229.173 - 229.175;
- 2) Texas Health & Safety Code Chapters 431 through 438 (Vernon 2005) and amendments thereto.

**B. Definitions:**

- 1) The word “suspension” means the temporary discontinuance of a permit issued under said sections

for an indefinite period of time.

- 2) The word “revocation” means the termination of a permit issued under said sections for an indefinite period of time.
- 3) Non-Smoking establishment: A food service establishment or retail food store that has **voluntarily** posted and enforces total non-smoking in the establishment. Proof of “No Smoking” signs must be presented to NETPHD declaring the food service establishment or retail food store a “Non-Smoking Establishment.”
- 4) “Heart Friendly Food Entree”: A food entree that is in conformance with or defined in Sec. 403 (r) of the Federal Food, Drug, and Cosmetic Act to make a health claim pertinent to cardiovascular health. The food items must meet the minimum requirements for sodium, cholesterol, and fat levels that enhance cardiovascular health.
- 5) Event means an organized activity for performing a specific function or celebration. An event shall have a sponsor that is responsible for the organization and advertisement of the event to include but not limited to crowd control, trash control, availability of potable water supply, wastewater management, toilet facilities and securing qualified temporary food vendors.
- 6) Mobile food units in Smith County are divided into these categories and must return daily to a required central preparation facility complete with servicing area to be refurbished. When a mobile food unit is not in service, it must be stored at the central preparation facility. Mobile food units must meet all other local requirements to offer food for sale on private or public property:
  - (a) Limited service mobile food unit. A limited service mobile food unit is a mobile food unit from which only food that is prewrapped, bottled, or otherwise packaged in individual servings or beverages that are nonpotentially hazardous and are dispensed from covered urn or other protected equipment.
  - (b) Mobile food preparation vehicle. A mobile food preparation vehicle is a commercially-manufactured, motorized mobile food unit in which ready-to-eat food is cooked, wrapped, packaged, processed, or portioned for service or sale. Commercially-manufactured means a vehicle that was originally manufactured for use as a mobile food preparation vehicle by a person regularly in the business of manufacturing mobile food preparation vehicles for sale or a mobile food preparation vehicle that is made to meet the

specifications of a commercially manufactured vehicle. The mobile food preparation vehicle must return daily to the required central preparation/commissary facility complete with serving area.

- (c) Pushcart. A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially hazardous foods requiring a limited amount of preparation as authorized by the regulatory authority. The pushcart must be self contained and all food products must be on the pushcart. The pushcart must return daily to the required central preparation facility complete with serving area.
  - (d) Central Preparation/Commissary Facility. A permitted fixed location food establishment where a mobile food unit or pushcart returns for servicing. This facility must meet the same requirements as a food service establishment. It must also have proper facilities to dispose of waste water and refill and flush potable and waste water tanks without risk of contamination.
  - (e) Mobility. Easily movable, controllable, and maneuverable by one person when the unit is fully loaded.
- 7) “No Bare Hand Contact” requires the use of a physical barrier between clean bare hands and ready to eat food items (examples: spoons, tongs, tissue paper, disposable food grade glove, etc).
  - 8) “Ready to Eat Foods” speaks to food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. The term includes unpackaged potentially hazardous food that is cooked the temperature and time required for the specific food; raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for future washing.
  - 9) “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 kindergartens, preschool and elementary schools, junior high schools, high schools, colleges, and universities. A school food establishment is classified as a food establishment.
  - 10) “Child care center.” Any facility licensed by the regulatory authority to receive 13 (thirteen) or

more children for child care which prepares food on-site for consumption. A child care center is classified as a food establishment.

## **SECTION 2: Compliance procedures--Permits**

Violations of the "Texas Food Establishment Rules," the permitting rules or relevant state law provisions are subject to the penalties and remedies listed in this order and otherwise provided by state law. NETPHD employees are hereby authorized to enforce provisions herein and to issue citations for any violations of this chapter. Compliance procedures for permits are as follows:

**A. General.** No person shall operate a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment without a valid permit issued by NETPHD. Only a person who complies with these rules shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be posted in every food service establishment, retail food store, or mobile food unit.

**B. Permits.**

**1) Required.** Prior to obtaining a permit, a permit application must be obtained, completed, and returned to NETPHD at least one business day before the pre-operational inspection. No person shall operate any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment within Smith County that does not possess a current and valid NETPHD permit that is framed and posted in a conspicuous place for the public to see. A valid permit is one not revoked or suspended. The permit shall not be defaced, removed or otherwise altered without written permission from NETPHD. Food service establishments, retail food stores, mobile food units, roadside food vendors, and temporary food service establishments shall be inspected by NETPHD immediately prior to the issuance of a permit. Any permit may be revoked or suspended by NETPHD at any time it is deemed any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment is not operating in compliance with the provisions of this Order or in any emergency when, in the judgment of NETPHD, any food service establishment, retail food store, mobile-food unit, roadside food vendor or temporary food service establishment has become a public health nuisance or menace. NETPHD may publish the name and address of any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service

establishment, the permit of which has been revoked or suspended, together with the reasons for revocation or suspension.

- 2) **Permit fees. General.** With each permit, a permit fee shall be required to cover a 12 (twelve) month period from date of issuance, and such fee must be renewed and shall be payable in advance for each 12 (twelve) month period thereafter, except for temporary food service establishments. The initial permit fee must be paid with the initial permit application. Failure to pay the annual permit renewal fee on a timely basis shall result in a late charge in the amount of \$75.00 (seventy-five dollars). The renewal permit fee and the late charge must be paid prior to the expiration of the permit or the establishment shall cease operations or a citation may be issued for operating a food establishment without a valid food establishment permit. Further legal action may be taken if necessary.
- 3) **Temporary food service establishments. Defined.** A temporary food service establishment is a food service establishment that operates at a fixed location for a period of time of not more than 14 (fourteen) consecutive days in conjunction with a single event or celebration. "Single event or celebration" includes an event that:
  - (a) Has an event sponsor that organizes and advertises the event, activity and is responsible for crowd control, trash control, connection to utilities, toilet facilities and traffic control; and
  - (b) Occurs once a month or less frequently. 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."
  - (c) The organizer of an event at which a temporary food establishment is operated shall assure a permit from NETPHD is obtained for each temporary food establishment; and
  - (d) The organizer of an event at which a temporary food establishment is operated shall provide a written statement describing the event and listing all proposed temporary food service establishments. An application will be provided by NETPHD. The purpose of the application is to verify the activity is a "single event or celebration." Event sponsors shall submit the application prior to the activity.
  - (e) Application: Prior to operating a temporary food service establishment, a Temporary

Food Service Establishment Permit application form must be obtained from NETPHD and returned with the required fee. The application shall contain such information necessary for NETPHD to determine if a permit should be issued and under what conditions the application shall be approved or disapproved. The Temporary Food Service Establishment Permit applications must be received by NETPHD at least one week prior to the event. **Applications accepted less than one week prior to an event must pay a \$100.00 (one hundred dollar) late application fee.**

- (f) The owner/operator of a temporary food service establishment has a liability for the operation of the temporary food service establishment. The owner/operator may be responsible should a patron/customer be harmed by the operation of the temporary food service establishment. The owner and the operators involved in food preparation must take extraordinary care to prevent risk/hazard to the community.
- (g) NETPHD may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishments, may prohibit the sale of some or all potentially hazardous foods. Each fixed location may have only one “single event or celebration” per month with the exception;
- (h) 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 2.B.5.(b) and the appropriate event or celebration coordinator’s application and a Temporary Food Service 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.

**4) Mobile food units. Additional requirements.** In addition to the other requirements of Section 2-B.1, a pushcart must:

- (a) Not exceed 6 (six) feet in length, including any handles measuring 6 (six) inches or more in length, 3 (three) feet in width (exclusive of wheels), or 8 (eight) feet in height (including the unit’s umbrella or roof if provided);
  - i. Have the bottom of the food service or storage unit at least 6 (six)

inches above the ground;

- ii. Be a self-contained unit to maintain a system to provide proper food temperature;
- iii. Not contain a grill;
- iv. Have all supplies and equipment necessary for the operation of the pushcart contained on the pushcart or at the central preparation/commissary facility; and
- v. Demonstrate mobility.

**5) Variable fee schedule.** The schedule for permit fees shall be as follows:

**(a) Food service establishment.**

For child care center food establishment	\$ 150.00
For 24 food handlers or fewer than	\$ 250.00
For more than 24 food handlers	\$ 300.00

The number of food handlers shall be computed on the basis of the maximum number of food handlers working or to work per month during the 12 (twelve) month period covered by the permit. In the case of separate and distinct facilities in the same building belonging to the initial permit owner, a separate permit shall be issued to provide an individual permit and inspection report and shall be referred to as an inventory. (Example: a bakery, deli, meat market, specialty food shop, bar, retail food establishment with potentially hazardous foods, produce section preparing food.)

**(b) Temporary food service establishment--Per Event/Per Unit \$50.00 (fifty dollars) for the first 3 (three) days and \$15.00 (fifteen dollars) per subsequent day not to exceed 14 (fourteen) consecutive days in conjunction with a single event or celebration.**

**(c) Retail food store (same as food service establishments in 5) (a) above).**

**(d) Mobile food unit--Must have a central food preparation facility complete with serving area maintaining a valid permit retail food establishment permit.**

Limited Service Mobile Food Unit	\$250.00
Mobile Food Preparation Unit	\$300.00
Pushcart	\$250.00



- (e) Duplicate Permit Fee \$20.00
- (f) Plan review and preliminary inspection \$175.00
- (g) "Texas Food Establishment Rules" bound copy \$8.00 (eight dollars) picked up at NETPHD or \$10.00 (ten dollars) if mailed. The rules are published on the Internet (cost of food establishment permit includes one copy) <http://www.tdh.state.tx.us/bfds/retail>.
- (h) Call Back Fee for New Business \$100.00
- (i) Re-inspection Fee for Suspended Permits \$100.00
- (j) Reinstatement Fee for Suspended Permits \$150.00

6) **Permit renewal following establishment closure for more than three months.** Any person who voluntarily discontinues the operation of any food service establishment, retail food store, or mobile food unit for not longer than 3 (three) consecutive months may secure a renewal of an existing permit by meeting all of the requirements of this District Order with the exception of an additional permit fee. Upon discontinuing the operation of a food establishment or if there is a change of ownership, the owner shall notify NETPHD in writing at least 30 (thirty) days prior to the discontinuing of operations or change of ownership.

7) **Non profit organizations exempt.** Food service establishments, the net earnings of which are used in whole for charity, church funds or public welfare, shall meet all requirements of this order with the exception of the fee and permit. However, written proof of such nonprofit status shall be provided to NETPHD prior to commencement of any operations. The inspection report posted at the site of operations will serve as documentation.

8) **Outside county units. Rules for permitting.** Any person whose food service establishment, retail food store, mobile food unit, or other source of food is located outside Smith County and who conveys, sends or furnishes food for the purpose of selling, offering or exposing for sale, exchanging or bartering in Smith County or area covered by NETPHD shall pay an annual permit fee of \$300.00 (three hundred dollars) to sell commercially packaged potentially hazardous foods from an approved manufacturer; or \$300.00 (three hundred dollars) to operate a retail mobile food unit or catering service; provided that food which is wholesaled and handled exclusively through wholesale house, jobbers or brokers which are located within Smith County and which do not change the conditions or package, wrapping or container of such food shall not be subject to the

permit fee. Further provided, that persons who produce all of the raw food or who raise live animals or birds, none of which are changed from the raw or living state prior to marketing by such person, shall not be subject to the permit fee.

- 9) **Permit issuance on compliance with rules.** NETPHD shall issue a permit to the applicant if its inspection reveals that the proposed food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment complies with these rules.
- C. **Suspension of permit.** NETPHD 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 NETPHD is responsible to enforce. A suspended food establishment permit shall remain suspended for a minimum of 24 (twenty-four) hours in order to remediate the imminent health hazard.
- D. **Revocation of a permit.** NETPHD may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of these rules or for interference with NETPHD in the performance of its duties. Upon revocation of a permit, operations of the food service establishment, retail food store, mobile food unit, roadside vendor, or temporary food service establishment shall cease immediately. Prior to revocation, NETPHD shall notify the holder of the permit, or the person in charge, in writing of the reason for the proposed revocation and that the permit shall be revoked at the end of the 10 (ten) days following service of such notice unless a written request for a hearing is filed with NETPHD by the holder of the permit within such 10 (ten) day period. If no request for hearing is filed within the 10 (ten) day period, the revocation of the permit becomes final.
- E. **Service of notices.** 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 NETPHD records.
- F. **Hearings.** The hearings provided for in these rules shall be conducted by NETPHD at a designated time and place. Based upon the recorded evidence of such hearing, NETPHD shall make a final finding and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by NETPHD. The NETPHD Chief Executive Officer will conduct hearings under this section.
- G. **Application after revocation.** Whenever a revocation of a permit has become final, the holder may make

written application for a new permit.

- H. Immediate cessation of operations.** Nothing in this section shall prevent NETPHD from requiring a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment to cease operations immediately pursuant to law. This is equivalent to a suspension.

### **SECTION 3. Inspections.**

Compliance procedures concerning inspections are as follows:

- A. Inspection frequency.** An inspection frequency of a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment shall be based on a risk management associated with the types of foods and the food preparation procedures. Additional inspections of the food service establishment or retail food store, or mobile food unit shall be performed as often as are necessary for the enforcement of these rules.
- B. Access.** NETPHD agents, after proper identification, shall be permitted to enter any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service 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.
- C. Report of inspections.** The Texas Department of State Health Services "Texas Food Establishment Rules" reports the score by using a demerit system, with 0 demerits denoting no critical violations. This means that there may be non-critical violations that are not assigned point values. Whenever an inspection of a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment is made, the findings shall be recorded on the inspection report form set out 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 service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service 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 service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment.

**D. Correction of violations.**

1) The inspection report form shall 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 sewage backup, the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by NETPHD. The food establishment must cease operations for a minimum of 24 (twenty four) hours.
- (b) All violations of three - four - or five-point weighted items shall be corrected as soon as possible, but in any event, within 10 (ten) days following the inspection. Within 5 (five) days after the inspection, the holder of the permit may be required to submit a written report to NETPHD stating that the three - four - or five-point violations have been corrected and a follow up inspection shall be conducted to confirm correction.
- (c) All less critical weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.
- (d) When the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment rating score exceeds 30 (thirty) demerits corrective action on all identified violations shall be initiated within 48 (forty-eight) hours. One or more re-inspections will be conducted at reasonable time intervals to assure correction.
- (e) In the case of temporary food service establishments, all violations shall be corrected within 24 (twenty-four) hours. If violations are not corrected within 24 (twenty-four) hours, the temporary food service establishment shall cease food service operations until authorized to resume by NETPHD.
- (f) **If a public health hazard exists, or is imminent, food service shall cease immediately.**

- 2) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of operations. An opportunity for appeal from the inspection findings and time limitations will be provided if a written request for a hearing is filed with NETPHD within 10 (ten) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within 20 (twenty) days of receipt of that request.
- 3) Whenever a food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment permit is suspended and ceases operations, it shall not resume operations until such time as a re-inspection determines that the suspension should be lifted.

**E. Inspection report form.** An inspection report form based on the requirements of these rules is appended to the "Texas Food Establishment Rules."

#### **SECTION 4. Examination and condemnation of food. Maintenance of equipment.**

Procedures concerning examination, condemnation and equipment maintenance are as follows:

- A. General.** Food may be examined or sampled by NETPHD as often as necessary for enforcement of these rules. NETPHD 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 state or local regulations. NETPHD 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 service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment. NETPHD 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 10 (ten) 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. Equipment.** All equipment used in the preparation, storage, and serving of food shall be kept in good repair and in proper working condition. NETPHD may tag any equipment found to be in violation of this subsection, and it shall be unlawful to use any equipment that has been so tagged, until approved to do so

by NETPHD.

**SECTION 5. Review of building plans, preliminary inspections of existing structures.**

**A. Submission of plans.** Whenever a food establishment within Smith County is constructed or extensively remodeled, when the ownership of a food establishment changes, and whenever an existing structure is converted to use as a food service establishment or retail food store, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to NETPHD for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall be professionally drawn to scale to indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. Each food establishment plan must be signed by an architect or engineer. The design must be compliant with plumbing, electrical and structural regulations to include the applicable provisions under the American Disabilities Act. 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. The NETPHD plan review will focus on whether the plans satisfy food service rules and regulations only. 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 agent for Smith County or the appropriate municipality. No food service establishment or retail food store shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by NETPHD. A plan review and preliminary inspection fee of \$175.00 (one hundred seventy-five dollars) is required on all food establishments. The fee is due at the time of the plan review or one day prior to the preliminary inspection of an existing structure. One requested preliminary inspection is included in this fee. Additional requested preliminary inspections will be considered a call back, and be assessed the appropriate fee. The initial plan review for a food establishment is valid for one year. If the plans are not implemented in the one year period, the plans must be resubmitted for approval along with a plan review fee of \$175.00 (one hundred seventy-five dollars) prior to the building of the proposed food establishment.

**B. Pre-operational/opening inspection.** Whenever plans and specifications are required by paragraph A. of this section to be submitted to the regulatory authority, NETPHD or its designated agent or expert shall inspect the food service establishment or retail food store prior to its beginning operation to determine

compliance with the approved plans and specifications and with the requirements of these rules. Request for pre-operational inspection must be made at least one business day prior to the opening of the food service establishment or retail food store. One pre-operational inspection service is included in the cost of the plan review. If the establishment does not meet the rules within this Order, a permit will not be approved. Any additional pre-operational inspections shall be assessed call back fees. Any initial plans that are more than one year old will require a resubmission for plan approval and plan review fee of \$175.00 (one hundred seventy-five dollars) in order to verify the plans are still compliant with applicable laws and rules.

**SECTION 6. Procedure when disease transmission or infection is suspected.**

When NETPHD has reasonable cause to suspect the possibility of disease transmission from any food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment employee, it may secure the morbidity history of the suspected employee or make any other investigation as needed and shall take appropriate action. NETPHD may require any or all of the following measures:

- A. The immediate exclusion of the employee from all food service establishments, retail food stores, mobile food units, roadside vendors, or temporary food service establishments;
- B. The immediate closing of the food service establishment, retail food store, mobile food unit, roadside vendor or temporary food service establishment concerned until, in the opinion of NETPHD, no further danger of disease outbreak exists;
- C. Restriction of the employee's services to some area of the food service establishment, retail food store, mobile food unit, roadside food vendor or temporary food service establishment where there would be no danger of transmitting disease; and
- D. Adequate medical and laboratory examination of the employee(s) and their bodily discharges.

**SECTION 7. Remedies.**

- A. **Penalties.** Any permit holder, responsible officer of the permit holder, or other person found guilty of violating any provision of this chapter shall be punished in accordance with state law.
  - 1) A violation of any provision herein shall be classified as a Class C misdemeanor and violators are subject to a fine of up to \$2,000.00 (two thousand dollars) per violation per day for each violation.
  - 2) Administrative penalties may be assessed pursuant to Health and Safety Code Secs. 437.0185-185.0186,

- (a) Authorizes the Chief Executive Officer of NETPHD to impose an administrative penalty on a person NETPHD requires to hold a permit under Section 437.003 or 437.004 if the person violates this order adopted under this chapter;
- (b) Prohibits the amount of the penalty from exceeding \$500.00 (five hundred dollars) 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 the most serious to violations that are more of minor health or safety significance.
- (d) Five Levels of penalties for retail food establishments will be imposed not to exceed \$500.00 (five hundred dollars).
- (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 20<sup>th</sup> day after the date the person receives notice of the penalty, to accept in writing the determination and pay the recommended penalty of the director 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) Assessment of Administrative penalty authorizes an administrative penalty to be imposed for a violation of this order under Chapter 437, 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.

**B. Continuing violations.** Each day or fractional part thereof that such violation shall continue shall constitute a separate offense.

**C. Injunction.** Whenever NETPHD 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, NETPHD 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.

## **SECTION 8. Certifications.**

### **A. Food Worker Certification Requirement and Definition.**

1) **Required.** It is unlawful for any person to work in a food service establishment, retail food store, or mobile food unit within NETPHD jurisdiction without having a food handler's certificate, or for any person in control of a food service establishment, retail food store, or mobile food unit to allow an employee to work in the food service establishment within NETPHD jurisdiction without the employee having a food worker's certificate.

2) **Application.** Each person, within 60 (sixty) days of becoming an employee of a food service establishment, retail food store, or mobile food unit shall obtain certification by satisfactorily completing a food handler's training course approved or conducted by NETPHD.

3) **Food hygiene training course.** NETPHD shall conduct a food worker's training course, consisting of courses of instruction as prescribed by the Chief Executive Officer, including but not limited to sanitary food handling, state statutes and NETPHD District Orders defining rules and regulations relating to food handling, foodborne disease, prevention of disease, personal hygiene, good housekeeping practices and other related information, said course to be conducted as needed.

4) **Fee.** The certificate fee shall be \$15.00 (fifteen dollars) for a 3 (three) year certification period.

5) **Issuance.** A food worker's certificate applied for under this section shall be issued by NETPHD initially upon the payment of the fee and satisfactory completion of the food handler's training course. Said certificate shall be valid for a period of 3 (three) years and shall be in the form of an

identification card. After the expiration of 3 (three) 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.

- 6) **Exemption. A food handler that has satisfactorily passed a certification test approved by the Texas Department of State Health Services shall be exempt from this requirement for a food handler's certification.**

**B. Food manager certification requirement and definitions.**

- 1) 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 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 §229.176 (relating to Certification of Food Managers). The words "food establishment" means a fixed or mobile location retail establishment in which food is prepared on-site for sale to the public. 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) Exemptions.**

The following food establishments are exempt from the requirements of this order:

- (a) Establishments that handle only prepackaged food and do not prepare or package food;
- (b) Child-care facilities, as defined by Section 42.002, Human Resources Code;
- (c) Establishments that do not prepare or handle exposed potentially hazardous foods as defined in 25 TAC §229.162(66); or
- (d) Non-profit organizations as defined in 25 TAC §229.371(9) (relating to Permitting Retail Food Establishments).

(Note: §437.0076(e) enables a county or public health district to exempt other establishments if the county or public health district determines that the application of the requirement to those establishments is not necessary to protect public health and safety.)

**3) Responsibilities of a certified food manager.**

Responsibilities of a certified food manager include:

- (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; and
- (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.

**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: NETPHD is accredited to conduct a Certified Food Manager Program. The fee for the 14 (fourteen) hour course is \$125.00 (one hundred twenty-five dollars).

**5) Certificate posting and establishment of a registry.**

The original food manager certificate(s) shall be posted in a location in the food establishment that is conspicuous to consumers. Each food establishment required to have certified food managers on duty present during operational hours shall register the certified food managers with NETPHD for a registration fee of \$25.00 (twenty-five dollars). Individuals certified by attending the NETPHD accredited Certified Food Manager Program and successfully passing the certified food manager test will be automatically registered into the registry system by NETPHD.

- 6) Effective date.** The effective date for at least one Certified Food Manager to be present at all times a food establishment is in operation is April 1, 2011.

**SECTION 9. Appeals of decisions made under sections 1 through 8.**

Any person aggrieved by a decision of NETPHD employee concerning the granting or refusal to grant a permit, or

any privilege as provided in sections 1 through 8 may appeal such decision in writing to the Chief Executive Officer of NETPHD within 10 (ten) days after the decision. The Chief Executive Officer shall render a decision within 30 (thirty) days after receipt of the appeal, either affirming the decision of the employee or entering an appropriate decision.

**PART II.**

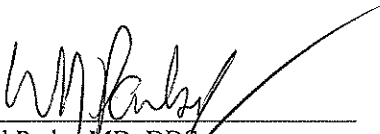
That if any provision or any section of this District Order shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this District Order, which shall remain in full force and effect.

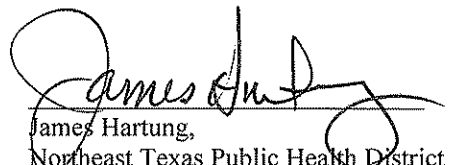
**PART III.**

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. 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. 2007-1 shall not become effective until November 1, 2010.

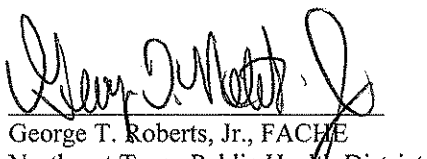
Signed this day: 10/28/10

**ATTEST:**

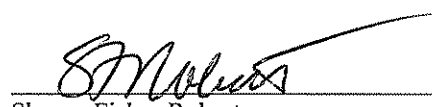
  
\_\_\_\_\_  
Will Parks, MD, DDS  
Northeast Texas Public Health District  
Board Secretary

  
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James Hartung,  
Northeast Texas Public Health District  
Board Chair

**Recommended:**

  
\_\_\_\_\_  
George T. Roberts, Jr., FACHE  
Northeast Texas Public Health District  
Chief Executive Officer

**Approved:**

  
\_\_\_\_\_  
Sharon Fisher Roberts  
Board Attorney