

AGENDA INFORMATION SHEET

AGENDA DATE: July 9, 2013

DEPARTMENT: Planning and Development

ACM: John Cabrales



SUBJECT

Receive a report, hold a discussion, and give staff direction regarding and update on Chapter 13 Food and Food Service Establishments ordinance.

BACKGROUND

On November 6, 2012, the City Council adopted the Food and Food Service Establishments ordinance. This ordinance was adopted with a recommendation that after being implemented for six months, staff would come before Council with a status report. The report would include public input and any staff recommendations for consideration.

Since the passage of this ordinance there has been better compliance by food establishments in regard to issues such as businesses having a Certified Food Manager in charge during open hours, and employees having their Food Handler Cards. Another area of popularity has been the increased activity in the Mobile Food Establishment business. Since the passage of the Food Code twelve (12) food trucks have been issued annual permits. There have been a few food truck events such as the DCTA's Food Trucking Tuesdays, and many more food trucks have been seen at other events like 35 Denton, Arts and Jazz Fest, other City events, and at the Community Market. Some food trucks choose to apply for temporary good permits for these special events, while others are free to use their annual food permits to gain access to these events. For the most part, the mobile food establishments have complied with the code; however, there have been a few citations issued because of not having water or hot water, and for not keeping food stored at proper food temperatures. Another success story worth mentioning is the growing success of the Denton Community Market. The market has continued to increase in popularity, and compliance with the Food Code has been very good.

On April 29, 2013, and on May 13, 2013, City interdepartmental staff, made up of representatives from Fire, Parks and Recreation, Code Enforcement, Health Inspections, Police, and Planning, met to discuss challenges to the effective enforcement of the Food Code. Staff discussed several issues and determined that revisions on how the Food Code was being implemented and some modifications to procedural issues would improve overall effectiveness. Most of the issues discussed, such as questions about parking, changes to the itinerary, zoning restrictions, and enforcement can be resolved through clarifying or creating in-house processes. These processes will ensure that the code is being enforced to the benefit of the community. (See Exhibit 1 and 2 for more detail about these meetings.)

On May 16, 2013, staff met with approximately 50 (some 30 brick and mortar restaurant owners, about 6 food truck owners, and others) food establishment owners and other members of the public to discuss the Food Code. The purpose of the meeting was to receive their input and suggestions on issues they have encountered with the Food Code. The most common topics discussed can be distilled into three (3) areas; Commissary; Itinerary Requirements; and Parking. Staff also received suggestions that are worth noting concerning the payment of Sales Tax and a limitation on the number of Food Trucks permits issued in the City.

Commissary

One of the most common issues of discussion in the meeting was in regard to Commissary. The code requires (in section 169.4) that a mobile food establishment visit the commissary once each day. The daily maintenance, including cleaning, sanitizing, restocking, draining wastewater, and taking on new clean water, will assure that the mobile food establishment is sanitary. The food truck owners feel that this requirement is too burdensome. Since there are no full-service commissaries in Denton, or even close to Denton, some food truck owners want the Council to change the requirement from daily visits to one visit per week. Through past experience, staff agrees that in order to keep the intent of the Texas Food Establishment Rules (TFER) that a food establishment needs to be clean and wholesome; this is best accomplished only by daily maintenance.

Recommendation: Given the importance of this requirement to public health and sanitation, Staff recommends no changes to this section of the code.

Itinerary Requirements

Another common issue of discussion was in regard to the Itinerary. Food trucks are required (section 169.1) to keep their City approved itinerary up to date. This provides Health Inspectors with the ability to perform random inspections and ensure that Food Truck vendors maintain compliance with the Food Code. Food truck owners want the freedom to change locations without notifying the City. Even though the code gives food truck owners two days to update their itinerary, keeping a currently approved itinerary can be a chore, especially if a mobile food establishment owner wants to change locations more frequently.

Recommendation: In order to properly enforce the provision of the Food Code there is a need to verify each location on the itinerary for zoning, parking, and setbacks. Staff also wants to be able to locate each mobile food establishment when necessary. Staff recommends no changes to this section of the code.

Parking

The last most common issue is in regard to Parking. The concerns about parking can be broken down into two (2) areas that include the following: parking a mobile food establishment at a residence or home; and the issue of a food truck taking up parking spaces along with the requirement that a mobile food unit park on an improved surface.

1. Parking a Mobile Food Establishment at a residence or home: According to the Denton Development Code (section 35.12.10 M), any food truck larger than a van shall not be parked at a residence. The Food Code requires (section 169.4) that a food truck, when not in operation, be stored at the commissary. Since Denton does not have a full-service commissary, we also allow a food truck to be parked in a commercial parking lot or at a storage facility.

Recommendation: Staff recommends that we continue to enforce the Denton Development Code and add an amendment to the Food Code prohibiting the parking of mobile food establishments at a residence.

2. Mobile Food Establishments parking in required parking spaces: On the Certificate of Occupancy of each business there is a required number of parking spaces according to each business use. A Mobile Food Establishment may not take up any of these required spaces. A food truck may only park at parcels that have more parking spaces than those required on the Certificate of Occupancy; or they may park elsewhere on the parcel if approved by staff. Also, in regard to parking a mobile food establishment, the food code states that parking shall not be on unimproved surfaces such as grass or dirt without the written approval from the City. Staff has been enforcing the requirement to park on concrete, asphalt, or surfaces covered with pavers.

Recommendation: Staff recommends no changes to the code; that we continue to enforce the parking requirements as explained above.

It is also worth noting that staff received a comment and suggestion related to sales tax and questioned if sales tax is being reported by mobile food establishments that do business in Denton. Staff has contacted the State Comptroller's office and found that the City may audit the sales tax records of any business with a State Sales Tax License doing business within the city limits. Although this is not germane to Chapter 13 Food and Food Service Establishments, the auditing of food trucks sales tax may be an option for consideration.

Finally, the last comment and suggestion is that the City limit the quantity of food trucks permitted in Denton. Some brick and mortar restaurant owners suggested that the City Council consider a limit on the quantity of food trucks permitted in Denton. Currently there are twelve (12) mobile food establishments with a Denton annual permit. Staff has asked other cities if they limit the number of food trucks in their cities and they have responded that there are no limits to the quantity of food trucks. Accordingly, staff does not have a recommendation on this suggestion; they will look to City Council for direction regarding this suggestion.

In order to gather additional feedback, staff posted three questions on www.EngageDenton.com and solicited comments from the public. The three questions and the public comments are as follows:

1. Do you think the current mobile food establishment requirements in the ordinance are fine as they are written or do they need to be changed? If so, what changes would you suggest and why? For this question there were two responses:
 - a. Don't make mobile regulations more strict than non-mobile ones
 - b. Please provide a summary
 - c. Simplify
 - d. Non-GMO
 - e. Picture Menu and Reasonable Prices
2. Do you think the current food management certification requirement in the ordinance is fine as it is written or does it need changes? If so, what changes would you suggest and why? There have been no responses to this question.
3. Do you think the ordinance is working well? If not, how could the ordinance be improved and why? For this question there was one response.
 - a. We Need Less Subway Franchises!

Staff will continue to reach out to the community on further issues associated with the Food Code and keep the Council updated on any recommendations in the future.

OPTIONS

1. Direct the Building Inspections Division to make no changes to the current Food and Food Service Establishments ordinance.
2. Direct the Building Inspections Division to amend the current Food and Food Service Establishments ordinance, based on staff recommendations.
3. Direct the Building Inspections Division to amend the current Food and Food Service Establishments ordinance based on Council and/or staff recommendations or a combination thereof.

PRIOR ACTION/REVIEW

November 6, 2012, City Council adopted the current Food and Food Service Establishments Ordinance Number 2012-305.

EXHIBITS

1. Notes from interdepartmental staff meeting on April 29, 2013
2. Notes from interdepartmental staff meeting on May 13, 2013
3. Notes from community meeting on May 16, 2013
4. Current Food and Food Service Establishments Ordinance 2012-305, adopted November 6, 2012
5. Current Food and Food Service Establishments Ordinance with staff recommended changes

Prepared by:



Kurt S. Hansen
Building Official

Respectfully submitted:



Brian K. Lockley, AICP, CPM
Director of Planning and Development

Exhibit 5

Current Food and Food Service Establishments Ordinance with Staff Recommended Changes

Exhibit 5

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AMENDING CHAPTER 13 (“FOOD AND FOOD SERVICE ESTABLISHMENTS”) OF THE CITY OF DENTON CODE OF ORDINANCES BY DELETING ARTICLES I, II, III, IV, V AND VI IN THEIR ENTIRETY; ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES PROMULGATED BY THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES AND MAKING RELATED DELETIONS AND AMENDMENTS THERETO; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000 FOR VIOLATIONS OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON TEXAS HEREBY ORDAINS:

SECTION 1: Articles I, II, III, IV, V and VI of Chapter 13 (“FOOD AND FOOD SERVICE ESTABLISHMENTS”) of the City of Denton Code of Ordinances are hereby deleted in their entirety and replaced with new Sections 13-10 and 13-20 which hereby read in their entirety as follows:

Sec. 13-10 Rules on food service --Adopted; compliance procedures.

The city adopts the amendments to Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, Sections 161--171 and 173--175 as amended, which establishes regulations regarding the regulation of food establishments in this jurisdiction is hereby adopted as the minimum standards for food service operations within the corporate limits of the City of Denton, Texas. Wherever in these rules the words "municipality of Denton" appear, they shall be understood to refer to the City of Denton and the words "regulatory authority" shall refer to the City of Denton. The Texas Food Establishments Rules, save and except the amendments set forth below are made a part of this article as if fully set forth herein. A copy of the Texas Food Establishment Rules, along with city amendments, shall be kept on file in the office of the city secretary of the city being marked and designated as the Texas Food Establishment Rules, published by the Texas Board of Health Bureau of Food and Drug Safety (Retail foods division). Any revision, addition, or deletion to the Texas Food Establishment Rules (TFER) by the Department of State Health Services or the United States Food and Drug Administration (FDA) shall be deemed to be an amendment to this article and adopted as of the time it goes into effect or is published.

Sec. 13-20 Deletions and amendments.

Amendments to the Texas Food Establishment Rules

Section 229.162 is amended by adding the following:

162.1 Administrator: the Building Official, or their designated employee, of the City of Denton.

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162.2 Agricultural product: an agricultural, apicultural, horticultural, silvicultural, or viticultural, or fish or other aquatic species product, either in its natural or processed state, that has been produced, processed, or otherwise had value added for use as human food.

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162.3 Catering Establishment: shall mean a food establishment where food is completely or partially prepared for delivery at a separate location where it is meant to be served and consumed. For purposes of this definition of mobile food establishments, a food service establishment is considered to be operating mobile food units, rather than to be operating as a catering establishment; unless at each premises or property to which food is delivered, the food is provided to one person for consumption by that person or that person’s guests or invitees.

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162.4 Catering operation: a food service establishment which prepares or serves food on premises in control of another.

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162.5 Certificate of Occupancy: A Certificate of occupancy is a document issued by a local government agency indicating that a building or mobile food vehicle complies with zoning and building laws.

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162.6 Change of Ownership: a change of owner or operator of a food establishment business, and does not refer to a change of owner of the property or building in which the business is located.

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162.7 Change of Use: that which requires the owner of an establishment to submit plans before any construction is begun on a project that changes the use of the current establishment.

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162.8 Commercially Manufactured: produced or built, for commercial gain, by a person showing a high degree of skill or competence.

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162.9 Commissary: also known as a central preparation facility; base of operations; or premises from which a mobile unit operates. The commissary shall be used as the base of operations for all classes of mobile food vendors. The commissary is an approved site(s) at which food preparation, storage and cleaning or servicing of the vehicle occurs. State law prohibits the use of a private residence as a central preparation facility or warehouse.

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162.10 Community Market: a designated location used primarily for the distribution and sale directly to consumers of raw agricultural products grown by farmers or home-grown fruits, vegetables, produce or food products; meat and fish items, plants and flowers; arts and crafts items; and bakery goods, beverages, dairy products, delicatessen, and grocery items.

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162.11 Cooking demonstration: food that is not to be offered, sold, or otherwise distributed to the public

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162.12 Farmers Market: a designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other producers of agricultural products

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162.13 Farmer's Market Food Vendor: any person(s) who operate(s), offers, or sells food typically known as "farm grown", "farm originating" or "farm obtained" from a location approved on private or public property. Foods included in "farm grown" are whole produce, plants, nuts, certain meats, honey, eggs and pasteurized dairy products. These vendors and any foodservice operations shall comply with the Texas Food Establishment Rules as set forth by the Dept. of State Health Services.

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162.14 Fixed Commercial Location: a building that can obtain a certificate of occupancy; not mobile in nature.

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162.15 Food handler card: a card issued by the city of Denton to all food establishment employees whose work brings them into contact with the handling of food, utensils, or food service equipment. These employees shall fulfill all city requirements before receiving a card.

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162.16 Grease Interceptor: A plumbing appurtenance that is installed in a sanitary drainage system to intercept oily and greasy wastes from a wastewater discharge. Such device has the ability to intercept free-floating fats and oils.

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162.17 Health Officer: the officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

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162.18 Health or regulatory authority: the City of Denton.

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162.19 Heavy Food Preparation: shall mean any area in which foods are prepared utilizing a grill, griddle, deep-fat fryer, commercial type ovens, and/or any similar food preparation equipment; or any area subject to flooding type of wet cleaning procedures due to the cutting or processing of meat, poultry, fish or pork. Heavy food preparation includes but is not limited to:

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cafeterias, fast food restaurants, full service restaurants, pizza preparation, donut preparation, and meat and fish markets, etc. and may include day care centers.

For information regarding grease interceptor sizes, refer to the International Plumbing Code as amended by the City Building Inspection Department.

162.20 Light Food Preparation: shall mean any area in which foods are prepared exclusive of the use of fryers, grills or similar equipment. Light food preparation is usually limited to the preparation of hot dogs, sandwiches, salads or other similar foods and fountain-type cold drinks. Light food preparation includes, but is not limited to, sandwich shops, limited menu concession stands, etc. and may include day care centers. For information regarding grease interceptor sizes, refer to the International Plumbing Code as amended by the City Building Inspection Department.

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162.21 Minor: shall mean an individual under the age of 18

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162.22 Mobile Food Establishment: a food establishment that serves, sells, or distributes any food or beverage from a mobile food preparation vehicle that is not operating at a permanent fixed location. A mobile foodservice establishment is vehicle-mounted or wheeled and capable of being readily moveable. A mobile food unit is fully self-contained. A mobile food establishment is a commercially manufactured vehicle from which food is prepared, served or provided for the public with or without charge.

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Types of mobile food establishments: The mobile food unit classifications are based upon the type of menu served.

Class I – Limited Mobile Food Establishment: these mobile food units may provide hot and cold holding display areas from which packaged foods are displayed. Self-service by customers of unpackaged foods is not allowed. Preparation, assembly or cooking of foods is not allowed on the unit. Non-potentially hazardous beverages must be provided from covered urns or dispenser heads only. No dispensed ice is allowed.

Class II – General Mobile Food Establishment: these mobile food units may serve a full menu as approved by the Consumer Health Division.

Class III - General Service Pushcarts: these mobile food units may operate only at one location for the life of a permit and shall serve only a limited menu as approved by the Consumer Health Division.

Class IV – Limited Service Pushcarts: these mobile food units may operate at one location for the life of a permit or may be pushed by human power to various locations and shall serve only a limited menu of non-potentially hazardous, prepackaged food items as approved by the Consumer Health Division.

162.23 No food preparation: any area in which foods are provided pre-wrapped, from a source approved by the Department of State Health Services with microwave oven type heating being the maximum handling involved. No food preparation is limited to prepackaged sandwiches or similar foods, candies and containerized beverages.

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162.24 Non-potentially hazardous beverage: shall mean a non-alcoholic liquid intended for consumption, whether natural or synthetic, that does not require temperature control because it is not capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the growth and toxin production of *Clostridium botulinum*. The term includes:

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- 1) Tea and coffee, excluding espresso, with powdered creamer or ultra-high, pasteurized half and half in individual servings;
- 2) Commercially made, high acid beverages with a pH level of 4.6 or below, such as apple juice, lemonade, limeade, and orange juice;
- 3) Fresh squeezed, high acid beverages;

- 4) Commercially filled carbonated beverages;
- 5) High acid beverages made from a commercial mix; and
- 6) Mineral water sold in open, single-service cups with ice from an approved source.

162.25 Non-profit organization: All government entities and political subdivision and public school districts; Organizations chartered under the Texas non-profit corporation act; or Operations recognized by the IRS as a 501(c) organization or corporation.

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162.26 Perishable food: shall mean any food of a type or in a condition that may spoil.

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162.27 Remodeling, extensive: any change in the structure of a food preparation area or any change in the establishment which would increase or decrease size requirements for the food preparation or food storage areas as specified in sections 13-27 (b) and (c). The term may also include any construction which requires a building permit from the Building Inspection Division of the City of Denton.

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It does not include: Expenditures for the replacement of moveable equipment; or remodeling which does not affect the construction or operation of food storage or food preparation areas or areas used to store or clean utensils and equipment used in food storage or food preparation.

162.28 Seasonal food service establishment: any food service establishment which operates from a fixed location for a period not to exceed six (6) consecutive months provided that such operation shall occur only once during any twelve (12) consecutive month period.

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162.29 Smoker: any unit, whether mobile or fixed in nature, which uses wood or wood products to provide smoke for the purpose of slow cooking meats intended for human consumption, whether such unit is inside an enclosed building or in an outdoor area.

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162.30 Temporary Event/Community Based Event: transitory gatherings such as traveling fairs, carnivals, multicultural celebrations, special interest fundraisers, restaurant food shows, grand openings, customer appreciation days, etc. also called special events. These are single events or celebrations.

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162.31 Temporary food permit: a permit issued after fulfilling all City requirements to a food establishment selling or serving food at a temporary event. The temporary food permit is valid until the temporary event concludes or for 14 consecutive days, whichever is less. A temporary food permit is valid for only one event location at a time.

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162.32 Toilet facilities: flush toilets and sinks with hot and cold running water connected to an approved system

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162.33 Warehouse: shall mean any enclosed structure, room, or building where packaged food or food products intended for off-premise consumption are stored for, sold to, or offered for sale or distribution to persons other than the ultimate consumer.

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162.34 Wholesome: in sound condition, clean, free from adulteration, and otherwise suitable for use as human food. Food which is packaged shall be deemed wholesome if it meets the foregoing requirements and it is used or sold prior to the expiration date marked on the package.

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Section 229.163(a) is amended by adding the following:

163.1 This person (**i.e., the person in charge**) shall have a valid Food Protection Management training certificate. Certification must be obtained by passing an examination approved by the Texas Department of State Health Services and approved by the regulatory authority.

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

- 1) Establishments selling only uncut produce or commercially packaged; hermetically sealed foods;

- 2) a food enterprise that provides only beverages or prepackaged food that is not a potentially hazardous food;
- 3) Bars and lounges that do not serve potentially hazardous foods;
- 4) a food processing plant that is inspected at least once each week by a state or federal food sanitation inspector or that only stores prepackaged food that is not potentially hazardous;
- 5) Concession stands that are run by volunteers;
- 6) a nonprofit organization that serves food only to members of the organization;
- 7) a vending machine or a mobile food establishment that offers only prepackaged food, if a certified food manager is in charge at the central preparation facility that supplies the products for the vending machine or mobile food establishment; or
- 8) a temporary event food vendor.

Compliance may be required of establishments having one of the above exemptions if they have repeated or critical food code violations, or if determined by the health officer to be capable of causing food borne illness.

163.2 The owner or operator of a new foodservice establishment shall provide verification to the Consumer Health Division, prior to the opening of the establishment, that the establishment meets the Certified Food Protection Manager requirement of this article.

163.3 If a foodservice establishment cannot meet the requirements of this section because of the termination or permanent transfer of a registered food protection manager, the food establishment shall: Employ another registered food manager within thirty (30) days of the effective date of the termination or transfer of the previous manager. When an existing food service establishment has a change of ownership, the new owner or operator of the establishment shall provide verification to the Consumer Health Division within thirty (30) days of the effective date of the change of ownership that it is in compliance with the certified food protection manager requirements of this article.

163.4 A person commits an offense if the person is the owner or operator of a food establishment and violates a provision of this section.

163.5 A person commits an offense if the person is the food manager of a food establishment and fails to obtain a food protection manager's certificate from an accredited program accepted by the Texas Department of State Health Services within the time limits allowed in this article.

163.6 A person holding a food protection manager's certificate shall register a copy of that certificate with the City of Denton Consumer Health Division.

Section 229.163(c)(12) is amended by adding the following:

163.7 Every person whose work brings them into contact with the handling of food, utensils, or food service equipment must possess a valid City of Denton food handler card.

Every person who owns, manages, or otherwise controls any food service establishment shall not permit any person to be employed therein who does not possess a valid City of Denton food handler card within ten (10) days from the date of their employment.

163.8 Food handler test

In order to receive a food handler's card, every person must achieve a score of seventy (70) or more on the test offered by the City of Denton or pass an approved on-line course offered on the City of Denton Consumer Health webpage. After an applicant passes an online food handler course, the applicant shall bring verification to the City in order to receive a City of Denton issued Food Handler card. This requirement must be met upon expiration of a food handler's card

and upon application for a new food handler's card. At the discretion of the health officer, if he or she deems it necessary, employees may be required to attend one of the classes offered by the City of Denton Consumer Health Division.

163.9 Certificates available.

The permit holder of the food service establishment shall make food handler cards and food manager certificates displayed where they can be easily seen by the regulatory authority.

163.10 Duration of food handler card.

Any food handler's card issued under the provisions of this article shall remain in full force and effect two years from the date of issuance.

163.11 Same-nontransferable.

Every food handler card issued under the provisions of this chapter shall be nontransferable.

163.12 Same--Confiscation.

The health officer shall have the authority to confiscate a food handler's permit that has expired or is otherwise invalid.

163.13 Personnel.

- a) A food employee may drink from a beverage container that has a tight-fitting lid with a straw.
- b) Employees shall wear disposable gloves when handling ready-to-eat foods, or provide documentation of training regarding correct handling of ready-to-eat foods as found in section 229.164(e)(1)(D)(i)-(iii).

Section 229.164(a) is amended by adding the following:

164.1 Destruction of unwholesome food authorized.

Whenever the city health officer discovers any food or drink displayed for sale or kept for sale, which is unwholesome or unsafe for human consumption, the officer shall order the food or drink to be destroyed or removed, and the owner or the responsible person in charge shall immediately destroy or remove such unwholesome or unsafe food at his or her own expense.

164.2 Sale or other disposition of unwholesome food prohibited.

It shall be unlawful for any person, association of persons, firm, food service establishment, temporary food service establishment or corporation to offer for sale or give away any food or drink for human consumption which has been pronounced by the city health officer to be unfit for such use. No person shall prepare potentially hazardous or TCS food for sale to the public from their own private residence.

Section 229.164(v)(2)(C) is amended by adding the following:

164.3 Written documentation of cool-down procedures of the food that is being donated is required.

Section 229.165(k)(1)(C) is amended by adding the following:

165.1 Existing equipment which was installed in a food service establishment prior to the effective date of this chapter, and which does not meet fully all of the design and fabrication requirements of this rule shall be deemed acceptable in that establishment as long as there is no change of ownership, equipment is in good repair and capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after the effective date of this chapter shall meet the requirements of this chapter.

Section 229.166(j)(3) is amended by adding the following:

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166.1 Grease Interceptors shall be located outside the food preparation area unless otherwise approved by the regulatory authority.

Section 229.166(l)(14)(B) is amended by adding the following:

166.2 Garbage Containers.

Garbage and refuse shall be kept in durable, easily cleanable, insect-proof, and rodent-proof containers that do not leak and do not absorb liquids. Containers used in food preparation and utensil-washing areas shall be kept covered except when actually in use.

There shall be sufficient number of containers to hold all the garbage and refuse that accumulates during operation of the food establishment. The regulatory authority may require additional service, dumpsters or larger dumpsters to accommodate the garbage and refuse that accumulates.

Suitable facilities, including hot water and detergent or steam shall be provided and used for washing garbage containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage. Power washing and contracted cleaning services shall be performed according to applicable law.

Cardboard or other packaging materials that do not contain food residues or that are waiting regularly scheduled delivery to a recycling or disposal site may be stored outside in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

Section 229.167(b)(3) is amended by adding the following:

167.1 Premises.

Food Service establishments and all parts of the property used in connection with operations of the establishment shall be kept free of litter.

Only articles necessary for the operation and maintenance of the food service establishment shall be stored on the premises.

Section 229.167(p)(15)(B)(iii) is amended by adding the following:

167.2 A food service establishment may permit a customer to be accompanied by a dog in an outdoor dining area if:

- a) The food service establishment posts a sign in a conspicuous location stating that dogs are allowed in the outdoor dining area;
- b) The customer and the dog access the outdoor dining area directly from the exterior of the food service establishment;
- c) The dog does not enter the interior of the food service establishment;
- d) The customer retains the dog on a leash at all times and controls the dog;
- e) The customer does not allow the dog to be on a seat, a table, a countertop, or a similar surface;
- f) In the outdoor dining area, the food service establishment does not
 - 1) prepare food; or
 - 2) permit open food, except for food that is being served to a customer; and,
- g) Only cleaners and sanitizers that are not harmful to animals may be used on outdoor surfaces.

Section 229.169 is amended by adding the following:

169.1 Requirements for mobile units.

- a) Application Process

- 1) In order to obtain a health permit to operate a mobile food establishment within the city limits of Denton, an applicant shall submit all required applications and applicable documents with the City of Denton and pay all required fees.
- 2) The application shall include an approved Certificate of Occupancy issued by the Building Official. A Certificate of Occupancy shall be required for all mobile units that will stop and sell food in any one parcel of land for more than one hour. The Certificate of Occupancy verifies that all sales locations stated in the submitted location itinerary are zoned for food establishments. Other documentation may be required by the health officer.
- 3) The Consumer Health Division must be given written notice at least two (2) business days before implementation of any changes to the filed itinerary.

b) Permit Issuance

- 1) Upon receiving a proper application for a permit, the Consumer Health Division shall make appropriate inspections of the vehicle; equipment and other reasonable inspections concerned with the mobile food establishment and shall issue a permit and sticker only if:
 - a) The inspection reveals compliance with the applicable requirements of all federal and state statutes and regulations and city ordinances governing the proposed mobile food establishment operation.
 - b) The valid sticker shall be displayed by a mobile food establishment:
 1. The hard copy of the permit shall be posted in public view inside the vehicle and
 2. The sticker permit shall be posted on the back right corner on the outside of the vehicle – it will display the date of expiration of the permit and the unit ID number.
- 2) The health permit shall be valid for 12 months. Mobile food establishment permits shall not be transferable and shall be considered revoked should the food vending operation be changed from that specified in the permit.

c) Location of Operation

- 1) Any location where mobile units stop and sell food in any one location for more than one hour, shall be zoned (according to the Denton Development Code) to allow food establishments.
- 2) Mobile units shall not stop and sell food in a residential District (as defined in the Denton Development Code) without written permission from the Homeowner's Association or a Neighborhood Association. Mobile units shall not stop and sell food in any residential zone that does not have an active Homeowner's or Neighborhood Association.

d) Operations on Public Property

No mobile food vehicle shall operate a business from a public park or publicly owned property or site without written permission from the City.

e) Signage

- 1) Each mobile establishment must be readily identifiable by business name, printed, permanently affixed, and prominently displayed upon at least two sides of the units, in letters and numbers not less than 3 (three) inches in height

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- 2) Each mobile food establishment shall be clearly marked with the food establishment's name or a distinctive identifying symbol. The lettering shall be at least three (3) inches in height and of a color contrasting with the background color. If a symbol is used, it shall be at least twelve (12) inches in diameter or of an equivalent size.
- 3) Each mobile food establishment shall be clearly marked with the permit number for purposes of identifying each unit on inspection reports and other communications.

Section 229.169(a)(1) is amended by adding the following:

169.2 Mobile Food Vehicle Types

Class I – Limited Mobile Food Establishment: these mobile food establishments may provide hot and cold holding display areas from which packaged foods are displayed. Self-service by customers of unpackaged foods is not allowed. Preparation, assembly or cooking of foods is not allowed on the unit. Non-potentially hazardous beverages must be provided from covered urns or dispenser heads only. No dispensed ice is allowed.

Examples of foods that are allowed:

- 1) Food that was prepared and packaged in individual servings at an approved commissary and transported and stored under conditions meeting the requirements of this article
- 2) Potentially hazardous beverages such as individual servings of milk, milk products and coffee creams that have been packaged at a pasteurizing plant. All foods sold will need to meet proper labeling requirements.

Note: If the vendor is selling prepackaged food, the vendor shall provide a copy of the commercial food establishment's Texas Food Manufacturing permit (or Meat Safety Assurance Permit – if applicable) from the Texas Department of State Health Services.

Class II – General Mobile Food Establishment: these mobile food establishments may serve a full menu as approved by the Consumer Health Division.

Class III - General Service Pushcarts: these mobile food units may operate only at one location for the life of a permit and shall serve only a limited menu as approved by the Consumer Health Division.

Menu items shall be limited to, unless authorized by the Health Inspector: those menu items listed under Class IV – Limited Service Pushcart category, hot dogs, nachos with artificial cheese base, corn on the cob, snow cones, popcorn, pretzels, sausage on a stick, tea, lemonade, fruit drinks (from dry mix only), tamales, and roasted peanuts.

Class IV – Limited Service Pushcarts: these mobile food units may operate at one location for the life of a permit or may be pushed by human power to various locations and shall serve only a limited menu of non-potentially hazardous, prepackaged food items as approved by the Consumer Health Division.

Menu items shall be limited to, unless authorized by the Health Inspector: prepackaged chips, candy, ice cream, prepackaged sodas, and bottled water.

169.3 Class III and Class IV Mobile Food Vendors shall not:

- 1) use a vehicle that exceeds 6 ft. x 4 ft. x3 ft.;
- 2) enter or occupy a public roadway to solicit or conduct a sale;
- 3) place any signs or other advertising devices on public property other than those signs affixed to the vehicle;
- 4) physically or visibly obstruction pedestrian and vehicular traffic;

- 5) sell, distribute, or offer for sale, goods or services that have not been approved by the Health Inspector;
- 6) be located within a construction area, or;
- 7) conduct business with vehicular traffic located in the street right-of-way.

169.4 Servicing ~~at~~ commissaries

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Mobile food establishments shall report to the approved commissary locations for supplies, cleaning, and servicing operations as follows:

- 1) The interior of the mobile food establishment shall be cleaned and serviced at the approved commissary at least daily and shall be stored at the commissary when not in operation.
- 2) The mobile food establishment shall acquire needed supplies from the commissary or other approved sources.
- 3) An existing food establishment may serve as a commissary for a mobile food establishment only if approved by the health officer. The existing food establishment would be required to have an approved vehicle storage facility, approved potable water hookups, approved wastewater drainage facilities, approved grease interceptor hookups and size, and any other accommodations as determined necessary by the health officer to ensure compliance with all regulatory codes.
- 4) The mobile food establishment shall provide documentation of each visit to the commissary and shall have that documentation available for inspection.

169.5 Servicing Records

It shall be unlawful for an operator of a mobile food establishment to be in operation without a valid servicing record in his possession. The operator of a mobile food establishment shall keep and maintain servicing records on the mobile food establishment for a period of one year from the date of servicing. The servicing records must be immediately available to any peace officer or health officer for inspection.

169.6 Vehicle construction

- a) The interior of the vehicle shall be commercially manufactured or be approved by the health officer.
- b) The food preparation area of the vehicle shall be completely enclosed.
- c) Mobile food establishments may be required to provide an on board power source, such as a battery or generator, to assure maintenance of PHF/TCS foods at proper temperatures during transit, preparation and service. The vehicle must be equipped with commercial mechanical facilities. All equipment on the vehicle is to be NSF approved, ANSI approved, or of commercial grade.
- d) The cab of the vehicle must be physically separated from the food preparation area, and the seats designated for the cook and any passengers must be located outside of the food preparation area.
- e) All cooking equipment and hot holding units must be located at the rear of a mobile food preparation vehicle. Covers for deep fryers must be provided and installed over fryer units while vehicle is in motion.
- f) The vehicle must be equipped with a built-in hose that may be used to wash the interior of the vehicle when it is at the commissary for servicing.

169.7 Exterior surfaces

Exterior surfaces of mobile food units shall be of weather resistant materials and shall comply with all applicable laws.

169.8 Utility connections

Utility connections shall be limited to only electrical service and shall be in full compliance with the Electrical Code. All electrical extension cords shall be of industrial grade quality and shall be utilized in a safe manner as not to be a nuisance or a trip hazard. Mobile food establishments shall not be connected to any potable water service, sanitary sewer service, or fuel gas service while in the operation of preparing or vending food.

169.9 Damage Report

Any accident involving a mobile food establishment that results in damage to the water system, waste retention tank, food service equipment, or any facility that may result in the contamination of the food being transported or any damage that results in a violation of this section, shall be reported within 24 hours of the time the accident occurred. Reports shall be made by the holder of the mobile food establishment health permit.

169.10 Overhead Protection

Overhead protection shall be provided for mobile food units that are operated outdoors and where food is not covered at all times. The overhead protection shall consist of, but not be limited to, roofing, ceilings, awnings, or umbrellas. The overhead protection must be easily cleanable.

169.11 Any additional equipment or the arrangement thereof other than that approved when the permit was issued shall be prohibited unless approved in advance by the Consumer Health Division.

Section 229.169(a)(7) is amended by adding the following:

169.12 A mobile food establishment must demonstrate mobility at any reasonable time if requested by any peace officer, health officer, or designated city employee.

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169.13 Operation capacity limited

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The operator of a mobile food establishment shall prepare, serve, store, and display food and beverages on or in the mobile food unit itself; and shall not attach, set up, or use any other device or equipment intended to increase the selling, serving, storing, or displaying capacity of the mobile food establishment. It shall be un-lawful for the operator of a mobile food establishment to:

- 1) Allow items such as, but not limited to brooms, mops, hoses, equipment, containers and boxes or cartons to remain adjacent to or beneath the mobile food establishment;
- 2) Provide or allow any sign or banner to remain that is not attached and solely supported by the mobile food establishment; or,
- 3) Sell food outside of the vehicle, for example, from a table under a free standing canopy. All food vending shall be done from the mobile unit.

169.14 Mobile food establishments are limited by the types and choices of approved food items being prepared and sold. Food preparation may be restricted by Consumer Health.

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Section 229.169(a)(8)(A) is amended by adding the following:

169.15 If liquid waste results from the operation of a mobile food establishment it shall comply with the following:

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1. It shall be stored in permanently installed, vented retention tanks that are at least fifteen percent (15%) larger than the water supply tank, but not less than thirty (30) gallons of capacity and shall be drained and thoroughly flushed during servicing operations.

2. All liquid waste shall be discharged to an approved sanitary sewage disposal system at the commissary.
3. Liquid waste shall not be discharged from the retention tank when the mobile food establishment is at an operational location.
4. The waste connection shall be located below the water connection to preclude contamination of the potable water system.
5. Connection to a sewerage system at an operation location is prohibited.
6. All used fats, oil, or grease shall be discharged to an approved grease interceptor at the commissary. Used fats, oils, or grease shall not be discharged to any unauthorized food establishment grease interceptor.

Section 229.169(a)(9)(B) is amended by adding the following:

169.16 Garbage and Refuse

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A mobile food establishment shall provide a minimum of 20 gallons for garbage and refuse storage facilities for the operator's use; and shall have garbage and storage facilities attached to the exterior of the mobile food establishment that are insect and rodent-proof for customer use.

169.17 Access to Restroom Facilities

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Prior to the issuance of a health permit, the operator of a mobile food establishment shall submit to the Consumer Health Division and comply with the following:

- a) Written proof of availability of restrooms with flushable toilets for the use of the mobile food establishment employees located in a business establishment within 500 feet of each location where the mobile food unit will be in operation for more than one (1) hour in any single day.
- b) Proof of availability of adequate facilities shall be in the form of a written and notarized statement from the owner, or owner's agent, including the name, address and telephone number of the property owner or authorized agent, and the type of business and hours of operation, granting permission for the use of the facilities. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one of the partners or officers.
- c) A copy of the notarized statement shall be displayed in the mobile food establishment in plain view of the public at all times.

169.18 Separation and Setbacks

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Mobile food vehicles shall be separated from existing buildings and other mobile food vehicles by a minimum of 12 feet. Mobile food vehicles shall be subject to all current zoning and setback regulations found in the Denton Development Code (DDC). Mobile food vehicles shall not set up in fire lanes or parking spaces that are required by the Certificate of Occupancy of an existing business.

169.19 Food Transportation

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- 1) During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original packages do not need to be overwrapped or covered if the original package is sealed.
- 2) Food shall be maintained at required temperatures at all times during transport.

169.20 Closure of a Mobile Food Establishment:

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When a mobile food unit is closed by the health officer for critical violations, the health officer shall post a closed sign and the inspection report on the unit. When a commissary or warehouse is closed by a health officer for critical violations, the health officer shall post the inspection report inside the facility. No person except the health officer shall remove or alter the inspection report or closed sign.

Section 229.169(b)(2) is amended by adding the following:

169.21 Servicing records to be kept by commissaries

The commissary from which a mobile food establishment operates shall issue and maintain servicing records for each unit in a manner and form prescribed by the health officer. The permit holder, person in charge, employee, or representative of any commissary shall keep and maintain servicing records at the commissary for a period of two years from the date of servicing or until retrieved by the health officer, whichever comes first. Servicing records maintained at the commissary shall be immediately available to any peace officer or health officer for inspection during normal business hours.

169.22 Falsification of servicing records

It shall be unlawful for an owner, permit holder, person in charge, employee, or representative of any commissary to issue a servicing record without first verifying that the mobile food establishment has complied with all servicing requirements. It shall be unlawful for any owner, permit holder, person in charge, employee, or representative of any commissary or mobile food establishment to knowingly present or issue any false, fraudulent, or untruthful servicing record for the purpose of demonstrating compliance with the requirements of this chapter.

Section 229.169(c)(2) is amended by adding the following:

169.23 Servicing operations

- 1) Potable water-servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.
- 2) Vehicle cleaning and in-place cleaning of nonfood-contact surfaces of equipment not requiring sanitization shall be done with potable water and shall be done in a manner that will not contaminate the vehicle's food storage or food preparation areas of equipment. If hoses are used in the cleaning process, they shall be food-grade and kept off the floor or pavement, on racks or by other approved suitable means. All cleaning areas shall be paved with a smooth surface of nonabsorbent material such as concrete or machine-laid asphalt, which is sloped to drain toward an approved catch basin or floor drain where the liquid waste can be lawfully disposed. The use of liquid waste transport vehicles (otherwise known as vacuum trucks), licensed by the Texas Commission on Environmental Quality for the removal and disposal of liquid waste resulting from mobile unit food operations is permitted.
- 3) Servicing operations may be performed by the commissary operator or by the mobile food establishment operator. It shall be the commissary operator's responsibility to observe or perform servicing on each mobile food unit and properly complete a servicing record. It is the responsibility of the mobile food establishment operator to confirm that the requirements of this section are fulfilled prior to resuming operations.
- 4) A current copy of each authorization must be maintained on file with the City of Denton Consumer Health Division and also in plain sight on the vehicle for inspection by the City of Denton or a peace officer upon request.

169.24 Permitting of commissaries as food establishments

A commissary servicing any mobile food establishment may be an approved and permitted food establishment at which the mobile food unit is supplied with fresh water, emptied of waste water (and grease) into a proper waste disposal system, and cleaned, including washing, rinsing and

Deleted: 169.19 Requirements for snow cone vendors and ice cream vendors¶
<#>A snow cone vendor shall be limited to the sale of snow cones and pre-packaged items only and shall have a:¶
<#>Commercially approved source for ice and syrup;¶
<#>Hand wash sink with hot and cold running water under pressure, liquid soap, and paper towels;¶
<#>At least a two (2) compartment sink (with hot and cold running water under pressure) for washing and sanitizing utensils; and,¶
<#>Waste-water holding tank of adequate size for operation or be connected to an existing sanitary sewer.¶
<#>A snow cone vendor may also be required to meet any and all provisions required for a food service establishment, which the administrator deems necessary to protect the public health and safety. This type of establishment may be a fixed location capable of obtaining a certificate of occupancy. ¶
<#>A water heater system capable of producing water of 100° degrees Fahrenheit interconnected with the potable water supply shall be provided. A minimum of 15 gallons of water must be available.¶
<#>Adequate, conveniently located and accessible toilet and lavatory facilities shall be available to the snow cone stand at all times. A notarized letter signed by the owner/operator of the establishment where the facilities are located, must be submitted with the permit application giving written permission for the snow cone personnel to use such facilities and that the facilities will be available for use at all times during the food establishment's hours of operation. The path of travel to such facilities shall not exceed a distance of 500 feet.¶
169.20 Requirements for the sale of ice cream, other frozen desserts or novelties upon a public street ¶
(a) A person may not sell ice cream, frozen desserts or other novelties from a vehicle before sunrise or after sunset.¶
(b) Ice cream, frozen desserts, and other novelty frozen food items shall be individually wrapped by the manufacturer before being placed in the vehicle from which they are sold and shall be sold in the original wrapping.¶
(c) Such frozen items as described in (b) above may be sold from a pushcart.¶
169.21 All vehicles offering ice cream for sale shall have:¶
1) An automatic flashing device consisting of two lamps at the front of the vehicle, mounted at the same level and as widely spaced laterally as possible and displaying simultaneously flashing amber lights, and two (2) lamps at the rear of the vehicle mounted at the same level and as widely spaced laterally as possible and displaying simultaneously flashing amber lights, to be used at all times while each vehicle is in use for food service or solicitation of sales;¶
2) Signs in front and rear bearing the word "SLOW" in letters not less than six (6) inches high; and 3) be capable of maintaining a constant temperature for food storage and contain, in a conspicuous place, a thermometer to allow for verification of temperatures.¶

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sanitizing of those food contact surfaces or items not capable of being immersed in the mobile food establishment's utensil-washing sink. The servicing area must be of adequate size and scope as to accommodate its own operation, as well as those of the mobile food establishment.

- 1) Compliance with all other applicable rules and operational guidelines as may be promulgated by the health officer.
- 2) When the commissary is within another jurisdiction the permit holder shall provide a copy of the latest inspection of its facility by that regulatory authority.

169.25 Warehouse:

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- 1) If only prepackaged goods are sold, a warehouse may be accepted in lieu of a commissary.
- 2) Warehouses shall be required to meet only those rules necessary to prevent the contamination of stored foods, single service articles, utensils and equipment. In general, warehouses shall be exempt from the rules relating to finished walls, ceilings, or storage bases, light colored surfaces, restrooms, lavatories and utility facilities, provided foods are protected from contamination from dust, insects, rodents, flooding, drainage, or other contaminants.
- 3) Handling of unpackaged foods, dishwashing and ice making are prohibited in a warehouse.

169.26 A mobile food preparation facility shall not:

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- 1) Stop at any location, unless the stop is for less than one hour, to sell or serve food during any time other than the dates and times specified in the current itinerary on file with the Consumer Health Division for the mobile food preparation vehicle.
- 2) Serve as a commissary for another mobile food unit or as the base of operation for a caterer
- 3) Apply for variances of food processing
- 4) Use leftover foods. All PHF/TCS foods shall be served or discarded at the end of each business day
- 5) Use time as a public health control. All PHF/TCS foods shall be controlled by mechanical means
- 6) Park on an unimproved surface such as grass or dirt without written approval from the City.
- 7) Park at a residence.
- 8) Be permitted to be washed-out at the location of an existing food establishment. All interior washing shall be at an approved commissary. Only exterior washing of the mobile food vehicle may be done at a commercially operated carwash. Grease or wastewater shall not be dumped or drained at a carwash.
- 9) Leave a location of operation until the area of operation is free from trash or nuisance caused by the mobile food vehicle business, its employees, or its customers.

169.27 Inspection Procedures

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- 1) Critical violations shall result in the immediate closure of a mobile food unit, commissary or warehouse if the City of Denton Consumer Health officer determines that an imminent danger to the public health exists, and that the violation cannot be corrected immediately or an approved alternative procedure has not been implemented. Also refer to section 171.22.

- 2) For violations not resulting in closure, the corrections shall be made and approval shall be given by a City Health officer before reopening for business.

169.28 Requirements for snow cone vendors and ice cream vendors

- a) A snow cone vendor shall be limited to the sale of snow cones and pre-packaged items only and shall have a:
- 1) Commercially approved source for ice and syrup;
 - 2) Hand wash sink with hot and cold running water under pressure, liquid soap, and paper towels;
 - 3) At least a two (2) compartment sink (with hot and cold running water under pressure) for washing and sanitizing utensils; and,
 - 4) Waste-water holding tank of adequate size for operation or be connected to an existing sanitary sewer.
- b) A snow cone vendor may also be required to meet any and all provisions required for a food service establishment, which the administrator deems necessary to protect the public health and safety. This type of establishment may be a fixed location capable of obtaining a certificate of occupancy.
- c) A water heater system capable of producing water of 100° degrees Fahrenheit interconnected with the potable water supply shall be provided. A minimum of 15 gallons of water must be available.
- d) Adequate, conveniently located and accessible toilet and lavatory facilities shall be available to the snow cone stand at all times. A notarized letter signed by the owner/operator of the establishment where the facilities are located, must be submitted with the permit application giving written permission for the snow cone personnel to use such facilities and that the facilities will be available for use at all times during the food establishment's hours of operation. The path of travel to such facilities shall not exceed a distance of 500 feet.

169.29 Requirements for the sale of ice cream, other frozen desserts or novelties upon a public street

- (a) A person may not sell ice cream, frozen desserts or other novelties from a vehicle before sunrise or after sunset.
- (b) Ice cream, frozen desserts, and other novelty frozen food items shall be individually wrapped by the manufacturer before being placed in the vehicle from which they are sold and shall be sold in the original wrapping.
- (c) Such frozen items as described in (b) above may be sold from a pushcart.

169.30 All vehicles offering ice cream for sale shall have:

- 1) An automatic flashing device consisting of two lamps at the front of the vehicle, mounted at the same level and as widely spaced laterally as possible and displaying simultaneously flashing amber lights, and two (2) lamps at the rear of the vehicle mounted at the same level and as widely spaced laterally as possible and displaying simultaneously flashing amber lights, to be used at all times while each vehicle is in use for food service or solicitation of sales;
- 2) Signs in front and rear bearing the word "SLOW" in letters not less than six (6) inches high; and 3) be capable of maintaining a constant temperature for food storage and contain, in a conspicuous place, a thermometer to allow for verification of temperatures.

Section 229.170(a) is amended by adding the following:

170.1 The term temporary food service establishment shall not include concession stands, which operate at a fixed location in conjunction with scheduled, community-based sporting or recreational events provided that the preparation and serving of potentially hazardous foods shall be restricted to only those pre-cooked, pre-packaged potentially hazardous food products that have been properly prepared in accordance with all Department of State Health Services and local requirements and are properly stored, handled, and served in the unopened, original package from said concession stands. In such instances where open potentially hazardous foods are prepared on site from a concession stand, these shall be evaluated on a case-by-case basis and a determination shall be made as to requirements.

- a) A temporary food service establishment that does not comply with other requirements of this chapter or other city ordinances applicable to food service establishments is permitted if:
 - 1) The health officer finds that the operation will not result in a health or safety hazard or a nuisance;
 - 2) The operation is limited to a single, fixed location, which may include one or more facilities at the location;
 - 3) The operation is either:
 - a. Limited to a time of not more than fourteen (14) consecutive calendar days;
 - b. Operating under a city park and recreation department that has been approved by the city; and
 - c. The food service establishment complies with the other requirements of this section.
- b) An application and non-refundable fees for a temporary event permit (per food booth) shall be submitted at least two (2) working days prior to the event, or five (5) days prior to the event if ten (10) or more booths are permitted for the same event. The application shall include the time the booth will be set up and ready for inspection.
- c) If an application is not submitted by the deadline in (b) above, the acceptance of the application will be at the discretion of the health officer, and an administrative fee will be charged.
- d) All requirements of the food booth must be in place before a permit will be issued.
- e) A temporary event permit will be required if there is open food (e.g. offering samples) available.
- f) Food manufacturers must submit a copy of the state manufacturer license with their application.
- g) Permits for temporary food service establishments that are not operating in conjunction with a City sponsored special event or community based event shall be limited to six (6) permits per year per establishment.
- h) A foodservice establishment with a current annual health permit will be required to obtain a temporary event permit if the event is at a location outside their permitted premises.
- i) A temporary food service establishment shall not:
 - 1) Prepare, serve, sell or distribute any food not approved in advance by the health officer. This prohibits the storage and preparation of food from a private residence. Any slicing, dicing or cutting of potentially hazardous foods must be done in a commercial kitchen and brought to the event under proper temperature control; this

includes raw hamburger meat that must be brought in as commercially prepared frozen patties. No “gyro” type meat cookers are allowed.

- 2) Prepare potentially hazardous food; except, that the establishment may prepare potentially hazardous food that is approved in advance by the health officer and does not require substantial preparation prior to consumption (including, but not limited to, a hamburger or frankfurter) or may prepare potentially hazardous food that is obtained by the establishment in individual servings;

Section 229.170(b) is amended by adding the following:

170.2 Potentially hazardous food products shall be held in mechanical refrigeration that is maintained at 41° degrees or less. Frozen products may be stored in ice only if approved in advance by the regulatory authority and the duration of the event and items offered for sale is limited, typically less than four (4) hours in duration. Potentially hazardous food products shall be held in mechanical hot or cold holding equipment if the event is more than four (4) hours in duration. All foods are to be kept properly protected during storage, preparation, and service; this will include grill covers or lids to prevent contamination from overhead.

Section 229.170(d)(3) is amended by adding the following:

170.3 Small “crock-pots” may be used to properly store food utensils in water 135 ° F degrees or hotter; or utensils may be stored in running water dipper wells.

170.4 “Sterno” heating units are not allowed for use at outdoor events to hold foods hot.

Section 229.170(d)(4) is amended by adding the following:

170.5 Bare hand contact with ready-to eat foods is prohibited. Single-use gloves must be worn over cleaned hands.

170.6 Animals are prohibited from being within the interior limits of a temporary food establishment.

Section 229.170(h) is amended by adding the following:

170.7 A temporary food service establishment shall comply with liquid waste disposal ordinances, solid waste disposal ordinances and fire codes.

Section 229.170(k)(3) is amended by adding the following:

170.8 A temporary food service establishment shall comply with these Texas Food Rules and any other requirement that the administrator determines is necessary to protect the public health or safety and imposes as a condition to the lawful operation of the establishment.

170.9 Food-handler cards required: Food safety training is required for all temporary food establishment workers. Food service workers may obtain a food-handler card through a class offered through the City of Denton Consumer Health Division’s normal schedule of classes or an approved on-line course. Depending on the duration of the event and the extent of the food service being offered, the Consumer Health Division may mandate a Food Manager’s Certification for a minimum of one or maximum of all personnel during the event.

170.10 Catering operations.

- a) All catering operations based in the City of Denton shall comply with all state rules, laws, and local ordinances. A person shall not engage in a catering operation unless the service is affiliated with a food service establishment operating from a fixed facility that is permitted by the appropriate health authority.
- b) The base of operations for a catering operation shall be physically separate from a residential home and shall be a permanent, fixed location.
- c) The health officer may inspect a catering operation at any time.

170.11 The health officer may request copies of the health permit issued to the caterer from the regulatory authority having jurisdiction where the food is prepared or packaged.

170.11 FARMER'S MARKET

a) Management and Personnel

Responsibility, assignment. The permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the market during hours of operation. Where it is allowed, food vendors that offer, sell, or distribute food that is potentially hazardous or that offer samples of food; shall have a person in charge that can show proof of successful completion of a Texas Department of State Health Services approved Certified Food Managers Course. Food vendors that offer, sell, or distribute only prepackaged foods, non-potentially hazardous foods or beverages or temporary food vendors in conjunction with a special event at such location are exempt from the food manager certification course requirement. Proof of successful completion of a certified food manager course may be required of food vendors having exemptions if judged by the regulatory authority to be capable of causing food-borne illness or may be an increased public health risk.

b) Food

1) Preventing contamination:

- a. Food Display. Except for plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging, counter, service line, or salad bar food guards that comply with NSF standards, completely enclosed display cases; or other means approved by the Regulatory Authority. Letters may be required from the fabricator or installer of such food guards stating compliance with NSF standards if visual compliance is not evident through the use of labels or listings posted directly on the food guard by the authority approved to affix such label or listing.
- b. Except for plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food that is not completely packaged must be located under a cover, tent or other covering approved by the Regulatory Authority and remain under the covered protection for the duration of the operating period.

2) Approved Source. Only food from an approved source may be offered at a Farmer's Market or Food Market under these rules. Foraged foods are not considered to be from an approved source. Food prepared in a private home, a Cottage food production operation or from an unlicensed food manufacturer or wholesaler is considered to be from an unapproved source and may not be used or offered for sale in Farmer's Markets or Food Market as defined in this rule. Food from a kitchen regulated by a local regulatory authority and proof of such is presented shall be considered from an approved source.

3) Meat, non-poultry.

- a. Meat such as game animals, ratites or equine meats (as defined in TFER) may not be sold.
- b. Whole muscle meat shall be stored frozen and held under refrigeration capable of maintaining the meat in a hard, frozen state. Meat shall be packaged ready to offer or sell. Separating, cutting or otherwise removing meat from an intact package is prohibited.

- c. Meat shall be produced, stored, labeled in compliance with U.S. Department of Agriculture rules and regulations. Proof of license or exemption shall be provided to the Regulatory Authority at time of application.
- 4) Poultry.
- a. Poultry is defined as allowed by TFER, as amended.
 - b. Poultry shall be stored frozen and held under refrigeration capable of maintaining the meat in a hard, frozen state. Poultry shall be packaged in form ready to offer or sell. Separating, cutting or otherwise removing poultry from intact packaging is prohibited.
 - c. Poultry shall be produced, stored and labeled in compliance with U.S. Department of Agriculture rules and regulations. Proof of license or exemption shall be provided to the Regulatory Authority at time of application.
- 5) Seafood, prohibition. Sale of seafood is prohibited at a Farmer's Market
- 6) Sampling: Allowed only where expressly approved by the Regulatory Authority. Where allowed, sampling shall comply with all of the following:
- a. Non-PHF/TCS foods shall be offered to the consumer in individual servings or bites and shall not be made available for self service. Portioning foods on site is prohibited. Portions shall be completely enclosed until given to the consumer or shall be unpackaged by the consumer.
 - b. Only single-service articles may be given to the consumer for use.
 - c. PHF/TCS foods shall be maintained at proper temperatures according to TFER (41 degrees or colder; 135 degrees or hotter). Meats shall be frozen and remain frozen until sold to the consumer
 - d. Where PHF/TCS foods are stored on ice, dry ice, or other items intended for use to cool or freeze foods, a thermometer shall be present in the container holding such foods. The thermometer must show evidence of proper temperatures in which to maintain the food item in compliance with TFER. If at any time, food stored in this manner is not at proper temperatures, the Regulatory Authority shall dispose of the food, whether voluntarily or involuntarily, if it cannot be determined if it is safe to sell or offer for sale.
 - e. Time as a public health control may not be used as the sole means for holding PHF/TCS foods safely
 - f. Ice shall be readily drained and water or melting ice shall not come into contact with stored food.
 - g. Foods cut or constituted on site such as soups, dips, relish, condiments and sauces shall be maintained at or below 41 degrees Fahrenheit and process must comply with the Equipment and Utensils section of these rules.
 - h. Digital thermometer accurate to +/- 2 degrees Fahrenheit shall be on site for use by the vendor. One thermometer shall be provided for each piece of equipment used to hold proper PHF/TCS temperatures.
- 7) Animals, prohibition.

- a. Animals may not be offered for sale, or given away at a Farmer's Market.
 - b. Other than service animals that are conspicuously and properly identified, animals accompanying their owner, where allowed, shall be in a carrier or on a leash and under direct physical control of the owner. Animals may not be allowed within 10 feet of a food booth.
- c) Equipment and Utensils
- 1) Functionality of equipment.
 - a. Except for a municipally owned Farmer's Market, equipment used to keep foods under this ordinance frozen or refrigerated shall comply with TFER and be able to maintain required temperatures for the duration of operations. Municipally owned Farmer's Markets shall have mechanical temperature controlled equipment capable of maintaining proper food temperatures as required in TFER. Mechanical food equipment shall obtain approval from the Regulatory Authority for use.
 - b. Tables used within the vending area shall be made of non-porous material and be easily cleanable.
 - c. Utensils used, only when approved for sampling, shall be made of non-wood material and disposable unless compliance for cleaning and sanitizing under Section 229.165 of TFER, or as amended, is provided and approved by the Regulatory Authority for use onsite.
 - 2) Equipment numbers and capacities.
 - a. At least one (1) hand wash sink or facility complying with the Temporary Food Establishment requirements in TFER (Section 229.170) shall be located within the immediate selling area of each food vendor approved to sample foods and available to each vendor where required by the Regulatory Authority.
 - b. Manual ware-washing sink requirements. At least one (1) sink with at least three (3) compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils for vendors that are approved to sample.
 - c. Alternative manual ware-washing equipment may be used only by vendors when approved by the regulatory authority. Such written approval shall be evident and conspicuous on the permit placard issued to the vendor.
- d) Water, Plumbing, and Waste
- 1) Where a hand sink is required, this hand sink shall be a portable hand sink capable of producing hot water, having a portable tanked water source and having a waste tank at least 2/3 size greater than potable source water tank. Hot generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the operation. If approved by the regulatory authority, other means of hand washing may be used.
 - 2) Where manual ware-washing is required using a hard – plumbed system, a licensed Plumbing inspector shall inspect the work prior to use. Backflow devices may be required.

- 3) Trash receptacles shall be available and shall be non-porous. Efforts shall be made to dispose of trash offsite in a timely manner so as not to encourage pests.
- e) Physical Facilities
- 1) Floor construction. Floors and floor coverings of all vending areas shall meet the requirements found in the TFER or be approved by the health officer.
 - 2) Vending area shall be covered and protected to minimize presence of pests.
- f) Plan Review
- 1) Farmer's Market vendor application shall be submitted by each food vendor.
 - 2) The plans and specifications shall indicate the following (whether existing or not):
 - a. Proposed layout drawn from a "bird's-eye view" showing equipment arrangement and schedule including type and model and grease/waste storage receptacle location,
 - b. Manufacturer's specifications sheets of all equipment
 - c. List of all food items offered or vended, listing separately foods proposed to be sampled.
 - d. Proof of food origin, copy of manufacturer's license, copy of storage license or description of approved source where food items will be obtained from; and copy of approved food labels.
- g) Administrative Process
- 1) All work must be inspected by the regulatory authority for compliance with these rules. After compliance with these rules is deemed to be met, a Food Vendor Permit may be approved.
 - 2) Failure to follow the approved plans and specifications will result in a permit denial, suspension or revocation.
 - 3) A notice, as required by this ordinance, 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 holder of the permit. A copy of the notice shall be on file in the records of the regulatory authority.
 - 4) The hearings provided by the HaBSCo shall be conducted by them at a time and place designated by HaBSCo. Based on the recorded evidence of such hearing, the regulatory authority shall make final findings, 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 the regulatory authority.
 - 5) Condemnation of adulterated products or on site destruction. Food found to be adulterated shall be condemned and, if no appeal be taken from such determination of condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector.
 - 6) All appeals from final suspension or revocation of a Food Vendor Permit shall be made in writing to the building official or his designee. The appeal shall be filed in writing within ten (10) days of the occurrence of the suspension or revocation. The Consumer Health director (or his designee) shall attempt to hear the appeal within thirty (30) days after the notice of the appeal. The Consumer Health director shall have the power to reverse a decision of the regulatory authority

where he finds that such a reversal will not affect the health and/or welfare of the public. All decisions of the Consumer Health Director or his designee shall be subject to review by the City Council at one of its regularly scheduled meetings. The decision of the Consumer Health Director or his designee will be final unless reversed by the City Council.

Section 229.171(b)(2) is amended by adding the following:

171.1 Plans

- a) The owner shall submit plans and specifications for construction of work areas intended for use in the operation of a food establishment, and the location, size, and type of fixed equipment and interior finishes of such areas to the City of Denton for approval, before work is begun, when a food service establishment is constructed, or:
 - 1) The nature of the operation changes;
 - 2) The establishment is extensively remodeled;
 - 3) When an existing structure is converted for use as a food service establishment;
or
 - 4) When the menu is changed to include more, or different menu items.
- b) In a food service establishment, the food preparation area shall be of adequate size and shall constitute a minimum of twenty-five (25) percent of the total square footage of the occupied permitted area or the minimum size deemed necessary by the Consumer Health Division.
- c) In a food service establishment, dry storage areas shall be of adequate size and shall constitute a minimum of fifteen (15) percent of the total square footage of the food preparation area. At the discretion of the Consumer Health Division, additional dry storage may be required.
- d) A menu must be submitted with all plans. If changes are made to the menu at a later time, the changes must be submitted for approval by the Consumer Health Division.
- e) All plans submitted shall include information on the following specifications:
 - 1) Aisles and working spaces: Shall be unobstructed and of sufficient width to permit employees to readily perform their duties without contaminating food or food contact surfaces by clothing or personal contact. Minimum width of aisles shall be thirty-six (36) inches.
 - 2) Auxiliary equipment: Water heaters, washing machines, dryers, remote connected refrigerators, compressors, and air conditioners must be located outside of food preparation areas.
 - 3) Equipment and utensils: All equipment is to be NSF (National Safety Foundation) approved or commercial grade.
 - 4) Floors: In food preparation areas, storage areas, utensil washing areas, restrooms, and dressing rooms, floors shall be constructed of smooth, durable, easily cleanable, non-absorbent materials of commercial grade. Flooring must be light colored, without texture or patterns that create difficult places to clean. In addition to the kitchen areas of day care centers, floors in food service areas of classrooms shall meet these requirements.

The health officer shall establish approved floor surfaces in food preparation areas based upon the degree of preparation expected. Food establishments involved in heavy food preparation shall incorporate quarry tile, cement-based terrazzo tile or an equivalent floor covering as approved by the health officer. Food establishments involved in light food preparation shall incorporate a commercial grade sheet vinyl or

equivalent floor covering as approved by the health officer. Establishments involved in no food preparation shall incorporate sealed concrete, vinyl asbestos tile or an equivalent floor covering as approved by the health officer. An approved sealer (such as rubber cove base) shall be required at the floor/wall interface. If using ceramic tile squares in the food preparation area, the minimum size of tiles shall be 12" x 12" (twelve by twelve inches).

- 5) Ice machines: Are to be of adequate size and located in areas that meet the wall, floor and ceiling design standards for food preparation areas. Do not locate an ice machine near sources of potential contamination, such as exposed sewer lines, open stairwells, etc.
- 6) Refrigerators/freezers: Each mechanical refrigeration unit storing potentially hazardous foods must be of commercial type (even in day care center rooms) and each unit must have a numerically scaled indicating thermometer. All such units must hold foods at 41° degrees Fahrenheit or colder. Freezers must hold frozen foods at a temperature of zero (0) ° degrees Fahrenheit or colder. Walk-in coolers must be commercially built and have interiors of impervious, non-absorbent materials. Shelves must be resistant to rust. Mechanical refrigeration is required on salad bars, etc. for holding cold foods cold; holding foods in ice will not be acceptable.

The processing and packaging of meat and poultry shall be conducted in a refrigerated room:

- a) Where the temperature is kept at 50° degrees F or less; or
 - b) Which, along with processing equipment, undergoes a mid-shift cleanup after 4 (four) hours of operation.
- 7) Sinks:
- a) Shall be the number required by law. Stainless steel hand sinks shall be located within every twenty-five (25) linear feet of unobstructed space in food preparation and utensil washing areas so it is convenient for employees to wash hands as often as necessary. Hand-wash sinks shall be freestanding or wall hung. If a sink is too close to other equipment or sinks, a splashguard may be required. Sinks are to be of adequate size to allow for the thorough washing of hands and forearms. Liquid soap and paper towels are required at the hand sink and lotion hand sanitizer is required if gloves are not used. Lavatories, soap dispensers, hand-drying devices and all related fixtures shall be permanently mounted and kept clean and in good repair.
 - b) A three (3) compartment sink that has basins large enough to allow immersion of the largest utensil and two (2) self draining drain-boards shall be required for manually washing, rinsing and sanitizing equipment and utensils.
 - c) A stainless steel, four (4) compartment sink with two (2) self-draining drain-boards shall be installed in all bar areas. This requirement may be modified if glassware is sanitized in a commercial dishwasher.
 - i. Knee pedals, electronic eye and metered faucets are not allowed in kitchen hand sinks but are allowable in public restrooms.
 - ii. Blower dryers shall not be allowed as a means of drying hands in food preparation or dish wash areas. Common towels are also prohibited. Steam-mixing valves are prohibited.

- iii. All dishwashing equipment shall be located in one area to prevent any cross contamination from soiled to clean dish storage or food preparation.
- 8) Storage rooms: Wood shelving is allowed for dry storage use only if finished with varnish or high gloss type paint to make sure it is smooth, non-absorbent, and easy to clean. Rooms are to have finished walls (minimum finish includes: taped and bedded sheetrock painted with high gloss paint) and commercial flooring with rubber cove base at floor/wall juncture. Dry storage rooms may contain refrigerators or freezers not requiring drains to the sewer for condensate removal.
- 9) Wait areas: If remote from food preparation or service areas, and used only for non-potentially hazardous beverage preparation, wait areas shall comply with the following requirements:
 - a) Flooring shall be VCT or equivalent as approved by the Consumer Health Division
 - b) Counters shall be laminate surface, solid surface, or equivalent
 - c) Shelving below countertops shall be sealed, smooth, and easily cleanable
- 10) Toilet facilities: Public access shall not be through the kitchen.
- 11) Walls & ceilings:
 - a) In food preparation, storage, utensil washing areas, and restrooms; walls, ceilings, and other architectural features shall be smooth (not textured), easily cleanable, non-absorbent, light in color, and durable. Fibrous acoustical drop-in ceiling panels are prohibited in these areas. Wall areas behind sinks or places that receive heavy use must be finished with FRP (fiberglass reinforced panels), ceramic tile, epoxy type paint or similar materials to withstand moisture. Bathroom walls shall be finished (as those listed above) behind plumbing fixtures to a height of at least four (4) feet up from the floor. Heavy food preparation areas behind stoves, grills, and fryers shall be of stainless steel from floor to ceiling.
 - b) Surface mounted pipes shall not be installed tightly against the surface of the walls. There shall be a gap of at least two (2) inches between the pipe and the finished surface of the wall.
 - c) All holes cut into walls and ceilings for pipes and conduits shall be sealed, and the clearance between the floor surface and the bottom edge of a door shall be tight fitting.
- 12) Water heater: Must be of adequate size to provide enough hot water for all hand washing, ware washing, and cleaning. Minimum size: fifty (50) gallons. Commercial tank-less water heaters may be used.
- 13) At the discretion of the City of Denton, additional sinks such as pot sinks, produce washing sinks, etc. may be required.
- 14) Kitchens in day care centers shall comply with all rules of this code except that the size of the kitchen may be determined on a case-by-case basis as approved by the City of Denton.
- 15) When a foodservice establishment is extensively remodeled it must be closed during any demolition especially if water or power service is interrupted. If remodeling pertains to only a portion of the establishment, the food preparation areas shall be protected by a solid wall that prevents any construction debris or other contaminants from entering the kitchen or food service areas.

Section 229.171(f) is amended by adding the following:

171.2 Permit required.

- a) It shall be unlawful for any person, association of persons, firm or corporation to operate a food service establishment in the city without having obtained a permit under the terms of this section.
- b) Any person desiring to operate a food service establishment shall make written application for a permit at the office of the consumer health division. The application shall include the applicant's full name, street and post office address, and whether such applicant is an individual, firm, or corporation, and, if a partnership, the names of the partners, together with their addresses shall be included; the location and type of the proposed establishment; and the signature of the applicant or applicants. If the application is for a temporary or seasonal food service establishment, it shall also include the inclusive dates of the proposed operation.

171.3 Application fee.

- a) The applicant shall submit the applicable nonrefundable fee as set forth by city council by ordinance, and the schedule of fees shall be available for public inspection at the offices of the city secretary or the health officer. Notwithstanding any other provision of this chapter the payment of any fees set under this section is not applicable to the City of Denton or any political subdivision or agency of the State of Texas and the United States of America.
- b) Application fees for seasonal food service establishments shall be the same as those for any other similar full time food service establishment.
- c) An applicant shall not, under any circumstances, be entitled to a refund of application fees after an application has been filed.
- d) Fee Exemptions
 - 1) Food vendors operated by a public entity, such as D.I.S.D., university, community college, or the City, may be exempt from paying the Food Vendor fee, if approved by the regulatory authority.
 - 2) A food vendor that is not permanently permitted by the regulatory authority, but that is a recognized charitable or philanthropic organization, or that has attained 501(c)(3) status from the Internal Revenue Service, may be exempt from paying the temporary food establishment fee for a permit for a temporary event, if approved by the regulatory authority.
 - 3) Fee exemptions granted do not exempt any food establishment from the requirement of applying for, obtaining, and displaying a food vendor permit or from complying with the provisions of this section or any other applicable law.

Permits are not transferable from one person to another or from one location to another location. A valid permit must be posted in or on every food establishment regulated by this ordinance, in a location conspicuous to the consumer.

171.4 Permit issuance.

- a) Upon receipt of an application and payment of the applicable fee, the health officer shall make an inspection of the premises where the business is to be conducted. If the premises comply with the terms of this article and with all current requirements of the zoning ordinance, other ordinances and state law, a permit shall be issued to the applicant upon payment of the permit fee. The applicable fees shall be set by city council by ordinance and the fee schedule shall be available for public inspection at the offices of the city secretary or the health officer. The applicant shall submit the applicable nonrefundable fee as set forth by city council before a permit will be issued.

- b) Notwithstanding any other provision of this chapter, the payment of any fees set under this section is not applicable to the City of Denton or any political subdivision or agency of the State of Texas and the United States of America.
 - 1) In the event a food permit application is rejected, the administrator shall notify the applicant of the rejection in writing. The notice shall specify the reasons why the permit is denied. The decision of the administrator is final unless the applicant shall file an appeal as provided in Section 13-34. The decision of the administrator shall continue in effect until the final decision of the committee.
 - 2) Permits shall not be transferable. A person who acquires an existing food service establishment shall not operate the establishment without obtaining a new permit within ten (10) days from the date of the change of ownership.
 - 3) Upon change of ownership of a business, the new owner shall be required to meet current food establishment standards as defined in this code and state food rules before a permit may be issued by the Consumer Health Division.
 - 4) If the establishment changes the name of the business only, they have 10 days from the date of the name change to notify the Consumer Health Division in writing.
 - 5) Each food service establishment shall display all valid health permits in public view in the establishment.
 - a) A permit shall be valid for a period of twelve (12) months with the expiration date being the last day of the month the permit was issued; temporary, and seasonal permits shall expire in accordance with their terms, unless suspended or revoked by the health officer.
 - b) Acceptance of a permit issued by the administrator constitutes agreement by the establishment to:
 - 1) Comply with all conditions of the permit and all applicable provisions of this chapter;
 - 2) Allow the lawful inspection of its facility and operations.
 - 3) Inspections of newly constructed establishments prior to opening shall be done:
 - i. when equipment is set in place;
 - ii. at least 2 weeks prior to opening; and
 - iii. At least 2 days prior to opening.

171.5 If inspections are called for before the establishment is ready for them, the owner may be charged an administrative fee.

171.6 Expiration and renewal of permits.

- a) A permit lapses and is void unless the applicable permit fee is received by the City of Denton before the expiration date of the existing permit.
- b) A permit lapses and is void if the food service establishment operating under the permit constructs a new facility or changes ownership.
- c) Permit renewal fees that are not received by the expiration date, will be assessed an additional administrative fee.

171.7 Revocation of permit.

The consumer health administrator may, after providing opportunity for a hearing, revoke a permit if the administrator determines that the manager or owner of a food service establishment has:

- a) Interfered with the health officer in the performance of his duties; or
- b) Been convicted twice within a twelve-month period for a violation of this chapter; or
- c) Failed to comply with a hold order or a condemnation order; or
- d) Failed to comply, within the time specified, with an order to correct or abate an imminent and serious threat to the public health or safety; or
- e) Intentionally or knowingly impeded a lawful inspection by the health officer; or
- f) Been closed two (2) or more times within a twelve-month period for conditions that constituted a serious and imminent threat to public health.

171.8 Prior to revocation, the health officer shall notify the holder of the permit, or the person in charge of the food service establishment, in writing, of the reason for which the permit is being revoked and that the permit shall be revoked at the end of five (5) days following service of such notice unless a written request for a hearing is filed with the city by the holder of the permit within such five-day period. If no request for hearing is filed within the five (5) calendar day period, a final notice of revocation shall be served. Upon receipt of the final notice of revocation, the food service establishment shall immediately cease operation and the permit shall be considered finally revoked.

171.8 Application after revocation.

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

171.9 Service of notices.

A notice provided for in this article is properly served when it is delivered to the holder of the permit, or the person in charge of the food service establishment, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the city secretary.

171.10 Appeal from denial or revocation of a permit.

If the health officer denies the issuance of a permit or a permit is finally revoked, the officer shall send the applicant or permit holder by certified mail, return receipt requested, written notice of the denial or revocation and of the right to an appeal. The applicant or permit holder may appeal the decision of the health officer to the Health and Building Standards Commission – (HaBSCo) by giving written notice to the administrator within ten (10) days of the receipt of the denial or revocation notice.

171.11 Hearing.

A hearing of the appeal shall be conducted by the Health and Building Standards Commission. The hearing shall be held at a time and place designated by the Health and Building Standards Commission. The Health and Building Standards Commission shall hear and consider evidence offered by any interested person. Based upon the recorded evidence of such hearing, the Health and Building Standards Commission shall sustain, modify or rescind any notice, or order, considered in the hearing by a majority vote and provide a written report of the hearing decision to the holder of the permit.

The decision of the Health and Building Standards Commission is final as to administrative remedies, and no rehearing may be granted. Once the decision of the Health and Building Standards Commission is final under this section, the applicant or permit holder may appeal the decision to the state district court or court of appropriate jurisdiction.

171.12 Registration of food service establishments based outside city.

A food service establishment or commissary operating from a facility located outside the city that sells, distributes or transports food inside the city may not conduct operations inside the city unless the food service establishment:

- a) Furnishes the health officer with a certificate from a health authority having jurisdiction over the establishment indicating that the establishment complies with applicable health laws; or
- b) Furnishes the health officer other information that the administrator determines is necessary to enforce the provisions of this chapter or otherwise protect the public health or safety.

Section 229.171(g)(6) is amended by adding the following:

171.13 Authority to inspect.

- a) The health officer may inspect any and all things offered for sale, given in exchange or given away for use as food or drink for human consumption, and he/she shall have the authority to enter any food service establishment in the city, as authorized by law for the purpose of such inspection.
- b) The Consumer Health Division will conduct risk-based inspections and where the risk of food-borne illness is low, the Consumer Health Division, at its discretion, may lower the number of required inspections performed to a minimum of one each year. However, if the Consumer Health Division feels that a food service establishment poses a higher risk of food-borne illness, the Consumer Health Division shall conduct inspections as often as necessary to ensure enforcement of these rules.

171.14 Power to examine food service establishment records.

- a) The health officer shall have the authority to examine the records of a food service establishment in order to ensure compliance with all provisions of this ordinance or of state law.
- b) The health officer shall have the authority to require written documentation of cool down methods used and reheating times in order to verify compliance with food temperature items on the foodservice establishment inspection form.

Section 229.171(i)(2) is amended by adding the following:

171.15 The city health officer, after proper identification, shall be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with these rules. The officer shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

171.16 The following types of establishments are exempt from inspection requirements:

- a) Group homes;
- b) Establishments selling only commercially packaged, non-potentially hazardous foods;
- c) Vending machines that sells only commercially packaged, Non-PHF; and
- d) Facilities operated by nonprofit organizations for their members, families and invited guests.

171.17 Facilities are not exempt when food service is provided in conjunction with a child care facility, retirement center, hospital, school, indigent feeding program, or public fundraising events.

Section 229.171(j) is amended by adding the following:

171.18 Report of inspections.

Whenever an inspection of a foodservice establishment is done, the health officer shall record the findings on the inspection report form. The inspection report form shall summarize the requirements of these rules and shall set forth a weighted point value for each requirement. Inspection remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from one hundred (100). The health officer shall furnish a copy of the inspection report form to the person in charge of the establishment at the conclusion of the inspection.

Section 229.171(j)(6) is amended by adding the following:

171.19 Re-inspection.

- a) Any food service establishment inspected by the City of Denton Consumer Health Division which receives a score of seventy-five (75) or below on any inspection shall be re-inspected.
- b) This re-inspection shall be performed in the same manner, using the same form, as the previous inspection.
- c) If, upon subsequent re-inspection of the establishment, the health officer finds that sufficient measures were not taken to bring the score above a total of seventy-five (75), he will issue a citation and schedule a date for another re-inspection. The health officer shall continue to perform re-inspections until the establishment has made sufficient progress to warrant a score above seventy-five (75). The issuance of a citation for failure to meet the required score upon re-inspection shall not in any way limit the ability of the inspector to issue any other citation for any violation of this chapter.
- d) Re-inspection for failure to meet the required score shall be performed within fourteen (14) calendar days immediately following the original inspection, or as soon as possible thereafter, except that where an establishment is closed due to a score below sixty (60), pursuant to section 13-44, the original inspector shall determine the time of the re-inspection.
- e) Any food service establishment owner or manager that receives a score which he feels is unacceptable, may request a re-inspection. A re-inspection fee shall be required and shall be paid before the re-inspection will be performed. The health inspector shall perform the requested re-inspection within two weeks of the re-inspection fee payment. Only one re-inspection may be requested within any six (6) month period.

171.20 Fee for re-inspection.

- a) The fee for re-inspection shall be one-half the annual permit fee of the establishment receiving the re-inspection.
- b) A re-inspection fee will be charged for each re-inspection necessary to bring the food establishment's score above seventy-five (75).
- c) Payment of the re-inspection fee shall not void, or in any way affect the responsibility of the owner or permit holder for payment of any fines for any other violations of this chapter.
- d) The person, partnership, or corporation listed as "owner" on the original application shall be responsible for payment of any and all fees, including re-inspection fees.
- e) Payment of the re-inspection fee shall be made ~~within 5 business days after the re-inspection is performed.~~

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171.21 Violations.

- a) The Building Official of the City of Denton, or any of his designated employees, shall have the responsibility and power to enforce all provisions of this chapter within the corporate limits of the City of Denton, Texas.
- b) Whenever the health officer determines that there has been a violation of any provision of this chapter, which in his/her judgment can jeopardize the public health, or for violation of any items, which have been noted as problems on two (2) or more consecutive inspection reports, the health officer may issue a written citation for said person to appear in court.
- c) It shall be unlawful for any person to knowingly give the health officer a false name when such officer requests the name of said person for purposes of enforcing the provisions of this chapter.

Section 229.171(k) is amended by adding the following:

171.22 Authority to close.

- a) The health officer shall close without warning any building or place described in this chapter and prevent its use for the storage, manufacture, or sale of food or drink for human consumption whenever:
 - 1) The health officer, upon inspection of an establishment, finds sufficient violations which cause the rating score of said establishment to be below a total of sixty (60) points;
 - 2) The health officer finds that an establishment is operating with no working refrigeration units;
 - 3) The health officer finds that an establishment is operating without running water or hot water for a period of more than one (1) hour;
 - 4) The health officer finds an establishment is operating without a functioning ware-washing machine or adequate sinks for manual ware-washing; and
 - 5) The health officer finds any food service establishment with an unreasonable infestation of rodents or insects.
- b) It shall be the duty of the health officer to post a notice of closure for such conditions at the entrance of such building or place and to maintain the same until such conditions or practices have been removed or abated.
- c) No person shall remove or alter in any way a sign, which has been posted by the health officer.

Section 229.171(n) is amended by adding the following:

171.23 Examination and condemnation of food.

The health officer 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 establishment. The health officer 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.

171.24 Appeal from hold order.

The hold order shall state that a request for hearing to appeal the hold order may be filed within five (5) days and that if no hearing is requested, the food shall be destroyed. If requested, a hearing shall be held on the basis of evidence produced at that hearing by the Health and Building Standards Commission. The Health and Building Standards Commission may vacate the hold

order or direct the owner or person in charge of the food to denature or destroy such food or to bring it into compliance with the provisions of this chapter.

SECTION 2. The Health Permit Fee Schedule set forth in Exhibit "A" attached hereto and made a part hereof for all purposes, is hereby adopted and authorized to be imposed for the purposes of application for, and issuance of, permits required for compliance with the provisions of Chapter 13 "Food and Food Service Establishments".

SECTION 3. This ordinance shall repeal every prior ordinance in conflict herewith, but only insofar as the portion of such prior ordinance shall be in conflict; and as to all other sections of the ordinance not in direct conflict herewith, this ordinance shall be and is hereby made cumulative except as to such prior ordinances or portions thereof as are expressly repealed hereby.

SECTION 4. Any person violating any provision of this ordinance, shall upon conviction, be fined a sum not exceeding \$2,000.00. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 5. If any provision of this ordinance or application thereof to any person or circumstance is held invalid by any court, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas hereby declares that it would have enacted the remaining portions despite any such validity.

SECTION 6. Save and except as amended hereby, all the sections, subsections, and clauses of Chapter 13 Food and Service Establishments of the Code of Ordinances of the City of Denton, Texas shall remain in full force and effect.

SECTION 7. This ordinance shall become effective, after its passage and approval on, _____, 201~~3~~, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas within ten (10) days of the date of its passage.

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PASSED AND APPROVED this the ____ day of _____, 201~~3~~,

Deleted: 2

MARK A. BURROUGHS, MAYOR

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:

ANITA BURGESS, CITY ATTORNEY

BY: _____

EXHIBIT A: Health Permit Fee Schedule:

See new fees hi-lighted in yellow

Type of Health Fee's	Fee Amount
1. Two year food handler card . . .	\$25.00
2. Manager Certification Registering Fee with the City...	\$10.00
3. Swimming Pool Operator Certification . . .	\$50.00
4. Replacement Cards...	\$ 5.00
5. Beer and wine permit- New application processing fee . . .	\$25.00
6. Wine and beer retailer's permit on premises . . .	½ of TABC charge
7. Wine and beer retailer's off premises . . .	½ of TABC charge
8. Retail dealer's on premise license beer only . . .	½ of TABC charge
9. Retail dealer's on premise late hours license . . .	½ of TABC charge
10. Mixed Beverage permit – application fee . . .	\$25.00
11. Mixed Beverage permit fee	½ of TABC charge
12. Mixed Beverage Late hours	½ of TABC charge
13. Annual swimming pool permit . . .	\$160.00
14. Re-inspection Fee for pools ...	\$ 80.00
15. Small Restaurant <= 2,000 sq ft...	\$310.00
16. Large Restaurant >= 2,001 sq ft...	\$485.00
17. Small Grocery Store <= 12,000 sq ft...	\$325.00
18. Large Grocery Store >= 12,001 sq ft...	\$450.00
19. Convenience Store, no Deli	\$250.00
20. Convenience Store with Deli	\$300.00
21. Bars	\$275.00
22. Concession Stands, Seasonal Permits	\$175.00
23. Mobile Food Unit – Class 1 (pre-packaged foods)	\$175.00
24. Mobile Food Unit – Class 2 (foods prepared on vehicle)	\$310.00
25. Mobile Food Unit – Class 3	\$175.00
26. Mobile Food Unit – Class 4	\$ 75.00
27. Daycare Facility...	\$150.00 plus \$1.00/each child licensed
28. Nursing Home...	\$275.00
29. School Cafeteria...	\$150.00
30. Temporary Permit . . .	\$ 35.00
31. *Farmer's/Community Market Annual Permit . . .	\$240.00
32. *Farmer's/Community Market Monthly Permit . . .	\$ 40.00
33. **Application fee for all new permits	\$250.00
34. ***Administrative Fee ...	\$ 35.00

Deleted: ¶

Fees are non-refundable.

*Sales of whole or uncut produce shall be exempt from permits and fees

**Application fee shall not apply to Temporary Food Service Establishments

*** Administrative fees may be charged for the following, but not limited to: late payment of any annual health permit fees; late application and payment of fees for temporary events; failure to have a mobile unit inspected when due; change of name of business only; re-inspections of new or remodeled establishments when contractor calls for inspection but is not ready when the inspectors begin the inspection.