MH/vv
03/03/16
Item 12

AN ORDINANCE 2016-03-03-0163

AMENDING CHAPTER 13 OF THE CITY CODE ENTITLED "FOOD AND FOOD HANDLERS" TO ADOPT THE NEW TEXAS FOOD ESTABLISHMENT RULES AND TO FURTHER REVISE THE REGULATION OF FOOD ESTABLISHMENTS, AND PROVIDING FOR PENALTIES AND PUBLICATION.

* * * * *

WHEREAS, on October 11, 2015, the Texas Department of State Health Services (DSHS) released the updated Texas Food Establishment Rules which govern the operation, inspection and permitting of all retail food establishments; and

WHEREAS, DSHS' goal is to protect the public's health through the efficient operation of a comprehensive, progressive retail food protection program which focuses on education, training, and oversight, which will ultimately reduce the potential for food borne illness in Texas; and

WHEREAS, the new rules call for a revision to the current routine food establishment inspection score sheet which will add additional categories of review upon inspection by a Registered Sanitarian; and

WHEREAS, after careful review of the new Texas Food Establishment Rules recently implemented by the DSHS, the San Antonio Metropolitan Health District is recommending adoption of the majority of the new rules; and

WHEREAS, in addition, Metro Health will be implementing a voluntary ABC grade placard program anticipated to start June 1, 2016; and

WHEREAS, a grade placard will be offered by Metro Health to each food establishment which the establishment may choose to post at the location; and

WHEREAS, other proposed amendments to the Chapter include revisions authorizing temporary food establishments at farmer's market to operate two days a week per calendar month versus the current restriction to one day a week per calendar month, removing the ability to transfer permits from one location to another, and prohibiting the posting of an unauthorized grade placard as part of the voluntary food establishment ABC placard program; and

WHEREAS, with the exception of the food handler requirement which will take effect October 1, 2016, the other changes will be effective April 1, 2016; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 13 of the City Code of San Antonio, Texas entitled "Food and Food Handlers" is hereby amended by adding language that is underlined (<u>added</u>) and deleting the

language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 13 of the City Code of San Antonio, Texas is hereby amended as follows:

Chapter 13, Article I., In General, Section 13-2, Food establishment rules, is amended as follows:

Sec. 13-2. - Food establishment rules.

(a) The following are hereby adopted by this chapter:

(1) 25 Texas Administrative Code (TAC) Part I, chapter 229, §§ 229.210—229.222, Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing, or Holding Human Food.

(2) The Texas Food Establishment Rules, TAC §§ 228.1- §§228.278 ~~TAC §§ 229.161—229.171, and § 229.173—229.175~~, effective date October 12, 2015 ~~March 15, 2006~~.

(b) The following sections of the Texas Food Establishment Rules are not adopted by this chapter:

TAC §§ 228.2(3), 228.2(47), 228.2(57)(D), 228.2(123), 228.2(129) and 228.2(143) ~~§§ 229.162(40)(c), 229.162(89), 229.162(94) and 229.166(d)(2)~~.

(c) To the extent that these Code provisions are more strict than the Food Establishment Rules from the Code of Federal Regulations, and the Texas Food Establishment Rules, this Code shall control.

The following definitions in Chapter 13, Article I., In General, Section 13-3, Definitions, are deleted or amended as follows:

~~*Commissary* shall mean a food processing establishment or food service establishment approved by the director in which food, containers or supplies are kept, handled, prepared, packaged or stored for transportation by mobile food establishment vendors.~~

Snow cone/shaved ice/raspa shall mean a food item prepared from block or cubed ice by a shaving process that is covered or mixed with a syrup that may be prepared by the operator in a central preparation facility ~~commissary~~ or on the mobile food establishment, or be purchased prepackaged.

Chapter 13, Article II., Permits Generally, Section 13-26, Display, is amended as follows:

Sec. 13-26. - Display.

Every person authorized to operate a food establishment in accordance with the provisions of this chapter shall post such permit and the latest city health inspection report, or cause them to be

posted, in a conspicuous place within the premises where such food establishment is authorized to be established, maintained or operated. A food establishment may also choose to voluntarily display a grade placard distributed by the Department consistent with the score received for that inspection period. A food establishment shall not display a grade placard not provided by the Department or a grade placard inconsistent with the food establishment's inspection score.

Chapter 13, Article II., Permits Generally, Section 13-27, Fees enumerated, Subsection (e) and Subsection (g), are amended as follows:

Sec. 13-27. - Fees enumerated.

...

(e) Temporary food establishments shall secure a permit more than three (3) days before beginning operation and shall pay a fee of thirty dollars ($30.00) per stand, per day, per event. In the event that the temporary food establishment does not secure a permit more than three (3) days before beginning operation they shall pay a fee of thirty-five dollars ($35.00) per stand, per day, per event. Each event is considered a separate permit period. The fee shall be paid prior to commencing operations. Permit fees are non-refundable. However, the date of the event may be rescheduled or the event may be canceled and rescheduled if the applicant makes a request to reschedule by contacting the Department's Duty Supervisor ~~in person at the development and business service center~~ at least two (2) business days prior to the event.

...

(g) A temporary food establishment at a farmers market may operate one or two days ~~day~~ a week for a calendar month as a single event if the event sponsor/coordinator for a farmers market submits the applications and all fees necessary to the department for the temporary food establishments located at the special event. Temporary food establishments located at a farmers market shall pay a fee of forty-five dollars ($45.00) per location per single event.

...

Chapter 13, Article II., Permits Generally, Section 13-30, Transferability, is amended as follows:

Sec. 13-30. - Transferability.

Permits, as required by section 13-21, shall not be transferable from either one food establishment to another food establishment at a different location or from one person to another person who may subsequently own a certain food establishment~~, except that a permit holder who operates a food establishment may, upon his closing of that food establishment for the purpose of continuing the business at another food establishment, apply to the director for a transfer of his permit to the new location. Such application shall be accompanied by an inspection fee of five dollars ($5.00). The director shall authorize such transfer if, upon inspection, it is determined that the new establishment complies with the provisions of this Code. The director may effect such transfer either by endorsement of the address of the new location on the permit, or by cancellation of the permit and issuance of a new permit for the new food establishment~~.

***Chapter 13, Article IV., Mobile Food Establishments, Section 13-62, Permit requirements, Subsection (b) and Subsection (k), are amended as follows*:**

Sec. 13-62. - Permit requirements.

...

(b) A person seeking a mobile food establishment permit from the director shall make application on a form provided by the director, and shall provide all of the information listed in subsections (1)—(13) as part of the application:

(1) The name and address of the owner and/or operator;

(2) A government issued identification of the applicant;

(3) A description of the owner and/or operator;

(4) If the applicant represents a corporation, association or partnership, the names and addresses of the officers or partners;

(5) The name under which the food vending operation will be operated;

(6) A description of the type of food or the specific foods to be vended; as for example prepackaged or unpackaged nonpotentially hazardous food, prepackaged potentially hazardous food, and openly handled potentially hazardous food;

(7) The manner of mobile food vending operation to be conducted; as for example foot vending, truck, trailer, pushcart, etc.;

(8) A description of any vehicle to be used in the mobile food vending operation along with the license or registration and vehicle identification number of any vehicle licensed or registered with the state;

(9) A notarized letter on the form issued by the department that contains the address and food establishment permit number of the central preparation facility ~~commissary~~ required by this article;

(10) Documentation indicating the volume capacity of any required water and wastewater storage tanks either on the tank itself or in writing;

(11) If the permit application is for the sale of approved openly handled potentially hazardous food from a pushcart, a vehicle or a trailer, a water sample test result from a drinking water bacteriology laboratory accredited by the Texas Commission on Environmental Quality showing the absence of coliform and E. coli which was performed within thirty (30) days prior to the date of the permit application;

(12) Any other information reasonably required by the director; and

(13) If the person seeking a mobile food establishment permit from the director will be vending frozen or refrigerated confections, including but not limited to ice cream cones, frozen ice cream novelties, raspas or paletas directly to consumers on a public street, sidewalk or right-of-way, or will travel with the person's mobile food establishment on a public street, sidewalk or right-of-way to or from a location where the person vends, then the person shall provide as part of the application to the director a written statement from the city police department certifying that the person seeking a mobile food establishment's permit is not a sex offender registered with the state department of public safety and that the records reviewed by the city police department indicate that the person seeking a mobile food establishment permit has not been convicted of any sexual offense or any offense against a child as defined by applicable law. The basic requirements for submitting requests for criminal

backgrounds of persons engaged in mobile food vending are specific in Exhibit 1 hereto on file in the office of the city clerk, and hereby adopted and incorporated herein for all purposes by reference.

...

(k) The director shall make routine, unannounced inspections of mobile food courts, mobile food establishments, central preparation facilities ~~commissaries~~ and servicing areas when applicable, to determine whether or not the vending operation is being conducted in such a manner as to comply with the conditions of the permit, the provisions of this article, other applicable city ordinances and state and federal statutes, regulations and rules.

...

Chapter 13, Article IV., Mobile Food Establishments, Section 13-64, Sanitation requirements generally, is amended as follows:

Sec. 13-64. - Sanitation requirements generally.

Mobile food establishments shall comply with the following requirements. These requirements pertain to all mobile food establishments unless specifically addressed otherwise:

(1) Mobile food establishments shall comply with all sanitation and construction regulations as outlined in TAC § 229.169 of the Texas Food Establishment Rules as adopted in this chapter unless specifically addressed in this section.

(2) A mobile food establishment shall be operated from a central preparation facility ~~commissary~~ that is licensed or approved by a local, state or federal agency or an approved servicing area as applicable so as to be an approved source and the mobile food establishment shall report to the central preparation facility ~~commissary~~ or servicing area as needed, but not less than once per calendar week for all cleaning and servicing operations. The mobile food establishment shall acquire needed supplies from the central preparation facility ~~commissary~~ or other approved source. The mobile food establishment and central preparation facility ~~commissary~~ or servicing area shall maintain documentation of each visit to the central preparation facility ~~commissary~~ or servicing area and shall have that documentation available for inspection. Mobile food establishments dispensing fresh fish and shrimp, prepackaged novelty ice cream, whole, uncut fruit and vegetables and any prepackaged nonpotentially hazardous foods are exempt from this provision.

(3) Mobile food establishments that dispense snow cones/shaved ice/raspas, shrimp, fish, shellfish, or crusteacea shall provide a gravity fed hand washing system, soap, and paper towels.

(4) Liquid waste resulting from any mobile vending operation shall be stored in permanently installed retention tanks of at least fifteen (15) percent larger capacity than the water supply tank and shall be drained and thoroughly flushed during servicing operations. All liquid waste shall be discharged to an approved sanitary sewage disposal system at the central preparation facility ~~commissary~~ or servicing area.

(5) All food that requires packaging or preparation by the vendor shall be processed in the central preparation facility ~~commissary~~ that is required as a support facility for a mobile food establishment.

(6) Mobile food establishments dispensing snow cones/shaved ice/raspas shall be designed so as to enable the operator of the unit to protect the equipment, syrup, ice and utensils used in the operation of the unit from dust, insects and rodents while the unit is in transit or overnight storage.

(7) Mobile food establishments shall provide waste containers for customers at such times when the unit is parked.

Chapter 13, Article IV., Mobile Food Establishments, Section 13-65, Sanitation requirements for units with facilities to prepare or dispense unpackaged potentially hazardous food, Subsection (1) and Subsection (2), are amended as follows:

Sec. 13-65. - Sanitation requirements for units with facilities to prepare or dispense unpackaged potentially hazardous food.

In addition to the sanitation requirements described in section 13-64, food vendors preparing and vending food from a mobile food establishment with facilities to prepare or dispense unpackaged potentially hazardous foods, shall comply with the following requirements:

(1) A mobile food establishment central preparation facility ~~commissary~~ or servicing area required in subsection 13-64(2), shall include at least overhead protection for any supplying, cleaning or servicing operation except those areas used only for the loading of water and/or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection. Within this central preparation facility ~~commissary~~/servicing area, there shall be a location provided for the flushing and the draining of liquid waste separate from the location provided for water servicing and for the loading and the unloading of food and related supplies.

(2) The central preparation facility ~~commissary~~ and servicing area will maintain a log of mobile food establishments being serviced at the central preparation facility ~~commissary~~ or servicing area and require each mobile food establishment that is serviced to document the date and time of arrival and departure from the central preparation facility ~~commissary~~ or servicing area and the services performed. The mobile food establishment, central preparation facility ~~commissary~~ and servicing area will make available for inspection the record or records of the mobile food establishments serviced.

...

Chapter 13, Article IV., Mobile Food Establishments, Section 13-66, Special requirements for units which are hand pushed, Subsection (6), is amended as follows:

Sec. 13-66. - Special requirements for units which are hand pushed.

In addition to the requirements described in section 13-64, the following requirements shall be met by mobile food establishments of perishable foods and potentially hazardous foods from a hand pushed mobile food establishment; except that snow cones/shaved ice/raspas, produce, prepackaged novelty ice cream and prepackaged nonperishable food vendors are exempt from the provisions of subsections (6), (7), and (8).

...

(6) The mobile food establishment shall be cleaned and serviced at the central preparation facility ~~commissary~~ or servicing area and shall be stored inside a building when not in operation. The mobile food establishment shall acquire needed supplies from the central preparation facility ~~commissary~~ or other approved source. The mobile food establishment shall provide documentation of each visit to the central preparation facility ~~commissary~~ or servicing area and shall have that documentation available for inspection. With prior approval from the director or his designee, however, the mobile food establishment may be kept on site in a location that is secured, fenced and inaccessible to the public during nonoperating hours. When so stored on site, such mobile food establishment must be covered for protection from the elements and potential vectors with covering approved by the director or his agent. The mobile food establishment stored on site shall be cleaned and serviced on the same standards as those units cleaned and serviced in a central preparation facility ~~commissary~~ or servicing area and must meet all other requirements of this chapter.

...

Chapter 13, Article IV., Mobile Food Establishments, Section 13-67, Operation requirements and restrictions for mobile food courts, Subsection (a), is amended as follows:

Sec. 13-67. - Operation requirements and restrictions for mobile food courts.

(a) Mobile food courts shall comply with the following requirements:
- (1) The property must meet all commercial zoning requirements;
- (2) All mobile food establishments situated on the property shall be located on an impermeable surface such as concrete or rolled asphalt;
- (3) All mobile food establishments that remain on the property overnight shall have temporary connections for electricity, potable water and sewage disposal, or a system to adequately provide these services to each mobile food establishment;
- (4) All mobile food establishments that are unable to comply with the requirements of subsection 13-67(a)(3) shall be removed from the property overnight and serviced by an approved central preparation facility ~~commissary~~ prior to its next day of operation; and
- (5) A restroom equipped with flush type toilets and properly plumbed to a sanitary sewage system with sufficient capacity to meet the needs of the mobile food court's mobile food establishments and customers shall be available on the property.

Restrooms shall be equipped with hand sinks, hot and cold water and either hand towels or forced air hand dryers.

...

***Chapter 13, Article VI., Certification of Food Establishment Personnel, Section 13-113, Exemption from requirements, Subsection (a), is amended as follows*:**

Sec. 13-113. - Exemption from requirements.

(a) Certification of food managers will not be required for:

(1) A food establishment that serves, sells or distributes only prepackaged foods and/or non-potentially hazardous beverages;

(2) Temporary food establishments that will be in operation for less than four (4) days;

(3) Temporary food establishments that are not required to have a certified food manager under subsection 13-120(c);

(4) Farmers market/flea market/trade show food establishments and mobile food establishments;

(5) Persons supplying food vending machines; however, a certified food manager shall be in charge at the central preparation facility ~~commissary~~ supplying the food vending machines; and

(6) A food establishment that serves, sells or distributes prepackaged or unpackaged non-potentially hazardous food products such as pickles, commercially baked products, and Chinese candy, and/or hot dogs and associated non-potentially hazardous condiments, and/or prepackaged dairy and dairy-like products.

(7) Any food establishment exempted from the requirements of section 13-112 shall lose this exemption if it scores more than twenty-five (25) demerits on any two (2) regular inspections by the director within a 12-month period.

...

***Chapter 13, Article VI., Certification of Food Establishment Personnel, Section 13-119, Food handler certification required, Subsection (a), is amended as follows*:**

Sec. 13-119. - Food handler certification required.

(a) Food handler certification is required of all employees of a food establishment regardless of their position. The food establishment shall maintain on the premises a certificate of completion of the food handler training course for each food employee. ~~as follows:~~

~~(1)For all personnel performing open food handling in a food establishment that receives thirty (30) or more demerits related to food handling on an inspection conducted under this chapter.~~

~~a.All five- and four-point demerit items and three-point demerit item numbers: 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 will be considered food handler related. All other three-point demerit items will not count towards the thirty (30) or more food handler related demerits.~~

~~b.Employees at the food establishment who have a current food handler certification will not be required to repeat the education process.~~

~~(2)For all personnel performing open food handling in a food establishment receiving twenty-one (21) or more demerits on a reinspection conducted under this Chapter during which a critical violation is found.~~

~~a.The intent of this re-inspection is to verify corrective action of the original inspection.~~

~~b.Employees at the food establishment who have a current food handler certification will not be required to repeat the education process.~~

~~(3)For all personnel performing open food handling in a food establishment that has had its permit temporarily suspended for one or more health violations.~~

~~a.This requirement does not include temporary suspensions due to the occurrence of imminent health hazards as defined in TAC § 229.171(k) of the Texas Food Establishment Rules, limited to fire, flood, or extended interruption of electrical or water service.~~

~~b.This requirement does include temporary suspension due to the occurrence of imminent health hazards as defined in TAC § 229.171(k) of the Texas Food Establishment Rules, limited to sewage backup, misuse of poisonous or toxic materials, onset of an apparent food borne illness outbreak, gross unsanitary occurrences or conditions, such as rodent and insect infestation, or other circumstances that may endanger public health.~~

~~(4)For all personnel performing open food handling in a food establishment in which the same critical violation for a food handling related item is found on two (2) consecutive inspections within the same 12-month period.~~

~~(5)For at least one person performing open food handling in a mobile food establishment.~~

~~(6)For at least one person performing open food handling in a temporary food establishment as required by section 13-120.~~

~~(7)For at least one person performing open food handling in a temporary food establishment located at a farmers market, as required by section 13-120.~~

~~(8)Persons or organizations conducting charitable feeding activities as described in subsection 13-13(c) of this Code must have a certified food handler or food manager present when food is prepared, or onsite while food is distributed if food will be prepared onsite.~~

...

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. All other provisions of Chapter 13 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

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SECTION 5. Violations occurring after the effective date of this ordinance shall be punished as provided in the revised Chapter 13 of the City Code of San Antonio. Violations prior to the effective date shall be punished under the former applicable Sections which shall remain in effect for that purpose.

SECTION 6. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 7. The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

SECTION 8. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 9. The revisions to Chapter 13 of the City Code of San Antonio, Texas shall be effective on April 1, 2016 with the following exception: Revised Section 13-119 of Chapter 13 entitled, Food handler certification required, shall be effective on October 1, 2016.

SECTION 10. Penalties provided for in the revised Chapter 13 of the City Code of San Antonio shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 3rd day of March, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, City Attorney

Agenda Item:	**12**
Date:	03/03/2016
Time:	09:54:13 AM
Vote Type:	Motion to Approve
Description:	An Ordinance amending chapter 13 of the City Code entitled "Food and Food Handlers" to adopt the new Texas Food Establishment Rules and to further revise the regulation of food establishments, and providing for penalties and publication. [Erik Walsh, Deputy City Manager; Dr. Vincent R. Nathan, Interim Health Director]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

CITY OF SAN ANTONIO
METROPOLITAN HEALTH DISTRICT

Chapter 13 Amendments
Item # 12

Presented by: Dr. Vincent Nathan, Interim Director of Health

Objectives

- Increased public awareness
- Transparency
- Long-term restaurant compliance
- Increase food safety

2

Stakeholder Engagement

- *November 19, 2015* – San Antonio Hotel and Lodging Association (SAHLA) Board Briefing
- *November 23, 2015* – Meeting w/ San Antonio Restaurant Association (SARA) leadership
- *December 2, 2015* – Meeting w/ SARA leadership
- *December 7, 2015* – Meeting w/ SARA Board
- *February 4, 2016* – Meeting with SARA Board and SAHLA Board Members

3

Updated Recommendations

- Adopt the new Texas Food Establishment Rule (TFER) as set forth by DSHS
  - Effective Date April 1, 2016
- Mandatory Food Handler Certification
  - Effective Date October 1, 2016
  - Reduce Number of Re-inspections
  - Improves Long-term Compliance

4

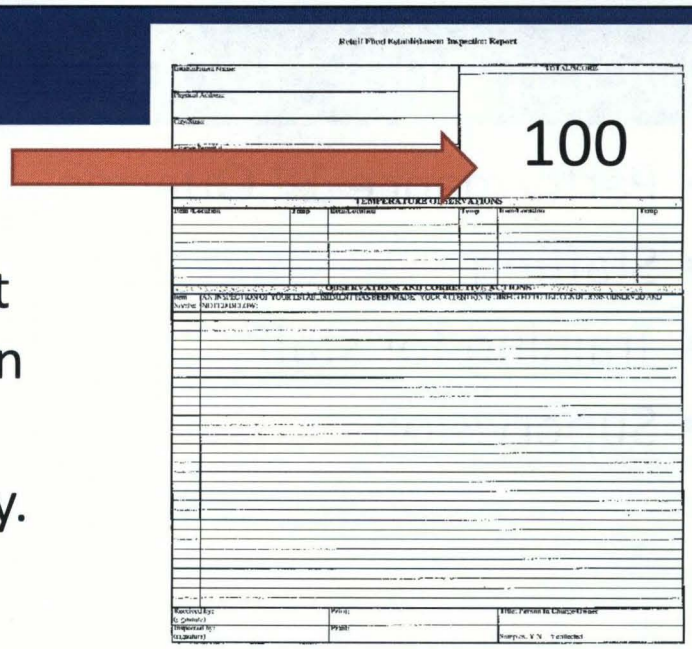
Updated Recommendations

- Implement a grading system that translates the current demerit score to a 100 Point Scale
  - An enlarged numerical score will be posted on the corner of the inspection report
- Voluntary Placard Program (Effective June 1, 2016)
  - A=0–10 Demerits
  - B=11-20 Demerits
  - C= 21 or more Demerits
- Prohibit the posting of unauthorized grade placards.

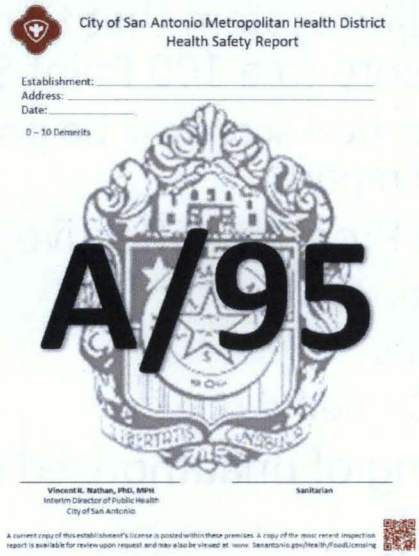
5

New Report

Inspection report must be posted in clear sight of the public upon entry.



Voluntary Placard


City of San Antonio Metropolitan Health District
Health Safety Report

Establishment: _____
Address: _____
Date: _____

0 – 10 Demerits

A/95

Vincent R. Nathan, PhD, MPH
Interim Director of Public Health
City of San Antonio

Sanitarian

A current copy of this establishment's license is posted within these premises. A copy of the most recent inspection report is available for review upon request and may also be viewed at: www. Sanantonio.gov/Health/FoodLicensing

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Operational Update

- Performance 1st Quarter
- Staffing
- Training for staff
- Supervision

8

Staff Recommendation

- Other recommended changes:
  - Allow temporary food establishments at farmers markets to operate two days a week per calendar month
  - Remove the ability to transfer permits from one location to another

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CITY OF SAN ANTONIO
METROPOLITAN HEALTH DISTRICT

Questions?