

Town of Plaistow

PH 2302 APPLICATION AND LICENSING PROCEDURE FOR FOOD SERVICE LICENSURE

PH – 2302.01 Pre-licensure requirements Unless exempted under RSA 143-A:5 or RSA 143-A:5-a, or PH- 2302.02, no person shall operate a food service establishment or retail food store in Plaistow without obtaining a license from the Town Health Department.

PH – 2302.02 Soup Kitchens Exempt from Licensure In accordance with RSA 143-A:5-a, soup kitchens shall be exempt from licensure by the department provided they do not charge for meals and provided:

- (a) They do not charge for meals; and
- (b) They submit to the department a written notice which :
 - (1) Identify the name and address of the natural person or other person operating the soup kitchen;
 - (2) Identify the clientele served by the soup kitchen;
 - (3) List the hours the soup kitchen will operate; and
 - (4) Provide a description of the food to be served.

PH – 2302.03 Application Requirements

- (a) In order to operate a food service establishment or retail food store pursuant to RSA 143-A, a person shall obtain from the department the application form entitled “Application for a License to Operate a Food Service Establishment in the Town of Plaistow”.
- (b) An applicant for a new license or renewal of an existing license shall submit to the department:
 - (1) A completed application form in accordance with PH 2302.04 and the items required by PH 2302.07 and PH 2302.08;
 - (2) A check, cash or money order for the applicable fees, in accordance with PH 2302.06 (a);
 - (3) If the application involves a new or remodeled food service establishment or retail food store, plans and specifications as required by PH 2302.17;
 - (4) If the application is for a food service establishment which commercially processes food requiring a scheduled process pursuant to He-P 2330.06 and He-P 2331.03 (b); and
 - (5) If the application is for a mobile food unit which uses a commissary, the identification of the commissary and a copy of the commissary license.

(c) In addition to the requirements in (b) above, an applicant for a new license shall submit to the department the items required by PH 2302.08.

(d) License holders shall submit the applicable items required under (b) above to renew their license at least 30 days prior to the expiration date of their existing license in order for their application to be considered timely.

PH – 2302.04 Application Submission

- (a) All information entered on the application form shall be typewritten or legibly printed in ink.
- (b) An applicant shall complete the application form required by PH 2302.03 (b)(1) by furnishing the items required under (c) below:
 - (1) By writing in the blank spaces provided wherever applicable; or
 - (2) By checkmark next to the corresponding response.
- (c) An applicant shall provide:
 - (1) Applicant information including:
 - a. Full legal name of owner or corporation;
 - b. Any name used to identify the food service establishment or retail food store which is different from the name supplied in response to (1) a. above;
 - c. The location address of the food service establishment or retail food store including:
 - 1. The number and street;
 - 2. The incorporated city or town;
 - 3. The state; and
 - 4. The zip code;
 - d. The mailing address, if different from the address supplied in response to (1) c. above, including:
 - 1. The number and street;
 - 2. The city and town;
 - 3. The state; and
 - 4. The zip code;
 - e. The e-mail address of the food establishment or retail food store, if applicable;
 - f. The telephone number of the food service establishment or retail food store;
 - g. An emergency telephone number where the legal owner or person in charge can be contacted after business hours;
 - h. The name of the person in charge of the food service establishment or retail food store; and
 - i. The fax number of the food service establishment or retail food store, if applicable;

- j. The previous business name in the case of a change of ownership; and
 - k. The type of ownership identified as either sole proprietorship, joint venture, partnership, corporation, limited liability company or any other entity;
- (2) Identification of the kind of license applied for as follows:
- a. By type, which shall be either:
 - 1. New;
 - 2. Change of ownership;
 - 3. Renewal, including the current license number; or
 - 4. Change in license classification, and
 - b. By classification according to PH 2302.05;
- (3) The license number, if the establishment has been previously licensed;
- (4) The seating count, to include indoor seats only;
- (5) The type of water system serving the establishment, including the Environmental Protection Agency number, if applicable;
- (6) The type of wastewater system serving the establishment;
- (7) The schedule of operation of the food service establishment or retail food store which shall include:
- a. Hours of operation;
 - b. Days of operation; and
 - c. Weeks of operation per year;
- (8) A copy of the intended or existing menu, if the application is for a new license;
- (9) A description of all vehicles used as mobile food units or vehicles used to sell retail food including:
- a. Make of vehicle;
 - b. Vehicle identification number;
 - c. Year of manufacture;
 - d. Color; and
 - e. State motor vehicle registration number;
- (10) The signature, title and printed or typed name of the person or applicant or the person who represents the applicant; and
- (11) The date the applicant signed.

PH – 2302.05 License Classes

(a) For the purpose of licensure, food service establishments and retail food stores shall be divided into the following classes:

(1) Class A which shall include:

- (a) Food service establishments which commercially process > 100,000 units of food per year;
- (b) Food service establishments with more than 199 seats;

(2) Class B which shall include:

- (a) Retail food stores with more than 2 food preparation areas;
- (b) Food service establishments with 100 to 198 seats; or
- (c) Commercial fish processors;

(3) Class C which shall include:

- (a) Retail food stores with 1 – 2 food preparation areas;
- (b) Caterers off-site;
- (c) Food service establishments with 25 to 99 seats;
- (d) Bars/lounges that serve alcohol with food preparation area;
- (e) Food service establishments which commercially process < 100,000 units per year; or
- (f) Packers of potentially hazardous foods;

(4) Class D which shall include:

- (a) Food service establishments with 0 to 24 seats including but not limited to bakeries;
- (b) Fraternities and sororities except those where the members prepare their own food;

(5) Class E which shall include:

- (a) Mobile food units which cook food;
- (b) Retail food stores that allow self-service of coffee, hot dogs, soft drinks and soft serve; or
- (c) Ice cream vendors which scoop ice cream;

(6) Class F which shall include:

- (a) Home delivery services of packaged potentially hazardous foods including but not limited to pizza, ice cream, meat and poultry;
- (b) Mobile food units including but not limited to those serving pre-packaged food and non - potentially hazardous unwrapped foods only
- (c) Retail food stores with no food preparation areas;

- (d) Wholesaler/distributors of food;
 - (e) On site vending machines which serve potentially hazardous foods;
 - (f) Bakeries which do not serve potentially hazardous food and have 0 seats;
 - (g) Sellers of pre-packaged frozen meat or poultry that is processed in a USDA- inspected plant; or
 - (h) Packagers of non-potentially hazardous bulk food;
- (7) Class G which shall include:
- (a) Bars/lounges that serve alcohol and that do not have a food prep area;
 - (b) Canteen/theater concessions;
 - (c) Ice cream vendors -pre-packaged ice cream;
 - (d) Senior meal sites;
 - (e) Institutions including state, county and municipal institutions; or
 - (f) Schools, including but not limited to private schools, colleges and universities and state-run schools.
This term does not include schools whose food service is operated by a private, for-profit catering business.
- (8) Class G Exempt which shall include:
- (a) Municipally operated schools. This term does not include schools whose food service is operated by a private, for-profit catering business;
 - (b) Day habilitation centers for developmentally disabled adults;
 - (c) National or veteran's fraternal organization; or
 - (d) Non- profit community organization not holding a liquor permit and not serving meals on a daily basis;
- (9) Class H which shall include temporary food establishments
- (c) When an establishment operates more than one type of business, the class of license shall be determined by the higher class.

PH – 2302.06 Fees

- (a) For each class of license requested the applicant shall pay the following fees in advance:
- (1) Class A: \$500;
 - (2) Class B: \$250;
 - (3) Class C: \$200;
 - (4) Class D: \$125;
 - (5) Class E: \$100;
 - (6) Class F: \$ 75;

- (7) Class G: \$50;
- (8) Class G Exempt: \$0
- (9) Class H: \$25
- (b) License holders shall be billed \$25 for each inspection conducted, except for:
 - (1) The initial pre-licensing inspection for a provisional license; and
 - (2) The 45 day inspection subsequent to the issuance of the provisional license; or
 - (3) The first and second inspection conducted in any calendar year.
- (c) An applicant shall submit a fee of \$25, in advance, for each plan review submitted under PH 2302.17.
- (d) All fees shall be:
 - (1) Nontransferable; and
 - (2) Nonrefundable.
- (e) Any instrument of fee payment returned to the Town shall be processed in accordance with RSA 6:11-a.

PH 2302.07 Water System Requirements

- (a) Food service establishments or retail food stores which operate their own public water systems, as defined by RSA 485:1-a, which are considered transient non-community water systems, as defined by Env-Ws 302.02 (bt), shall submit as part of their application for a license the United States Environmental Protection Agency (EPA) identification number of the system which has been assigned by the New Hampshire Department of Environmental Services.
- (b) Food service establishments or retail food stores which purchase their water from other public water systems, as defined by RSA 485:1-a, and therefore do not fall under (a) above, shall submit as part of their application for a license a written statement identifying the name of the public water system regulated by the New Hampshire Department of Environmental Services which provides their water.
- (c) Food service establishments or retail food stores which do not fall under (a) above, because of their small size, or do not fall under (b) above, and are instead served by a water source other than a public water system, shall submit:
 - (1) If applying for a new license, the written results of a laboratory analysis of the water intended for use which tests the level of the following:

a. PH	d. Nitrate	g. Iron
b. Hardness	e. Nitrite	h. Manganese
c. Chloride	f. Sodium	i. Bacteria
 - (2) If applying to renew a license, the written results of an analysis of the water intended for use which tests the level of the following:
 - a. Bacteria; and
 - b. Nitrates

- (d) The analyses required by (c) above shall be conducted not more than 90 days prior to the date of the application by a laboratory certified by the Department of Environmental Services to perform such tests in accordance with Env-C 300.
- (e) In order for an application to be approved:
 - (1) If it is an application for a new license, the results of:
 - a. The bacteria test required under (c)(1) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 315; and
 - b. The nitrate and nitrite test required under (c)(1) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 316 for those two contaminants; or
 - (2) If it is an application for license renewal, the results of:
 - a. The bacteria test required by (c)(2) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 315; and
 - b. The nitrate test required by (c)(2) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 316.

PH 2302.08 Wastewater System Requirements

- (a) Food service establishments or retail food stores which discharge their wastewater to either public or private wastewater systems which hold either a state surface water discharge permit or a groundwater discharge permit issued by the New Hampshire Department of Environmental Services, shall submit as part of their application a written statement identifying the name of the municipality, private entity or state agency operating the wastewater treatment facility which holds the permit.
- (b) Food service establishments or retail food stores which do not meet the requirements of (a) above shall submit, as part of their application, one of the following:
 - (1) Both:
 - a. A copy of the construction approval and operational approval for the sewage or waste disposal system serving the subject food service establishment or retail food store issued by the New Hampshire Department of Environmental Services in accordance with RSA 485-A:29 and Env-Ws 1000; and
 - b. A written statement signed by the applicant containing the following language: "I certify that there has been no increase in the loading on my system which would cause an exceedance of the capacity of the system approved by the Department of Environmental Services under the provisions of Env-Ws 1000; or
 - (2) A written statement signed by the applicant containing the following language: "I certify that the private sewage or waste disposal system serving my food service establishment or retail food store was constructed prior to 1971 and is presently not in failure. I further certify that I have not been notified by either the Department of Environmental Services or the local health officer that the system serving my food service establishment or retail food store is in violation of any state or local statute, administrative rule, ordinance or bylaw."
- (c) If there is no increase in the loading of the waste disposal system serving the food service establishments or retail food stores in (b) above, and the applicant is unable to produce the documentation required, the department shall inform the Department of Environmental Services that the applicant has not complied with (b)(1) above. In this case, the requirement of (b)(1) above shall be waived.

PH 2302.09 Processing of Applications

- (a) Applications shall be processed in accordance with RSA 541-A:29.
- (b) If an application does not contain all the items required by PH 2302.03 the department shall:
 - (1) Not process that application; and
 - (2) Notify the applicant in writing of which incomplete required items must be submitted before the application can be processed.
- (c) If all the items required by PH 2302.03 are received, the application shall be deemed to be complete.
- (d) If an inspection of a food service establishment or retail food store conducted in accordance with RSA 143-A:6 and PH 2302.24 determines compliance with RSA 143, RSA 143-A and these rules, a license shall be issued.
- (e) If an inspection of a mobile food unit or other vehicle used for the retail sale of food determines compliance with RSA 143, RSA 143-A and these rules, a license shall be issued.

PH 2302.10 Provisional Licenses

- (a) A provisional license shall be issued under RSA 143-A:6 upon approval of:
 - (1) An application for a new license in accordance with PH 2302.03 and an inspection in accordance with PH 2302.24;
 - (2) A request for a change of ownership in accordance with PH 2302.13;
 - (3) A request for a change in location in accordance with PH 2302.15;
 - (4) A request for upgrade of an existing license under PH 2302.16(a); or
 - (5) A request for reinstatement of a revoked license, as authorized by RSA 143-A: 6, I.
- (b) A provisional license shall expire 90 days after the date of issuance.
- (c) If a license is not issued following the automatic expiration by law of a provisional license in accordance with RSA 143-A:6, the affected food service establishment or retail food store shall cease operation the day after the license expires, and shall not operate until a license is obtained.

PH 2302.11 Licenses

- (a) All licenses shall be non-transferable.
- (b) All licenses shall be issued for a specific license classification under PH 2302.05.

PH 2302.12 Expiration of Licenses

- (a) All licenses issued shall be valid for one year following the date of issuance.

- (b) All license holders shall apply for renewal of their license as required by PH 2302.03 (d).
- (c) If a license holder fails to timely submit a complete application for renewal as required under (b) above, the food service establishment or retail food store shall cease operation the day after the license expires, and shall not operate until a license is obtained.
- (d) Any food service establishment or retail food store submitting an application for a license whose previous license has been expired in excess of 90 days shall:
 - (1) Apply in accordance with the requirements of a new license; and
 - (2) Be issued a provisional license under PH 2302.10 if its application is approved.
- (e) Whenever a change of ownership of a food service establishment or retail food store occurs, the food service license shall be void the date of the change of ownership occurs.

PH 2302.13 Change in Food Service Establishment or Retail Food Store Ownership

- (a) When there is a change of ownership of a food service establishment or retail food store, the new owner shall submit the following to the department at least 30 days prior to the change of ownership:
 - (1) A written request for a new license which shall contain the following:
 - a. The reason for requesting the license;
 - b. The name of the food service establishment or retail food store as it appears on the current license.
 - c. The name of the legal owner of the food service establishment or retail food store which will appear on the new license; and
 - d. The date upon which the change of ownership will take effect;
 - (2) A copy of any certificate of amendment of organizational filings issued by the NH secretary of state, if applicable;
 - (3) The items required for license renewal applicants under PH 2302.03; and
 - (4) A letter from the most recent owner containing the following shall be submitted with the application:
 - a. An acknowledgement of the impending transfer of ownership; and
 - b. An identification of the date when the change of ownership will become final.
- (b) Upon receipt and processing, in accordance with these rules, of the items required by (a) above, and after an inspection in accordance with PH 2302.24 which shall also determine compliance with the construction requirements of PH 2302.19 if applicable, the department shall issue a provisional license reflecting the change in ownership.
- (c) The owner of the previously licensed food establishment or retail food store shall return the previous license to the department within 10 days of the date the provisional license is issued under (b) above.

PH 2302.14 Change in Name of Food Service Establishment or Retail Food Store

- (a) When a license holder intends to change the name of a food service establishment or retail food store, that license holder shall submit a written request to the department for a new license at least 30 days prior to the intended date of change in name.
- (b) The written request shall include:
 - (1) The reason for requesting a new license;
 - (2) The name of the food service establishment or retail food store as it appears on the existing license;
 - (3) The name of the food service establishment or retail food store as the license holder requests it to appear on the new license; and
 - (4) An identification of the date when the change in name is intended to occur.
- (c) Following receipt of the items required by (b) above, the department shall issue a revised license reflecting the change in name. The license number and expiration date shall remain the same as it was on the immediately preceding license.
- (d) The license holder shall return the previous license to the department within 10 days of issuance of the revised license.

PH 2302.15 Change in Location of Food Service Establishment or Retail Food Store

- (a) When there is a change of location of a food service establishment or retail food store, the license holder shall submit the following to the department at least 30 days prior to the change of location:
 - (1) The items required by PH 2302.03; and
 - (2) A written identification of the date when the change of location is intended to occur.
- (b) Upon receipt and processing, in accordance with the rules, of the items required under (a) above, and after an inspection in accordance with PH 2302.24, the department shall issue a provisional license reflecting the change of location.
- (c) The license holder shall return the previous license to the department within 10 days of the date the provisional license is issued under (b) above.
- (d) This section shall not apply to mobile food units, push carts or vehicles used to sell retail food.

PH 2302.16 Change in License Class

- (a) A license holder wishing to request an upgrade to a higher level class of license listed in PH 2302.05 shall:
 - (1) Be treated as an applicant for a new license;
 - (2) Apply for a new license in accordance with PH 2302.03; and
 - (3) Upon approval of the application under (a) (2) above and after an inspection in accordance with PH 2302.24 be issued a provisional license.
- (b) A license holder wishing to request a downgrade to a lower level class of license listed in PH 2302.05 shall submit a written request for downgrade to the department.

- (c) The written request shall include:
 - (1) The reason for requesting a downgrade; and
 - (2) An identification of the date when the downgrade is requested to take effect.
- (d) Following receipt of the request under (b) above the department shall issue a revised license reflecting the downgrade in class of license. The license number and expiration date shall remain the same as it was on the immediately preceding license.
- (e) The license holder shall return the previous license to the department within 10 days of issuance of the revised license.

PH 2302.17 Submission of Plans and Specifications for New or Remodeled Food Service Establishments or Retail Food Stores

- (a) A license applicant or license holder shall submit plans and specifications to the department for review and approval at least 45 days prior to:
 - (1) Constructing a new food service establishment or retail food store;
 - (2) Converting an existing structure for use as a food service establishment or retail food store;
 - (3) Remodeling a food service establishment or retail food store; and
 - (4) Relocating a food service establishment or retail food store.
- (b) Plans and specifications shall:
 - (1) Be submitted to the Plaistow Health Department, 145 Main Street, Plaistow, NH 03865;
 - (2) Be drawn to scale using a scale of less than or equal to ¼ inch equals one foot;
 - (3) Show all areas of the food service establishment or retail food store including food preparation areas and restrooms;
 - (4) Designate all fixed and non-fixed equipment with numbers and a legend which states what each number represents;
 - (5) Indicate the number of seats in the “no smoking” area on the plan if the indoor seating capacity is greater than 50 seats; and
 - (6) Contain the following information printed on the drawing:
 - a. The name of the food service establishment or retail food store;
 - b. The physical address and the mailing address if different; and
 - c. The name and telephone number of the primary contact person with knowledge of the contents of the plans and specifications.
- (c) The following items, type written or legibly written in ink, shall be submitted with the plans and specifications:
 - (1) A copy of the intended menu;

- (2) A detailed explanation of the method(s) by which potentially hazardous foods will be cooled and maintained at a temperature below 5°C, 41°F, or lower and how hot temperatures will be maintained above 60°C, 140°F;
- (3) An explanation of the anticipated volume of food to be stored, prepared, and sold or served daily;
- (4) Proposed layout, mechanical schematics, construction materials and finish schedules;
- (5) A list of proposed equipment including manufacturer, model number, location, dimension, performance capacity, and installation specifications;
- (6) A detailed description of all special operations, including, but not limited to, salad bars, catering or vacuum packaging; and
- (7) A list of names, mailing addresses, and phone numbers of all persons accountable for design and construction of the establishment.

PH 2302.18 Critical Items

- (a) On the inspection report outlined in PH 2302.25(b), the following subparagraphs shall be considered critical items:
 - (1) 1, He-P 2303.01 and He-P 2303.02(a) through (m);
 - (2) 3, He-P 2304.04 through He-P 2304.22;
 - (3) 4, He-P 2304.23 and He-P 2304.24;
 - (4) 7, He-P 2304.29 and He-P 2304.30 and He-P 2304..31 through He-P 2304.35;
 - (5) 11, He-P 2305.01 through He-P 2305.03 and He-P 2305.04 and He-P 2305.05;
 - (6) 12, He-P 2305.06 through He-P 2305.08 and PH 2332;
 - (7) 22, He-P 2310.03;
 - (8) 27, He-P 2311;
 - (9) 28, He-P 2312;
 - (10) 30, He-P 2313.02;
 - (11) 31, He-P 2314.01 and He-P 2314.03;
 - (12) 35, He-P 2316; and
 - (13) 41, He-P 2321.
- (b) All critical items in violation shall be corrected immediately in the presence of the department's authorized representative, if possible.
- (c) If temporary measures are used by the license holder to correct the critical items for the short term, a compliance agreement for permanent corrections shall be submitted in accordance with PH 2302.31.

PH 2302.19 Construction Items

- (a) Items listed in (b) below shall be subject to correction prior to the issuance of a provisional license.
- (b) On the inspection report outlined in PH 2302.25 (b), the following subparagraphs shall be considered as construction items:
 - (1) 14, He-P 2306;
 - (2) 15, He-P 2307;
 - (3) 16, He-P 2308.01 through He-P 2308.12;
 - (4) 34, He-P 2315.02;
 - (5) 36, He-P 2317.01
 - (6) 37, He-P 2317.02
 - (7) 38, He-P 2318;
 - (8) 39, He-P 2319; and
 - (9) 43, He-P 2323 and He-P 2324.

PH 2302.20 Denial of License Applications

- (a) The department shall deny applications for any license if:
 - (1) The applicant has failed to pay any fees imposed under PH 2302.06 or administrative fines imposed under PH 2302.29;
 - (2) There remain missing or incomplete items, or items that do not meet the requirements of PH 2302.03, and the applicant has been notified of and given an opportunity to supply such items;
 - (3) A food service establishment or retail food store applying for a new license does not meet all of the following:
 - a. A minimum inspection score of 70 pursuant to PH 2302.25;
 - b. No violation of any critical items pursuant to PH 2302.18; and
 - c. No violation of any construction items pursuant to PH 2302.19;
 - (4) A food service establishment or retail food store that has a change of ownership does not meet all of the following:
 - a. A minimum inspection score of 70 pursuant to PH 2302.25;
 - b. No violation of any critical items pursuant to PH 2302.18; and
 - c. No violation of any construction items pursuant to PH 2302.19;
 - (5) A food service establishment or retail food store which has had its previous license revoked does not meet the following upon reapplication:
 - a. A minimum inspection score of 70 pursuant to PH 2302.25;

- b. No violation of any critical items pursuant to PH 2302.18; and
 - c. No violation of any construction items pursuant to PH 2302.19;
- (6) A food service establishment or retail food store applying for a renewal license does not meet all of the following:
 - a. A minimum inspection score of 70 pursuant to PH 2302.25; and
 - b. No outstanding critical item violations pursuant to PH 2302.18;
- (7) The applicant prevents the department from conducting an inspection;
- (8) The applicant has failed to comply with a compliance agreement under PH 2302.31; or
- (9) The applicant is found to be in violation of RSA 143-A;
- (b) Any applicant aggrieved by the denial of an application may request the right to be heard in accordance with PH 2302.23.

PH 2302.21 Revocation of License; Reinstatement

- (a) The department shall revoke a license if:
 - (1) A violation of a critical item is detected during an inspection and the person in charge fails to either:
 - a. Correct the deficiency during the inspection, if possible; or
 - b. Enter into a compliance agreement under PH 2302.31 to correct the deficiency;
 - (2) An establishment receives a sanitary score of less than 70% on more than 2 inspections within a period of one year;
 - (3) A compliance agreement is violated; or
 - (4) A license holder fails to provide payment in accordance with PH 2302.30 (d), and as allowed by RSA 143-A:9-a.
- (b) The notice of revocation, as per RSA 143-A:7, shall:
 - (1) Be in writing;
 - (2) Enumerate the reason or reasons for revocation; and
 - (3) Outline the remedial action necessary to correct the revocation;
 - (2) Inform the owner or his agent of his rights and options for redress of grievances as enumerated in RSA 541-A.
- (c) Any person who has had a license revoked shall be prohibited from applying to renew their license while it remains revoked.
- (d) Revoked licenses shall be reinstated in accordance with RSA 143-A:8 and, if reinstatement is approved, a provisional license shall be issued in accordance with RSA 143-A:6,I and PH 2302.10 of these rules.

- (1) A written application to the department for a re-inspection from the person whose license has been revoked;
 - (2) A re-inspection by the department within 10 days of receipt of the written request; and
 - (3) The immediate reinstatement of the license if the reasons for revocation have been corrected.
- (e) If a revoked license expires without having been reinstated, the former license holder shall apply for a new license in accordance with PH 2302.03 before again operating a food service establishment or retail food store.

PH 2302.22 Effect of Denial of Application, Revocation of License or Expired License

- (a) Any applicant who has been denied a license shall not operate that food service establishment or retail food store.
- (b) If a license has been revoked or has expired without timely application for renewal having been made, operation of that food service establishment or retail food store shall be discontinued immediately.

PH 2302.23 Right to Be Heard

- (a) Before the department takes any adverse administrative action affecting an application for an existing license, the applicant or license holder shall be provided with a written notice identifying the action to be taken including:
 - (1) An explanation of the reasons for the action; and
 - (2) Notice of the availability of an adjudicative proceeding in accordance with RSA 541-A:31, III.
- (b) If an applicant or license holder fails to request an adjudicative proceeding in writing within 10 days of receipt of the notice required by (a) above, the department action shall become final.

PH 2302.24 Food Service Establishment or Retail Food Store Inspection

- (a) Comprehensive inspections of food service establishments or retail food stores, including mobile food units and vehicles used for the retail sale of food, shall be conducted in accordance with RSA 143-A:6.
- (b) The applicant or licensee shall acknowledge receipt of the inspection report by signing the report.
- (c) Upon completion of an inspection, the department shall provide the person-in-charge of the food service establishment or retail food store at the time of the inspection with a written inspection report including:
 - (1) The name and address of the food service establishment or retail food store;
 - (2) The class of license;
 - (3) The date of the inspection;
 - (4) The name of the person(s) conducting the inspection;
 - (5) The results of the inspection according to PH 2302.25; and

- (6) The signature of the person in charge of the food service establishment or retail food store during the inspection, as required by (b) above or a notation by the person conducting the inspection indicating any refusal to sign.

PH 2302.25 Documentation of Inspections

- (a) The inspection report required by PH 2302.24 shall include:
 - (1) The owner's name and address;
 - (2) The type of water and sewage system;
 - (3) The non-smoking dining capacity;
 - (4) Information about the license and certification;
 - (5) Information about the sanitarian;
 - (6) The name and signature of the person interviewed, as required by PH 2302.24 (b); and
 - (7) An inspection checklist containing 44 items with debit points as noted in (b) below, which are subtracted from 100 to arrive at the score of the inspection.
- (b) The point values of the items on the inspection checklist, which shall be subtracted from 100 if not met during the inspection, shall include;
 - (1) Five points if food is not in sound condition and from approved sources as required by He-P 2303.01 and He-P 2303.02 (a) through (m);
 - (2) One point if food is not in the original container or labeled, as required by He-P 2303.02 (n) and (o) and He-P 2304.01 through He-P 2304.03;
 - (3) Five points if food does not meet the temperature requirements of He-P 2304.04 through He-P 2304.22;
 - (4) Four points if facilities are not provided to maintain food at temperatures as required in He-P 2304.23 and He-P 2304.24;
 - (5) One point if thermometers are not provided and are not accurate to determine if the temperatures required by He-P 2304.25 and He-P 2304.26 are achieved;
 - (6) Two points if potentially hazardous food is not thawed as required by He-P 2304.27 and He-P 2304.28;
 - (7) Four points if:
 - a. Unwrapped food or potentially hazardous food served to the public is reserved as prohibited by He-P 2304.29 and He-P 2304.30;
 - b. Food is not protected from cross-contamination as required by He-P 2304.31;
 - c. Food is not protected during consumer self-service operations as required by He-P 2304.32;
 - d. Food is not protected from contact with unclean utensils and equipment as required by He-P 2304.33; or

- e. Food is not protected during tasting as required by He-P 2304.34;
 - f. Raw fruits and vegetables are not washed in a food preparation sink as required by He-P 2304.35;
- (8) Two points if food is not protected from contamination during storage, preparation, display, service and transportation as required by He-P 2304.36 through He-P 2304.45;
 - (9) Two points if food or ice is not protected from contamination when handled as required by He-P 2304.46 through He-P 2304.48;
 - (10) One point if in-use utensils are stored so as to contaminate the utensils, and subsequently the food, as prohibited by He-P 2304.49;
 - (11) Five points if personnel are not free of infections which can be transmitted by food as required by He-P 2305.01 through He-P 2305.03 or if there is not a person in charge who meets the requirements of He-P 2305.04 and He-P 2305.05;
 - (12) Five points if personnel do not wash and clean their hands and maintain good hygienic practices as required by He-P 2305.06 through He-P 2305.08
 - (13) One point if food service workers do not wear clean clothes and hair restraints as required by He-P 2305.09;
 - (14) Two points if food equipment and utensils are not designed, maintained and used as required by He-P 2306;
 - (15) One point if non-food contact equipment and utensils are not designed, maintained and used as required by He-P 2307;
 - (16) Two points if food equipment and utensils are not washed, rinsed, sanitized and stored using equipment and procedures required by He-P 2308.01 through He-P 2308.12;
 - (17) One point if:
 - a. Dishwashing machines do not automatically dispense detergents and sanitizers, as is required by He-P 2308.12;
 - b. Temperature measuring devices are not provided in all dishwashing operations, as is required by He-P 2308.13; or
 - c. Test kits are not provided when using chemicals for sanitizing in order to determine that the strength of the sanitizer meets the requirements of He-P 2308.14;
 - (18) One point if single-service articles are not stored and dispensed as required by He-P 2309.01;
 - (19) Two points if single-service articles are re-used in violation of He-P 2309.02;
 - (20) One point if equipment and utensils are not pre-flushed and scraped as required by He-P 2310.01;
 - (21) Two points if equipment and utensil wash water and rinse water are not kept clean and at the temperatures required by He-P 2310.02;
 - (22) Four points if food equipment and utensils are not sanitized either manually or by machine as required by He-P 2310.03;
 - (23) One point if wiping cloths are not used as required by He-P 2310.05;

- (24) Two points if kitchenware and food-contact surfaces of equipment are not washed, rinsed and sanitized at the frequency required by He-P 2310.06;
- (25) One point if non-food contact surfaces of equipment are not kept clean as required by He-P 2310.07;
- (26) One point if food equipment and utensils are not air dried as required in He-P 2310.04 or if clean equipment and utensils are not handled and stored as required by He-P 2310.08 through He-P 2310.12;
- (27) Five points if the water supply is not in accordance with the rules and referenced statutes listed by He-P 2311;
- (28) Four points if the sewage disposal is not in accordance with the rules and referenced statutes listed by He-P 2312;
- (29) One point if plumbing is not sized, installed and maintained as required by PLU 700 of the state plumbing code, He-P 2313.01, and He-P 2313.03;
- (30) Five points if plumbing is not installed and maintained to protect against backflow and back Siphonage as required by He-P 2313.02;
- (31) Four points if toilet and handwashing facilities are not installed according to the provisions of Plu 700 of the state plumbing code and He-P 2314.01 and He-P 2314.03;
- (32) Two points if toilet and handwashing facilities do not meet the requirements of He-P 2314.02 and He-P 2314.04;
- (33) Two points if solid waste disposal is not in accordance with He-P 2315.01;
- (34) One point if solid waste is not stored in accordance with He-P 2315.02;
- (35) Four points if insect, rodent and animal control are not in accordance with He-P 2316;
- (36) One point if the floors are not constructed, drained, clean and in good repair as required by He-P 2317.01;
- (37) One point if the walls and ceilings are not constructed, clean and in good repair as required by He-P 2317.02;
- (38) One point if the lighting is not shielded and of the intensity required by He-P 2318;
- (39) One point if sufficient ventilation is not provided as required by He-P 2319;
- (40) One point if dressing rooms are not located and cleaned as required by He-P 2320;
- (41) Five points if toxic materials are not used, stored and labeled as required by He-P 2321;
- (42) One point if the premises are not maintained as required by He-P 2322;
- (43) One point if there is not complete separation from living quarters and laundry facilities as required by He-P 2323 and He-P 2324; and
- (44) One point if clean and soiled linen are not stored as required by He-P 2325.

PH 2302.26 Requirements for All License Holders

- (a) License holders shall operate in accordance with the class of license issued under PH 2302.05.
- (b) Department representatives or inspectors shall be admitted to food service establishments or retail food stores to inspect the premises at all times, as authorized by RSA 143:4.
- (c) Department representatives or inspectors shall be afforded access at all times to mobile food units or vehicles used by license holders for the transportation of food for the purpose of inspecting them.
- (d) Samples of food shall be provided to the department for bacteriological, chemical and physical examination upon request .
- (e) Licenses shall be posted at all times in an area of the food service establishment or retail food store that is conspicuous to patrons entering the premises.
- (f) In the event of an occurrence, including but not limited to a fire, flood, power outage, or similar event which might result in the contamination of food, or which might prevent potentially hazardous food from being held at required temperatures, the person in charge shall notify the Health Department within 24 hours.

PH 2302.27 Waivers

- (a) Applicants or license holders seeking waivers of specific rules in this chapter shall submit a written request for waiver to the department.
- (b) The waiver request shall include:
 - (1) Specific reference to the rule for which a waiver is being sought;
 - (2) Full explanation of why a waiver is necessary; and
 - (3) Full explanation of alternatives proposed by the applicant or license holder, which shall be equally as protective of public health as the rule from which a waiver is sought.
- (c) The department shall approve a request for waiver if:
 - (1) The department concludes that authorizing deviation from strict compliance with the rule from which waiver is sought does not contradict the intent of the rule; and
 - (2) The alternative proposed by the applicant or license holder ensures that the objective or intent of the rule from which waiver is sought will be accomplished.
- (d) If a waiver is approved, the license holder's subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.
- (e) No request for a waiver concerning the rules of other state agencies which are referred to in this chapter shall be accepted.

PH 2302.28 Procedure for Administrative Fines Whenever the department determines that a violation of RSA 143-A or the provisions of these rules has occurred, the license holder shall be provided with a written notice:

- (a) Identifying each violation;
- (b) Informing the license holder of the amount of the proposed fine under PH 2302.29;
- (c) Informing the license holder of the right to appeal the department's decision to assess a fine by submitting a written request for a hearing to the Board of Health no later than 10 calendar days from the date of the receipt of the notice;
- (d) Informing the license holder of the opportunity to waive the right to a hearing by paying the fine within 10 days of the receipt of the department notice of proposed administrative fine; and
- (e) Informing the license holder that if he or she does not request an appeal as specified in (c) above, the department's decision to assess a fine shall become final after the 10 day period specified in (c) above and the fine shall be paid to the department no later than 10 days from that date.

PH 2302.29 Schedule of Administrative Fines The Department shall impose administrative fines in the specified amounts for the following violations:

- (a) For willful submission of false or fraudulent information on or with an application, in violation of PH 2302.03, the fine shall be \$500;
- (b) For failure to operate a food service establishment or retail food store only in the manner in which licensed to do so, in violation of PH 2302.26 (a), the fine shall be \$500;
- (c) For failure to cooperate during an inspection of a food service establishment, retail food store, mobile food unit or vehicle used to sell retail food, including but not limited to, failing to allow department representatives or inspectors to inspect food service establishment or retail food store premises and vehicles at all times, in violation of PH 2302.26 (b) and (c) , the fine shall be \$2,000;
- (d) For failure to notify the department by telephone within 24 hours of any fire or other disaster that jeopardizes the safety or sanitation of food provided in food service establishments or retail food stores, in violation of PH 2302.26 (g), the fine shall be \$50;
- (e) For failure to notify the department pursuant to PH 2302.13 (a) within 30 days of food service establishment or retail food store ownership change the fine shall be \$500;
- (f) For failure to notify the department pursuant to PH 2302.15 (a) prior to moving the location of a food service establishment or retail food store, the fine shall be \$250;
- (g) For failure to submit a plan for review as required in PH 2302.17, the fine shall be \$200;
- (h) For failure to discard food as required by He-P 2303.01 (h), and in the manner instructed to do so by the department, the fine shall be \$250;
- (i) For failure to cease operation upon notification by the department to do so, the fine shall be \$500. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;
- (j) For failure to cease operation after a license has expired , when an application has been denied, or when a license has been revoked, the fine shall be \$500. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;
- (k) For a violation of the same critical violation as defined in PH 2302.18 (a) for more than two inspections in a period of 12 months, the fine shall be \$500;

- (l) For failure to pay an administrative fine within 30 days of its imposition, or the completion of any appeal of the administrative fine, the fine shall be \$100 per day for the duration of the license;
- (m) For failure to comply with a compliance agreement signed by the owner, as per PH 2302.31, the fine shall be \$100;
- (n) For operation of a food service establishment without obtaining a food service license, as required by RSA 143-A:4, the fine shall be \$500 plus \$100 for each day for which the department has proof that the establishment has operated.

PH 2302.30 Form of Payment of Fees and Administrative Fines Whenever an applicant or license holder makes a payment to the department in satisfaction of a fee or administrative fine, the following shall apply:

- (a) Payment shall be made in the form of cash, check or money order for the exact amount due;
- (b) Cash, money order, or certified check shall be required when an applicant or license holder has issued payment to the department by check, and such check was returned for insufficient funds;
- (c) Any instrument described in (a) above shall be made payable to the "Town of Plaistow"; and
- (d) Any payment made to the department by check which is returned for insufficient funds, and which a license holder has not made good by submitting cash, money order or certified check within two business days of notification by the department, including any penalty assessment required by RSA 6:11-a, shall be considered grounds for revocation of the license.

PH 2302.31 Compliance Agreement

- (a) If critical violations are found and can not be corrected immediately in the presence of the inspector, the applicant or licensee shall complete a compliance agreement in the presence of the inspector.
- (b) If construction items delineated in PH 2302.19, are found during an inspection for a new or change of ownership license, and can not be corrected immediately in the presence of the inspector, the applicant or licensee shall complete a compliance agreement in the presence of the inspector.
- (c) The compliance agreement shall be completed on the "Compliance Agreement" form provided by the inspector.
- (d) The following shall be provided on the compliance agreement:
 - (1) The date of the agreement;
 - (2) The name of the establishment;
 - (3) The address of the establishment;
 - (4) The name of the person in charge of the establishment at the time of the inspection;
 - (5) The telephone number of the person in charge;
 - (6) Attestment to the agreement to make repairs, corrections, and/or changes that are necessary to bring the establishment into compliance with He-P 2300;
 - (7) A list of each repair/correction or change to be made including the date of intended completion and an explanation as to why the correction can not be made immediately;

- (8) The signature of the person in charge;
 - (9) Title of the signee;
 - (10) Date;
 - (11) Signature of the inspector; and
 - (12) Establishment identification number.
- (e) Failure to make the necessary corrections according to the specified date shall result in the licensee being required to attend a compliance meeting with the department.
 - (f) If a waiver to a critical item or a construction item is desired by the applicant or licensee, the applicant or licensee shall request a waiver pursuant to PH 2302.27.

PH 2302.32 Closure

- (a) In accordance with RSA 143:5-a, imminent health hazard shall include but not limited to the following:
 - (1) An extended loss of the establishment's water supply;
 - (2) The use of an unapproved source of water within the establishment;
 - (3) The source water is out of compliance with the quality standard in a way that presents an imminent danger to public health;
 - (4) A failed sewer system or a sewage backup into the establishment;
 - (5) An extended power outage;
 - (6) The establishment has been subject to one or more of the following:
 - a. Flood;
 - b. Fire;
 - c. Chemical exposure;
 - d. Natural disaster; or
 - e. Other catastrophic event that could result in contamination of the food supply;
 - (7) An employee has been found to be infected with a communicable disease as described in He-P 2305.01(b); or
 - (8) Severe unsanitary conditions that threaten to contaminate the source, the establishment, a part of the establishment or a particular product.
- (b) The failure to include other violations, practices, circumstances or events in this section shall not be construed as a determination that other violations, practices, circumstances, or events are not or shall not be considered an imminent health hazard.

