

Chapter 34 - HEALTH

Footnotes:

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State Law reference— General authority of home-rule municipalities to protect public health, Tex. Health and Safety Code, § 122.066; authority of home-rule municipalities concerning sanitation and health, Tex. Health and Safety Code, § 341.081.

ARTICLE I. - IN GENERAL

Sec. 34-1. - Appointment of health official.

The health official shall be appointed by the city manager. All activities of the health official shall be coordinated through the director of development services.

(Ord. No. 03-H-09, § 7½-1, 3-4-2003; Ord. No. 07-H-32, I, 7-3-2007)

Sec. 34-2. - Duties and powers of the health official.

- (a) Generally. The health official is hereby authorized and directed to enforce the provisions of this chapter and other related ordinances of the city. The health official shall have the authority to render interpretations of this chapter and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this chapter and shall not have the effect of waiving requirements specifically provided for in this chapter.
- (b) Health official qualifications. The health official shall either:
 - 1) Be a Registered Professional Sanitarian in Texas or a Sanitarian-in-Training as defined in Title 25, Section 265.142 of the Texas Administration Code, or
 - 2) Meet the Food and Drug Administration Voluntary National Retail Food Regulatory Program Standards basic curriculum and field training elements, as accepted by the Texas Department of Health.
- (c) Assistant inspector appointment and qualifications. The director of development services, with the approval of the city manager, may appoint such additional officers, inspectors, assistants, and other employees as shall be authorized from time to time. Such employees shall hold a code enforcement license issued by the Texas Department of Health and have such powers as are delegated by the health official.
- (d) Inspection agencies. The director of development services is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the city's established requirements as to qualifications and reliability.
- (e) Fees and salary. The fees, salary, or both for the health official shall be set in the annual budget of the inspection department approved by the city council. All fees shall be as set forth in section 34-3 of this chapter, as modified from time to time.

- (f) Reports. The health official shall give attention to the health and sanitary conditions of the city and report to the city manager and the city council once each month, making recommendations as necessary conducive to the cleanliness of the city and the general health of the citizens.
- (g) Right of entry. It shall be unlawful for any person to interfere, hinder, or delay the health official, deputies, inspectors, or officers in the discharge of any duties under this chapter or to refuse to comply with the orders of the health official. The health official shall issue all necessary notices or orders to ensure compliance with this chapter.
- (h) Orders of correction. The health official shall have the authority whenever, in his or her opinion, a nuisance detrimental to health exists to cause the same to be abated or removed.
- (i) Appeals. The city manager shall hear and decide on all appeals or orders, decisions, or determinations made by the health official relative to the application and interpretation of this chapter.
- (j) Liability. The health official and other city employees charged with the enforcement of this chapter shall not be held personally liable for any damage accruing to persons or property as a result of any act or omission while performing the duties required by this chapter, so long as such health official or other city employee is acting in good faith and without malice.

(Ord. No. 03-H-09, § 7½-2, 3-4-2003; Ord. No. 07-H-32, I, 7-3-2007)

Sec. 34-3. - Permit fees.

Exhibit 1.
Fees

- ~~1) Food and/or beverage establishment permits fees:*~~
~~1-3, \$100.00~~
- ~~4-6, \$200.00~~
- ~~7-10, \$300.00~~
- ~~11-20, \$400.00~~
- ~~21 plus, \$500.00~~

~~Exception: Nonprofit organizations will pay a permit fee of \$100.00 regardless of the number of employees or volunteers.~~

- ~~2) Temporary food and/or beverage establishment permit fees, \$50.00.~~
- ~~3) Frozen dessert and frozen beverage machines, \$125.00.~~
- ~~4) Individual charge for food handler's class, \$14.00.~~

~~5) Mobile vendors, \$150.00.~~

~~6) Swimming pool permits, \$75.00.~~

Note: ~~* Based on number of employees~~

Please reference the City of Schertz current fee schedule.

(Ord. No. 03-H-09, Exh.1, 3-4-2003; Ord. No. 07-H-32, Exh. 1, 7-3-2007)

Editor's note— Ord. No. 07-H-32, Exh. 1, adopted July 3, 2007 amended information in the Code set out at the end of Chapter 34 as Exhibit 1. FEES. Since this ordinance was not specifically amendatory and the fees set out herein affect different sections within this chapter the information herein has been set out as a new section 34-3, at the discretion of the editor.

Secs. 34-4—34-21. - Reserved.

ARTICLE II. - FOOD ESTABLISHMENTS

Footnotes:

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State Law reference— Municipal regulatory authority concerning food service employees not preempted by state regulation, Tex. Health and Safety Code, § 438.037; municipality which is member of public health district not prohibited from regulating or administering permit system concerning food service establishments, Tex. Health and Safety Code, § 437.004(d).

Sec. 34-22. - Adoption of Texas Food and Beverage Establishment Rules.

A person operating a food establishment, vending machine, mobile food establishment, temporary event, farmers market, or farmers market vendor booth shall comply with this chapter and, the city adopts the Texas Administrative Code Title 25, Part 1, Chapter 228 (Texas Food Establishment Rules) and Chapter 229, Subchapter N (Current Good Manufacturing Practice And Good Warehousing Practice In Manufacturing, Packing And Holding Human Food).

(Ord. No. 07-H-32, II, 7-3-2007; Ord. No. 17-M-10 , § 1, 3-7-2017)

Sec. 34-23. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings, ascribed to them in the section, except where the context clearly indicates a different meaning:

Authorized agent or employee means the health official and any deputies, assistant inspectors, or other officers representing the City of Schertz pursuant to this article.

Food and/or beverage establishment means a food and/or beverage service establishment, a retail food and/or beverage store, a temporary food and/or beverage establishment, a mobile food and/or beverage unit and/or a roadside food and/or beverage vendor.

Food and/or beverage handler means any person, including cook, cook's helper, waiter, waitress, dishwasher, bartender, barmaid, busboy or any other person, whether compensated or not, engaged in

the delivery, storing, preparation, dispensing or serving food or beverages for human consumption, or who engages in the handling, use, cleaning or preparation for use of any pots, pans, grills, skillets, plates, trays, eating and drinking equipment/utensils, or similar wares on which such foods or beverages are prepared, dispensed or served.

Mobile Food Permit Registration means a mobile food vendor with a current and valid mobile food unit health permit from another Texas municipal or county health inspection agency that registers to operate within the city limits of Schertz.

Mobile Food Vendor shall mean a food service vendor that operates a vehicle-mounted or wheeled unit that is capable of being readily moveable.

Permit means a license to operate a food and/or beverage establishment within the City of Schertz for a specified period of time for a stated fee as established in section 34-3 of this chapter.

Regulatory authority means the City of Schertz.

State rules means rules described in section 34-22. These rules are also known as the Texas Food Establishment Rules.

Temporary food establishment means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(Ord. No. 03-H-09, § 7½-3, 3-4-2003; Ord. No. 07-H-32, I, 7-3-2007)

Sec. 34-24. - Inspection of food and beverage establishment.

- (a) In addition to the rules adopted in section 34-22, the City of Schertz adopts by reference the provisions of current rule or rules as amended by the Texas Board of Health found in Title 25 of the Texas Administrative Code, Chapter 217, Milk and Dairy, subchapter C, rules for Manufacture of Frozen Desserts; rule 217.65, Examination and Standards for Frozen Desserts.
- (b) As often as deemed necessary for the proper enforcement of the provisions of this article and the state rules, the health official shall inspect every food and/or beverage establishment that is located within the city at least twice annually. **Mobile food vendors with a valid Mobile Food Permit Registration from the City of Schertz are exempt from the bi-annual inspection requirement with a valid health inspection permit from another Texas municipal or county health inspection agency. This does not prohibit the city health official from performing spot inspections or investigating complaints on mobile food vendors.** The mobile food vendor or person operating the food and/or beverage establishment shall, upon request of the health official, permit access and allow the inspection of all parts of the establishment **or vending unit.**
- (c) In case of any items of violation identified by or brought to the attention of the health official, the person in charge of such establishment **or vending unit** shall be advised of the violation. A second inspection will be made after a lapse of sufficient time, as the health official deems sufficient for correction of the violation. Any violation of the same provision on such second inspection shall call for an immediate suspension of the food and/or beverage establishments permits **or revocation of the mobile food permit registration.**

- (d) In the interest of public clarification, the results from compiling the inspection report will be converted to a letter grade with the letter "A" being the highest level of food service operation and "F" being lowest. The criteria for the various certificates are:

Grade "A" Attain sanitation score of 90 or above;

Grade "B" Attain sanitation score of 89 - 80;

Grade "C" Attain sanitation score of 79 - 70;

Grade "D" Attain sanitation score of 69-60;

Grade "F" Attain a sanitation score of 59 or below.

- (e) An inspection certificate [or mobile food permit registration](#) shall be issued and a copy shall be posted by the establishment and posted immediately at some conspicuous location near the front of the premises where it will be clearly visible to all patrons. The certificate [or registration](#) shall not be defaced and may not be removed by any person except the health official. Violation of this section shall be a Class C misdemeanor punishable by a fine not to exceed \$200.00 per day that the certificate is removed, moved or defaced and/or suspension of the food establishment permit for 30 days. The health official shall permit the owner to correct any noncritical infractions within no more than 24 hours. If the health official determines that the infraction is of an immediate threat to the public health, there shall be no grace period for correction. Repeat violations may result in higher point deduction.

(Ord. No. 03-H-09, § 7½-4, 3-4-2003; Ord. No. 07-H-32, I, 7-3-2007; Ord. No 12-H-14, §§ 1, 2, 6-26-2012)

Sec. 34-25. - Food handler sanitation training course.

It shall be unlawful for any employer to employ any person to be employed as a food handler without such employee having completed a city food handler sanitation training course within two weeks of employment or the next such course scheduled thereafter. Satisfactory completion of a city food handler sanitation training course constitutes authority to permit a person to accept employment or work in, around, or about all food and beverage establishments for a period of one year. Exception: All volunteers within a nonprofit organization shall not be required to attend such course, but all food preparation and serving activities must be directly supervised by someone who has satisfactorily completed a City of Schertz food handler sanitation training course.

(Ord. No. 03-H-09, § 7½-5, 3-4-2003)

Sec. 34-26. - Examination and condemnation of unwholesome or questionable food or drink.

- (a) Samples of food, drink and other substances shall be taken and examined by the health official as often as he deems necessary for the detection of unwholesomeness and deleterious qualities. The health official may condemn and forbid the sale of or cause to be removed or destroyed, any food or drink which is unwholesome or deleterious.
- (b) Any food which appears to the health official to be of a questionable nature from the standpoint of wholesomeness or possible deleterious quality may be held for further examination by attaching a "City of Schertz Retained" tag to the item(s) foodstuffs so retained and may not be

removed or disturbed without the permission of the health official. The city health official shall promptly proceed by examination, laboratory or otherwise to determine the wholesomeness of such food. As soon as such wholesomeness has been determined, such food must be immediately released. If however, such food is found to be unwholesome or deleterious, the health official must promptly condemn such food as herein stated and shall file petition in a court of competent jurisdiction for injunction to restrain the owner from selling such condemned food and to obtain order for destruction of such unwholesomeness or deleterious food or drink.

(Ord. No. 03-H-09, § 7½-6, 3-4-2003)

Sec. 34-27. - Procedure when infection suspected.

When suspicion arises as to the possibility of transmission of infection from any food and beverage establishment employee, the health official is authorized to require any or all of the following measures:

- 1) The immediate exclusion of the employee from all food and beverage establishments.
- 2) The immediate closing of the food and beverage establishment concerned until no further danger of disease outbreak exists in the opinion of the health official.
- 3) Adequate medical examination of the employee and of his associates with such laboratory examinations as may be indicated.

(Ord. No. 03-H-09, § 7½-7, 3-4-2003)

Sec. 34-28. - Permits.

- (a) It shall be unlawful for any person to operate a food and/or beverage establishment, or temporary food and/or beverage establishment without a valid food and/or beverage establishment permit [or mobile food permit registration](#) issued by the city. All permits expire on September 30 of each year and are due and payable on October 1 of each year. Permits are not transferable from one establishment to another or from one person to another. [Mobile food permit registrations expire on the date of expiration from the issuing health inspection agency.](#) Permits [and mobile food permit registration](#) must be posted in a conspicuous place.
- (b) [Mobile Food Vendors may operate in the City of Schertz without a health inspection from the City of Schertz if they possess a valid mobile food health permit from another Texas municipal or county health inspection agency. To operate in the City of Schertz, the mobile food vendor must register with the city health official and pass a fire safety inspection conducted by the Schertz Fire Department if one has not been completed by another Texas municipal or county health inspection agency.](#)
- (c) [Mobile Food Vendors who have a valid food health permit and fire safety inspection from another Texas municipal or county health and fire inspection agency will have their registration fee waived, but will be required to register with the City of Schertz.](#)

- (d) All permits [and city registrations](#) may be suspended or revoked by the health official upon the violation by the holder of any of the terms of this article, following which, unless corrections are immediately made, action may be instituted in the name of the city in any court of competent jurisdiction to obtain a restraining order or permanent injunction preventing such person from operating unless immediate compliance with the provisions of this article is obtained. Revocation of a permit [or mobile food permit registration](#) for any cause whatsoever is still affected by the issuance of the statement that the permit [or mobile food permit registration](#) may be made at any time and will be approved provided that full compliance of the provisions of this article is accomplished.
- (e) Whenever a food and/or beverage establishment is constructed or extensively remodeled or whenever an existing structure is converted to use as a food and/or beverage establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the city for review before work is begun. Extensive remodeling means that 20 percent or greater of the area of the food and/or beverage establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction materials of work area, and the type of model of proposed fixed equipment and facilities. The city will approve the plans and specifications if they meet the requirements of the rules contained in this article. The approved plans and specifications must be followed in construction, remodeling or conversion prior to opening for business; each new establishment will be inspected by the health official to ensure compliance with this article.

(Ord. No. 03-H-09, § 7½-8, 3-4-2003; Ord. No. 07-H-32, I, 7-3-2007)

Sec. 34-29. - Penalty.

Any person, firm, corporation or agent who shall violate a provision of this article, or fail to comply therewith, or with any other requirements thereof, shall be guilty of a Class C misdemeanor. Such person shall be considered guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this article is committed or continued, and upon conviction of any such violation, such person shall be punished by a fine not to exceed \$2,000.00.

(Ord. No. 03-H-09, § III, 3-4-2003; Ord. No. 07-H-32, I, 7-3-2007)