

ORDINANCE NO. 24-H-03

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AMENDING SCHERTZ CODE OF ORDINANCES, CHAPTER 34 HEALTH, ARTICLE I – GENERAL AND ARTICLE II – FOOD ESTABLISHMENTS.

WHEREAS, the City staff of the City of Schertz (the “**City**”) recommended that the City Council approve the amended Code of Ordinances, Chapter 34 Health, Article 1 & 2 to address current changes related to Texas State Law, SB 577, and mobile food units.

WHEREAS, the City staff has provide the amended Code of Ordinances, Chapter 34 attached hereto as Exhibit A.

WHEREAS, on February 20, 2024, the City Council conducted a public hearing and after consideration of the amendments to Chapter 34 Health has determined that the proposed amendments are appropriate and in the interest of the public safety, health, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS:

Section 1. The current Code of Ordinances, Chapter 34 Health, Article I & II is hereby amended as set out in Exhibit A attached hereto.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. This ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the ____ day of _____ 2024.

PASSED APPROVED and ADOPTED ON SECOND READING, the ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit “A”

Code of Ordinances

Chapter 34 Health

Article I – In General

Article II – Food Establishments

ARTICLE I. - IN GENERAL

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

The health official shall be appointed by the city manager.

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, a Sanitarian-in-Training of the Texas Administration Code, or a Registered Environmental Health Specialist (REHS)
- (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 State Health Services.

(c) *Assistant inspector appointment and qualifications.* The city manager, or their designee, 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 Texas Department of Licensing & Regulation and have such powers as are delegated by the health official.

(d) *Inspection agencies.* The city manager, or their designee, 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 the city fee schedule.

(f) *Right of entry.* It shall be unlawful for any person to interfere, hinder, or delay the health official, 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.

(g) *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.

(h) *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.

(i) *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.

Sec. 34-3. - Permit fees.

Please reference the current city fee schedule.

Secs. 34-4—34-21. - Reserved.

ARTICLE II. - FOOD ESTABLISHMENTS

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

A person operating a retail food establishment, vending machine, self-service food market, mobile food units, temporary food establishments, farmers market, shall comply with this chapter and, the city adopts the Texas Administrative Code Title 25, Part 1, Chapter 228 (Texas Food Establishment Rules) Chapter 229, Subchapter N (Current Good Manufacturing Practice And Good Warehousing Practice In Manufacturing, Packing And Holding Human Food) and Chapter 229, Subchapter FF, (Farmers' Markets).

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 other officers representing the City of Schertz pursuant to this article.

Farmers market: refer to Schertz Unified Development Code Article 16. Definitions.

Food establishment shall mean any place where food is prepared and intended for individual portion service. This includes the site at which individual portions are provided for consumption on or off the premises and regardless of whether there is a charge for the food.

Food handler shall mean a person, regardless of age, engaged in the preparation, handling, or vending of food.

Mobile food permit registration means a mobile food unit with a current and valid mobile food unit health permit from another state municipal, or county health inspection agency that registers to operate within the city limits.

Mobile food unit shall mean a food service vendor that operates a vehicle-mounted or wheeled unit that is capable of being readily moveable. Mobile food unit does not mean a stand, booth, pushcart, or peddle cart.

Permit means a license to operate a food 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.

Self-Service Food Market means a market that is unstaffed and offers prepackaged non-time/temperature control for safety (TCS) food and prepackaged refrigerated or frozen time/temperature controlled for safety (TCS) food that is stored and displayed in equipment that complies with §228.225 of this title.

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

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

Sec. 34-24. - Inspection of food 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 217.45, 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 prioritize, and conduct more frequent inspections based upon its assessment of a food establishment. Mobile food units with a valid mobile food permit registration from the city are subject to random inspections, or investigation of complaints on mobile food unit. The mobile food unit or person operating the food 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 as the health official deems sufficient for correction of the violation.
- d. In the interest of public clarification, the results from compiling the inspection report will be converted to a grading placard 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) The most recent scored inspection report 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 inspection report 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 inspection report is removed, moved or defaced and/or suspension of the food establishment permit for 30 days.
- (f) Mobile food unit requirements:
 - (1) Mobile food units may vend on private property, properly zoned, and with the written permission of the property owner/agent granting employees of the mobile food unit access to approved flush type toilet facilities, connected to an approved type sewage system on the private commercial property during hours of operation.
 - (2) Mobile food units shall be parked on a paved surface and in clean surroundings. No mobile food unit shall be parked in violation of section 21.8.9 of the Unified Development Code.
 - (3) The total noise level of any mobile food establishment shall comply with Sec. 54-14 of the Code of Ordinances.

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 an accredited food handler training course within 30 days of hire.

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 deemed 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.
- c.

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

When suspicion arises as to the possibility of transmission of infection from any food 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 establishments.
2. The immediate closing of the food establishment concerned until no further danger of disease outbreak exists in the opinion of the health official.
3. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.
- 4.

Sec. 34-28. - Permits.

- a. It shall be unlawful for any person to operate a food establishment, or temporary food establishment without a valid food 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 units may operate in the city without a health inspection from the city if they possess a valid mobile food health permit from another state municipal, or county health inspection agency. To operate in the city, the mobile food unit must register with the city health official and pass a fire safety inspection conducted by the city fire department if one has not been completed by another state municipal, or county health inspection agency.
- c. Mobile food units who have a valid food health permit and fire safety inspection from another state municipal, or county health and fire inspection agency will have their registration fee waived, but will be required to register with the city.
- 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 establishment is constructed or extensively remodeled or whenever an existing structure is converted to use as a food 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 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.

f.

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.

Secs. 34-30—34-46. - Reserved.