

ARTICLE 3. - FOOD ESTABLISHMENTS AND FOOD VENDING MACHINES^[2]

Footnotes:

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Editor's note— Ord. No. 2003-46, § 1, adopted July 23, 2003, repealed ch. 18, art. 3, §§ 18.086—18.093, 18.121—18.124, in its entirety and enacted new provisions to read as herein set out. Prior to amendment, art. 3 pertained to food service establishments and derived from Code 1970, § 11-1—11-10, 11-11(a), (d), (e), (g)(1), (2), 5½-1—5½-4; Ord. No. 1999-81, § 1, adopted Sept. 27, 1999; Ord. No. 1999-91, § 1, adopted Nov. 8, 1999.

Cross reference— Buildings and building regulations, ch. 14.

State Law reference— Food service establishments, V.T.C.A., Health and Safety code, § 473.001 et seq.

DIVISION 1. - GENERALLY

Secs. 18.061—18.085. - Reserved.

DIVISION 2. - FOOD ESTABLISHMENTS AND FOOD VENDING MACHINES

Sec. 18.086. - Purpose.

The purpose of this division is to protect the public health by establishing uniform requirements for food establishments and food vending machines.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.087. - Definitions.

In this division:

Food establishment means an operation that stores, prepares, packages, serves, or otherwise provides food for human consumption, such as a food service establishment, retail food store, satellite or catered feeding location, catering operation (if the operation provides food directly to a consumer or to a conveyance used to transport people), market, remote catered operation, conveyance used to transport people, institution, or food bank, that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by a common carrier.

Food vending machine means a vending machine that is designed to contain, or contains, potentially hazardous food.

Potentially hazardous food means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of *Clostridium botulinum*, or in raw shell eggs, the growth of *Salmonella enteritidis*. A further elaboration of foods that are included and excluded from this term is contained in the state rules.

Regulatory authority means the city environmental health department.

State rules mean the state rules found at 25 Texas Administrative Code, Chapter 229, Subchapter K. These rules are also known as the Texas Food Establishment Rules. Terms used in this division that are defined in the state rules will have those same definitions when used in this division.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.088. - Adoption of state health rules.

The state rules are adopted by reference and will be enforced by the regulatory authority.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.089. - Remedies.

- (a) *Penalties.* Any person who violates this division, and any person who is the permit holder of or otherwise operates a food establishment or a food vending machine who does not comply with the provisions of this division, or any responsible officer or manager of the establishment or food vending machine, may be punished upon conviction as provided in section 1.015 of this Code.
- (b) *Injunctions.* In addition to subsection (a) of this section, the regulatory authority may seek to enjoin violations of this division.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.090. - Permits.

- (a) *Required.* No person may operate a food establishment or a food vending machine without a valid permit issued by the regulatory authority. Only a person who complies with this division is entitled to receive or retain a permit. Permits expire on an annual basis and are not transferable between persons or locations. A valid permit must be posted and available for inspection by the regulatory authority in every food establishment or on every food vending machine in the city.
- (b) *Application.*
 - (1) Any person desiring to operate a food establishment or a food vending machine must make written application for a permit, on forms provided by the regulatory authority and must pay all applicable fees. Failure to provide all required information and fees, or falsifying information provided on the application may result in the denial of the application or revocation of a previously approved permit. The denial or revocation is in addition to other penalties provided for under section 18.089 of the city Code.
 - (2) Prior to the approval of an application for a permit, the regulatory authority must inspect the proposed food establishment or food vending machine for compliance with the requirements of this division.
- (c) *Fees.*
 - (1) The applicant for a permit under this division will pay all fees to the city finance department.
 - (2) Fees for permits, inspections and other services under this division are established by the city council.
- (d) *Issuance.* The regulatory authority will issue a permit to the applicant if its inspection reveals that the proposed food establishment or food vending machine meets all requirements of this division.
- (e) *Suspension.*
 - (1) The regulatory authority may without warning, notice or hearing, suspend any permit to operate a food establishment or vending machine if the operation constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by subsection (e)(3) of this section. Whenever a permit is suspended, food service operations must immediately cease.

- (2) If, upon reinspection under section 18.092(c), the regulatory authority discovers that the person operating a food establishment or food vending machine did not take the directed corrective measures that necessitated the reinspection, the regulatory authority may suspend the permit until the operator complies with the directions. The regulatory authority shall follow the notice procedures set forth in (e)(3) of this section.
- (3) Whenever a permit is suspended, the regulatory authority must notify the holder of the permit or the person operating the food establishment or food vending machine in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten days. If a request for a hearing is received during the ten day period, the regulatory authority must hold a hearing on the suspension within ten days of receipt of the request. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.
- (f) *Revocation.* The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of this division or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority must notify the holder of the permit or the person operating the food establishment or food vending machine in writing, of the reason for which the permit is subject to revocation and that the permit will be revoked at the end of the ten days following service of notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within the ten day period. If a request for a hearing is not filed within the ten day period, the revocation of the permit is final.
- (g) *Service of notices.* A notice provided for in this division is properly served when it is delivered to the holder of the permit, the person operating the food establishment or food vending machine or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.
- (h) *Hearings.* The hearings provided for in this division will be conducted by the regulatory authority at a time and place designated by the authority. Based upon the recorded evidence of the hearing, the regulatory authority will make a final finding and will either sustain, modify or rescind any notice or order considered at the hearing. A written report of the hearing decision will be furnished to the holder of the permit by the regulatory authority within 30 days of the hearing.
- (i) *Application after revocation.* Whenever a revocation of a permit has become final, the holder of the revoked permit, may make written application for a new permit.
- (j) A food establishment or food vending machine is exempt from the permit fees under this division if it is operated solely by a nonprofit organization. The organization must apply for the exemption and the regulatory authority may request any information reasonably necessary to determine whether the organization is nonprofit and failure to provide such information is grounds for denying the exemption.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.091. - Review of plans.

- (a) *Submission.* Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for the construction, remodeling or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion begins. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas and the type and model of proposed fixed equipment and facilities. The regulatory authority will approve the plans and specifications if they meet the requirements of this division. No food service establishment shall be constructed, extensively

remodeled or converted except in accordance with plans and specifications approved by the regulatory authority.

- (b) *Preoperational inspection.* Whenever plans and specifications are required by subsection (a) of this section to be submitted to the regulatory authority, the regulatory authority shall inspect the food service establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this division.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.092. - Inspections.

- (a) *Inspections.* An inspection of a food service establishment or a food vending machine shall be performed at least once every six months. Additional inspections of the food service establishment or food vending machine shall be performed as often as necessary for the enforcement of this division.
- (b) *Priorities.* If the department cannot inspect every food service establishment or food vending machine, then the department shall prioritize the inspection frequency based upon the following factors:
 - (1) Past performance for noncompliance with critical rules;
 - (2) Past performance for noncompliance with noncritical rules;
 - (3) The hazards associated with the particular foods that are prepared, stored, or served;
 - (4) The type of operation including the methods and extent of food storage, preparation, and service;
 - (5) The number of people served;
 - (6) Whether the population served is a highly susceptible population; and
 - (7) Any other relevant risk factor.
- (b) *Reinspections.* The department shall reinspect the food service establishment or food vending machines in accordance with the guidelines in 25 TAC §229.171(l) if the department finds critical violations during the inspection, if the department gives more than 30 demerits during the inspection, or if the establishment or machine is not ready for inspection.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.093. - Food handler cards.

- (a) *Required for employees.*
 - (1) It is unlawful to accept any person for employment in any food establishment, unless the person has obtained a valid food handler card.
 - (2) It is unlawful for a person to work at any food establishment without first obtaining a valid food handler card.
 - (3) While working at the food establishment, all employees shall carry the food handler card on or about their person.
 - (4) Notwithstanding section 18.090, the provisions of V.T.C.A., Health and Safety Code §§ 438.032 et seq. and 438.041 et seq. are adopted as a portion of this section, insofar as applicable.

- (b) *Completion of training session prerequisite to issuance.* Any person required by this section to have a food handler card must first complete a training session approved by the city environmental health department.
- (c) *Issuance; forms.* Upon completion of the training session required by subsection (b) of this section, the department may issue a food handler card, which will expire 36 months from the date issued. The health officer is authorized to adopt a form for the card, plan of registration and other recordkeeping that will benefit the physicians and the city environmental health department.
- (d) *Registration; records; charges.* Each person receiving a food handler card shall, prior to reporting for work, go to the city environmental health department and have the card stamped and registered. The city environmental health department shall retain a permanent record of all cards issued, to whom issued, the date issued and any other information the health officer may need.

(Ord. No. 2003-46, § 1, 7-23-03)

Sec. 18.094. - Food establishment/food vending machine fee schedule.

City of San Marcos Environmental Health Department Food Establishment/Food Vending Machine Fee Schedule

Permit	Fee	Term
Food establishment permit:		
Up to five employees	\$200.00	Oct. 1st through Sept. 30th
Six to 19 employees	\$300.00	Oct. 1st through Sept. 30th
Over 20 employees	\$500.00	Oct. 1st through Sept. 30th
*Temporary food establishment permit	\$30.00 per booth or event	Up to 14 days
Mobile vendor permit	\$100.00 per unit	One year from date of issuance
Food vending machine permit	\$10.00 per unit	Oct. 1st through Sept. 30th
Reinspection fee	\$100.00	N/A

Food handler certificates	\$15.00	Three years from date of issuance
Plan review	½ of the permit fee	N/A

(Ord. No. 2003-46, § 2, 7-23-03)

Editor's note— Ord. No. 2003-46, § 2, adopted July 23, 2003, did not specifically amend the Code, hence inclusion as § 18.094 was at the discretion of the editor.

Sec. 18.095. - Variance for food establishments seeking to permit dogs in outdoor eating areas.

- (a) A food establishment may apply for a variance waiving the prohibition against dogs at a food establishment as permitted by Section 229.171(c) of the Texas Food Establishment Rules.
 - (1) The variance will be granted if the city environmental health division determines a health hazard or nuisance will not result from the granting of the variance.
 - (2) The food establishment must submit an application for a variance on a form provided by the city environmental health division and pay a nonrefundable application fee of \$200.00.
 - a. Upon request of the food establishment, before accepting an application for a variance and the accompanying application fee, the city environmental health division will schedule one preliminary meeting for up to one hour with a representative of the food establishment to review the proposed variance request, and provide comments to or answer questions regarding the request.
 - (3) A variance granted under this section is nontransferable and shall be reviewed biannually in accordance with City Code section 18.092.
- (b) The city environmental health division may grant a variance pursuant to this section and Section 229.171(c) of the Texas Food Establishment Rules, to allow dogs on the premises of a food establishment's outdoor patio or outdoor dining area, only in accordance with the following standards and conditions intended to prevent a health hazard or nuisance:
 - (1) Except as allowed under Section 229.167(p)(15) of the Texas Food Establishment Rules, no dog may enter or be present inside the food establishment or on any playground area of the food establishment;
 - (2) A separate entrance must be provided from the outside of the food establishment to the outdoor patio or outdoor dining area so that a dog will have direct access to the patio without entering the interior of the food establishment or any playground area of the food establishment;
 - (3) Signage provided by the city environmental health division must be posted at the front entrance and at the separate entrance to the outdoor patio or outdoor dining area of the food establishment to be easily visible to the public. The signage at the front entrance must read: DOG FRIENDLY ACCESS (with an arrow showing the direction to the outdoor patio or dining entrance) NO DOGS THROUGH MAIN ENTRANCE. Signage to the outdoor patio or outdoor dining area must read: DOG ACCESS. In addition, one or more signs promulgated by the

environmental health division outlining the dog dining rules shall be posted in conspicuous locations as determined by the division;

- (4) Doors equipped with self-closing devices must be provided at all entrances to the outdoor patio or outdoor dining area from the interior of the food establishment;
 - (5) No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio or outdoor dining area, except that a beverage glass may be filled from a pitcher or other container that has been filled or otherwise prepared inside the food establishment;
 - (6) The food establishment shall have hand sanitizer available at or near all entrances and exits to the outdoor patio or outdoor dining area;
 - (7) The outdoor patio or outdoor dining area must be continuously maintained free of visible dog hair, dog dander, and other dog-related waste or debris. Any portion of the outdoor patio or outdoor dining area with impervious cover must be hosed down or mopped with animal friendly chemicals at the beginning of each shift during which food or beverages will be served (breakfast, lunch, dinner, or late-hours), or, if a food establishment has continuous food or beverage service without designated shifts, then every six hours that the establishment is open for business. Waste created from a dog's bodily functions must be cleaned up with animal friendly chemicals within five minutes after each occurrence. All dog waste must be disposed of outside of the food establishment in an appropriate waste receptacle. Equipment used to clean the outdoor patio or outdoor dining area must be kept outside of the food establishment. Cleaning under this subsection is not required if no dog has been present in the outdoor patio or outdoor dining area since the last cleaning;
 - (8) While on duty, wait staff or other food handlers at the food establishment, may not pet or have contact with any dog;
 - (9) A dog must be kept on a leash and remain in the control of the owner while in the outdoor patio or outdoor dining area. The dog must be currently vaccinated for rabies and wear a collar or harness with a current rabies tag attached to it;
 - (10) A dog is not allowed on a seat, table, countertop, or similar surface;
 - (11) A dog is not allowed to have contact with any dish, utensil, tableware, linen, paper product, or any other item used for food service;
 - (12) A dog may not be given any food (including, but not limited to, dog kibble, biscuits, and edible treats) while in the outdoor patio or outdoor dining area, but may be given water in a disposable container or from a container provided by the owner;
 - (13) The food establishment must maintain written procedures to notify city animal services of any rabies control incidents, or any other incident involving any sort of altercation between two or more dogs where the dogs come into physical contact;
 - (14) The food establishment shall provide a training program to all employees related to dog dining that is completed once a year and, for each new employee, within 14 days of the date the employee is hired. The training shall include a review of this section and the terms of the variance for the food establishment; and
 - (15) The food establishment shall require each employee to sign a form acknowledging that they have completed the training program and understand this section and the terms of the variance. The form shall, at a minimum, contain the employee's name, address, phone number, the person conducting the training and the date of the training. The forms shall be available upon request during inspections or investigations of complaints.
- (c) An owner, officer, manager, or other person in charge of a food establishment commits an offense if he, either personally or through an employee or agent, violates, allows a violation of, or fails to comply with a term or condition of a variance granted under this section.
- (d) A food establishment granted a variance under this section shall comply with all other applicable Texas Food Establishment Rules and the provisions of this chapter.

- (e) The city may deny or revoke a variance under this section if the food establishment is in violation of any term or condition of the variance as established by this section or state law. The process established in Section 18.090 for the revocation of a food establishment permit will be followed when it is determined a violation of this section has occurred.

(Ord. No. 2015-27, § 1, 8-18-15; [Ord. No. 2017-42](#), § 1, 8-15-17)

Secs. 18.096—18.150. - Reserved.