

Chapter 58 - HEALTH AND SANITATION

Footnotes:

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Cross reference— *Animals, ch. 18; buildings and building regulations, ch. 26; unsafe building abatement, § 26-201 et seq.; environment, ch. 46; floods, ch. 54; solid waste, ch. 86; junked vehicles, § 102-461 et seq.; utilities, ch. 110.*

State Law reference— *Local Public Health Reorganization Act, V.T.C.A., Health and Safety Code § 121.001 et seq.; authority of home rule municipalities to enact health ordinances, V.T.C.A., Health and Safety Code § 341.081; local regulation of sanitation, V.T.C.A., Health and Safety Code ch. 342; food, drugs, alcohol and hazardous substances, V.T.C.A., Health and Safety Code ch. 431 et seq.; Texas Controlled Substances Act, V.T.C.A., Health and Safety Code § 481.001 et seq.; community services for mental health and mental retardation, V.T.C.A., Health and Safety Code § 534.001 et seq.; preservation of health in home rule municipality, V.T.C.A., Local Government Code § 54.004; nuisance in home rule municipality, V.T.C.A., Local Government Code § 217.042.*

ARTICLE I. - IN GENERAL

Secs. 58-1—58-30. - Reserved.

ARTICLE II. - FOOD ESTABLISHMENTS

Footnotes:

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Editor's note— *Ord. No. 2019-04, § 1, adopted Feb. 26, 2019, repealed the former Art. II, §§ 58-31—58-36, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and derived from Code 1968, art. 9-1-1—9-1-5; Ord. No. 89-30, 1-28-1989; Ord. No. 89-01, 2-14-1989; Ord. No. 91-01, 1-22-1991; Ord. No. 91-27, 10-22-1991; Ord. No. 94-11, 5-10-1994; Ord. No. 97-03, 3-25-1997; Ord. 99-08, 7-13-1999; Ord. No. 2008-22, 7-22-2008; Ord. No. 2011-14, 7-12-2011.*

Sec. 58-31. - Adoption of state rules.

There is hereby adopted the "City of Kerrville Food and Food Handlers Code," which comprises the most recent version of the Texas Administrative Code, Title 25, Part 1, Chapter 228, Texas Food Establishment Rules (TFER). The city shall maintain a copy of the TFER in the office of the city secretary and the development services department.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-32. - Local amendments.

- (a) The Food and Food Handlers Code adopted by section 58-31 is amended by adding the following provisions to the Texas Administrative Code, Title 25, Part 1, Chapter 228:

- (1) 228.2(160) Code Enforcement/Health Officer—the City's Code Enforcement and/or Health Officer(s), as designated by the City Manager and assigned to inspect food establishments, educate food establishments' employees and food employees on local and state statutory requirements for health and safety in food service, and enforce all local and state health and safety laws as permitted by law.
 - (2) 228.2(161) Corn roaster—a rotisserie type of oven mounted on a vehicle, trailer, or pushcart that is designed to cook whole ears of corn with the shucks in place.
 - (3) 228.2(162) Grade card—a card indicating a letter grade that is posted at the conclusion of an inspection which is based on the results from the inspection report form.
 - (4) 228.2(163) Inspection report form—the written report prepared by the City following an inspection which indicates a numeric score to determine compliance with this article as well as federal and state laws.
 - (5) 228.2(164) Reconstituted—Food created or prepared by recombining dehydrated food products with water or other liquids.
 - (6) 228.2(165) Sanitation—Effective bactericidal treatment process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on tableware, utensils, and equipment.
 - (7) 228.2(166) Route based vendor—a restricted unit that travels from location to location selling items.
 - (8) 228.2(167) Site based vendor—a restricted or unrestricted unit that is stationary.
 - (9) 228.2(168) Sticker—a decal issued by the City that is numbered and has the month and year of the expiration date of the food permit.
 - (10) 228.2(169) Supervisory personnel—persons with supervisory training or management responsibilities, as well as persons in charge of food preparation or service.
 - (11) 228.2(170) Vehicle—every device in, upon, or by which any food is or may be transported, pushed, or drawn.
 - (12) 228.33(g) The certified food protection manager is considered in charge of the permitted establishment and is required to remain on-site during food preparation or where the business or operation is open to the public.
 - (13) 228.186(o)(2)(F) in areas that are not used for food preparation or storage, a food establishment may, at the owner's or manager's discretion, allow patrons to bring dogs on the premises after the food establishment (1) has notified, in writing, the Code Enforcement/Health Officer that it intends to allow such action; and (2) posts notice of same in all areas where dogs are allowed by the food establishment.
- (b)

The Food and Food Handlers Code adopted by [Section 58-31](#) is revised by adopting in place of the identically numbered provisions in the Texas Administrative Code, Title 25, Part 1, Chapter 228, the following provisions:

- (1) 228.2(57) Food establishment—Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:
 - a. A restaurant; retail food store; satellite feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; self-service food market; conveyance used to transport people; or institution, including any establishment where prepackaged food and food products are offered for sale to the ultimate consumer and intended for off-premise consumption;
 - b. An establishment 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 common carriers;
 - c. Includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises;
 - d. Food establishment does not include a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a cottage food industry; an area where cottage food is prepared, sold, or offered for human consumption; a bed and breakfast; a food bank; or a private home that receives catered or home-delivered food.
- (2) 228.2(85) Mobile Food Unit (MFU)—a vehicle mounted, self-, or otherwise propelled, self-contained food service operation, designed to be readily movable, including catering trucks, trailers, push carts, and roadside vendors, and used to store, prepare, display, serve, or sell food. A Mobile Food Unit must completely retain their mobility at all times. A Mobile Food Unit does not include a stand or a booth. A roadside food vendor is classified as a MFU.
- (3) 228.2(116) Regulatory Authority—the local, state, or federal enforcement body or authorized representative having jurisdiction over a food establishment, in most instances being the City and its Code Enforcement/Health Officer. For purposes of this article and its regulations, Regulatory Authority, the City, and Code Enforcement/Health Officer will be used at times interchangeably.
- (4) 228.2(143) Temporary food establishment—a food establishment that operates a stand or booth for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-33. - Inspections.

- (a) The code enforcement/health officer, after proper identification, is authorized and must be permitted to enter any food establishment at any reasonable time to inspect for compliance with this article. The code enforcement/health officer is authorized to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.
- (b) The code enforcement/health officer shall inspect each food establishment within the city at least once every six months and shall make as many additional inspections as are necessary for the enforcement of this article. The code enforcement/health officer shall perform a follow-up inspection for any establishment scoring 75 or below on an inspection within ten days of the initial inspection. The food establishment shall pay a reinspection fee prior to the follow up inspection. Failure to pay the reinspection fee or a second score of 75 or below on an inspection may result in an order to immediately cease all food service operations. Any person, firm, or food establishment proven to have failed to immediately cease all food service operations upon an order from the city may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this article.
- (c) If a food establishment is being inspected for the first time by a code enforcement/health officer, the following additional requirements apply:
 - (1) For a food establishment located on or within permanent premises, a code enforcement/health officer will only conduct an inspection to obtain a food service permit after the food establishment has passed final inspections by the city's building official and its fire marshal, or designees.
 - (2) For a food establishment operating as a mobile food unit, a code enforcement/health officer will only conduct an inspection to obtain a MFU permit after any other inspections required for the specific type of MFU being operated have been completed and approval has been given.
 - (3) A food establishment located on or within permanent premises may not store any food defined as time/temperature control for safety food (TCS) at the premises until after the code enforcement/health officer has completed the inspection and issued a permit. If a food establishment is found to have TCS food on the premises at the time of an initial health inspection, the code enforcement/health officer may order the TCS food to be disposed of properly if it is found to have been kept in unsafe conditions.
- (d) Whenever an inspection of a food establishment is conducted, the findings will be recorded in an inspection report and a copy of each inspection report with number score and corresponding letter grade will be provided to the food service manager or other person in charge of the

establishment. The food service manager shall post the letter grade corresponding to the food establishment's inspection report on an inside wall or window near the main public entrance of the establishment in a location readily visible to customers. Such letter grade may not be defaced or removed by any person except the code enforcement/health officer. Any person, firm, or corporation who fails to properly post the inspection report or the corresponding letter grade as required may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.

- (e) In the case of a temporary food service establishment, all violations must be corrected immediately. If a violation is not immediately corrected, a code enforcement/health officer shall immediately suspend the permit. Any person, firm, or establishment found to have failed to immediately cease operations upon suspension of temporary food service permit may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-34. - Grease traps.

The installation, operation, and maintenance of grease traps must comply with the following regulations:

- (1) *When required.* A food establishment, which generates grease or oil based products which thus, may not be introduced into the publically owned treatment works (POTW), otherwise known as the city's wastewater system, as set forth in section chapter 110 of the Code, shall install a grease trap in accordance with city-approved design specifications when:
- a. The food establishment is initially constructed or permitted;
 - b. There is a change in ownership or in occupancy of the food establishment;
 - c. There is a reconstruction of the premises;
 - d. A violation of chapter 110 of the Code has occurred; or
 - e. The food establishment has been determined by a code enforcement/health officer to have no grease trap or to have a grease trap which is insufficiently sized such that it is reasonable to expect that the business or operation will discharge wastes into the wastewater system in violation of chapter 110 of the Code if a sufficiently sized grease trap is not installed.
- (2) *Deferral.*
- a. In limited situations as specified below, the holder of a food permit may submit a written request to the city manager, or designee, for a deferral from the requirements of the applicable sections of chapter 110 of the Code. The city will not grant a deferral until:
 - 1.

The city determines that the operation of the food establishment will not result in the discharge of wastes into its wastewater system in violation of chapter 110 of the Code; and

2. The permit holder has installed a sampling point (e.g., sample well) accessible to the code enforcement/health officer, which allows for the sampling of discharges from the food establishment into the city's wastewater system.
 - b. Once granted, a deferral will remain in effect until such time that the code enforcement/health officer determines that test samples from the sampling point indicate discharges from the food establishment violate chapter 110 of the Code, or until federal, state, or local law terminates such deferrals.
- (3) *Permittee liable.* The holder of a food permit is at all times responsible for the proper operation, cleaning, and maintenance of the grease trap connected to the wastewater system at the location to which the food establishment permit was issued.
- (4) *Inspection by code enforcement/health officer.* When conducting inspections of a food service establishment, the code enforcement/health officer shall conduct the following additional inspections:
 - a. A visual inspection of all grease traps installed at that location to determine that the trap is being properly maintained and cleaned;
 - b. A review of the permit holder's copy of the manifest of a liquid waste transporter to determine the adequacy of cleaning of such traps in accordance with chapter 110 of the Code; and
 - c. A visual inspection of the food establishment and the surrounding premises to determine the reasonable likelihood that the operation of the establishment will discharge wastes into the wastewater system in violation of chapter 110 of the Code, if a sufficiently sized grease trap is not installed.
- (5) *Inspection report.* The inspection report prepared by the code enforcement/health officer pursuant to this section will include an evaluation of the food establishment's grease trap maintenance with a weighted score noted for the level of compliance in the same manner as all other items inspected.
- (6) *Maintenance of manifests.* The holder of a food establishment permit must keep and maintain on the premises of the food service establishment for a period of five years after issuance, a copy of each manifest issued by a liquid waste transporter for removal of waste from the grease trap of the food service establishment in accordance with chapter 110 of the Code.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-35. - Permit required.

- (a) It is unlawful for a person to operate a food establishment without a valid permit issued by the code enforcement/health officer. Such permit is known as a "food establishment permit", a "temporary food establishment permit", or a "mobile food unit permit"; hereinafter collectively referred to as "permit(s)" or "food permit(s)". Only a person who complies with the requirements of this article is entitled to receive or retain such a permit. A permit is not transferable from one person or place to another person or place. A valid permit must be posted in view of the public in every food establishment. All food permits remain the property of the city.
- (b) Any person desiring to obtain a food permit must apply for such permit on a form provided by the city. Such application must include the applicant's full name and mailing address, the location of proposed food establishment, and the signature of the applicant(s).
- (c) Whenever a food establishment and/or retail food store is constructed or remodeled, and whenever an existing structure is converted to use as a food establishment and/or retail food store, properly prepared plans and specifications for such construction, remodeling, or conversion must be submitted to the city for review and approval before construction, remodeling, or conversion begins. The plans and specifications must indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The city shall approve the plans and specifications if they meet the requirements of this article. It is unlawful for a food establishment and/or retail food store to be constructed, remodeled, or converted except in accordance with plans and specifications approved by the city.
- (d) Whenever plans and specifications are required to be submitted to the city, the city shall inspect the food establishment prior to operation to determine compliance with this article.
- (e) Any person desiring to obtain a temporary food service permit must apply for such permit on a form provided by the city. In addition to the information listed in subsection (b) above, such application must include the inclusive dates of the proposed operations; the name, address and telephone number of the owner(s) of the property where the temporary food service establishment is to be located; and a statement signed by the owner(s) of the property or authorized agent, stating that arrangements have been made for the proper disposal of all rubbish, trash, garbage, and for maintaining the property free from litter and nuisances during the total period of operation up to and including any cleanup time required to remove all rubbish, trash, garbage, and litter resulting from the food service. A description of such arrangements must be included. A permit for a temporary food establishment is limited to a time period that may not exceed 14 consecutive days.
- (f) Any person desiring to obtain a mobile food unit permit must apply for such permit on a form provided by the city. In addition to the information listed in subsection (b) above, such application shall include the physical address where the mobile food unit is stationed when not in use; the

business name and address of the central preparation facility or other fixed food service establishment where the potentially hazardous food supplies are obtained; the address of the servicing area; a description of the mobile food unit which includes the manufacturer's make and model number.

- (g) A code enforcement/health officer shall issue the appropriate permit to the applicant if the inspection reveals that the proposed food establishment complies with the requirements of this article.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-36. - Mobile food units.

- (a) Any person desiring to operate a mobile food unit (MFU) must obtain a permit for each MFU from the code enforcement/health officer. A code enforcement/health officer will issue each permit only after an inspection reveals satisfactory compliance with state and local laws, including this article. Such permit remains the property of the city.
- (b) It is unlawful for a person to operate or cause to be operated any MFU, which does not possess a valid permit issued by a code enforcement/health officer. Any person, firm, or establishment who is found to have operated or caused to be operated a MFU without a valid mobile food unit permit may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this article. An MFU operating within the city must have onsite at least one employee who possesses a food manager certification.
- (c) The fire marshal shall inspect the mobile food unit as follows:
 - (1) An operator of a MFU must possess a valid driver's license. In addition, the MFU must display valid license plates and a state registration sticker and must be in good working order.
 - (2) A mobile food unit must contain an "ABC" 5 pound sized extinguisher with an annual inspection tag from a Texas licensed inspection company. If frying media (grease) may occur, a class K extinguisher is required with an annual inspection tag from a Texas licensed inspection company. An MFU equipped with an automatic extinguishing system must have a current (bi-annual) inspection tag from a Texas licensed inspection company.
 - (3) An MFU must be parked or located in such a way as to maintain a minimum of ten-foot clearance around the vehicle to allow for emergency access. An MFU equipped with an automatic extinguishing system must maintain a minimum of ten-foot clearance from all combustible structures and other parked MFUs or unattended vehicles. An MFU not equipped with an automatic extinguishing system but that produces grease laden vapors must maintain a minimum of 50-foot distance from combustible structures or parked, unattended vehicles.
 - (4)

All cooking appliances in the mobile food unit must be of an approved type, listed, and labeled for the use intended. Appliances must be installed in accordance with the manufacturer's instructions. All cooking appliances must have an approved, labeled, and listed on-off valve. Camp stoves or the equivalent are prohibited.

- (5) All propane and natural gas appliances must be pressure tested annually and contain only approved parts. Rubber hoses are prohibited. All piping must comply with National Fire Protection Association 58 and be protected from physical damage. Mounting and placement of containers must comply with National Fire Protection Association 58 and Texas Department of Transportation regulations. The capacity limit of propane and natural gas containers or cylinders will be determined by the fire marshal after consideration of features that secure and protect the container. Upon request of the fire marshal, the owner/operator of the MFU shall produce documentation illustrating that an annual gas test was performed and passed by a licensed individual or firm.
 - (6) Cooking surfaces in the mobile food unit must remain clean of grease build-up. Trash containers and debris must be emptied regularly. Appliances shall be plugged directly into electrical outlets and extension cords may not be utilized for appliances.
 - (7) The fire marshal is authorized to conduct periodic inspections as necessary to determine the extent of compliance at any time.
- (d) Such permit shall be affixed by the code enforcement/health officer on the mobile food unit in a conspicuous place where it can be viewed by customers. A permit will set forth the business name, license plate number, permit number and expiration date.
- (e) Every MFU must be readily identifiable by its business name and phone number that are printed, permanently affixed, and prominently displayed on the back of the unit and on the side of the unit from which food is served, in letters not less than three inches in height.
- (f) A MFU must meet the following operational requirements and restrictions:
- (1) It is unlawful for the operator of a MFU to remove any food from the MFU to vend from a stand or other temporary structure located upon any public street, sidewalk, right-of-way, or other adjacent public or private area without a permit as required by this article.
 - (2) It is unlawful to operate an MFU from the public right-of-way. The operation of a mobile food unit near a street must not create a traffic hazard.
 - (3) An MFU may apply for permission to operate within a city park subject to applicable park regulations.
 - (4) A MFU may operate on private property where the property is properly zoned and the operator receives written permission from the property owner. An operator is prohibited from parking and operating from an unimproved lot as defined by the zoning code.
 - (5)

A MFU may not park in any location while operating and open for business for more than 72 consecutive hours.

- (6) A MFU must completely retain its mobility at all times.
- (7) Unless written permission is granted by the appropriate school, it is unlawful for a person to operate a MFU within 300 feet of the property line of any public or private elementary, middle, or high school one hour before, during, and after school hours.
- (8) No person shall operate a MFU within 50 feet of any residential zoning district.
- (g) According to TFER, a MFU must operate from a licensed central preparation facility (CPF) or other approved retail food establishment. The city manager, or designee, may approve a variance to this requirement if the MFU meets all other requirements set forth by the TFER and this article and the variance will not create any health hazard or nuisance. An application for the variance must be submitted on a form provided by the city and include: a statement of the proposed variance that includes the section of the rule(s) related to the modification; and, the rationale for how the potential public health hazards and nuisances addressed by the relevant rule(s) will be alternatively addressed by the proposed variance. In addition, an applicant may submit additional documents and photographs that will help the city verify that a health hazard or nuisance will not result from the variance. The city will provide a written response to the applicant concerning the variance request. If the city grants a variance, any deviation from the procedures is justification to rescind the variance. Where the city grants a variance, the MFU must provide information about the servicing operations, including the location the MFU operator will use to acquire potable water and dispose of liquid waste.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-37. - Fees.

Each application for a permit must be accompanied by the appropriate fee established by city council.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-38. - Permit valid for one year.

- (a) Each permit is valid for 12 months.
- (b) Anyone allowing a permit to expire without renewing, must pay a late fee to renew a permit as established by city council.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-39. - Grading of food establishment.

- (a) The code enforcement/health officer shall inspect and issue a grade to all food establishments in a uniform and consistent manner.
- (b) The code enforcement/health officer, based upon a 100-point system, shall determine the grade for each food establishment using the following system:
 - (1) "A" Card: A score of 90 or above, which indicates safe food handling practices and designates a food establishment as meeting the provisions of this article.
 - (2) "B" Card: A score between 80 and 89, which indicates that the food establishment has met minimum health requirements but also was found to have several violations of this article.
 - (3) "C" Card: A score between 70 and 79, which indicates that a food establishment was found to have several violations of this article which were not immediately correctable.
- (c) A food establishment that scores below 70 points shall immediately close to the public and cease all food operations.
- (d) Each food establishment shall post its grade card at or near each public entrance or in similar conspicuous place. The grade card remains the property of the city. No person shall move, remove, deface, camouflage, alter, or conceal the grade card from public view. It is unlawful to remove a grade card or to operate a food establishment unless the grade card is posted in the manner requested herein. The grade card remains valid until the next routine inspection of the food establishment.
- (e) Following an inspection by the code enforcement/health officer and the issuance of a grade card, the permit holder for the food establishment may appeal the grade as follows:
 - (1) A permit holder must submit a written request for an appeal within five business days to development services following the date of the inspection.
 - (2) The code enforcement/health officer shall schedule an appeal before the city's food service advisory board within 20 business days following the written appeal request. The board shall hear the appeal and provide an opinion as to whether the grade was appropriate.
 - (3) The previously issued grade card must remain posted through the appeal process. Where a revised grade card is issued, the new grade card must be posted in accordance with this section.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-40. - Suspension or revocation of permit.

- (a) The code enforcement/health officer may suspend or revoke any permit upon written notice as is reasonable under the circumstances, if the permit holder does not comply with the requirements of this article, or if the operation of the food establishment or MFU otherwise constitutes a

substantial hazard to public health. Suspension or revocation is effective upon service of notice as required below. Where a permit is suspended or revoked, all food service operations must immediately cease.

- (b) Whenever a permit is suspended or revoked, notice must be given to the permit holder or the person in charge of or responsible for the operation of the food establishment or MFU. Such notice must include:
 - (1) The specific condition(s) which are in violation of this article or the specific conditions which constitute a substantial hazard to public health;
 - (2) That the permit holder may file an appeal with the city's food service advisory board within three business days after the permit is suspended revoked, but that if the code enforcement/health officer permits the food establishment to reopen before the appeal is held, the appeal will be cancelled; and
 - (3) That if an appeal is held, the permit holder must appear in person.
- (c) Whenever a permit is suspended or revoked, the code enforcement/health officer shall seize it.
- (d) The food service advisory board shall hear the appeal within 15 business days of the city receiving an appeal of the permit holder. Upon setting the appeal date and time, the city shall provide notice of such appeal to the permit holder. If the permit holder fails to appear at the appeal before the food service advisory board at the time, place, and date specified, the food service advisory board may cancel the appeal.
- (e) Where an appeal is held, the food service advisory board shall determine whether the food establishment was, in fact, in violation of this article or that it constituted a hazard to public health, and whether the permit should remain suspended or revoked until all violations of this article are corrected and any conditions constituting a hazard to public health are eliminated. A copy of the board's decision shall be either given to the responsible party upon conclusion of the appeal.
- (f) Whenever the reasons for a suspension or revocation no longer exist, the permit holder or the person in charge may notify the code enforcement/health officer that the conditions under which the permit was suspended have been corrected and that an inspection is requested. Upon receipt of request and payment of a reinspection fee, the code enforcement/health officer shall conduct such inspection as soon as possible and in no event, later than three regular working days after the receipt of the request for inspection.
- (g) When a mobile food unit permit which has been suspended or revoked is reinstated, a new permit shall be affixed to the mobile food unit. A reinstated permit shall include all of the same information as that which appeared on the permit which was suspended or revoked, and shall not be reinstated until a reinspection has been completed and the reinspection fee(s) paid.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-41. - Food service advisory board.

- (a) *Appointment.* The city has previously established and will continue to maintain a food service advisory board (the "board"), consisting of seven members, each of whom is appointed by city council. The board is composed of local certified food managers from the food service or food processing industry, any person associated with a food establishment conducting business within the city, and any Kerr County resident qualified by training and/or experience to advise on the application of this article.
- (b) *Term of office.* Board members serve for staggered terms of two years each and no member of the board may serve more than two consecutive terms. Vacancies will be filled for an unexpired term in the manner in which the original appointments are made.
- (c) *Quorum.* Four members of the board constitute a quorum for the transaction of business and a majority vote of the full membership is required to effect an official action.
- (d) *Ex officio member; records.* The code enforcement/health officer serves as the officio member of the board, without voting privileges. Such ex officio member will act in an advisory capacity and secretary to the board. The secretary shall make a detailed record of all its proceedings, which shall set forth the reasons for the board's decisions, the vote of each member participating therein, the absence of a member, and any failure of a member to vote.
- (e) *Duties and powers.*
 - (1) *Appeals.*
 - a. The board, when so appealed to in writing, may recommend to the city a variance from any provision of this article to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of this article or public interest. The board shall develop the necessary policy that will establish the standards regarding the granting of variance applications. However, it shall be the duty and responsibility of the code enforcement/health officer to make the final determination regarding the grant of specific variance applications, and to assure that the granting of the variance will not be detrimental to the public health, safety, or welfare.
 - b. A recommendation of the board to vary the application of any provision of this article shall specify in what manner such variation or modification is made, the conditions upon which it is made, and the reasons therefor.
 - c. Final recommendations of the board must be in writing and indicate the vote upon the decision. Every decision will be promptly filed with the city secretary and shall be open to public inspection.
 - d. The board shall, in every case, reach a decision without unreasonable or unnecessary delay.

e. The code enforcement/health officer shall take immediate action after receiving the board's recommendation.

(2) *Interpretations.* The board shall act upon requests for interpretations of this article. The board's opinion on interpretations shall be made in the form of a recommendation(s) to the code enforcement/health officer. Requests for interpretations may be made in writing by any person subject to the application of this article.

(3) *Advisory matters.*

a. The board shall hear and review appeals relating to a suspension or revocation of a food permit. The board does not have the authority to change or modify a decision by the code enforcement/health officer.

b. Board may consider and make recommendations to the city council on any matter pertaining to this article.

(Ord. No. 2019-04, § 1, 2-26-2019)

Sec. 58-42. - Penalties.

(a) The provisions of this article are applicable to all food establishments unless otherwise required by law.

(b) It is unlawful for any food establishment to operate within the city unless it conforms to the provisions of this article.

(c) A permit holder shall ensure that the food establishment or mobile food unit is in full compliance with this article at all times. The person in charge shall ensure that the food establishment is operated in full compliance with this article and that all food is stored, prepared, displayed and served in accordance with the provisions of this article.

(d) Any person who violates any provision of this article is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$2,000.00; provided, however, that no penalty shall be greater than the penalty provided for the same or a similar offense under the laws of the State of Texas. However, nothing in this article shall be construed as requiring the code enforcement/health officer to report minor violations of this article for prosecution whenever the code enforcement/health officer believes the public interest will be adequately served in the circumstances by a warning.

(Ord. No. 2019-04, § 1, 2-26-2019)

Secs. 58-43—58-60. - Reserved.

ARTICLE III. - SMOKING IN ENCLOSED PUBLIC PLACES AND PLACES OF EMPLOYMENT; USE OF ELECTRONIC VAPING DEVICES