

PART II - CODE OF ORDINANCES
Chapter 62 - HEALTH AND SANITATION
ARTICLE III. FOOD

DIVISION 1. GENERALLY

Sec. 62-81. Definitions.

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

Central Preparation Facility means the location where a mobile food unit originates, and is returned for cleaning, storing or stocking. Food preparation for catering is permitted. This is an approved and permitted facility or space where food is prepared, stored, and packaged.

Employee means any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or the permit holder, person in charge, person having supervisory or management duties, person performing work under contractual agreement, or other person working in a food establishment.

Extensive remodeling means alterations or remodeling to an existing structure that requires a commercial building permit and that the local regulatory authority deems to be extensive.

Food means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

Food Establishment means a restaurant, coffee shop, cafeteria, short order cafe, , cafe, tavern, delicatessen, bakery, barbecue-to-go, limited food sales, central preparation facility, catering, mobile food unit, snack bar, farmer's market, meat processors, temporary food establishments state licensed adult or child care facility kitchen, and all other eating/drinking establishments as well as kitchens or other places in which food or drink is prepared for sale elsewhere.

Grocery means any business that stores and sells perishable products that includes but is not limited to self-service bulk food areas, dairy, frozen and other refrigerated sections. These products are not handled, opened or processed in any way by the business.

Health Authority/Local Health Authority means the City of New Braunfels Health & Food Safety staff, sanitarian, health specialist or city health inspector who has jurisdiction over the food establishments.

Improved surfaces means ground surface covered or paved with concrete, asphalt, brick and mortar, permeable or impermeable pavers, or such materials as has been approved for parking of vehicles in such a manner as is designed to properly support the gross weight of the class of vehicle parked, and permanently inhibits weed growth around and under the vehicle and leakage of oil, fuel and other fluids into the ground.

Mobile Food Unit (MFU) means a vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks, and trailers) and used to store, prepare, display, serve or sell food. A mobile food unit must completely retain its mobility at all times. A MFU does not include a stand or a booth. The different types of mobile food units may have different restrictions.

Type A- is a vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks and trailers) with no permanent fixed location. This mobile food unit does not have a permanent location, cannot stay at a location for three consecutive days and must vacate the property after 8 hours.

Type B- is a vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks and trailers) with a fixed location for a 12-month period

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that has been approved by the Planning and Development Division.

Type C- is any individual, firm, or corporation who may be traveling from place to place in a vehicle-mounted, self or otherwise propelled, self-contained food service vehicle, designed to be readily movable, used to store, prepare, display, serve or sell at locations that are construction area.

Type D- is any individual, firm, or corporation who may be traveling from place to place in a vehicle-mounted, self or otherwise propelled, self-contained food service vehicle, designed to be readily movable, used to store, prepare, display, serve or sell frozen or refrigerated confections, including but not limited to ice cream cones, frozen ice cream novelties, raspas or paletas, that are available for sale. A type D mobile food unit has special exemptions and requirements.

Mobile food court is a location where three or more mobile food units congregate to offer food or beverages for sale to the public. This definition does not apply to temporary events.

Servicing area means an operating base location to which a mobile food unit or transportation vehicle returns regularly for vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks or similar activities.

Temporary Food Establishment means a food establishment that operates for a period of no more than 10 consecutive days in conjunction with a fair, festival, carnival, circus, fund raiser, public gathering, or an event that is sponsored or recognized or organized by an organization such as a homeowners association, religious organization, cultural group, political party, schools, sports team, fraternal organization, or other non-profit group.

Tavern means a bar, club, drive through or lounge serving alcohol that is inside or outside and has a separate counter or seating area from the general food establishment seating area, regardless of whether it is located within the premises of a food establishment.

Utensils means and includes any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation or serving.

(Code 1961, § 9-1)

Cross reference(s)—Definitions generally, § 1-2.

¹Charter reference(s)—Authority to make and enforce health regulations, § 2.01.

Cross reference(s)—Businesses, ch. 18; business licenses, § 18-26 et seq.; solid waste, ch. 110; solid waste containers, § 110-36 et seq.

State law reference(s)—Minimum standards of sanitation and health protection measures, V.T.C.A., Health and Safety Code § 341.001 et seq.; Texas Food, Drug, and Cosmetic Act, V.T.C.A., Health and Safety Code § 431.001 et seq.; food service establishments, retail food stores, mobile food units, V.T.C.A., Health and Safety Code § 437.001 et seq.; public health measures relating to food, V.T.C.A., Health and Safety Code § 438.001 et seq.; municipal ordinances relating to food service employees, V.T.C.A., Health and Safety Code § 438.037.

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DIVISION 2. FOOD HANDLERS²

Sec. 62-96. Examination; registration certificates.

(a)

(b) A "food handler" shall be defined as any person who prepares, cooks, or serves food or drinks for consumption by the public. Such food handlers shall include those personnel in a supervisory capacity including owners and those who provide accessory services such as dishwashers, busboys, cashiers and so forth, whether full-time, part-time or temporary employees. The term "food handlers" shall include those who are employed as butchers, meat cutters and wrappers, produce handlers or bakers.

(c)

(d) All food handlers shall be thoroughly indoctrinated in personal hygiene and food service sanitation as well as in the methods and importance of preventing food-borne illness. The local health authority or his designated representative shall be in charge of preparing a minimum required two-hour workshop designed to impart the information necessary to the sanitary preparation and handling of food and food service equipment.

(e) Requirements for professional food handlers to acquire food handler's cards. Those persons defined as professional food handlers in this section shall be required to obtain food handler's certificate before working in any capacity that shall require the preparation or service of food for consumption by the public. Professional food handlers will qualify for a food handler's certificate, initially, by attending and showing knowledge of a course designed to impart information necessary to the sanitary preparation and handling of food and equipment. Such food handler's certificate shall be issued-for a period of two

(f) Volunteer food handlers will not require a food handler's certificate. However, each chairperson heading an event will be given an information package containing sanitation requirements at the time of licensing. Each volunteer food handler will be responsible for knowing the information presented them through this channel. A list of rules and information will be provided by the local health authority or his designated representative and must be posted conspicuously at each event site. The volunteer worker will be expected to follow the rules in practice.

(g) The local health authority or his designated representative shall be responsible for enforcing the rules set out in this section.

(h) As an administrative charge for registering food handlers under this section and other work involved, the health division shall impose a nonrefundable administrative charge of \$15.00 for the issuance of a two year professional health certificate. There shall not be a charge for volunteers voluntarily working for nonprofit or civic organizations on a non-continuing basis.

(i) It shall be the duty of the local health authority or his designated representative to prepare the workshop for educating the food handlers. (Code 1961, § 9-5; Ord. No. 99-47, § I, 7-12-99)

State law reference(s)—Physical examination, doctor's certificate, V.T.C.A., Health and Safety Code § 438.033.

²State law reference(s)—Food service employees, V.T.C.A., Health and Safety Code § 438.031 et seq.; municipal ordinances, V.T.C.A., Health and Safety Code § 438.037.

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Sec. 62-101. Same—Examination of employees to determine transmissible condition.

Sec. 62-102. Personal cleanliness.

Every person engaged in the handling of food, drink or unsealed containers therefore shall maintain personal cleanliness, shall wear clean outer garments, shall keep his hands clean at all times, and shall thoroughly wash his hands with soap and water after each visit to the toilet.

(Code 1961, § 9-2)

State law reference(s)—Employee cleanliness, V.T.C.A., Health and Safety Code § 438.034.

Secs. 62-103—62-115. Reserved.

DIVISION 3. RESTAURANTS³

Sec. 62-116. Compliance with article.

No restaurant shall be operated within the city unless it conforms with the requirements of this article. When any restaurant fails to qualify, the local health authority is authorized to suspend the permit required in section 62-118.

(Code 1961, § 9-

Sec. 62-117. Enforcement of article; Texas Food Establishment Rules.

- (a) *Adoption of state regulations.* The City of New Braunfels adopts by reference the provisions of the current rules or rules as amended by The Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments within the City of New Braunfels to the extent that they do not conflict with the provisions of the Code of Ordinances of the City of New Braunfels.
- (b) *Conflicting provisions.* In the event of conflict with the provisions of this article and the code incorporated by reference in subsection (a) of this section, the provisions of this article shall govern.

(Code 1961, § 9-12; Ord. No. 2006-106, § 1, 12-11-06)

Editor's note(s)—Ord. No. 2006-106, § 1, adopted December 11, 2006, changed the title of § 62-117 from "Enforcement of article; rules on food service sanitation" to "Enforcement of article; Texas Food Establishment Rules." The historical notation has been preserved for reference purposes.

³Cross reference(s)—Businesses, ch. 18.

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Sec. 62-118. Permits—Required; posting; fees.

- (a) *Required for Food Establishments/restaurants and Temporary food establishments.* It shall be unlawful for any person to operate a Food Establishment, restaurant, tavern, mobile food unit or a Temporary food establishment in the city who does not possess a valid, current permit from the local health authority. Only persons who comply with the requirements of this article shall be entitled to receive and retain such a permit.
- (b) *Posting.* The permit required by this section shall be posted in a conspicuous place visible to the public in the Food Establishment /restaurant.
- (c) *Fee.* The following nonrefundable fees shall be paid for permits under this section:
 - (1) Food establishments, and restaurants, as defined in this chapter, except, taverns, *Mobile Food Unit*, licensed foster care, state licensed adult or childcare facility kitchens, shall be assessed a fee based on employees as reflected per Appendix D of the New Braunfels Code of Ordinances. If at any time during the period of validity of any permit issued under this chapter, additional persons are employed by the establishment operating under such permit, it shall be the duty of the person in charge of such establishment to immediately notify the health division of such increase and if such increase brings that establishment into a higher permit fee bracket, such person shall pay to the health division the additional sum required. This charge shall be prorated according to the month in which the change occurred as set forth in the charges for permit fees referenced above.
 - (2) Temporary food establishment fee (Single Event), per Appendix D of the New Braunfels Code of Ordinances for any period during a ten-day span, for each location or booth.
 - a) Temporary food establishment permit (Multiple Events)
 - 1) A temporary food establishment may apply for up to 6 events per calendar year, and the permit is nontransferable.
 - 2) Permit fees are per Appendix D of the New Braunfels Code of Ordinances.
 - b) Temporary sampler for Time /temperature Control for Safety (TCS) foods
 - 1) A temporary sampler may apply for a single event or up to 6 events per calendar year. The permit is nontransferable.
 - 2) Permit fees are per Appendix D of the New Braunfels Code of Ordinances.
 - (3) Nonprofit organization restaurant, per Appendix D of the New Braunfels Code of Ordinances annually.
 - (4) Nonprofit organization temporary food establishment fee per Appendix D of the New Braunfels Code of Ordinances for any period during a ten-day span, for each location, but assessed only if a mobile food unit, structure tent or booth is proposed.
 - (5) Taverns, groceries, farmer’s market merchants, central preparation facilities, meat processors and state licensed adult or childcare facility kitchens shall be assessed an annual fee per Appendix D of the New Braunfels Code of Ordinances. Additionally, a fee per Appendix D of the New Braunfels Code of Ordinances shall be assessed for each initial and subsequent re-inspection of all residential adoption and foster care placement assessment reviews.
 - (6) Mobile food courts as described in section 144-5.26 shall be assessed an annual fee per Appendix D of the New Braunfels Code of Ordinances for each permitted location, for any period of time during a calendar year at that permitted location.
 - (7) A health construction plan review fee equaling one-half of the full year annual food establishment permit to operate fee per Appendix D of the New Braunfels Code of Ordinances shall be assessed to all constructed, extensively remodeled or converted structures to be used as a food service establishment.

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(8) Expired health permit late fee. Health permit applications submitted after January 1 of each calendar year shall be assessed a late fee per Appendix D of the New Braunfels Code of Ordinances.

- (d) *Proration of fees.* All food establishment/restaurant permits shall be issued as of January 1 and shall expire on December 31 of the year; provided, however, that if any permit is issued at any time during the year to a new establishment, the initial fee shall be prorated per Appendix D of the New Braunfels Code of Ordinances and the applicant for the permit shall only be responsible for the amount due for the unexpired portion of such year. Subsequent permits for existing establishments under the same ownership shall require the full annual permit fee.

(Code 1961, § 9-13; Ord. No. 99-47, § I, 7-12-99; Ord. No. 2003-33, § 5, 5-12-03; Ord. No. 2013-64, § II, 10-28-13; Ord. No. 2014-80, § II, 11-24-14; Ord. No. 2017-25, § 4, 2-27-17)

Sec. 62-119. Same—Suspension; revocation.

The permit required in section 62-118 will be temporarily suspended for a total of 2 days by the local health authority if any food establishment earns a score below 60 three times in an 18-month period. The food establishment shall not reopen until it receives a reinspection score of 75 or greater from the local health authority. (Code 1961, § 9-14)

Sec. 62-120. Same—Reinstatement; procedure.

Any food establishment permit of which has been suspended, may at any time make application for the reinstatement of such permit. Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision has been conformed with, the local health authority shall make a reinspection, and thereafter as many additional inspections as the local health authority may deem necessary to ensure that the applicant is again complying with the requirements, and, if the findings indicate compliance, shall reinstate the permit.

(Code 1961, § 9-15)

Sec. 62-121. Regular inspection; reinspection of violators; suspension of permit; posting of reports; records.

- (a) *Regular inspection.* At a frequency based on the assigned risk of the facility, the local health authority shall inspect every food establishment located within the corporate limits of the city as required by this Chapter. The risk categories for each food establishment will be assigned at the initial permitting stage of the establishment, and these risk categories will not have any impact on any fees associated with the food establishments. Assigned risk can increase or decrease based on the local health authority assessment of the establishment. If a food establishment changes a risk category the local health authority will indicate this change on the inspection report.
- (1) The follow are the types of risk categories and their inspection frequency.
- a) Type 1 food establishment is inspected at least once a year.
 - b) Type 2 food establishments are inspected at least twice a year.
 - c) Type 3 food establishments are inspected at least three times per year.
 - d) Type 4 food establishments are inspected at least 4 times per year.
 - 1) Type 4 would only be used if a type 3 establishment risk category was increased.
- (2) Each food establishment shall be assigned a risk based on the following criteria:
- a) Past performance, for nonconformance with the food code;
 - b) Past performance, for numerous or repeat violations of code that are priority items;
 - c) Past performance, for complaints investigated and found to be valid;

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- d) The food establishment has shown through historical inspection records to have consistently passed routine inspections;
 - e) The type of operation including the methods and extent of food storage, preparation, and service;
 - f) The number of people served;
 - g) Whether the population served is a highly susceptible population; and
 - h) Any other risk factors deemed relevant to the operation by the regulatory authority.
- (3) A food establishment will increase their risk category based on the following criteria.
- a) Earns a score of 74 or below for two consecutive routine inspections in a 12-month period or;
 - b) Two priority item complaints are investigated within one year and are found to be valid or;
 - c) Two separate cases of confirmed food borne illnesses occur within one calendar year.
- (4) A food establishment will return to their initial risk category if any of the above items in section 3 do not occur within one year of the change in the risk category.
- (5) A food establishment can appeal their change in risk category directly to the Neighborhood Services Manager within 14 days of their risk category change in writing or through an electronic format.
- a) If the food establishment does not appeal within 14 days the assigned risk will stay for one year.
 - b) If it is determined by the Neighborhood Services Manager, the change in risk category was not justified the initial risk category shall immediately be reinstated.
- (b) *Reinspection of violators.* If the local health authority discovers the violation of any sanitary requirement, they shall make a second inspection after the lapse of such time as they deem necessary for the defect to be remedied. A reinspection fee per Appendix D of the New Braunfels Code of Ordinances shall be paid to the city for the reinspection of any food service-related establishment that requires reinspection due to a failure rating. Any food establishment that receives 31 or more demerits is considered a failing inspection.
- (c) *Suspension of permit.* Failure to remedy the defects and violations at the time of the second inspection, as provided in subsection (b) of this section, shall call for immediate suspension of permit.
- (d) *Reports posted and filed.* One copy of the most recent health inspection report shall be posted for the public to view in the food establishment that is directly visible to customers. Such inspection report shall not be defaced or removed by any person except the food establishment, or local health authority for the purposes of placing the most recent health inspection.
- (e) *Records.* The person operating the food establishment/restaurant shall upon request of the local health authority permit access to all parts of the food establishment and shall permit the copying of any or all records of food purchased.

(Code 1961, § 9-17; Ord. No. 2003-33, § 6, 5-12-03)

Sec. 62-122. Mobile Food Unit – Permit Application and Display

- (a) A person who seeks to operate a mobile food unit must submit to the health authority an application for a permit provided by the health authority.
- (b) A food establishment that uses a vehicle in the operation of a mobile food unit shall:
 - (1) Identify the vehicle name with characters three inches high on at least three exterior sides of the vehicle stating the following:
 - a) The name of the Mobile Food Unit as indicated on their permit;
 - (2) A mobile food unit shall display a current permit and the most recent inspection where they are readily visible to the customer as designated by the local health authority.
- (c) For a mobile food unit to continue to be permitted yearly, operators shall bring all permitted mobile food units to a location designated by the health authority for annual inspection.

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62-123 Regulation of operations

- (a) A mobile food unit may not sell or serve food on any public street, sidewalk, or other public right-of-way;
 - (1) Exemption: Type C & D units have certain exemptions from this regulation.
- (b) Comply with all applicable zoning, noise, and smoking regulations in the City of New Braunfels ordinances.
 - (1) Mobile food units may not operate on a residentially zoned property.
 - a) Exemption: mobile food units may operate on a residential parking lot for a singular event
 - b) Example- homeowner association community/pool clubhouse parking lot.
 - (2) Mobile food units may not have signs that are prohibited per city ordinances.
- (c) Electricity may be provided by:
 - (1) Generator, or
 - (2) Other connection approved by the health authority and other regulating authorities having jurisdiction over the electrical connection.
- (d) Except for the purpose of filling potable water or emptying tanks at approved locations, water or wastewater connections are prohibited, unless approved by regulating authorities having jurisdiction over the water and wastewater connection.
- (e) A mobile food units wastewater container must be sized at minimum of 25 gallons or 15 percent larger capacity than the potable water tank size installed.
 - (1) This will apply to all new mobile food unit operators and any operators whose permit expires or is no longer valid.
- (f) Mobile food unit permits are not transferable.
- (g) Mobile food unit shall not operate on unimproved or vacant property.
- (h) A mobile food unit must be readily moveable at all times and all components and equipment must be subject to compliance with Texas Department of Transportation regulations.
- (i) A mobile food unit shall be prohibited from stopping on any street in the state highway system, regardless of the speed limit, including Farm-to-Market Roads located within the corporate boundaries of the city; unless permitted otherwise.
- (j) A mobile food unit shall only be located on properties that;
 - (1) Have adequate space for the mobile food unit and accessories.
 - a) Accessories include but are not limited to canopies, games, tables, chairs, etc.
 - (2) Follow all applicable fire regulations.
 - (3) Must be located on an improved surface.
 - (4) Must not be in the public right of way.
 - (5) This is not applicable to type-C mobile food units.
- (k) The mobile food unit must park only on improved surfaces to sell and serve food. Operating on dirt, gravel, or grass is prohibited, unless they are vending at a special event. The mobile food unit may not utilize or park in any off-street parking spaces required of the host business.
 - (1) If a mobile food unit was previously permitted by the City of New Braunfels Planning and Development Services Department is currently located on non-improved surface. Operators will have 1 year from ordinance adoption date to be set up on improved surface.
- (l) A mobile food unit shall be located on a property that is commercially zoned.
- (m) All disturbed areas must be cleaned to a minimum of 25 feet from the sales location. Liquid spills near the unit shall be properly cleaned and the property shall be maintained at all times.

62-124 Mobile Food Unit Types & Regulation

- (a) Type A mobile food unit shall be permitted to operate in city limits, in parking lots or other improved surfaces. This mobile food unit shall not remain overnight at a location unless in conjunction with a special event. Operation shall not occur at an individual sales location for a period of more than 8 hours on 3 consecutive days.
- (b) Type B mobile food unit shall be permitted to operate in city limits, in a parking lot or on other improved surface for a 12-month period once location is reviewed and approved by planning and development services

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department. Location approvals can be reviewed as often as needed.

- (1) An improved surface must be placed or constructed. If improvement is reviewed and approved by the city of new Braunfels.
 - (2) Bathroom access for staff within 500 feet of sales location.
 - (3) May not park or block ADA parking and ADA access in any way.
 - (4) May not park in Fire Lanes.
 - (5) Do not obstruct any drive isles, or city right of ways.
 - (6) MFU located in the flood way or flood plain will require additional documentation, and review.
 - (7) Need signed vendor and property owner acknowledgement.
- (c) Type C mobile food unit is meant to be pulled to locations that comply with the construction and operation standards for operating a mobile food unit used for cooking, keeping, storing, or warming food or beverages.
- (1) Type C mobile food units shall not have an identifiable fixed location for daily operations.
- (d) Type D mobile food units shall be prohibited from stopping on any street in the state highway system, regardless of the speed limit, including Farm-to-Market Roads located within the corporate boundaries of the city. A state highway system includes, but is not limited to, Interstate Highway 35, Loop 337, FM 725, Business 35, FM 1044, FM 758, FM 1101, FM 306, FM 1102, FM 482, FM 2722, SH 46 and Business 46 (excluding Business 46 located between Coll Street and Walnut Avenue).
- (1) Type D mobile food units are hereby authorized to sell or dispense frozen or refrigerated confections on authorized public streets in compliance with the following:
 - (2) On streets where the posted speed limit is 35 miles per hour or less, with the exception of the following:
 - a) Common Street;
 - b) County Line Road;
 - c) Landa Street;
 - d) McQueeney Road;
 - e) Walnut Avenue;
 - f) San Antonio Street;
 - g) Seguin Avenue;
 - h) Klein Road;
 - i) Goodwin Lane,
 - j) Morningside.
 - k) Within the boundaries of the New Braunfels' Main Street District; and
 - l) Gruene Road and Hunter Road within the boundaries of the Gruene National Historic District.
 - (3) Type D Mobile food units shall be limited to three trips down a street within one 24-hour period. Trips up and down a cul-de-sac will be counted as one trip.
 - (4) Prior to making a sale or dispensing such frozen or refrigerated confection the driver of such vehicle shall drive to the side of the street, as close as practical to the curb, and if there is no curb, then as close as practical to the edge of the paved portion or the edge of the portion used for vehicular traffic of said road.
 - (5) The driver shall stop, stand or park such vehicle in full compliance with all applicable ordinances of the city and statutes of the state, and particularly ordinances governing the stopping, standing, or parking of vehicles, and such vehicle shall remain so stopped, standing or parked for no longer than is necessary to make the immediate sale or to dispense such frozen or refrigerated confections.
 - (6) Mobile food units shall be equipped with a sign clearly visible from both the front and rear, mounted on the top of the truck and bearing the warning "CAUTION—CHILDREN." The lettering for such sign shall be block style letters not less than six inches high and one-half inch wide, and such letters shall be black against a yellow background. Flasher-type warning lights displaying yellow to the front and red to the rear and which operate continuously while the truck is stopped for the purpose of making a sale or dispensing frozen desserts shall be installed at each end of the sign.
 - (7) Mobile food units shall not stop within 20 feet of an intersection or double park when attempting a sale or when making a sale.
 - (8) All mobile food units when stopped on city streets must sell from the curbside of the vehicle. No sales can occur from the driver's side will be allowed when stopped on city streets.

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- (9) Mobile food unit operators and food handlers shall be subject to national, state, and local criminal background checks as administered through an accredited processor. The fees background checks are the responsibility of the applicant. Documentation of clearance of applicable criminal background checks shall be provided to the Neighborhood Services division and renewed every two years for all mobile food unit personnel selling frozen or refrigerated confections. Based on the results of the background check into the applicant's criminal history, the permitting authority will determine the applicant's eligibility. However, in no case will a permit be issued to a person who is a sex offender. Mobile food unit operators and food handlers shall wear a photo identification badge visible to patrons indicating their name and the date their background clearance was issued.

Secs. 62-123—62-130. Reserved.

DIVISION 4. CAKES, PIES AND SIMILAR PRODUCTS

Sec. 62-131. Bake sales.

It shall be unlawful for any person to sell or offer for sale in any public or private place within the corporate limits, any cakes, pies, or any other nonperishable baked food products unless they comply with the following conditions. Food products prepared in a kitchen of a private home that is not licensed may be offered for sale for human consumption, subject to full compliance with the following requirements: The items offered for sale shall be limited to baked food products that are not time/temperature controlled for safety (TCS) food,

- (a) The items are offered for sale at a function conducted by or under the auspices of a sponsoring organization, which shall be a religious or nonprofit organization.
- (b) The sale shall not be conducted in a school or at school functions.
- (c) The sale shall not be conducted in a food establishment, except that if the sponsoring organization is a food establishment, then the sale may be conducted on its premises, provided that the sale is conducted separately and apart from the sponsoring organization's food sales or service; and
- (d) The consumer is informed by a clearly visible placard at the sales or service location that the food was prepared in a kitchen that is not subject to regulation and inspection by the City of New Braunfels or any other health inspection agency. The person conducting the bake sale shall provide the placard, which shall be in a form approved by the health specialist.
- (e) All foods offered for sale must be wrapped as required by the local health authority.
- (f) Approval by the local health authority prior to the bake sale.

(Code 1961, § 9-26)

Secs. 62-122—62-140. Reserved.

DIVISION 5. FROZEN DESSERTS⁴

Sec. 62-141. Definitions.

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

Frozen dessert means any of the following: ice cream, ice milk, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milkshake, freezer-made shake. The term includes the mix used in the freezing of one of such frozen desserts.

Frozen desserts retail establishment means premises, including a retail store, approved type stand, hotel,

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restaurant, vehicle, or mobile food unit, where frozen dessert mixes are frozen or partially frozen and dispensed for retail sale or distribution. This term does not include Temporary Food Establishments.

Health authority means the local health authority or his representative.

Retail frozen desserts manufacturer means a person who manufactures, processes, converts, partially freezes or freezes any mix or frozen desserts for sale at retail.

(Code 1961, § 9-27(b)—(e))

Cross reference(s)—Definitions generally, § 1-2.

Sec. 62-142. Permits—Required; nontransferable.

It shall be unlawful for any person to manufacture retail frozen desserts who does not possess a valid permit from the local health authority. Permits shall not be transferable with respect to persons, vehicles and/or locations.

(Code 1961, § 9-34)

Sec. 62-143. Same—Fees.

For the enforcement and operation of this division, an annual permit fee per Appendix D of the New Braunfels Code of Ordinances will be charged for each retail frozen dessert manufacturer.

(Code 1961, § 9-35; Ord. No. 99-47, § I, 7-12-99; Ord. No. 2003-33, § 7, 5-12-03; Ord. No. 2014-80, § II, 11-24-14)

Sec. 62-144. Same—Effective dates; apportioned fee.

Sec. 62-145. Same—Suspension and revocation.

The permit required in section 62-142 may be suspended by the local health authority or revoked after an opportunity for a hearing by the local health authority, upon the violation by the holder of any of the terms of this division.

(Code 1961, § 9-37)

Sec. 62-146. Laboratory testing of products; sampling; notice of substandard conditions; reinstatement of permit.

- (a) *Samples; laboratory standards.* Samples shall be collected from each retail frozen dessert manufacturer at least twice a year or as often as the local health authority directs. Samples shall be supplied to the local health authority at no cost. Bacterial counts (standard plate count) shall not exceed 50,000 per gram or milliliter. The coliform count shall not exceed 40 per gram or milliliter.
- (b) *Notice of results.* Once the results of samples are received, the local health authority shall send a written or electronic notice thereof to the retail frozen dessert manufacturer.
 - (1) If the retail frozen dessert manufacturer has two consecutive samples that exceed the limit, regardless of the time between samples, a Temporary Retail Frozen Dessert Permit fee per Appendix D of the New Braunfels Code of Ordinances will be applied.
 - a) This fee shall be paid within two weeks of receipt of sample results and allows for the local health authority to continue sampling.

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- b) After the fee is paid two additional samples shall be taken at a frequency determined by local health authority.
 - 1) If the next two consecutive samples exceed the bacterial count the permit as required in 62-142 will be suspended.
 - 2) No further sales of any frozen desserts shall occur to the public until the requirements in section (c) below are satisfied.
 - 1) The suspension is only specific to the machine that was being tested.
- c) If at least one of the next two samples is below the bacterial count the retail frozen dessert business can continue normal operations. *Reinstatement of permit.* Any retail frozen dessert manufacturer whose permit has been suspended may make application at any time for the reinstatement of their permit.
 - (1) The application shall include a reinstatement fee per Appendix D of the New Braunfels Code of Ordinances and indicate the probable causes for the excessive counts and action taken for correction. The applicant shall provide one frozen dessert sample by an independent lab to the local health authority at the time of application or within at least two weeks of application submittal for reinstatement.
 - a) Failure to submit the lab result to the local health authority within the above time frame will void the reinstatement application.

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- b) If a lab result is submitted and the bacteria counts are elevated the permit will not be reinstated.
 - 1) There will be no further sales of any frozen desserts to the public, and each day the business provides frozen desserts to the public is a separate offense.
 - 2) The business can keep providing lab results until the bacterial counts are below the acceptable level. Until approved lab results are provided during this time frame no sales of frozen desserts are allowed to the public.
 - 3) This will only apply to the specific machine that was tested.
- c) If the business completes the application and provides a frozen dessert sample in the time frame listed above, and the sample is below the bacterial counts acceptable level the permit will be reinstated.
- (d) *Revocation of permit.* The permit required in section 62-142 will be suspended by the local health authority upon at least 4 elevated samples within an 24-month period, or upon serious or repeated violations of this article.
 - (1) If the permit is suspended the process above in section (c) will apply.

⁴Cross reference(s)—Businesses, ch. 18.

State law reference(s)—Frozen Desserts Manufacturer Licensing Act, V.T.C.A., Health and Safety Code § 440.001 et seq. (Code 1961, § 9-41)

Secs. 62-147—62-155. Reserved.

DIVISION 6. MILK⁵

Sec. 62-156. Sale of raw milk prohibited.

It shall be unlawful for any person, grocer, business, firm, corporation, or partnership to sell at retail any raw milk or raw milk products within the corporate limits of the city. Only Grade A pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments. Grade a raw milk may be allowed within the city as per Chapter 217 of the Texas Administrative Code for Milk and Dairy rules.

(Code 1961, § 9-49)

State law reference(s)—Grade A milk specifications, V.T.C.A., Health and Safety Code § 435.003.

Secs. 62-157—62-165. Reserved.

DIVISION 7. MEAT

Sec. 62-166. Short title.

Sec. 62-167. Definitions.

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

Director of public health means the local health authority.

Inspector means the city sanitarian, health specialist, local health authority or city health inspector.

Processor means and includes all establishments, of any nature whatsoever, that prepare meat and meat food products for retail sale to the general public for human consumption. These operations traditionally and

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usually include the following:

- (1) Cutting up, slicing and trimming carcasses, halves, quarters or wholesale cuts into retail cuts such as steaks, chops and roasts, and freezing such cuts.
- (2) Grinding and freezing products made from meat.
- (3) Curing, cooking, smoking, or other preparation of meat food products with a meat basis such as chili, sausage and tamales.

(Code 1961, § 9-52)

Cross reference(s)—Definitions generally, § 1-2. State law reference(s)—Definitions, V.T.C.A., Health and Safety Code § 433.003.

Sec. 62-171. Annual permits—Generally.

- (a) *Issuing authority.* The director of public health is authorized to issue the permits required in sections 62-174 upon receipt of the application therefor, accompanied by the permit fee required, provided such establishments meet the requirements of this division.
- (b) *Expiration; prorated fees.* All permits issued under this division shall be issued as of January 1, and such permits shall expire on December 31 of the year; provided, however, that when any permit is issued at any time during the year, the fee shall be prorated, and the applicant for the permit shall only be responsible for the amount due for the unexpired portion of such year.

Sec. 62-174. Same—Processors.

(a)

- (b) *Fee.* The annual processor permit fee shall be per Appendix D of the New Braunfels Code of Ordinances

(Code 1961, § 9-60; Ord. No. 99-47, § I, 7-12-99)

Sec. 62-176. Sanitation requirements.

- (a) Prior to the issuance of a processor permit an inspection of the establishment and premises shall be made by the city sanitarian and the requirements for sanitation shall be specified.
- (b) Establishments shall be maintained in a sanitary condition, and to this end the requirements of the following regulations shall be complied with:
 - (1) *Light and ventilation.* There shall be abundant light, both natural and artificial, and sufficient ventilation for all rooms and compartments to ensure sanitary conditions.
 - (2) *Drainage and plumbing.* There shall be an efficient drainage and plumbing system for the establishment and premises. All drains and gutters shall be properly installed with approved traps, vents and interceptors as required by the city plumbing code. Toilet drain lines shall not be discharged into grease interceptors.
 - (3) *Water supply.* All establishments shall be connected to the public water system with adequate facilities for its distribution in the plant and its protection against contamination and pollution.
 - (4) *Sewage disposal.* All establishments shall have their sanitary drain lines connected to the city sewer collection system , or onsite sewage disposal system.
 - (5) *Construction.* The floors, walls, ceilings, partitions, posts, doors and other parts of all structures shall be light-colored, smooth, nonabsorbent and easily cleanable. Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface. Floors shall be constructed of smooth, durable material such as sealed concrete, terrazzo, ceramic tile, or covered

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- with durable grades of linoleum or tile.
- (6) *Toilet facilities.* Toilet rooms shall be ample in size, conveniently located and sufficient in number. They shall be properly ventilated and meet all requirements as to sanitary construction and equipment. They shall be separate from and have no direct opening into rooms or compartments in which meat products are prepared, stored or handled. Where both sexes are employed, separate facilities shall be provided.
- (7) *Lavatory facilities.* Modern lavatory accommodations, including hot and cold water tempered by means of a mixing valve or combination faucet, shall be placed in or near the toilet room and also at such other places in the establishment as may be essential to assure cleanliness of all persons handling products. Soap and a supply of sanitary towels, or a hand-drying device providing heated air, shall be conveniently located near lavatories.
- (8) *Equipment and utensils.* Equipment and utensils used for preparing, processing or otherwise handling any meat or meat products shall be designed and fabricated for durability under the conditions of normal use and shall be resistant to denting, pitting, buckling, chipping or crazing and shall be easily cleanable, smooth and free of open seams, breaks, cracks, pits or similar imperfections and free of difficult-to-clean internal corners and crevices. Such equipment shall be made of metal or other impervious nontoxic material. Soft metal such as copper, lead and cadmium are not acceptable.
- (9) *Washing and sanitizing.* A sink with at least three compartments shall be provided and constructed of rust-resistant material and shall be of sufficient size for complete immersion of the largest pot, pan, utensil or equipment to be washed. Hot and cold water shall be provided through a mixing faucet. Sink drain boards shall be provided so cleaned utensils may air dry.
- (10) *Use of sawdust, etc.* The use of sawdust, wood shavings, peanut hulls or similar material upon the floors is prohibited.
- (11) *Insect and rodent control.* Management will use every acceptable method possible in order to maintain the establishment free of flies, cockroaches, rats, mice and other vermin. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents. The building shall be protected against the entrance of insects by tightfitting, self-closing doors, closed windows, screening, controlled air currents or other means. Screen doors shall be self-closing. Screens for windows, doors, skylights, transoms and other openings to the outside shall be tightfitting and free of breaks. Screening material shall not be less than 16-mesh to the inch. Insecticides and rodenticides used in the extermination of insects and rodents shall be only those approved by the Food and Drug Administration for use in food establishments, and their use shall be in strict conformance with applicable regulations and label directions.
- (12) *Living quarters.* No establishment shall operate in a building used for living or sleeping quarters unless the part used for meat processing is separated from the living quarters by a solid wall and ceiling, and the wall or ceiling is without an opening directly or indirectly into any part of the building used for living quarters.
- (13) *Animals.* Live animals, including birds, turtles, cats, dogs and other animals, shall be excluded from within the establishment.
- (14) *Employee practices.* Employees shall not use tobacco in any form in the meat processing or meat storage areas. Employees shall wear headgear while handling meat products. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.

(Code 1961, § 9-60) Cross reference(s)—Animals, ch. 6. (Code 1961, § 9-57)

⁵State law reference(s)—Dairy products, V.T.C.A., Health and Safety Code § 435.001 et seq.; municipal regulation authorized, V.T.C.A., Health and Safety Code § 435.013.