

ORDINANCE NO. 20100923-028

AN ORDINANCE AMENDING CHAPTER 10-3, ARTICLE 4 OF THE CITY CODE RELATING TO MOBILE FOOD ESTABLISHMENTS; CREATING VIOLATIONS AND PROVIDING PENALTIES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to amend § 10-3-1 to read:

§ 10-3-1 DEFINITIONS.

- (A) Except as provided in Subsection (B), a term defined by Texas Administrative Code Title 25, Part 1, Chapter 229, Subchapter K (*Texas Food Establishment Rules*) has the same meaning in this chapter.
- (B) In this chapter:
 - (1) **BAKED GOODS** means cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking in an oven. A baked good does not include a potentially hazardous food item.
 - (2) **CERTIFIED FARMERS MARKET** means a farmers market that has been certified by the Texas Department of Agriculture pursuant to Subchapter D of Title 4 of the Texas Administrative Code.
 - (3) **FARM PRODUCE** means herbs and spices in their natural or dried state, vegetables, fruits, nuts, berries, grains, honey, watermelons and other melons, and cantaloupes in their natural state.
 - (4) **FOOD ENTERPRISE** includes:
 - (a) a food establishment;
 - (b) a food processing plant; and
 - (c) a vending machine.
 - (5) **FOOD HANDLER** means a food enterprise employee who works with unpackaged food, food equipment or utensils, or food contact surfaces.

- (6) MARKET MANAGER means a person who is designated as the person-in-charge of a certified farmers market.
- (7) MOBILE FOOD ESTABLISHMENT [~~includes an establishment that offers only prepackaged foods that are not potentially hazardous~~] means one of two types of mobile food units:
- (a) A restricted unit that offers only prepackaged food in individual servings; beverages that are not potentially hazardous and are dispensed from covered urns or other protected vessel; and packaged frozen foods. Preparation, assembly or cooking of foods is not allowed;
- (i) A foot peddler permit is a restricted unit, and, except as set forth in subsection (ii), is limited to one portable ice chest, cooler, case or unit per permit, capable of being carried by one person;
- (ii) A foot peddler at a Certified Farmers Market may use multiple portable ice chests, coolers; cases or units; or,
- (b) An unrestricted unit that may serve food as allowed in (a), and may cook, prepare and assemble a full menu of food items;
- (i) Except as provided in subsection (ii), below, an unrestricted unit must be secured and completely enclosed; and,
- (ii) Foods such as hot dogs, coffee, or shaved ice, or food with prior approval from the health authority, may be served from vehicles with three sides and a cover.
- (8) PERSON IN CHARGE means an employee who possesses a food manager certificate at a food enterprise, bed and breakfast limited or unrestricted mobile food establishment. If the person possessing a food manager certificate is not present, then if an employee appears to be a supervisor, that employee shall be the person in charge.
- (9) SAMPLING means the demonstration or promotion of a food via offering of the food in a small serving which cannot be sold and which may not consist of a whole meal, an individual portion or a whole sandwich.
- (10) TEMPORARY FOOD ESTABLISHMENT shall mean a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single special event or

celebration, and shall also include an establishment that is granted an exemption by the health authority.

(a) A person or organization is allowed four temporary events in a calendar year unless granted an exemption by the health director.

(b) Properties overseen by the City and multi-use facilities that are for trade shows and conventions are exempt from this restriction.

(11) UNSAFE FOOD means:

(a) food that contains any chemical, poisonous or injurious substance which may be harmful to the health of a consumer,

(b) food that is not packaged in conformity with this chapter;

(c) food that contains a contaminated or putrid substance; or,

(d) food that has been prepared, packed or held under unsanitary conditions whereby it may have become contaminated, or may have been rendered diseased, unwholesome, or harmful to health.

(12) VIOLATION means the failure to follow this Chapter 10-3 or an act prohibited by this Chapter. A violation may result in charges being filed in municipal court for:

(a) scoring below a 70 on a food enterprise inspection;

(b) using an unapproved source;

(c) home prepared foods; or,

(d) food out of temperature compliance.

PART 2. Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to repeal and replace Section 10-3-91 (*Mobile Food Establishments*) to read:

§10-3-91 PERMIT APPLICATION.

(A) A person who seeks to operate a mobile food establishment must submit to the health authority a written application for a permit on a form provided by the health authority. The application must include:

(1) name and address of the applicant and the applicant's identification number as shown on a current and valid government-issued identification document that includes a photograph of the applicant;

- (2) type of vehicle to be used for the proposed mobile food establishment;
 - (3) proof of sales tax and use permit;
 - (4) an itinerary of locations where sales occur;
 - (5) other information reasonably required by the health authority;
 - (6) the signature of each applicant;
 - (7) a notarized statement from the owner of a central preparation facility stating the mobile food establishment uses the facility as its base of operation; and
 - (8) if at one location for more than two hours, a written agreement from a business within 150 feet for employees of the mobile food establishment to have use of flushable restrooms (or other facilities as approved by the health authority) during hours of operation.
- (B) For a mobile food establishment permit, the health authority shall:
- (1) describe on the permit whether the unit is restricted or unrestricted; and,
 - (2) provide the permit holder a sticker that indicates the permit expiration date.
- (C) Except as set forth in subsection (D), a person operating a mobile food establishment shall promptly display the sticker on the unit where it is readily visible (as designated by the health authority).
- (D) A foot peddler permit may be carried on the peddler's person.
- (E) The health authority may suspend or revoke a mobile food establishment permit if the health authority determines that:
- (1) an applicant obtained the mobile food establishment by knowingly providing false information on the application;
 - (2) a person is infected with or is a carrier of any foodborne communicable disease;
 - (3) the continuation of the person's mobile food establishment permit presents a significant public health threat; or,

- (4) the mobile food establishment violates the terms and conditions of any written agreement submitted to the health authority under §10-3-91.
- (5) If a written agreement submitted to the health authority terminates without fault by the mobile food establishment, the operator has ten days to replace the required written agreement without constituting an violation under this §10-3-91.

PART 3. Chapter 10-3, Article 4 of the City Code is amended to repeal and replace Section 10-3-93 (*Sanitary Requirements*) to read:

- (A) If a person who operates a mobile food establishment maintains food at a hot holding temperature by mechanical means, that person shall comply with fire and explosion safety standards established by the fire marshal.
- (B) If a person uses a pressurized fuel system of container in conjunction with the mobile food establishment, that person shall comply with fire and explosion safety standards established by the fire marshal.
- (C) A mobile food establishment shall be equipped with an attached trash receptacle approved by the health authority. The operator must hold, store, and dispose of solid and liquid waste in a receptacle approved by the health authority and comply with any other applicable City Code requirements.
- (D) A person who operates a mobile food establishment must meet all of the following requirements:
 - (1) A mobile food establishment shall provide only single service articles for use by the consumer;
 - (2) A mobile food establishment shall comply with the regulations the health authority adopts regarding time, temperature, plumbing, operation and maintenance requirements for mobile food establishments;
 - (3) A mobile food establishment shall comply with the regulations the health authority adopts regarding a mobile food establishment's provisions, mandatory central preparation facility, serving area and operations;
 - (4) A mobile food establishment shall demonstrate that the vehicle is readily moveable if requested by the health authority;
 - (5) A mobile food establishment shall comply with all requirements of the health authority prohibiting alteration, removal, attachments,

placement or change in, under, or upon the mobile food establishment that would prevent or otherwise reduce ready mobility of the mobile food establishment unit;

- (6) If at one location for more than two hours, a written agreement from a business within 150 feet of the mobile food establishment, allowing employees of the mobile food establishment to have use of flushable restrooms (or other facilities as approved by the health authority) during hours of operation;
- (7) The health authority shall require a mobile food establishment to come, on an annual basis, to a location designated by the health authority for an inspection;
- (8) All food and supplies must be stored within the mobile unit; and,
- (9) The health authority may require that mobile food establishments found to violate this section to come for a re-inspection at a location designated by the health authority.

PART 4. Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to amend Section 10-3-156 (*Mobile Food Establishment Violations*) to read:

- (A) A person or business who operates a mobile food establishment shall immediately correct violations identified in an inspection report. ~~[as soon as possible but not later than the 10th day after the date of inspection.]~~ If the violations are not corrected immediately, the person or business in charge shall stop food service operations at the mobile food establishment until authorized to resume food service operations by the health authority.
- (B) The health authority may immediately cite, suspend operations, or file violation charges against the person or business in charge of a mobile food establishment that does not correct violations identified as required in Subsection (A).

PART 5. This ordinance takes effect on October 4, 2010.

PASSED AND APPROVED

September 23, 2010

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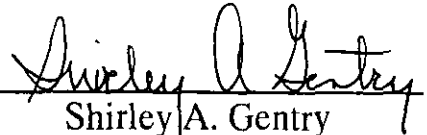
Lee Leffingwell
Mayor

APPROVED:



Karen Kennard
Acting City Attorney

ATTEST:



Shirley A. Gentry
City Clerk