

**ORDINANCE NO. 20100429-028**

**ORDINANCE AMENDING CHAPTER 10-3, ARTICLE 2 OF THE CITY CODE  
RELATING TO TEMPORARY FOOD ESTABLISHMENTS AND SAMPLING  
OF FOOD PRODUCTS AT CERTIFIED FARMERS MARKETS.**

**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 Chapter 17, 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.
  - ~~[(1)]~~(4) FOOD ENTERPRISE includes:
    - (a) a food establishment;
    - (b) a food processing plant; and
    - (c) a vending machine.
  - ~~[(2)]~~(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.

- ~~[(3)]~~(7) MOBILE FOOD ESTABLISHMENT includes an establishment that offers only prepackaged foods that are not potentially hazardous.
- ~~[(4)]~~(8) PERSON IN CHARGE means an employee who possesses a food manager certificate ~~[is present]~~ at a food enterprise, ~~[or]~~ 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 and its characteristics via offering a small serving of the food 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 used 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 amend § 10-3-2 to read:

**§ 10-3-2 COMPLIANCE REQUIRED**

(A) A person may not manufacture for supply, possess with intent to supply, display, sell, or supply, with or without charge, any food that is [adulterated] unsafe or misbranded. [All food shall be prepared, packaged, transported and supplied in compliance with Texas Health and Safety Code Title 6, Chapter 431 (*Texas Food, Drug, and Cosmetic Act*).]

(B) All food shall be prepared, packaged, transported and supplied in compliance with this Chapter.

[(B)](C) A person operating a food establishment, vending machine, [or]bed and breakfast limited, mobile food establishment, temporary event or sampling at a farmers market shall comply with this chapter and, except as provided in § 10-3-124 (*Dogs Permitted in Outdoor Dining Areas*), the City adopts the [with] Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapters K (*Texas Food Establishment Rules*) and N (*Current Good Manufacturing Practice And Good Warehousing Practice In Manufacturing, Packing And Holding Human Food*).

[(C)](D) A person operating a food processing plant or central preparation facility shall comply with this chapter and the requirements of Code of Federal Regulations Title 21, Part 110 (*Current Good Manufacturing Practice in Manufacturing, Packing, Or Holding Human Food*).

**PART 3** Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to amend § 10-3-34 to read:

**§ 10-3-34 FOOD HANDLER REGISTRATION REQUIRED.**

(A) Except as provided in Subsections (B) and (I), a person employed or volunteering as a food handler shall register as a food handler not later than the 30<sup>th</sup> day after employment or volunteering with a food enterprise. After a person's 30<sup>th</sup> day of employment or volunteering, it is unlawful for the

person to be employed or volunteer as a food handler at the food establishment without a valid food handler registration.

- (B) The requirements of this section do not apply to:
- (1) a food enterprise that provides only beverages or prepackaged food that is not a potentially hazardous food;
  - (2) a nonprofit organization that serves food only to members of the organization;
  - (3) A food processing plant that is inspected at least once each week by a state or federal food sanitation inspector or that only stores prepackaged food that is not potentially hazardous;
  - (4) a vending machine or a mobile food establishment that offers only prepackaged food, if a certified food manager is in charge at a central preparation facility that supplies the products for the vending machine or mobile food establishment; or
  - (5) a temporary event.
- (C) A person required by this section to have a food handler registration shall first successfully complete a food handler training class approved by the State of Texas [~~or the City~~]. The person shall pay the food handler training course fee as required by the training course provider.
- (D) A person may submit an application to the health authority for a food handler registration after the person successfully completes a food handler training course. The application must include:
- (1) the applicant's full name;
  - (2) the applicant's mailing address;
  - (3) the applicant's date of birth;
  - (4) a copy of a government-issued identification document that includes a photograph of the applicant; and
  - (5) the applicant's signature.
- (E) An applicant shall pay a nonrefundable registration fee established by a separate ordinance except that an employee of a public school located in the City is not required to pay the registration fee.
- (F) The health authority may issue a food handler registration on receipt of a proper application and the required registration fee.

- (G) A person must successfully complete a food handler training course every two years and maintain a current food handler registration with the City.
- (H) A food handler registration is not transferable from one person to another. The food handler registration remains in effect if a person changes employment during the food handler registration's effective period.
- ~~[(I)]~~ ~~The health authority shall implement a phased-in compliance schedule to ensure all food handlers in the City obtain registrations no later than December 31, 2009].~~
- ~~[(J)]~~(I) A person operating a food enterprise shall ensure every food handler has a current food handler registration. Upon request by the health authority, a person operating a food enterprise shall provide a list of all food handlers at the establishment that have been employed for more than 30 days along with a signed statement verifying the listed employees possess current food handler registrations.
- ~~[(K)]~~(J) The health authority may suspend or revoke a food handler registration if the health authority determines that:
  - (1) an applicant obtained the food handler registration by knowingly providing false information on the application;
  - (2) a person is infected with or is a carrier of any foodborne communicable disease; or
  - (3) the continuation of the person's food handler registration presents a significant public health threat.
- ~~[(L)]~~(K) A person whose food handler registration has been suspended or revoked may reapply for a new food handler registration after successfully completing a food handling training course, paying both the food handler training course fee and registration fee established by separate ordinance or by approval of the health authority.

**PART 4.** Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to amend § 10-3-67 to read:

- (A) The health authority may deny or revoke a permit issued under this chapter or issue a conditional permit when a renewal is applied for by a food establishment if the permit holder or the permit holder's employee:
  - (1) commits critical or repeated violations of applicable law;
  - (2) knowingly provides false information on an application; or

- (3) interferes with the health authority in the performance of the health authority's duties.
- (B) Before denying or revoking a permit, the health authority shall provide the permit holder or person in charge with written notice of the pending permit revocation or denial. The written notice shall include:
  - (1) the reason the permit is subject to denial or revocation; or
  - (2) if applicable:
    - (a) the date on which the permit is scheduled to be revoked; and
    - (b) a statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a hearing with the health authority not later than the 10<sup>th</sup> day after the date the notice is served.
- (C) A conditional renewal permit for a food establishment shall be effective for 60 days, and shall be revoked if the permit holder or person in charge of the establishment does not comply with the terms of its issuance.
  - (1) This subsection (C) does not apply to mobile food establishments or temporary events.
  - (2) Revocation for noncompliance shall be the equivalent of a permit renewal denial.
- ~~[(C)]~~(D) A permit denial or revocation becomes final on expiration of the time period prescribed by the notice if the permit holder does not file within that time period a request for hearing with the health authority.

**PART 5.** Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to delete § 10-3-94 in its entirety.

**PART 6.** Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to add §§ 10-3-96 and 10-3-97 to read:

**§ 10-3-96 TEMPORARY FOOD ESTABLISHMENT.**

- (A) A food establishment set up for a temporary event shall comply with the requirements of this section. The health authority may impose additional requirements to protect against health hazards related to the conduct of a temporary food establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of these rules.

- (B) The health authority may impose requirements on cooking, freezing, reheating, treating juice, cooked-food storage temperatures and time control.
- (C) Equipment.
  - (1) Equipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the establishment.
  - (2) Equipment for cooling or heating food, and holding cold or hot food shall be adequate in number and capacity to provide food temperatures as specified under requirements the health authority imposes under Paragraph (B).
  - (3) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminant sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.
  - (4) Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a multi-compartment sink, may be used when there are special cleaning needs or constraints and the health authority has approved the use of alternative equipment.
- (D) A temporary food establishment shall provide only single-service articles for use by consumers.
- (E) Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment. Water need not be under pressure, but shall come from an approved source approved by the health authority.
- (F) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.
- (G) All waste water and sewage generated from the establishment shall be disposed of through an approved sanitary sewer system that is constructed, maintained, and operated according to rules promulgated by the health authority and applicable law.
- (H) Handwashing facilities shall include an insulated container with a spigot that can be turned on to allow potable, clean, free flowing warm water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially pre-packaged foods that are dispensed in their original containers.

- (I) A temporary food establishment shall comply with regulations the health authority adopts regarding floors, ceilings and outer openings of food preparation areas.
- (J) The health authority shall apply this section to promote safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.
- (K) If necessary to protect against public health hazards or nuisances, the health authority may impose specific requirements in addition to those requirements contained in this section.

**§ 10-3-97    SAMPLING OF FOOD PRODUCTS AT CERTIFIED FARMERS MARKETS**

- (A) It shall be unlawful for any person to operate a booth and offer the sampling of food products within the city limits at a certified farmers market without first having obtained an annual sampling permit as required by this section.
- (B) Every person, before opening, maintaining, or operating a booth for the sampling of food products within the city limits, shall make an application for a sampling permit for an establishment to be maintained or operated by the person, on a form prescribed by the health authority, which shall include, among other things, the name, address, and telephone number of the applicant's residence and of the establishment;
- (C) Upon receiving the application for a sampling permit under this section, the health authority may approve the application upon payment of the sampling permit fee set out in separate ordinance. After approval of the application, a sampling permit may be issued to the applicant which shall be effective for one year from the date of issuance.
- (D) A booth that offers sampling of food products shall have its original annual sampling permit posted in view of the public during operating hours.
- (E) An application for renewal of a sampling permit must be received by the department, accompanied by the applicable fee, before the expiration date of the previous sampling permit. All information provided in a renewal application must be current and valid.
- (F) A person operating a booth for the sampling of food products at a farmers market shall comply with the Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter K (*Texas Food Establishment Rules*) regarding equipment, floors, dust control, ceilings and outer openings of food preparation areas at a temporary event.



- (G) In the event the health authority determines that the booth of the applicant does not comply with the provisions of this section or other City ordinances, the health authority shall disapprove such application for issuance or renewal of a sampling permit.
- (H) An applicant who has been refused a sampling permit or renewal of a sampling permit at a farmers market may, within ten days, appeal to the health authority by filing a copy of such application, the application's denial and requesting the health authority grant a hearing to overrule the action.
- (I) A person conducting sampling at a farmers market shall comply with the following requirements:
  - (1) Only those potentially hazardous foods approved by the health authority shall be displayed, served or sampled at a farmers market.
  - (2) All potentially hazardous food samples shall be disposed within four hours after being removed from active temperature control, if not served or consumed.
  - (3) An employee or volunteer of a sampling operation at a farmers market shall be a registered food handler.
  - (4) A booth shall have sufficient hot and cold potable water for cleaning foods and for cleaning and sanitizing equipment and utensils.
  - (5) An approved facility for employee hand-washing, consisting, at a minimum, of warm, free flowing clean running water, soap, and individual paper towels or other approved hand drying device shall be provided near a booth offering sampling.
  - (6) An approved facility shall be provided for washing, rinsing, and sanitizing of equipment and utensils used in the preparation and serving of samples. The facility shall consist of at least three containers or compartments, each of adequate size so as to permit the total immersion of all utensils used in a booth offering sampling at a farmers market.
- (J) The health authority may inspect each booth offering sampling of food products as is necessary for the enforcement of this section.
- (K) The market manager of a certified farmers market shall be responsible for ensuring daily compliance with the provisions of this section and Section 10-3-34. In the case of repeated violations of this section, the health authority may impose restrictions on the sampling of food products at a farmers market.

- (L) All violations shall be corrected at the time of inspection unless an extension is allowed by the health authority. No extension shall be granted where the violation poses a significant risk of food borne illness is posed to the public.
- (M) If violations of sampling of food products at a farmers market are not corrected at the time of inspection, or within the specified extension time limits, the health authority shall immediately order the booth to suspend the sampling operations.
- (N) Repeated violations at a booth operating the sampling of food products at a farmers market without a valid permit or with a suspended permit constitutes an offense under this chapter.

**PART 7.** Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to amend § 10-3-154 to read:

- (A) The person or business in charge of a temporary food service establishment shall immediately correct violations identified in an inspection report. If the violations are not corrected immediately, the person or business in charge shall stop food service operations at the establishment until authorized to resume by the health authority.
- (B) The health authority may immediately cite, suspend operations, or file violations against the person or business in charge of a temporary food service establishment that does not correct violations identified as required in Subsection (A).

**PART 8.** Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to amend § 10-3-156 to read:

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

**PART 9.** Chapter 10-3 (*Food and Food Handler*) of the City Code is amended to amend § 10-3-157 to read:

- (A) The health authority may place a hold order on food or may detain equipment after:
- (1) determining that the food is stored, prepared, transported, or served in violation of applicable law; ~~[and]~~
  - (2) the detained equipment is not functioning properly or presents a health risk; and
- ~~[(2)]~~ (3) giving written notice to the permit holder or the person in charge.

- (B) The health authority shall tag or otherwise identify food or equipment that is subject to a hold order. Unless authorized by the health authority, a person shall not use, serve, sell, or move food or equipment that is subject to a hold order nor may the person remove a detained equipment sticker.

- (C) The health authority shall permit storage of food that is subject to a hold order. The hold order may prescribe storage conditions for the food.

- ~~(D)~~ The health authority may permit repair of equipment affixed with a detained sticker.

(1) The hold order may prescribe the repairs necessary.

(2) The health authority may require reinspection and payment of a reinspection fee, prescribed under separate ordinance, to approve repairs that are necessary to the detained equipment.

- ~~[(D)]~~(E) The health authority shall state in a hold order:

- (1) the reasons for the holder order;
- (2) that a person may file a written request for a hearing with the health authority not later than the 10<sup>th</sup> day after the date the hold order is issued; and
- (3) that if a hearing is not requested, the food will be destroyed or the equipment will be further detained.

- ~~[(E)]~~(F) The permit holder or person in charge may file with the health authority a written request for a hearing on a hold order or detained equipment. The request must be filed not later than the 10<sup>th</sup> day after the date the hold order or detained sticker is issued.

- ~~[(F)]~~(G) If a timely request is filed, the health authority shall hold a hearing on the hold order or equipment detention.
- ~~[(G)]~~(H) On the basis of evidence produced at the hearing, the health authority may:
- (1) vacate the hold order or detention sticker; or
  - (2) by written order require the permit holder or person in charge to denature or destroy the food, bring the food into compliance or have the equipment repaired so that it operates in compliance with applicable law.
- ~~[(H)]~~(I) An order of the health authority to denature or destroy food or to repair detained equipment is stayed if the order is appealed to a court of competent jurisdiction not later than the third day after the date the order is issued.
- ~~[(I)]~~(J) The health authority shall immediately condemn food or render food unsalable as human food if the health authority determines that the food:
- (1) contains filthy, decomposed, or putrid substance;
  - (2) may be poisonous or deleterious to health; or
  - (3) is otherwise unsafe.
- ~~[(K)]~~ The health authority may condemn equipment as unsafe for food storage or preparation if the health authority determines that the equipment:
- (1) contains filthy, decomposed, or putrid substance(s);
  - (2) may be or is deleterious to health; or
  - (3) is otherwise unsafe.

**PART 10.** Chapter 10-3 (*Food and Food Handlers*) of the City Code is amended to amend § 10-3-211 to read:

**§ 10-3-211 OFFENSES AND PENALTIES.**

- (A) A person commits an offense if the person knowingly provides false information on an application for a food manager certificate or food handler registration.
- (B) A person commits an offense if the person uses a food manager certificate or food handler registration that has not been issued to the person by the health authority.

## Attachment A

### Fee Impacts

Requires a food handler certification of all food vendors that participate in sampling and requires that they be registered in Austin by obtaining a City of Austin Food Handler card at cost of \$10.00 for a two-year registration.

Establishes a new annual sampling permit fee of \$210 per year for booths offering product sampling.

### Impacts for Farmers' Market

Amendment to Part 1 Ch 10-3-1 (B), adding and clarifying definitions of baked goods, certified farmers' markets, market managers and sampling.

Addition of Article 4, Part 8, 10-3-97 to allow sampling at a Certified Farmers' Market under certain conditions.

### Impacts for Food Establishments

Amendment to Part 1 Ch 10-3-1, adding and clarifying definitions of baked goods, temporary events, unsafe food, and vehicle and violation.

Amendment to Part 2 Ch 10-3-2, adding and clarifying compliance required regarding unsafe food.

Amendment to Part 4, Ch 10-3-34 (A) to clarify current language requiring employees or volunteers to have a valid food handler certification.

Amendment to Part 5, Ch10-3-67 (A) allowing a conditional permit when a renewal is applied for.

Addition of Part 10, Ch 10-3-96 for temporary event requirements.

Amendment to Part 11, Ch 10-3-154 for violation enforcement and suspending operations of a temporary event.

Amendment to Part 13, Ch 10-3-157 clarifies ability to detain equipment due to health risk.

Amendment to Part 14, Ch 10-3-211(H) to establish offenses under this section as a "fine only offense."

- (C) A person commits an offense if the person knowingly provides false information on an application for a permit required by this chapter.
- (D) A person commits an offense if the person uses a permit that has not been issued to the person by the health authority.
- (E) A person commits an offense if the person performs an act prohibited by this chapter or fails to perform an act required by this chapter.
- (F) A person commits an offense if the person operates a booth for the sampling of food products at a farmers market without a valid permit or with a suspended permit.
- ~~[(F)]~~(G) A person commits a separate offense each day that the person performs an act prohibited by this chapter or fails to perform an act required by this chapter.
- ~~[(G)]~~(H) Except as otherwise provided, proof of criminal negligence is required for conviction of an offense under this chapter. Proof of a higher degree of culpability that criminal negligence constitutes proof of criminal negligence.
- ~~[(H)]~~(I) An offense under this section is a ~~[Class C misdemeanor]~~ fine only offense and is punishable by a fine not to exceed \$2,000.

**PART 11.** This ordinance takes effect on May 10, 2010.

**PASSED AND APPROVED**

\_\_\_\_\_, April 29 \_\_\_\_\_, 2010

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Lee Jeffingwell  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk