



## Recommendation for Action

**File #:** 21-1726, **Agenda Item #:** 13.

5/6/2021

### **Posting Language**

Approve an ordinance amending City Code chapters 10-3 (Food and Food Handlers), 15-10 (Wastewater Regulations), and 25-12 (Technical Codes) relating to permit, permit fee, and operational requirements for charitable feeding organizations and grease traps for food establishments. Related to Item #12.

### **Lead Department**

Austin Public Health.

### **Fiscal Note**

This item will result in unrealized revenue in the General Fund. See Item 21-1613 for details. This item is projected to result in unrealized revenue up to \$417,837 in the Fiscal Year 2020-2021 Austin Water's Department's Operating Budget due to the waiving of wastewater discharge permits and surcharge fees for charitable feeding organizations.

### **Prior Council Action:**

July 29, 2020 - Council approved Resolution No. 20200729-087 directing the City Manager to convene a collaborative working group to develop recommendations regarding amendments to the food enterprise permitting process and related fees for charitable feeding organizations, and encouraging the City Manager to cease enforcement, in order to reduce barriers of providing access to healthy foods for our community's vulnerable and food insecure populations, on a 10-0 vote with Mayor Adler off the dais.

### **For More Information:**

Stephanie Hayden-Howard, Director, 512-972-5010; Don Hastings, Assistant Director, APH Environmental Health Services Division, 512-978-0303; Marcel Elizondo, Program Manager II, APH Environmental Health Services Division, 512-978-0308; Lucy Thompson, Agenda Coordinator, APH, 512-972-5045; Jay Porter, Austin Water Division Manager, 512-972-1093.

### **Council Committee, Boards and Commission Action:**

October 14, 2020 - Presented a proposal regarding charitable feeding organizations to the Health and Human Services Committee.

November 18, 2020 - Presented a proposal regarding charitable feeding organization to the Zero Waste Advisory Commission.

December 9, 2020 - Presented a proposal regarding charitable feeding organizations to the Food Policy Board.

April 7, 2021 - Recommended by the Water and Wastewater Commission on a 9-0 vote with Commissioner Michel absent.

### **Additional Backup Information:**

Currently, the City regulates most charitable feeding organizations (CFO) in the same manner as commercial food establishments. Consistent with the policy direction set forth in Resolution No. 20200729-087, staff worked extensively with charitable feeding stakeholders (representatives of the Food Policy Board) and City Departments (Office of Sustainability, Austin Water, Austin Fire, Austin Resource Recovery, Development Services Department) to identify how City regulations, policies, and fees can be amended to reduce the

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barriers of providing access to healthy foods for our community's vulnerable and food insecure populations.

To reduce CFO regulatory requirements without unduly compromising public safety, staff worked with the Office of Sustainability to identify four major types of CFO's based on food safety risk. Staff then formulated the following recommendations for regulatory and fee changes that are proportionate to the level of food safety risk posed by each CFO category:

- **Category 1 CFO's** are traditional food pantries that distribute only shelf stable foods (canned foods and packaged grains) and uncut produce. Because they pose no significant food safety risk, these CFO's are not regulated by the City or the State of Texas.
  - APH Recommendations:
    - In the absence of permitting, require registration as a Category 1 CFO and best management practices. Routine inspections will not be conducted.
    - Designate a CFO ombudsman/liaison to assist all CFO's; and establish a CFO webpage.
- **Category 2 CFO's** distribute and may portion commercially prepared and packaged time-temperature controlled for safety (TCS) foods and therefore pose low-moderate food safety risks. Category 2 CFO's are defined by the State of Texas as a food establishment.
  - APH Recommendations:
    - Amend Chapter 10-3 of the City Code (Food and Food Handlers) to define a Category 2 CFO and exempt it from permitting requirements. In lieu of permitting, require registration of Category 2 CFO's and best management practices.
    - Conduct annual inspections (please note that no inspection fee currently exists for unpermitted food establishments and no such fee is recommended).
    - Designate CFO ombudsman/ liaison and establish a CFO webpage.
  - AW Recommendations:
    - Exempt Category 2 CFO's from wastewater discharge permit and surcharge fees.
    - Amend Chapter 15-10 and 25-12 to exempt new Category 2 CFO's from the requirement to install grease traps.
    - Austin Water Director will relax grease trap maintenance requirements on a case-by-case basis.
- **Category 3 CFO's** heat and/or portion commercially prepared foods that are TCS for same day service and therefore pose moderate-significant food safety risks and will require a food establishment permit. A Category 3 CFO is defined by the State of Texas as a food establishment.
  - APH Recommendation:
    - Due to pathogen risk, continue requiring food establishment permit. To ease permitting process, amend Chapter 10-3 (Food and Food Handlers) to define CFO Category 3 and reduce certain permitting requirements (e.g., multiple sinks, self-closing doors, smooth ceiling tile surfaces, etc.).
    - Exempt Category 3 CFO's from food establishment permit fee.
    - Designate CFO ombudsman/liaison; establish a CFO webpage; and consider variances on a case-by-case basis.
  - AW Recommendation:
    - For Category 3 CFO's, the Director of Austin Water will relax requirements for installing and maintaining grease traps depending on the amount of grease/solids processed, on a case-by-case basis.
    - Exempt Category 3 CFO's from wastewater discharge permit and surcharge fees.

- **Category 4 CFO's** are full-service charitable feeding food establishments, such as community kitchens or soup kitchens, that require food establishment permits. They are defined by the State of Texas as food establishments.
  - APH Recommendation:
    - Due to significant pathogen risk, continue requiring food establishment permit and compliance with the Texas Food Establishment Rules.
    - Exempt Category 4 CFO's from food establishment permit fee.
    - Designate CFO ombudsman/liaison; establish a CFO webpage; and consider site-specific variances.
  - AW Recommendation: Exempt Category 4 CFO's from wastewater discharge permit and surcharge fees.

To-date, staff has designated a supervisor-level Environmental Health Services Division ombudsman to work directly with CFO's on permitting and regulatory matters; drafted best management practices (also known as BMP's) for CFO's; and launched a beta version of a CFO webpage linked to the Austin Public Health/ Environmental Health Services Division webpage.

Resolution No. 20200729-087 also encouraged the City Manager to cease enforcement of structure-based requirements that do not impact life-safety and health until at least December 31, 2020 to avoid losing CFO resources at a time when demand for food access is growing due to COVID-19-related lay-offs. To staff's knowledge, this has been accomplished to-date and staff is not aware of any recent or pending CFO permitting issues.

**Strategic Outcome(s):**

Health and Environment.