

ORDINANCE NO. 20131024-016

AN ORDINANCE AMENDING CITY CODE CHAPTER 10-3 (FOOD AND FOOD HANDLERS) REGARDING REGULATION OF INDIVIDUAL VENDORS AT CERTIFIED FARMERS MARKETS.

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

PART 1. Section 10-3-1 (*Definitions*) is amended to read as follows:

§ 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 Establishments*) 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) **BONA FIDE EDUCATIONAL PURPOSE** means providing cooking demonstrations solely for the purpose of informing, training, or educating persons about how to prepare foods, or providing samples in order to inform persons of the quality and characteristics of the sample, and is not done in conjunction with the sale of food or food products.
 - (3[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.
 - (4) **CONCESSION STAND** means a food establishment operated by a city or county, a non-profit organization, or public school district from which limited foods are served during athletic or entertainment events.
 - (5[3]) **FARM PRODUCE** means herbs and spices in their natural or dried state, vegetables, fruits, unshelled nuts, berries, grains, honey, watermelons and other melons, and cantaloupes in their natural state.

(6) FARMERS MARKET VENDOR means a vendor operating an individual booth at a certified farmers market with a Class A, B, or C permit described in Section 10-3- 97 of this chapter.

7[(4)] FOOD ENTERPRISE includes:

- (a) a food establishment; ~~and~~
- (b) a food processing plant; ~~;~~
- (c) a certified farmers market vendor;
- (d) a temporary food establishment; and
- (e) a mobile food establishment.

8[(5)] FOOD HANDLER means a food enterprise employee who works at any time with unpackaged food, food equipment or utensils, or food contact surfaces.

(9) LIMITED FOODS means foods requiring limited handling and preparation and that may be heated for hot holding and service. The term does not include foods cooked from a raw state, or that are cooled and reheated for subsequent service.

10[(6)] MARKET MANAGER means a person who is designated as the person-in-charge of a certified farmers market.

11[(7)] MOBILE FOOD ESTABLISHMENT 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 vessels; 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.

12[(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 is the person in charge.

13[(9)] SAMPLING means the demonstration or promotion of a food via offering a small serving of the food which cannot be, and is not, sold and which may not consist of a whole meal, an individual portion or a whole sandwich.

14[(40)] 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 no more than a total of 30 days in a calendar year, 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) Subsection (a) does not apply to vendors under contract with the City or Travis County to provide food and beverage services at properties owned and overseen by the City or Travis County. [~~Properties overseen by the City and multi-use facilities that are used for trade shows and conventions are exempt from this restriction.~~]
- (c) A farmers market vendor is not a temporary food establishment. [~~A temporary food establishment at a certified farmer's market may operate one day a week for 14 consecutive weeks as a~~]

~~single special event if the temporary food establishment is permitted as a food establishment, or is preparing its food at a permitted food establishment, and is in compliance with its permit issued by the health authority. The permit shall be issued to the vendor. The vendor shall meet requirements of the Texas Food Establishment Rules (TFER) and all other applicable laws. A temporary food establishment at a certified farmer's market is not exempt from the food handler requirements of this chapter.]~~

15[(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.

16[(12)] VIOLATION means the failure to follow this Chapter 10-3 or the commission of an act prohibited by this Chapter. A violation may result in reinspection fees being assessed, permit suspension or charges being filed in municipal court for reasons including but not limited to:

- (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. Subsection (C) of Section 10-3-2 (*Compliance Required*) is amended to read as follows:

- (C) A person operating a food establishment, vending machine, bed and breakfast limited, mobile food establishment, temporary event, ~~[or sampling at a]~~ farmers market, or farmers market vendor booth shall comply with this chapter and, except as provided in Section 10-3-124 (*Dogs Permitted in Outdoor Dining Areas*), the City adopts the 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*).

PART 3. Subsections A, C and D of 10-3-31 (*Food Manager Certificate Required*) are amended to read as follows:

- (A) Except as provided in Subsection[s] (B) ~~[and (C)]~~, a person may not operate a food enterprise or bed and breakfast limited unless at least one employee has a current, valid food manager certificate issued by the health authority.
- (B) A food manager certificate is not required for a person who operates:
- (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 mobile food establishment that offers only prepackaged food, if a certified food manager is in charge at the central preparation facility that supplies the products for the mobile food establishment; or
 - (5) a temporary event.
- ~~[(C) If a food manager certificate expires or the certificate holder is no longer employed by the food enterprise or bed and breakfast limited, the person in charge shall comply with Subsection (A).]~~
- (C)~~[(D)]~~The person in charge shall post the food manager certificate in a prominent location in the food enterprise or bed and breakfast limited.

PART 4. Subsection (B) of Section 10-3-34 (*Food Handler Registration Required*) is amended to read as follows:

(B) The requirements of this section do not apply to:

- (1) a nonprofit organization that serves food only to members of the organization;
- (2) 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~~];
- (3) 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 mobile food establishment; [~~or~~]
- (4) [~~a temporary event~~] a retail food establishment that sells or offers only prepackaged foods; [~~or~~]
- (5) a person who verifies by affidavit that he or she does not ever work with unpackaged food, food equipment or utensils, or food contact surfaces; or[-]
- (6) a concession stand that offers only limited foods and maintains a Certified Food Manager, registered with the City of Austin, on duty during all hours of operation. The valid, registered Food Manager Certificate issued to the food manager on duty must be posted in compliance with Subsection (D) of Section 10-3-31 (*Food Manager Certificate Required*).

PART 5. Subsection (B) of Section 10-3-61 (*Permit Required*) is repealed and replaced with a new Subsection (B) that reads as follows:

- (B) A person must hold a permit issued by the health authority to operate a group residence with more than six residents when food is provided, stored, or prepared onsite, or prepared by a third party operator or facilitator.

PART 6. Subsection (D) of Section 10-3-62 (*Permit To Be Posted*) is amended and a new Subsection (E) is created to read as follows:

- (D) if the food enterprise is operated in a space that prevents posting the permit as required in Subsections (A) through (C), the permit shall be posted in the initial patron contact area, on the menu board or counter of the enterprise[; ~~or in a location determined by the health authority to ensure proper notice to the general public and patrons.~~]; or

- (E) in a location determined by the health authority to ensure proper notice to the general public and patrons.

PART 7. Subsection (D) of Section 10-3-93 (*Sanitary Requirements*) is amended to read as follows:

- (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) A person who operates a mobile food establishment may not place food, equipment, or supplies that are part of its operations outside of the permitted unit and must conduct all of its operational activities within the mobile food establishment; and,

~~(10)~~~~(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 8. Section 10-3-95 (*Use of Public Property*) is amended to read as follows:

- ~~[(A)] [If a person operates a mobile food establishment on public property, the person may not place food or supplies on the ground or on tables, chairs, or shelves that are not part of the mobile vending establishment.]~~
- ~~[(B)]~~ A person who operates a mobile food establishment may not go into a City park to sell, offer for sale, or display a food item, unless the person's activity is authorized by:
- (1) a park property rental agreement; or
 - (2) written permission of the director of the Parks and Recreation Department.

PART 9. Section 10-3-97 (*Sampling of Food Products at Certified Farmers Markets*) of Article 4 is repealed.

PART 10. A new Article 5 is created, with the existing Articles 5 through 8 renumbered accordingly, that reads as follows:

Article 5. CERTIFIED FARMERS MARKET VENDORS.

§ 10-3-97 PERMIT REQUIRED.

- (A) It shall be unlawful for any person to operate as a farmers market vendor within the city limits at a certified farmers market without first having obtained a Class A, B, or C permit as required by this section.
- (B) A Class A permit allows a vendor to offer only prepackaged foods, beverages that are dispensed from covered urns or other protected vessels available for customer self-service, and packaged frozen food. The preparation, assembly, reheating, or cooking of foods is not allowed under this permit.
- (C) A Class B permit allows a vendor to offer baked goods, bulk food items, beverages that are dispensed from covered urns or other protected vessels available for employee service (including ice service), and sampling. All food operations under a Class A permit are allowed under a Class B permit.
- (D) A Class C permit allows the on-site preparation of foods and open foods and includes but is not limited to the sampling of foods. Vendors may cook,

prepare, and assemble a full menu of food items. All food operations under Class A and B permits are allowed under a Class C permit.

- (E) Every person, before opening, maintaining, or operating as a farmers market vendor at a certified farmers market, shall file an application for and obtain one of the permits described in Subsection (A) of this section.
- (F) Farmers market vendors operating at multiple markets simultaneously shall obtain a site-specific permit for each location.
- (G) An applicant for a certified farmers market vendor's permit must file the application with the health authority. The application must include:
 - (1) the 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) the class of permit the applicant will operate under;
 - (3) the signature of each applicant;
 - (4) a notarized statement from the owner of a central preparation facility stating the farmer's market vendor uses the facility as its base of operation or proof that the applicant has its own central preparation facility;
 - (5) name and address of the certified farmers market where the vendor will operate; and
 - (6) other information reasonably required by the health authority.
- (H) Upon receiving the application with the fee set forth by council for a farmers market vendor permit under this section, the health authority may approve the application for a farmers market vendor. A farmers market vendor permit is effective for one year from the date of issuance.
- (I) An applicant for a certified farmers market permit shall submit the application to the health authority not later than the 10th day before the effective date for which the permit is sought.
- (J) An application for renewal of a farmers market vendor permit must be received by the department, accompanied by the applicable fee, at least 10 days before the expiration date of the previous permit. All information provided in a renewal application must be current and valid.

- (K) A person operating under a farmers market vendor permit shall promptly display the permit where it is readily visible or as designated by the health authority.
- (L) In the event the health authority determines that the vendor 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 farmers market vendor permit.
- (M) An applicant who has been refused a farmers market vendor permit or renewal of a farmers market vendor permit 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.
- (N) A cottage food production operation, as that term is defined in Chapter 437 of the Texas Health and Safety Code, is exempt from the permit requirements of this section.
- (O) A farmers market or farmers market vendor booth that is conducting a cooking demonstration, or providing samples of food, for a bona fide educational purpose is exempt from paying permit fees described in Section 10-3-64 (*Permit Fees*).
- (P) Notwithstanding any other provision to the contrary, a farmers market vendor may prepare and distribute samples of farm produce only, at a farmers market, without a permit, if the farmers market vendor complies with the sanitary conditions in Section 437.020(c) of the Texas Health and Safety Code.
- (Q) A farmers market vendor may conduct a cooking demonstration only if the vendor verifies in writing with the farmers market at which the vendor is conducting the demonstration that the farmers market is in compliance with the establishment operator requirements of Section 437.0203(c) of the Texas Health and Safety Code and the vendor complies with all other requirements of Section 437.0203 of the Texas Health and Safety Code.
- (R) A person may provide samples, or conduct a cooking demonstration, for a bona fide educational purpose, only in a defined physical location designated in writing by the market manager.

§ 10-3-98 SANITARY REQUIREMENTS.

- (A) A person operating as a farmers market vendor 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.

- (B) A farmers market vendor shall comply with the requirements of this section.
- (C) The health authority may impose requirements on cooking, freezing, reheating, treating juice, and cooked-food storage temperatures.
- (D) A person operating under a farmers market vendor permit shall comply with the following requirements:
 - (1) With the exception of egg vendors, all certified farmers market vendors operating at a farmers market must operate out of a central preparation facility as its base of operation;
 - (2) The health authority must approve the preparation, serving, or displaying of potentially hazardous foods at a farmers market in accordance with permit requirements.
 - (3) An employee or volunteer of a farmers market vendor shall be a registered food handler if operating under a Class B or Class C permit with the provisions of Section 10-3-34. The registered food handler certificate shall, upon request, be provided to the health authority.
 - (4) At least one employee or volunteer of a farmers market vendor shall be a registered food manager if the vendor is operating under a Class C permit with the provisions of Sections 10-3-31 through 10-3-34. The City of Austin food manager certificate shall be prominently posted on the vendor booth.
 - (5) A farmers market vendor shall have sufficient potable water from a source approved by the health authority for cleaning foods, equipment and utensils under a Class B or Class C permit.
 - (6) A farmers market vendor operating under a Class B or C permit shall provide an approved facility for employee hand washing consisting of warm, free-flowing clean running water at a minimum temperature of 100 degrees Fahrenheit, soap, and individual paper towels or other approved hand-drying device. If the vendor is unable to maintain the water at the above temperature, the vendor shall provide another control measure, such as a hand sanitizer or single-use gloves, which is approved by the health authority.

- (7) A farmers market vendor operating under a Class B or C permit shall provide an approved facility for washing, rinsing, and sanitizing of equipment and utensils used in the preparation and serving of food products. 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 at a farmers market.
- (8) A farmers market vendor operating under a Class B or C permit must wear disposable plastic gloves when preparing samples of food or produce and must observe proper hand washing techniques immediately before preparing samples of food or produce.
- (E) The health authority may inspect each farmers market vendor booth offering food products as is necessary for the enforcement of this section.
- (F) The market manager of a certified farmers market shall be responsible for ensuring compliance with the provisions of Sections 10-3-97(I) and 10-3-31 through 10-3-34 and for ensuring that all shared or common facilities and operations comply with this chapter. In the case of repeated violations of this section, the health authority may impose restrictions on the preparation of food products at a farmers market vendor booth under a Class B or Class C permit.
- (G) The market manager shall obtain from the operator of a food cottage production operation and from a vendor exempt under Section 10-3-97(P) the operator's or vendor's name, address, date of birth, and a copy of the person's government-issued identification. The market manager shall provide this information to the Health Authority upon request.
- (H) A farmers market vendor may not set up food sampling operations as unattended self-service displays for customers.
- (I) A farmers market vendor shall provide containers with covers to protect food products during storage and display and shall put sneeze guards, or other method or equipment, pre-approved by the Health Authority, into place to protect food products from consumer contamination.
- (J) Farmers market vendors shall correct all violations 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 to the public.
- (K) If a farmers market vendor does not correct violations at the time of

inspection, or within the specified extension time limits, the health authority shall immediately order the booth to suspend operations.

- (L) Repeated violations by a farmers market vendor operating at a certified farmers market without a valid permit or with a suspended permit constitutes an offense under this chapter.

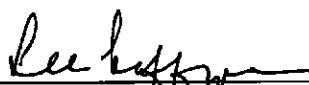
§ 10-3-99 ADDITIONAL REQUIREMENTS.

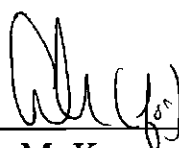
The health authority may impose additional requirements to protect against health hazards related to the conduct of a farmers market booth, may prohibit the sale of some or all potentially hazardous foods and, when no health hazard will result, may waive or modify requirements of these rules.

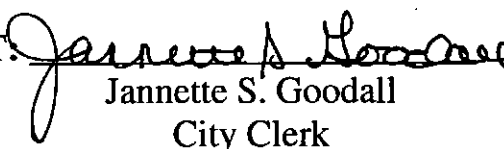
PART 11. This ordinance takes effect on November 4, 2013.

PASSED AND APPROVED

October 24, 2013

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Lee Leffingwell
Mayor

APPROVED: 
Karen M. Kennard
City Attorney

ATTEST: 
Jannette S. Goodall
City Clerk