



Austin/Travis County Health and Human Services Department

Office of the Director


P O Box 1088, Austin, TX 78767

Phone: (512) 972-5010; Fax: (512) 972-5016



MEMORANDUM

TO: Mayor and Council

FROM: David Lurie, Director 
Austin/Travis County Health and Human Services

DATE: June 24, 2010

SUBJECT: Farmer's Market - Hot Food Resolution; CIUR #280

On March 24, 2010 City Council passed a resolution that the Austin/Travis County Health and Human Services Department (HHSD) study and present Code recommendations on a policy regarding hot food served on site at Farmer's Markets.

In November of 2009, Farmer's Market representatives had requested the ongoing use of Temporary Event Permits for serving prepared foods, referred to as "Hot Foods" in the resolution, at the Markets. The HHSD Environmental and Consumer Health Unit (ECHU) staff asked the question of the City Law Department and to provide a written opinion.

After Law's research and discussion with the Texas Department of State Health Services (DSHS) they provided the opinion that the Farmer's Market did not meet the intent of a Temporary Food Event but was an ongoing event. Under current rules, the Farmers' Market may have prepared foods on site with Mobile Vending Permits. The Market and the Sustainable Food Board have both expressed that this is not what they want and continue to request the Temporary Food Permits.

The use of Mobile Vending units at farmers market would allow hot food preparation at this moment in time. Therefore HHSD's recommendation is to use mobile unit at these venues. They meet current state and local laws, address the public health issues and could be implemented immediately.

HHSD recognizes that although other communities in Texas such as Sunset Valley and Galveston have changed their code to allow for ongoing Temporary Event Permits thereby assuming the risk and liability for these decisions; Austin/Travis County HHSD does not recommend doing this for the following reasons:

- State law is the basis for rules and regulations and municipalities may choose to go stricter than but not less than the State rules. City legal has given the opinion that allowing Temporary Permits on an ongoing basis will mean the City is regulating below state law and regulations.

- The Temporary Food Event requirements have been written with the intent and understanding that outdoor events, such as rodeos, carnivals art festivals etc., occur outside the regular permitting scheme and there is food associated with such events. The requirements at these events are minimal and do not offer the same level of ongoing protection that is associated with permanent food establishments or Mobile Food Vending Units.
- The Texas Department of State Health Services (DSHS) has acknowledged that Farmers Markets have changed from their original intent of providing fresh, local fruits and vegetables. Consequently they will be creating a new section in the food code and are requesting local health jurisdictions, farmer's market representatives and consumers to participate in establishing rules for Farmer's Markets that are not addressed in the existing Texas Food Establishment Rules. This work group will have a draft of this to propose to the next Texas Legislature by January 2011.
- To allow one group to operate with ongoing Temporary Event permits does not create an equitable interpretation of the Texas Food Establishment Rules (TFER) within the City of Austin. Other venues such as charitable functions and ongoing weekend flea markets are required to have permanent structures or Mobile Vending Permits to provide food to the public.
- In addition, discussions with the Fire Department have indicated possible conflicts with on-going outdoor cooking events and the Fire Code. It speaks to the frequency of on-going events and the fire dangers associated with them.

Therefore, HHSD does not recommend that the City of Austin use Temporary Event Permits in an ongoing situation. If we were to do otherwise it would put the city in conflict with state law and responsible for associated risk and liability. As an alternative, we are recommending the use of mobile vendor units consistent with current Code and State Rules. In addition, HHSD recommends reviewing and updating the Code as it relates to Farmer's Market – Hot Foods, following any changes in the TFER.

Should you need further information, please contact my office at 972-5010.

cc: Marc A. Ott, City Manager
H. G. (Bert) Lumbreras, Assistant City Manger
Shannon Jones, HHSD Assistant Director