

ORDINANCE NO.

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 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.

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. [-]
- [(+)] 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.[-]

3

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[(+)] 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[(+2)] 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;

- 1
- 1 (b) using an unapproved source;
- 2 (c) home prepared foods; or
- 3 (d) food out of temperature compliance.

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

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

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16 *Farmers Markets*) of Article 4 is repealed.

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

19 **Article 5. CERTIFIED FARMERS MARKET VENDORS.**

20 **§ 10-3-97 PERMIT REQUIRED.**

- 21 (A) It shall be unlawful for any person to operate as a farmers
22 market vendor within the city limits at a certified farmers market
23 without first having obtained a Class A, B, or C permit as required by
24 this section.
- 25 (B) A Class A permit allows a vendor to offer only prepackaged foods,
26 beverages that are dispensed from covered urns or other protected
27 vessels available for customer self-service, and packaged frozen food.
28 The preparation, assembly, reheating, or cooking of foods is not
29 allowed under this permit.
- 30 (C) A Class B permit allows a vendor to offer baked goods, bulk food
31 items, beverages that are dispensed from covered urns or other
32 protected vessels available for employee service (including ice
33 service), and sampling. All food operations under a Class A permit are
34 allowed under a Class B permit.

- 1 (D) A Class C permit allows the on-site preparation of foods and open
2 foods and includes but is not limited to the sampling of foods. Vendors
3 may cook, prepare, and assemble a full menu of food items. All food
4 operations under Class A and B permits are allowed under a Class C
5 permit.
- 6 (E) Every person, before opening, maintaining, or operating as a farmers
7 market vendor at a certified farmers market, shall file an application
8 for and obtain one of the permits described in Subsection (A) of this
9 section.
- 10 (F) Farmers market vendors operating at multiple markets simultaneously
11 shall obtain a site-specific permit for each location.
- 12 (G) An applicant for a certified farmers market vendor's permit must file
13 the application with the health authority. The application must include:
- 14 (1) the name and address of the applicant and the applicant's
15 identification number as shown on a current and valid
16 government-issued identification document that includes a
17 photograph of the applicant;
- 18 (2) the class of permit the applicant will operate under;
- 19 (3) the signature of each applicant;
- 20 (4) a notarized statement from the owner of a central
21 preparation facility stating the farmer's market vendor uses the
22 facility as its base of operation or proof that the applicant has its
23 own central preparation facility;
- 24 (5) name and address of the certified farmers market where
25 the vendor will operate; and
- 26 (6) other information reasonably required by the health authority.
- 27 (H) Upon receiving the application with the fee set forth by council
28 for a farmers market vendor permit under this section, the health
29 authority may approve the application for a farmers market vendor. A
30 farmers market vendor permit is effective for one year from the date of
31 issuance.
- 32 (I) An applicant for a certified farmers market permit shall submit
33 the application to the health authority not later than the 10th day before
34 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 food at a farmers market 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.

- 1 (R) A person may provide samples, or conduct a cooking demonstration,
2 for a bona fide educational purpose, only in a defined physical location
3 designated in writing by the market manager.
- 4 (S) A certified farmers market may have only one designated physical
5 location for the activities described in Subsection (R) of this section.

6 **§ 10-3-98 SANITARY REQUIREMENTS.**

- 7 (A) A person operating as a farmers market vendor shall comply with the
8 Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter
9 K (Texas Food Establishment Rules) regarding equipment, floors, dust
10 control, ceilings and outer openings of food preparation areas at a
11 temporary event.
- 12 (B) A farmers market vendor shall comply with the requirements of this
13 section. The health authority may impose additional requirements to
14 protect against health hazards related to the conduct of a farmers
15 market booth, may prohibit the sale of some or all potentially
16 hazardous foods and, when no health hazard will result, may waive or
17 modify requirements of these rules.
- 18 (C) The health authority may impose requirements on cooking, freezing,
19 reheating, treating juice, and cooked-food storage temperatures.
- 20 (D) A person operating under a farmers market vendor permit shall comply
21 with the following requirements:
- 22 (1) With the exception of egg vendors, all certified farmers market
23 vendors operating at a farmers market must operate out of a
24 central preparation facility as its base of operation;
- 25 (2) The health authority must approve the preparation, serving, or
26 displaying of potentially hazardous foods at a farmers market in
27 accordance with permit requirements.
- 28 (3) An employee or volunteer of a farmers market vendor shall be a
29 registered food handler if operating under a Class B or Class C
30 permit with the provisions of Section 10-3-34. The registered
31 food handler certificate shall, upon request, be provided to the
32 health authority.
- 33 (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) A farmers market vendor may not set up food sampling operations as unattended self-service displays for customers.
- (H) A farmers market vendor shall provide containers with covers to protect food products during storage and display and shall put sneeze guards into place to protect food products from consumer contamination.
- (I) 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.
- (J) 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.
- (K) 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.

PART 11. This ordinance takes effect on _____, 2013.

PASSED AND APPROVED

§
§
§

_____, 2013

Lee Leffingwell
Mayor

APPROVED: _____

ATTEST:

Karen M. Kennard
City Attorney

Jannette S. Goodall
City Clerk

DRAFT - NOT FINAL VERSION