

**ORDINANCE NO. 20151008-011**

**AN ORDINANCE AMENDING CHAPTER 10-3 OF THE CITY CODE  
RELATING TO FOOD AND FOOD HANDLERS.**

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

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

- (A) Except as provided in Subsection (B), a term defined by Texas Administrative Code Title 25, Part 1, Chapter 228[9], [~~Subchapter K~~] (*Texas Food Establishment[s] Rules*) has the same meaning in this chapter.
- (B) In this chapter:
  - (1) **AGRICULTURAL PRODUCT** means produce, meat, fish, honey, dairy, seeds, live plants intended for food production, and compost products produced by a farmer.
  - (2) **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.
  - (3) **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.
  - (4) **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.
  - (5) **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.
  - (6) **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.

- (7) 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.
- (8) FOOD ENTERPRISE includes:
- (a) a food establishment;
  - (b) a food processing plant;
  - (c) a certified farmers market vendor;
  - (d) a temporary food establishment; and
  - (e) a mobile food establishment.
- (9) FOOD ESTABLISHMENT RULES means Title 25 of the Texas Administrative Code, Part 1, Chapter 228, (Texas Food Establishment Rules).
- (10) ~~(9)~~ FOOD HANDLER means a food enterprise employee who works at any time with unpackaged food, food equipment or utensils, or food contact surfaces.
- (11) ~~(10)~~ 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.
- (12) ~~(11)~~ MARKET MANAGER means a person who is designated as the person-in-charge of a certified farmers market.
- (13) ~~(12)~~ MOBILE FOOD ESTABLISHMENT means one of two types of mobile food operations ~~[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 is limited to one portable ice chest, cooler, case or unit per permit, capable of being carried by one person; 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.
- (14) ~~[(13)]~~ **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.
- (15) ~~[(14)]~~ **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.
- (16) **SINGLE BOOTH EVENT** means an event consisting of a single booth and operating for a single day.
- (17) ~~[(15)]~~ **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.~~

~~(e)~~] A farmers market vendor is not a temporary food establishment.

**(18) TEMPORARY FOOD BOOTH** shall mean a single small enclosure used for food preparation, or food handling, or both, and service by an individually permitted vendor.

**(19) [(46)] 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.

**(20) (47) 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 City Code Section 10-3-2 (*Compliance Required*) is amended and a new Subsection (E) is added to this Section to read:

- (C) A person operating a food establishment, vending machine, bed and breakfast limited, mobile food establishment, temporary event, 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 228 (*Texas Food Establishment Rules*) and Chapter 229,

Subchapter[s] ~~[K-and]~~ N (*Current Good Manufacturing Practice And Good Warehousing Practice In Manufacturing, Packing And Holding Human Food*).

- (E) The health authority may adopt additional requirements not specified in this chapter as are reasonably required in the health authority's professional judgement, and authorized by law, to protect against health hazards or nuisances. When the health authority reasonably determines as a matter of professional judgement that no health hazard or nuisances will result from a particular activity or method of conduct, the health authority may waive or modify requirements of this chapter.

**PART 3.** City Code Section 10-3-31 (*Food Manager Certificate Required*) is amended to read:

- (A) Except as provided in Subsection (B), 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;]~~
  - (2) [(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;
  - (3) [(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
  - (4) [(5)] a temporary food establishment ~~[event]~~.
- (C) The person in charge shall post the food manager certificate(s) in a prominent location in the food enterprise or bed and breakfast limited.

**PART 4.** City Code Section 10-3-34 (*Food Handler Registration Required*) is repealed and replaced to read:

**§10-3-34 FOOD HANDLER TRAINING CERTIFICATION REQUIRED**

- (A) A person employed at a food enterprise shall maintain current, valid certification as a food handler. It is unlawful for the person to be employed at the food enterprise without a current, valid food handler training certification as required by Section 438 of the Texas Health and Safety Code, and the Texas Food Establishment Rules.
- (B) A person operating a food enterprise shall ensure every food employee has a current food handler training certification. Upon request by the health authority, a person operating a food enterprise shall provide a list of all food handlers at the enterprise along with the current, valid certification document verifying each listed person possesses a current food handler certification.

**PART 5.** Subsection (B) of City Code Section 10-3-61 (*Permit Required*) is amended to read:

- (B) A person must hold a food enterprise permit issued by the health authority to operate a group residence, boarding home, or congregate living facility with occupancy for 16 or more [~~than six~~] residents when food is provided, stored, or prepared onsite, or prepared by a third party operator or facilitator.

**PART 6.** Subsections (A) and (E) of City Code Section 10-3-91 (*Permit Application*) are amended to read:

- (A) A person who seeks to operate a mobile food establishment must submit to the health authority a written application for a permit on a form provided by the health authority. The application must include:
  - (1) 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) type of vehicle to be used for the proposed mobile food establishment;
  - (3) proof of sales tax and use permit;
  - (4) an itinerary of locations where sales occur;
  - (5) other information reasonably required by the health authority;

- (6) the signature of each applicant;
  - (7) a notarized statement from the owner of a central preparation facility stating the mobile food establishment uses the facility as its base of operation; ~~[and]~~
  - (8) if at one location for more than two hours, a written agreement from a business within 150 feet for 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;
  - (9) verification of a current, valid City of Austin Food Manager Certification;
  - (10) if the central preparation facility is located outside the jurisdiction of the City, the applicant must provide a copy of the most current health inspection obtained from the health authority having jurisdiction over the central preparation facility; and
  - (11) a listing of all food items to be sold.
- (E) The health authority may suspend or revoke a mobile food establishment permit if the health authority determines that:
- (1) an applicant obtained the mobile food establishment by knowingly providing false information on the application;
  - (2) a person is infected with or is a carrier of any foodborne communicable disease;
  - (3) the continuation of the person's mobile food establishment permit presents a significant public health threat; or,
  - (4) the mobile food establishment violates the terms and conditions of any written agreement submitted to the health authority under § 10-3-91.
- (F) ~~[(5)]~~ If a written agreement submitted to the health authority terminates without fault by the mobile food establishment, the operator has 10~~ten~~ days to replace the required written agreement without constituting a~~n~~ violation under this section.

**PART 7.** Subsections (D) and (E) of City Code Section 10-3-93 (*Sanitary Requirements*) are amended to read:

- (D) A person who operates a mobile food establishment must comply with the Food Establishment Rules, including, but not limited to ~~meet all of the following requirements~~:
- (1) a[A] mobile food establishment shall provide only single service articles for use by the consumer;
  - (2) a[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[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[A] mobile food establishment shall demonstrate that the vehicle is readily moveable if requested by the health authority;
  - (5) a[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;]~~
  - (6) ~~t~~[(7) T]he 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;
  - (7) ~~a~~[(8) A]ll food and supplies must be stored within the mobile unit;
  - (8) ~~a~~[(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,]~~

~~(9) t[(10)F]~~he 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; ~~[-]~~

(10) an unrestricted mobile vending unit must be equipped with an attached potable water container of no less than 30 gallons. A push cart type unrestricted mobile vending unit must be equipped with an attached potable water container of no less than 10 gallons; and

(11) mobile vending unit waste water containers must be sized at least 15% higher capacity than the potable water tank size installed. Potable water tank must meet minimum size as required in subsection 10-3-93 D (11).

~~[(E) Subsection (D)(9) of this section does not apply to trash, recycling, or composting receptacles required under Article 5 (Universal Recycling) of Chapter 15-6 (Solid Waste Services) of the City Code and that a person uses while operating a mobile food establishment. An operator of a mobile food establishment may place trash, recycling, or composting receptacle outside of, and detached from, the mobile food establishment when the establishment is open for business.]~~

**PART 8.** City Code Section 10-3-94 (*Reserved*) is replaced to read:

## **§10-3-94 CENTRAL PREPARATION FACILITY REQUIREMENTS**

### **(A) Registration and Operational Requirements**

- (1) A person who seeks to operate a central preparation facility must register with the health authority by submitting a form provided by the health authority. The form must include:
  - (a) 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;
  - (b) designated area to be used as a servicing area for any proposed mobile food establishment operations;
  - (c) size of grease trap;

- (d) number of mobile food vendors that will be utilizing facility;
    - (e) copy of the most current health inspection of the food establishment that will be utilized as central preparation facility; and
    - (f) any other documentation required by the Food Establishment Rules.
  - (2) The operations of a central preparation facility shall comply with the requirements of the Food Establishment Rules.
- (B) Facility Requirements
- (1) a food establishment set up as a central preparation facility shall comply with the requirements of this section. The health authority may impose additional requirements to protect against health hazards related to the operation of a central preparation facility, may prohibit some or all processes, and when no health hazard will result, may waive or modify requirements of these rules.
  - (2) the health authority may impose requirements for the servicing area for the purposes of minimizing health and environmental hazards.
  - (3) logs representing central preparation facility use shall be maintained at the facility and inside any mobile food establishment that uses the central preparation facility. These logs shall be made available to the health authority immediately upon request.
  - (4) central preparation facility owner must designate all equipment, storage, and preparation areas used by a mobile food establishment.

**PART 9.** City Code Section 10-3-96 (*Temporary Food Establishment*) is amended to read:

- (A) A temporary 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 operation[~~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) Unless granted an exemption by the health authority, a person may not receive a permit to operate a temporary food establishment for more than six events or celebrations, and for a total of 84 days in a calendar year. [The health authority may impose requirements on cooking, freezing, reheating, treating juice, cooked food storage temperatures and time control.]

(C) Subsection (B) does not apply to vendors under contract with the City or Travis County to provide food and beverage services at properties owned and operated by the City or Travis County.

(D) ~~[(B)]~~ The health authority may impose requirements on cooking, freezing, reheating, treating juice, cooked-food storage temperatures, and time control.

(E) ~~[(E)]~~ Equipment.

- (1) ~~e~~[E]quipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the establishment.
- (2) ~~e~~[E]quipment 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 (D)~~[(B)]~~.
- (3) ~~f~~[F]ood-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) ~~a~~[A]lternative 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.

(F) ~~[(D)]~~ A temporary food establishment shall provide only single-service articles for use by consumers.

(G) ~~[(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 a~~n approved~~ source approved by the health authority.

(H) ~~[(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.

- (I) [(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.
- (J) [(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. The handwashing facility must be conveniently located within 15 feet of the temporary food booth. Handwashing facilities are not required if the only food items offered are commercially pre-packaged foods that are dispensed in their original containers.
- (K) [(I)] A temporary food establishment shall comply with regulations the health authority adopts regarding floors, ceilings, and outer openings of food preparation areas.
- (L) [(J)] The health authority shall apply this section to promote safeguarding the public's health and to ensure~~ing~~ that food is safe, unadulterated, and honestly presented when offered to the consumer.
- (M) [(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.

**PART 10.** Subsection (K) of City Code Section 10-3-97 (*Permit Required*) is amended to read:

- (K) A person operating under a farmers market vendor permit shall promptly display the original farmers market vendor permit where it is readily visible to consumers or as designated by the health authority.

**PART 11.** Subsection (A) of City Code Section 10-3-98 (*Sanitary Requirements*) is amended to read:

- (A) A person operating as a farmers market vendor shall comply with the Texas Administrative Code, Title 25, Part 1, Chapter 228~~[9, Subchapter K]~~ (*Texas Food Establishment Rules*) regarding equipment, floors, dust control, ceilings, and outer openings of food preparation areas at a temporary event.

**PART 12.** Subsection (A) of City Code Section 10-3-121 (*Employee Restroom Requirements*) is amended to read:

- (A) The owner or person in charge of a food enterprise or food processing plant shall provide:
- (1) if 10 or fewer employees are on duty at one time, not less than one restroom; or
  - (2) if more than 10 employees are on duty at one time, not less than two restrooms, one for each sex, or two single-user restrooms that comply with the requirements of chapter 4-16, article 1 (*Gender-Neutral Signage for Single-User Restrooms*).

**PART 13.** Subsection (A) of City Code Section 10-3-122 (*Food Service Enterprise Restroom Requirements*) is amended to read:

- (A) The owner or person in charge of a food service enterprise that [~~serves alcoholic beverages or~~]seats 20 or more persons shall provide not less than two restrooms for public use in the enterprise, one for each sex, or two single-user restrooms that comply with the requirements of chapter 4-16, article 1 (*Gender-Neutral Signage for Single-User Restrooms*) and that are provided in a location that is~~[- The restrooms shall be]~~ conveniently accessible from the seating or dining area during hours of operation.

This ordinance takes effect on October 19, 2015.

**PASSED AND APPROVED**

\_\_\_\_\_, October 8 \_\_\_\_\_, 2015

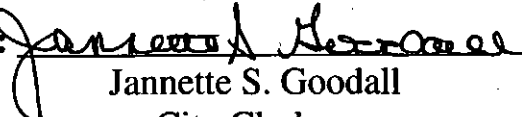
**APPROVED:**

  
Anne L. Morgan  
Interim City Attorney

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Steve Adler  
Mayor

**ATTEST:**

  
Jannette S. Goodall  
City Clerk