




MEMORANDUM

TO: Mayor and Council Members

FROM: Stephanie Hayden, Director 

DATE: October 23, 2020

SUBJECT: Staff Response to Resolution 20200729-087 Austin Public Health
RE: Initiatives to Assist Charitable Feeding Organizations (CFOs)

On July 29, 2020, the Austin City Council approved Resolution No. 20200729-087 directing the City Manager to convene a collaborative working group to develop recommendations for potential amendments to the Food Enterprise permitting process and other City programs needed to reduce barriers faced by charitable feed organizations (CFOs) as they work to provide healthy foods for our community's vulnerable and food insecure populations.

This resolution 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.

This memorandum provides an update on staff efforts to date. In order to provide a comprehensive response staff will need input from several Boards and Commissions. Due to the various components of this resolution, APH anticipates providing the final report to Council by January 2021.

Steps Taken To-Date

To address Resolution No. 20200729-087, Environmental Health Services staff have thus far:

- Conferred extensively with the Office of Sustainability about Austin-Travis County CFO operations and the challenges faced by CFOs to fulfill their mission.
- Reviewed previous regulatory process mapping and results from stakeholder interviews conducted by Office of Sustainability staff.
- Conferred with Departments that have programs, regulations and fees impacting CFOs, including Austin Water, Austin Fire (AFD), the Development Services Department (DSD) and Austin Resource Recovery (ARR), to identify CFO regulatory requirements that can be reduced without unduly compromising health and safety.

- Held two discussions with Austin-Travis County Food Policy Board representatives to learn “pain points” experienced by operators of food pantries/ CFOs.
- Identified requirements that can be safely waived/ reduced to assist CFOs:
 - Amendments to the City of Austin food permitting process (Code of Ordinances Ch. 10-3, Food & Food Handlers) to differentiate types of CFOs based on differing levels of food safety risk.
 - Amendments to building-related codes and City ordinances administered by Austin Water, AFD, DSD and ARR.
- Designated an APH ombudsman/ liaison for CFOs: the APH Supervisor of the EHSD One Stop Shop staff.
- Evaluated all recommended CFO process changes from a *health and safety* perspective:
 - Assessed potential for food borne illness outbreaks, structure fires and sewage backups that might result from proposed reductions in CFO regulatory requirements.

Identified Barriers and Burdens Faced by CFOs

Based on the objective of Resolution No. 20200729-087 to increase CFO capacity, staff worked with Office of Sustainability to outline barriers currently faced by some CFOs:

- Sharing space (e.g., a pantry in a church) complicates the permitting process.
- Tenant status complicates needed facility upgrades.
- Change of use determination by DSD triggers a need for a Certificate of Occupancy, which in turn triggers the need to produce building plans.
- Food handler certification for volunteers can be costly & time-consuming.
- Physical requirements of Texas Food Establishment Rules & City Codes can be costly and might not be justified for lower risk CFOs:
 - Self-closing doors; smooth ceiling tiles, 3-compartment sink separate from hand washing station separate from mop sink.
 - Kitchen vent hood.
 - Grease trap.
- City-required fees can be burdensome: APH, Austin Water, AFD and DSD.

Identified Tradeoffs: Benefits & Risks of Amending CFO Processes and Requirements

The task of reducing operational barriers to charitable feeding involves by necessity the balancing of two competing City Council goals: increasing accessibility of healthy, affordable food to the community’s most needful and vulnerable populations; versus the need to ensure public health and safety in the feeding environment. Accordingly, staff reviewed the tradeoffs of action, as summarized below:

- BENEFITS of Streamlining:

- Lower CFO operating costs will result in increased resources available for feeding.
- Lowered cost-of-entry may result in a greater number of CFOs able to serve the community.
- Registering/ permitting a higher percentage of existing CFOs will result in safer operations community-wide (an estimated 76% of CFOs are currently not permitted*).
- *Note: An unknown portion of these unpermitted CFOs may not require permits by State and local law because they are low risk food pantries (Category 1 CFOs, as described below).
- **RISKS of Streamlining:**
 - For similarly food service operations, food borne pathogens pose equal dangers in both commercial and non-profit settings.
 - The Texas Food Establishment Rules classify all food pantries/ CFOs as food establishments except pantries that only distribute shelf stable & uncut produce.
 - CFOs often rely on volunteers who may lack training in food safety and hygiene.
 - Over time, it is common for CFOs to transition to higher risk food offerings (cooked food, dairy, meats) in response to food bank donations and changing market demands. Reduced requirements appropriate for a given CFO may present hazards over time if that CFO transitions to cooking or higher-risk foods.

Identified Regulatory Points of Impact on CFO Operation

To identify the priorities for regulatory change, APH/ EHSD staff held two discussions with representatives of the Austin-Travis County Food Policy Board. The Board submitted to staff a list of the most common and problematic regulatory process hurdles/ burdens, aka “pain points,” which EHSD staff used to prepare specific recommendations for action as summarized in the “Proposed Actions” section below.

- *Austin Public Health:* Compliance with Texas Food Establishment Rules: requirements for kitchen and sanitation facilities; food manager and food handler certification; food establishment permit fees (\$359 to \$896 per year depending on size & risk level).
- *Austin Water:* Grease traps; wastewater discharge permits; maintenance of grease traps; wastewater surcharge fees; water and wastewater fees.
- *Austin Fire:* Fire alarms; fire sprinklers; kitchen vent hoods.
- *Austin Resource Recovery:* Universal Recycling Ordinance/ organics diversion program.
- *Development Services Department:* Hosts the permitting process in which above departmental requirements are invoked when CFO requires a food establishment permit; Building Dept. maintains building-related Codes that impact CFOs: Fire Code, Mechanical Code, Plumbing Code, etc.

Developed Proposals for Action for Each Major Type of CFO

Charitable Feeding Organizations and the barriers they face differ widely, ranging from simple food pantries that distribute canned goods and uncut produce to full service community kitchens. Each type of CFO is impacted differently by regulatory processes, has its own barriers and poses its own type of public safety risks. Based on its research and interviews, the Office of Sustainability developed the four categories of CFOs listed below. In proposing alternatives for reducing operational barriers for each type of CFO, staff assessed each category's particular barriers and risk levels.

- **Limited Service CFO Category 1:** Distributes only shelf stable & uncut produce.
 - *Currently:* Not Regulated/ Permits Not Required.
 - *Proposed:* In the absence of permitting, register Category 1 CFOs and apply best management practices. Routine inspections would not be conducted.
- **Limited Service CFO Category 2:** Distributes and may portion commercially prepared & packaged Time-Temperature Controlled for Safety (TCS) foods.
 - *Currently:* Food establishment permit required because these are defined by the State of Texas as a food establishment subject to regulation.
 - *Proposed:* Amend Ch. 10-3 (Food & Food Handlers) to define this type of CFO and exempt it from food establishment permitting requirements. In lieu of permitting, register Category 2 CFOs and apply best management practices; conduct annual inspections; propose inspection fee waiver; provide technical resources.
- **Limited Service CFO Category 3:** Heats/ Cools/ Portions Commercially Prepared Foods that are Time-Temp. Controlled for Safety for same day service.
 - *Currently:* Food establishment permit required because these are defined by the State of Texas as food establishments subject to regulation.
 - *Proposed:*
 - APH: Due to pathogen risk, continue requiring food establishment permit. To ease permitting process, amend Ch. 10-3 (Food & Food Handlers) to define CFO Category 3 and reduce certain permitting requirements (e.g., multiple sinks, self-closing doors, smooth ceiling tile surfaces, etc.).
 - APH: Potential fee waivers; designation of CFO ombudsman/ liaison; establishment of a CFO webpage; consideration of site-specific variances.
 - Austin Water: may limit the requirement for grease traps where vent hoods are not required, and limited amounts of grease/ solids are expected.
 - Austin Water: may waive requirement for a wastewater discharge permit.
- **Full Service CFO Category 4:** Community Kitchens/ Soup Kitchens



- *Currently:* Food establishment permit required because these are defined by the State of Texas as food establishments subject to regulation.
- *Proposed:*
 - APH: Due to significant pathogen risk, continue requiring food establishment permit and compliance with Texas Food Establishment Rules.
 - APH: potential fee waivers; designation of CFO ombudsman/ liaison; establishment of a CFO webpage; consideration of site-specific variances.
 - Austin Water: Consider lowering/ waiving wastewater permit and surcharge fees.

Next Steps

Staff presented the foregoing initial findings and CFO proposals to the City Council Health and Human Services Committee on October 14, 2020. Going forward, staff proposes the following next steps:

- Develop a CFO Webpage on the APH/ EHSD website.
- Finalize CFO categorization scheme as a basis for regulatory amendments.
- Devise the process that will be used to register Category 1 & 2 CFOs (for Category 2 CFOs, registration in lieu of permitting).
- Prepare and distribute best management practices (BMPs) for all CFO types.
- City Council Regular Session to Hear Final Report on Staff Response to Resolution 20200729-087.
 - November 12 was the original Resolution target date for a final staff report. However, given the priority of the City's pandemic response, and the time needed for affected departments to seek Board/ Commission, legal and/ or policy-level input on proposed regulatory revisions, APH requests to present its final report in January 2021.
- Initiate amendments to City of Austin Code of Ordinances Ch. 10-3 (Food & Food Handlers) that implement CFO regulatory proposals, as directed by City Council.
- Coordinate with affected Departments on amendments to related Building Codes/ City Ordinances, as directed by City Council.
- Initiate City of Austin FY20-21 Adopted Fee Schedule amendments, as directed by City Council.
- Ongoing implementation of City Council-approved changes to CFO regulation and processing.

If you have any questions or if I can provide additional information, please contact me at (512) 972-5010 or via email at Stephanie.Hayden@austintexas.gov.



Cc: Spencer Cronk, City Manager
Nuria Rivera-Vandermyde, Deputy City Manager
Christopher Shorter, Assistant City Manager