

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 16 “HEALTH AND SANITATION”, ARTICLE IV “FOOD ESTABLISHMENTS”, OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (1986) AS AMENDED, FOR THE PURPOSE OF REVISING THE REQUIREMENTS FOR FARMERS MARKETS BY AMENDING DIVISION 1 “GENERAL PROVISIONS”, SECTION 16-101 “DEFINITIONS” TO REVISE AND ADD DEFINITIONS; AND BY AMENDING DIVISION 4 “REQUIREMENTS FOR CERTAIN ESTABLISHMENTS” BY REPLACING SECTION 16-135 “FARMERS MARKETS” IN ITS ENTIRETY TO REVISE THE CRITERIA FOR THE OPERATION OF FARMERS MARKETS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, national public health initiatives have endorsed the expansion of farmers markets, particularly in urban environments, to allow more convenient access to healthier foods; and

WHEREAS, there is a growing national trend to expand the variety of foods for sale at farmers markets to include items other than uncut produce, such as cut produce, meats, eggs, dairy products, cooked foods, and baked goods; and

WHEREAS, farmers market coordinators and vendors have requested that the Code of the City of Fort Worth be amended to allow the sale of cut produce meats, eggs, dairy products, cooked foods, and baked goods in Fort Worth farmer markets; and

WHEREAS, it is declared the policy of the City of Fort Worth to encourage the availability of healthy foods by expanding the variety of foods available at farmers markets; and

WHEREAS, ensuring cut produce meats, eggs, dairy products, certain cooked foods, and baked goods are manufactured, packaged, transported, displayed and sold in a safe and sanitary manner, such as within prescribed temperature ranges, is a challenge in the atypical non-commercial environments in which farmers markets are operated; and

WHEREAS, a balance must be struck between making cut produce, meats, eggs, dairy products, cooked foods, and baked goods widely available while ensuring public health and food safety considerations are adequately considered; and

WHEREAS, City staff facilitated ongoing discussions with industry stakeholders and provided an opportunity for review and comment on the proposed changes for farmers markets; and

WHEREAS, the vast majority of industry stakeholder feedback favored the proposed changes as a means of addressing the public health requirements regarding the sale of cut produce, meats, eggs, dairy products, cooked foods, and baked goods at Fort Worth farmers markets; and

WHEREAS, it is in the legitimate interest of the City of Fort Worth to protect the health, safety, and welfare of its citizens by setting reasonable standards for the operation of farmers markets;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

That Chapter 16 “Health and Sanitation”, Article IV “Food Establishments”, Division 1 “General Provisions”, Section 16-101 “Definitions” of the Code of the City of Fort Worth is hereby amended to revise the definition of Director, to replace in its entirety the definition of Farmers Market, and to add new definitions for Animal Food, Department, Farmers Market Permit, Farmers Market Food Vendor, Farmers Market Food Vendor Permit, TAC, and Yard Eggs, to read as follows:

Sec. 16-101. - Definitions.

Animal food means meat, poultry, shell eggs, and ratites intended for human consumption. Examples of meat may include the flesh of cattle, swine, sheep, and game animals. Poultry may include the flesh of birds such as chicken, turkey, duck and game birds.

Department means the Code Compliance Department of the City of Fort Worth.

Director means the director of the Code Compliance Department and the director's authorized representatives.

Farmers market, as used in Chapter 16 “Health and Sanitation”, means an operation at a designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other food producers of agricultural products. A farmers market for the purposes of Section 16-135 does not include a “flea market” or a retail grocery store.

Farmers market permit means a food service establishment permit to operate a farmers market.

Farmers market food vendor means a farmer or other food producer that sells or distributes food at a farmers market.

Farmers market food vendor permit means an annual permit issued pursuant to the requirements of Section 16-135(b).

Sampling shall mean a food product promotion where only a bite-sized portion of food is offered free of charge to demonstrate its characteristics and shall not consist of a whole meal, an individual portion, or a whole sandwich.

TAC means the Texas Administrative Code.

Yard eggs mean ungraded shell eggs.

SECTION 2.

That Chapter 16 “Health and Sanitation”, Article IV “Food Establishments”, Division 4 “Requirements for Certain Establishments”, Section 16-135 “Farmers Markets” of the Code of the City of Fort Worth is hereby replaced in its entirety to read as follows:

Sec. 16-135. - Farmers markets.

(a) General Provisions:

(1) No person shall operate a Farmers Market without a valid Farmers Market Permit issued by the Code Compliance Department. A copy shall be conspicuously posted at the site of the Farmers market.

(2) Farmers Markets shall be located only on appropriately zoned property. The owner or operator of the Farmers Market shall obtain a notarized letter from the property owner stating that the market has permission to vend food on the property. The notarized letter shall be submitted to the director along with the Farmers Market Permit application.

(3) Conveniently located, commercial, fixed-plumbed toilet facilities shall be available for market vendors. A notarized letter from the business owner granting the market vendors access to toilet facilities during all hours of the Farmers Market operation shall be submitted with the Farmers Market Permit application. A copy of the letter shall be made available to the director upon request. All toilets shall conform to the city code and shall have tight fitting, self-closing solid doors. Toilet rooms and fixtures shall be clean and in good repair. Toilet paper shall be available and easily accessible at all times. Toilets accessible to women shall have a trash receptacle that is covered with a lid.

(4) A handwash lavatory with hot and cold water under pressure and tempered through a mixing valve shall be provided in or immediately adjacent to the toilet room. A soap dispenser and disposable paper towels shall be available at all times. All wastewater shall be captured and disposed of in an approved sewage disposal system.

(5) The permit holder shall ensure that all trash, refuse and garbage is removed from the site at the end of each day or that trash, refuse and garbage is placed in appropriate containers for later disposal. The premises occupied by the Farmers Market shall be kept clean and free of accumulated trash, refuse or garbage during and after the hours of operation. All trash, refuse and garbage that remains at the market site shall be sealed in plastic bags and discarded in waste containers. Sufficient durable, nonabsorbent and easily cleanable, leak proof, rodent and insect proof refuse and garbage containers shall be available on site.

(6) It shall be unlawful for any Farmer’s Market Food Vendor to engage in food preparation other than that involved in sampling.

(b) Sale and Distribution of Food at Farmers Markets:

(1) Farmers Market Food Vendor Permit required:

(i) A Farmers Market Food Vendor that sells or distributes food, other than packaged food that is Nonpotentially Hazardous Food or whole uncut fresh produce must obtain a Farmers Market Food Vendor Permit.

(ii) A Farmers Market Food Vendor that provides samples of any food must obtain a Farmers Market Food Vendor Permit.

(iii) A Farmers Market Food Vendor that sells only whole uncut fresh produce or packaged Nonpotentially Hazardous Food will not be required to obtain a Farmers Market Food Vendor Permit.

(2) No person shall sell or distribute food, other than packaged food that is Nonpotentially Hazardous or whole uncut fresh fruits and vegetables unless a Farmers Market Food Vendor Permit is obtained from the department.

(3) A Farmers Market Food Vendor Permit holder must comply with the requirements for Temporary Food Establishments specified in 25 TAC 229.170 and this Chapter.

(4) Food shall be safe, unadulterated, and honestly presented to the consumer.

(5) Food sold at a Farmers Market must comply with applicable state and federal laws.

(6) Individuals distributing or offering open food or potentially hazardous foods for sale at Farmers Markets must have a valid Food Handler certificate.

(7) Foods not from an approved source, as defined in 25 TAC 229.162(3), shall not be offered for sale at a Farmers Market.

(8) Packaged food sold or distributed at Farmers Markets shall be labeled in accordance with the requirements of applicable state and federal laws.

(9) All products distributed, offered for sale, or sold at a Farmers Market must have been raised, grown, made, crafted, processed, or produced by the Farmers Market Food Vendor.

(10) Food products obtained from food retailers or wholesalers may not be offered for resale at Farmers Markets.

(11) Offering samples of food products is prohibited unless the Farmers Market Food Vendor has a valid Farmers Market Food Vendor Permit from the Department.

(12) Food displays shall be confined to tables or to the bed of a vehicle. Food must be at least six (6) inches above the ground. Fresh produce shall not be cut or sliced unless a Farmers Market Food Vendor Permit is obtained by the Farmers Market Food Vendor conducting the sale and distribution of the cut produce.

(13) Food displays shall be situated above smooth, hard, paved surfaces such as concrete or machine laid asphalt, and not above grass or dirt surfaces.

(14) Farmers Market Food Vendors selling or distributing only whole produce and packaged Nonpotentially Hazardous foods from an approved source are exempt from obtaining additional health permits.

(c) Sale and distribution of Potentially Hazardous Foods at Farmers Markets. Farmers Market Food Vendors must meet the following public health and sanitation requirements for Potentially Hazardous Foods, whether in the raw (uncooked) or ready-to-eat form:

(1) Source. Potentially Hazardous Foods must be from a source in compliance with all applicable laws and which is licensed by the regulatory authority having jurisdiction over the processing and distribution of the food.

(i) Meat and poultry products must have either the State of Texas or the Federal USDA mark of inspection if required by State or Federal Law.

(ii) Yard Eggs from an individual vendor's own flock may be sold at a Farmers Market. The labeling and temperature requirements for Potentially Hazardous Foods must be met.

(iii) Graded shell eggs may be sold at Farmers Markets. The requirements of the Texas Egg Law (4 TAC 15.1 through 15.13) must be met.

(2) Packaging. Animal Foods shall be packaged to meet the requirements of state and federal laws including but not limited to 25 TAC 229.164(b)(1)(C).

(i) Animal meat products must be in the package in which it was placed at the food processing plant from which it originated.

(ii) Unpackaged raw Animal Food products shall not be offered for sale or distribution to the consumer at a Farmers Market.

(iii) Yard and graded shell eggs must be sold in cartons or other containers and labeled.

(iv) Potentially Hazardous Foods sold at Farmers Markets must be packaged and labeled in accordance with state and federal law.

(3) Labeling. Animal Food sold or distributed at Farmers Markets shall be labeled to meet the requirements of state and federal laws, and:

(i) Animal Foods that are not ready-to-eat in a packaged form and shell eggs that have not been specifically heat treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in 25 TAC 229.164(b)(1)(F) and (G), respectively.

(ii) Yard Eggs cartons shall be labeled with the word "ungraded" and the name and address of the producer (4 TAC 15.2).

(iii) Graded shell eggs must meet the labeling requirements of the Texas Egg Law (4 TAC 15.1 through 15.13).

(4) Time and Temperature Controls.

(i) Raw animal meats must be sold frozen at a Farmers Market.

(ii) Shell eggs must be stored at 45°F or less while offered for sale or in distribution at a Farmers Market.

(iii) Time and temperature requirements for all other Potentially Hazardous Foods not specified herein must meet the requirements specified under 25 TAC 229.164(o) where applicable.

(5) Prohibited Food Items.

(i) The sale and distribution of fish, including seafood, as defined at 25 TAC 229.162(35), is prohibited at a Farmers Market.

(ii) The sale and distribution of unpasteurized fluid milk and milk products as defined by 25 TAC 217.1(38) is prohibited at a Farmers Market.

(iii) The sale and distribution of game animal and exotic animal meats, as defined at 25 TAC 229.162(33) and (42), are prohibited at a Farmers Market, unless such game animal and exotic animal meat can be demonstrated to meet the requirements of 25 TAC 229.164(b)(7).

(iv) The sale or distribution of live animals is prohibited at a Farmers Market.

(d) A person commits an offense if that person violates any provision of this section, or fails to perform an act required by this section.

SECTION 3.

That this ordinance shall be cumulative of all other ordinances of the City of Fort Worth and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 4.

That all rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared void, ineffective or

unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2000.00) for each offense. It is an offense to omit or fail to perform an act required by this ordinance. Each day that a violation exists shall constitute a separate offense.

SECTION 7.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption summarizing the purpose of this ordinance and the penalty for violating this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by V.T.C.A. Local Government Code Subsection 52.013.

SECTION 8.

This ordinance shall take effect after adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: _____
Arthur N. Bashor
Assistant City Attorney

Adopted: _____

Effective: _____