

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 16-135, “FARMERS MARKETS,” OF DIVISION 4, “REQUIREMENTS FOR CERTAIN ESTABLISHMENTS,” OF ARTICLE IV, “FOOD ESTABLISHMENTS,” OF CHAPTER 16, “HEALTH AND SANITATION” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, TO ALLOW FOR PORTABLE HANDWASHING FACILITIES AND TOILETS AT CERTAIN SHORT-TERM FARMERS MARKETS, TO REMOVE THE REQUIREMENT THAT A FARMERS MARKET FOOD VENDOR THAT PROVIDES SAMPLES OF FOOD OBTAIN A FARMERS MARKET FOOD VENDOR PERMIT AND TO PROVIDE THAT THE SALE OF FOOD AT A FARMERS MARKET FROM A COTTAGE FOOD PRODUCTION OPERATION DOES NOT REQUIRE A FARMERS MARKET FOOD VENDOR PERMIT; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES AND REPEAL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Fort Worth (“City”) seeks to provide for the health, safety and welfare of its citizens; and

**WHEREAS**, rules and regulations to safeguard public health by providing consumers with food that is safe, unadulterated, and healthy are a mechanism to protect the health, safety, and welfare of the citizens of the City of Fort Worth; and

**WHEREAS**, the City seeks to promote access to healthy food options including those available at local farmers’ markets; and

**WHEREAS**, the City desires to simplify the permitting of farmers’ markets in accordance with state law; and

**WHEREAS**, section 437.0201 of the Texas Health and Safety Code allows the Code Compliance Department to issue a temporary food establishment permit to a person who sells food at a farmers’ market, subject to certain limitations; and

**WHEREAS**, Senate Bill 932, which was made effective on September 1, 2019, amends the Texas Health and Safety Code to require certain permits issued by the Code Compliance Department to a farmer for the sale of food directly to consumers at a farmers market, a farm stand, or the farmer's farm and issued to an individual who prepares food for sale at a farmers market to be valid for a term of not less than one year and to cover sales at all locations within the jurisdiction of the permitting authority; and

**WHEREAS**, Senate Bill 932 also caps at \$100 the maximum annual fee that may be imposed by the Code Compliance Department for the issuance or renewal of an applicable permit; and

**WHEREAS**, House Bill 1694, which was made effective on September 1, 2019, amends the Texas Health and Safety Code to prohibit the Code Compliance Department from requiring a person providing food samples at a farm or farmers' market to obtain a permit. The bill also exempts a person who provides samples and does not sell food directly to consumers at the farm or farmers' market from statutory provisions regulating food samples at such locations and limits the type of food samples a cottage food production operation may provide at such locations to food produced by that operation; and

**WHEREAS**, section 437.020 of the Texas Health and Safety Code, in conjunction with the amendments provided by Senate Bill 932 and House Bill 1694, prohibits the City from adopting a rule under state law to regulate the provision of samples of food at a farm or farmers' market; and

**WHEREAS**, the Fort Worth City Council finds it advisable to adopt staff's recommendations.

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

### **SECTION 1.**

Section 16-135, "Farmers Markets" of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby revised to remove permitting requirements when a farmers market food vendor provides samples of food, to provide for temporary portable toilets and handwashing stations, and to specify when a farmers market permit is required and to renumber certain subsections, 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) A farmers market that is operated at any one specific location for fewer than three hours per month may provide portable toilets and portable handwashing facilities instead of the permanent facilities required by section 16-135(a)(3) and 16-135(a)(4). A copy of the rental receipt or other appropriate proof of the availability of the portable facilities shall be submitted with the farmers market permit application. All portable toilets shall be maintained in good working condition without any broken surfaces or leaks, in a clean and sanitary manner, and be adequately supplied with toilet paper. All portable handwashing facilities shall be maintained in good working condition without any broken surfaces or leaks, in a clean and sanitary manner, and be adequately supplied with hand soap and paper towels.

(56) 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.

(67) It shall be unlawful for any farmers 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:

a. A farmers market food vendor that sells or distributes food, other than packaged food that is nonpotentially hazardous food, ~~or whole uncut fresh produce, or food from a cottage food production operation, as defined by Tex. Health and Safety Code § 437.001 (2-b)~~, must obtain a farmers market food vendor permit;

~~b. A farmers market food vendor that provides samples of any food must obtain a farmers market food vendor permit; and~~

~~e-b.~~ 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, or food from a cottage food production operation, as defined by Tex. Health and Safety Code § 437.001 (2-b), 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 Texas Food Establishment Rules 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 Texas Food Establishment Rules 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.~~

~~(1211) Food displays shall be confined to tables or to the bed of a vehicle. Food must be at least six 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.~~

~~(1312) Food displays shall be situated above smooth, hard, paved surfaces such as concrete or machine laid asphalt, and not above grass or dirt surfaces.~~

~~(1413) Farmers market food vendors selling or distributing only whole produce, and packaged food from an approved source that is nonpotentially hazardous, foods from an approved source or food from a cottage food production operation, as defined by Tex. Health and Safety Code § 437.001 (2-b), 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.

a. 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.

b. 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.

c. Graded shell eggs may be sold at farmers markets. The requirements of the Texas Egg Law (Tex. Administrative Code Title 4, §§ 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 those in the Texas Food Establishment Rules.

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

b. Unpackaged raw animal food products shall not be offered for sale or distribution to the consumer at a farmers market.

c. Yard and graded shell eggs must be sold in cartons or other containers and labeled.

d. 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:

a. 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 the Texas Food Establishment Rules;

b. Yard eggs cartons shall be labeled with the word “ungraded” and the name and address of the producer (Tex. Administrative Code Title 4, § 15.2); and

c. Graded shell eggs must meet the labeling requirements of the Texas Egg Law (Tex. Administrative Code Title 4, §§ 15.1 through 15.13).

(4) *Time and temperature controls.*

a. Raw animal meats must be sold frozen at a farmers market.

b. Shell eggs must be stored at 45°F or less while offered for sale or in distribution at a farmers market.

c. Time and temperature requirements for all other potentially hazardous foods not specified herein must meet the requirements specified under the Texas Food Establishment Rules where applicable.

(5) *Prohibited food items.*

a. The sale and distribution of fish, including seafood, as defined in the Texas Food Establishment Rules is prohibited at a farmers market.

b. The sale and distribution of unpasteurized fluid milk and milk products as defined by Tex. Administrative Code Title 25, § 217.1(38) is prohibited at a farmers market.

c. The sale and distribution of game animal and exotic animal meats, as defined in the Texas Food Establishment Rules are prohibited at a farmers market, unless such game animal and exotic animal meat can be demonstrated to meet the requirements of the Texas Food Establishment Rules.

d. The sale or distribution of live animals is prohibited at a farmers market.

(d) *Offense.* 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 2.**

That these ordinances shall be cumulative of all other ordinances of the City of Fort Worth, Texas, 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 3.**

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 and criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 4.**

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of these ordinances are severable, and if any phrase, clause, sentence, paragraph or section of these ordinances 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 these ordinances, 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 5.**

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 these ordinances shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation exists shall constitute a separate offense.

**SECTION 6.**

That the City Secretary of the City of Fort Worth, Texas, is hereby directed to publish these ordinances for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by the section 52.013 of the Local Government Code Subsection.

**SECTION 7.**

These ordinances shall take effect after adoption and publication as required by law.

**APPROVED AS TO FORM AND LEGALITY:**

**ATTEST:**

\_\_\_\_\_  
Christopher K. Austria  
Assistant City Attorney

\_\_\_\_\_  
Mary J. Kayser, City Secretary

Date: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_