EFG/eg
12/17/15
Item #17

**AN ORDINANCE** 2015-12-17-1066

**AMENDING CHAPTER 13, "FOOD AND FOOD HANDLERS" OF THE CITY CODE OF THE CITY OF SAN ANTONIO, TEXAS, PERTAINING TO CHARITABLE FEEDING AND PROVIDING FOR CRIMINAL PENALTIES AND PUBLICATION.**

* * * * *

**WHEREAS,** the City Code for the City of San Antonio does not currently address or recognize charitable feeding activities as distinct from Mobile Food Establishments (food trucks) and Temporary Food Establishment (food booths or special events); and

**WHEREAS,** multiple meetings and discussions have taken place to determine the best way to establish charitable feeding within the City Code, to include: presentation and discussion with City Council subcommittees and the entire Council at a B Session; a Charitable Feeding Summit with representatives from feeding groups and other stakeholders; and, multiple meetings with stakeholders from feeding groups, business and residential stakeholders; and

**WHEREAS,** it is recommended that charitable feeding be defined within Chapter 13 of the City Code and recognized as a separate activity from commercial activity that is regulated by other portions of the code; and

**WHEREAS,** it is recommended that food safety should remain a critical component of any charitable feeding policy or code provision, and to that end, a requirement for a certified food handler or manager be present at every charitable feeding activity should be included with Chapter 13, and that any fee for certification should be waived; and

**WHEREAS**, it is recommended that charitable feeding comply with all established rules and regulations regarding traffic, the use of the right of way, and the use of City parks; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Chapter 13 of the City Code of San Antonio, Texas entitled "Food and Food Handlers" is hereby amended by adding language that is underlined (<u>added</u>) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

**SECTION 2.** Chapter 13 of the City Code of San Antonio, Texas is hereby amended as follows:

***Chapter 13, Article I., In General, Section 13-3, Definitions, is amended as follows***:

**Sec. 13-3. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

*Charitable feeding* shall mean the provision of food to individuals without charge, payment, or other compensation to benefit those in need at an outdoor location not owned, leased or controlled by the individual or organization providing food.

...

*Food establishment* shall mean an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(1) Such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(2) That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

Food establishment includes:

(1) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(2) An operation that is conducted afoot, in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(3) An establishment that offers only prepackaged foods that are not potentially hazardous;

(4) A food processing plant;

(5) A bed and breakfast limited, bed and breakfast extended and bed and breakfast food establishment facility as defined in the Texas Food Establishment Rules.

For the limited purpose of permits, food establishment shall not include:

(1) A food establishment that ~~only sells~~ vends only whole, uncut fresh fruits or vegetables;

(2) A mobile food establishment that ~~only sells~~ vends only whole, uncut fresh fruits or vegetables;

(3) A temporary food establishment that ~~only sells~~ vends only whole, uncut fresh fruits or vegetables; or

(4) A temporary food establishment that only gives away pre-packaged, non-potentially hazardous foods.

...

***Chapter 13, Article I., In General, is amended by adding Section 13-13, Charitable Feeding, as follows:***

**Sec. 13-13. – Charitable feeding.**

(a) No permit is required and no regulations apply to charitable feeding of four (4) individuals or fewer.

(b) Except as set out in subsection (d), no permit is required for giving away whole, uncut fresh fruits or vegetables or pre-packaged, non-potentially hazardous foods such as canned goods, granola bars, bottled water, non-refrigerated fruit drinks, bagged potato chips, popcorn, pre-packaged snack cakes and candy bars.

(c ) If there is any handling of food, other than packaged food, any person engaged in charitable feeding activities to five (5) or more individuals in one instance shall comply with the following:

1) Either a certified food handler or certified food manager must be present when food is prepared, or onsite while food is distributed if food will be prepared onsite. Food manager or food handler certification shall be in accordance with the requirements set out in Article VI of this chapter, except that no city certification fees for food managers or food handlers shall be required; and

(2) The department shall be notified within twenty four (24) hours after charitable feeding activities with the name of the person or organization providing the charitable feeding activities, and the location and date and time of feeding.

(d) Charitable feeding of five (5) or more individuals in one instance within the following designated parks may be conducted only by following the standard reservation process including the payment of all required reservation fees: River Walk, Travis Park, Main Plaza, Alamo Plaza, Milam Park, Madison Square Park and Hemisfair Park.

(e) Any person engaged in charitable feeding activities shall remove all undistributed food from the feeding site upon conclusion of the charitable feeding activities and dispose of all trash, debris, and waste water generated during feeding.

(f) The department shall post minimum safety requirements for safe food handling and preparation on the department's website as guidance for any charitable feeding activity. The director may condemn and forbid the distribution, or cause to be removed or destroyed, any food or drink which is unwholesome or deleterious according to the procedure outlined in this chapter.

(g) Charitable feeding activities may not be conducted on streets where a traffic hazard is created or in violation of other rules and regulations regarding public streets and the use of right-of-way.

(h) This section does not apply to a special event as set out within Section 13-27(f).

***Chapter 13, Article II., Permits Generally, Section 13-21, Required for Food Establishments in the City, is amended as follows***:

**Sec. 13-21. - Required for food establishments in the city; exception for charitable feeding.**

(a) It shall be unlawful for any person to operate a food establishment or rendering business in the city who does not possess a valid unsuspended or unrevoked permit from the department. No person/owner/operator shall, within the city, manufacture, sell, or offer or expose for sale, or have in possession with intent to sell, any food product without the proper permits. A person operating a temporary food establishment shall also be required to secure a permit before they shall be allowed to operate.

(b) Charitable feeding activities are not considered a food establishment and do not require a permit under this chapter, except as otherwise set out in section 13-13(d) and provided that charitable feeding of five (5) or more individuals in one instance be conducted in accordance with section 13-13.

***Chapter 13, Article VI., Certification of Food Establishment Personnel, Section 13-112, Food Manager Certification Required, is amended as follows***:

**Sec. 13-112. - Food manager's certification required.**

(a) A food establishment shall employ at least one person assigned to each shift of twelve (12) or fewer hours who:

(1) Meets the "person in charge" definition found in the Texas Food Establishment Rules; and

(2) Has a valid and current food manager's certificate issued by the director.

(b) A food establishment is in compliance with the provisions of this section when during each shift of twelve (12) or fewer hours there is at least one certified food manager employed in a supervisory capacity during all hours of open food handling.

(c) If a food establishment cannot meet the requirements of this section because of the termination or permanent transfer of a certified food manager, the food establishment shall:

(1) Notify the director, in writing, within twenty (20) days of the effective date of termination or permanent transfer of the certified food manager; and

(2) Employ another certified food manager within sixty (60) days of the effective date of termination or permanent transfer of the certified food manager.

(d) Persons or organizations conducting charitable feeding activities as described in Section 13-13(c) of this code must have either a certified food manager or food handler present when food is prepared, or onsite while food is distributed if food will be prepared onsite.

***Chapter 13, Article VI., Certification of Food Establishment Personnel, Section 13-119, Food Handler Certification Required, is amended as follows***:

**Sec. 13-119. - Food handler certification required.**

(a) Food handler certification is required as follows:

(1) For all personnel performing open food handling in a food establishment that receives thirty (30) or more demerits related to food handling on an inspection conducted under this chapter.

a. All five- and four-point demerit items and three-point demerit item numbers: 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 will be considered food handler related. All other three-point demerit items will not count towards the thirty (30) or more food handler related demerits.

b. Employees at the food establishment who have a current food handler certification will not be required to repeat the education process.

(2) For all personnel performing open food handling in a food establishment receiving twenty-one (21) or more demerits on a reinspection conducted under this Chapter during which a critical violation is found.

a. The intent of this re-inspection is to verify corrective action of the original inspection.

b. Employees at the food establishment who have a current food handler certification will not be required to repeat the education process.

(3) For all personnel performing open food handling in a food establishment that has had its permit temporarily suspended for one or more health violations.

a. This requirement does not include temporary suspensions due to the occurrence of imminent health hazards as defined in TAC § 229.171(k) of the Texas Food Establishment Rules, limited to fire, flood, or extended interruption of electrical or water service.

b. This requirement does include temporary suspension due to the occurrence of imminent health hazards as defined in TAC § 229.171(k) of the Texas Food Establishment Rules, limited to sewage backup, misuse of poisonous or toxic materials, onset of an apparent food borne illness outbreak, gross unsanitary occurrences or conditions, such as rodent and insect infestation, or other circumstances that may endanger public health.

(4) For all personnel performing open food handling in a food establishment in which the same critical violation for a food handling related item is found on two (2) consecutive inspections within the same 12-month period.

(5) For at least one person performing open food handling in a mobile food establishment.

(6) For at least one person performing open food handling in a temporary food establishment as required by section 13-120.

(7) For at least one person performing open food handling in a temporary food establishment located at a farmers market, as required by section 13-120.

(8) Persons or organizations conducting charitable feeding activities as described in Section 13-13(c) of this code must have a certified food handler or food manager present when food is prepared, or onsite while food is distributed if food will be prepared onsite.

***Chapter 13, Article VI., Certification of Food Establishment Personnel, Section 13-117, Fees, is amended as follows*:**

**Sec. 13-117. - Fees.**

(a) An application fee of fifteen dollars ($15.00) shall be required to be paid to the director for a food manager's certificate at the time of application or renewal. This fee is required regardless of whether or not the course requirement is waived.

(b) Fees are refundable only if the food manager's certificate is denied by the director. In no other instance shall fees be refundable.

(c) An individual who requires the replacement of a valid current food manager's certification card may obtain a replacement from the director for a fee of ten dollars ($10.00).

(d) No fees for food manager certification shall be required for charitable feeders.

***Chapter 13, Article VI., Certification of Food Establishment Personnel, Section 13-125, Fees, is amended as follows:***

**Sec. 13-125. - Fees.**

(a) An application fee of fifteen dollars ($15.00) shall be required to be paid to the director for a food handler's certificate at the time of application or renewal. This fee is required regardless of whether or not the course requirement is waived.

(b) Fees are refundable only if the food handler's certificate is denied by the director. In no other instance shall fees be refundable.

(c) An individual who requires the replacement of a valid current food handler's certification card may obtain a replacement from the director for a fee of ten dollars ($10.00).

(d) No fees for food handler certification shall be required for charitable feeders.

**SECTION 3.** Locations that have been identified as historically used to conduct charitable feeding activities (specifically: Maverick Park, and other sites under the IH 35 and US 37 bridges) shall remain such, subject to changes in law or ownership of property.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** All other provisions of Chapter 13 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

**SECTION 6.** Enforcement of violations shall begin on June 1, 2016 and after that date violations of this ordinance shall be punishable as provided in the revised Chapter 13 of the City Code of San Antonio. This delay in enforcement does not affect the Health Department's authority to condemn unwholesome or unsafe food immediately upon the effective date of this ordinance.

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**SECTION 7.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 8.** The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

**SECTION 9.** The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

**SECTION 10.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**SECTION 11.** Penalties provided for in the revised Chapter 13 of the City Code of San Antonio shall be effective five days after publication by the City Clerk.

**PASSED AND APPROVED** this 17th day of December, 2015.

**M A Y O R**
Ivy R. Taylor

**ATTEST:**

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

Martha G. Sepeda, Acting City Attorney

| | |
|---|---|
| **Agenda Item:** | **17** |
| **Date:** | 12/17/2015 |
| **Time:** | 10:59:13 AM |
| **Vote Type:** | Motion to Approve |
| **Description:** | An Ordinance amending City Code Chapter 13 "Food and Food Handlers" establishing provisions related to charitable feeding. [Maria Villagomez, Assistant City Manager; Melody Woosley, Director, Human Services] |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Ivy R. Taylor | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | x | |
| Alan Warrick | District 2 | | x | | | | |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | x |
| Joe Krier | District 9 | | x | | | | |
| Michael Gallagher | District 10 | | x | | | | |

City of San Antonio
Department of Human Services

Teamwork • Integrity • Innovation • Professionalism

# Charitable Feeding Proposed Policy Revisions

December 17, 2015

Melody Woosley, Director
Department of Human Services

## Development Timeline

**Apr.**
- QOL Briefing Apr. 21

**May**
- QOL Review of Best Practices May 17

**July**
- Charitable Feeder & Stakeholder Discussions Jul. 28

**Oct.**
- Housing Committee Oct. 6
- Charitable Feeder & Stakeholder Discussions Oct. 15 & 19

**Nov.**
- Charitable Feeder & Stakeholder Discussion Nov. 19

**Dec.**
- Charitable Feeder & Stakeholder Discussion Dec. 2
- B Session Briefing Dec. 9

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## Proposed Revisions

Establishes Definition – Applies to feeding of 5 or more individuals

No Permit or Fees

24 Hour Notification Health Department

Requires Food Handler or Manager Certification

Removal of Undistributed Food, Trash and Waste

*Must follow food safety requirements*

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## Parks and Right of Way Requirements

**Current Regulations**
Downtown, Mobile Vending, Food Truck, and Park Restrictions

**Proposed Regulations**
Clarifies Park and Reservation Processes

Reservation and Right of Way Requirements
7 Downtown Parks

- Travis
- Milam
- Madison Square
- Main Plaza
- Riverwalk
- Hemisfair
- Alamo Plaza

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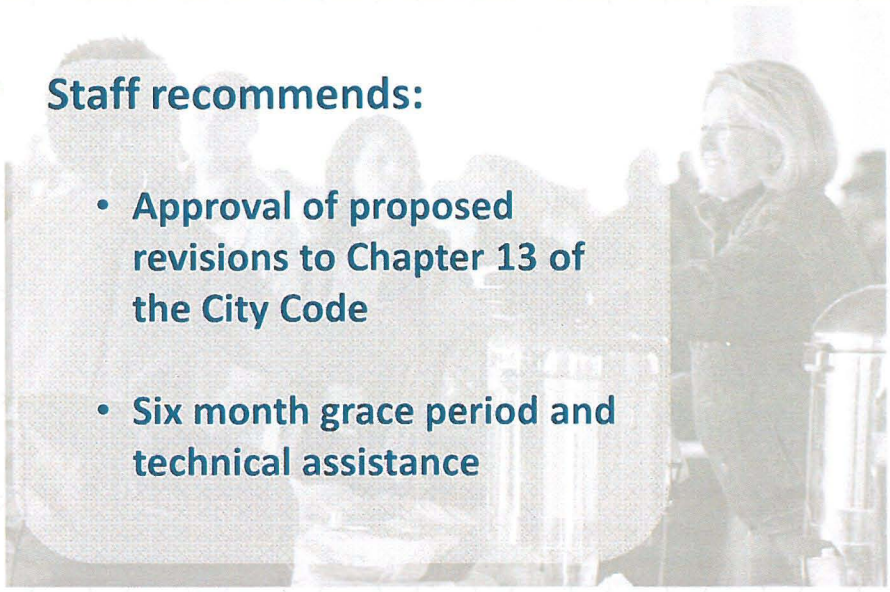
## Recommendation



**Staff recommends:**

- **Approval of proposed revisions to Chapter 13 of the City Code**
- **Six month grace period and technical assistance**

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