

AN ORDINANCE 2013-04-11-0258

AN ORDINANCE AMENDING CHAPTER 13, "FOOD AND FOOD HANDLERS" OF THE CITY CODE OF SAN ANTONIO, TEXAS, RELATED TO THE REGULATION OF TEMPORARY FOOD ESTABLISHMENTS THAT PREPARE AND SELL FOOD AT FARMERS MARKETS WITHIN THE CITY, AND THE REGULATION OF MOBILE FOOD ESTABLISHMENTS OPERATING AT SPECIAL EVENTS, ESTABLISHING PERMITS, FEES AND PROVIDING FOR CRIMINAL PENALTIES AND PUBLICATION.

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WHEREAS, on February 19, 2013, the San Antonio Metropolitan Health District (Metro Health) provided a presentation to the Quality of Life Committee on changes to Chapter 13 "Food and Food Handlers" pertaining to farmers markets, flea markets and trade shows which were approved by City Council in May of 2012; and

WHEREAS, under the current Code temporary food establishments operating at farmers markets are limited to only four special events per year unless they apply for a waiver to this limit; and

WHEREAS, the Quality of Life Committee recommended Metro Health meet with local stakeholders to establish a solution to the four special event limit imposed by Chapter 13; and

WHEREAS, Metro Health, in collaboration with the City Manager's Office, held a series of stakeholder meetings to solicit input on the issues and proposed solutions; and

WHEREAS, following input from stakeholders and a review of policies from similar municipalities, Metro Health recommends amending Chapter 13 of the City Code so that the current four event limit for temporary food establishments would not apply when a farmers market event sponsor/coordinator submits payment (based on a revised fee structure) to Metro Health on behalf of temporary food establishments at their farmers markets; and

WHEREAS, the changes will also clarify that food handler certification is required for temporary food establishments preparing and selling food at farmers markets; and

WHEREAS, additionally, Metro Health recommends amending Chapter 13 of the City Code so that mobile food establishments operating at special events would not have to purchase an additional temporary food establishment permit; **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 (added) 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:

The following definitions in Chapter 13, Article I., In General, Section 13.3, Definitions, are amended to include the revision and addition of the following definitions, as follows:

Event sponsor/coordinator shall mean the organizer, sponsor or coordinator for a special event with two or more temporary food establishments. The event sponsor/coordinator shall be responsible for submission of all applications and fees to the department on behalf of event participants, and shall have oversight of event participants.

Special event shall mean an event that is sponsored or recognized or organized by an organization such as a neighborhood association, religious group, cultural group, political party, church, school, sports team, fraternal organization, non-profit group/organization, city, county, state, or federal government or an organized mass gathering of people such as a concert, sporting event, trade show, flea market, farmers market, carnival, circus, or other similar type of show or celebration, or a celebration or gathering which may be based around a specific calendar date which is recognized by the federal, state, county or city government as a holiday or celebratory day or by an abovementioned group or organization, or an event approved by the director.

Chapter 13, Article II., Permits Generally, Section 13-27, Fees Enumerated, is amended as follows:

13-27 – Fees Enumerated.

- (a) The annual permit fee to cover the cost of inspection of such food establishments shall be paid in advance upon issuance of such permit as follows:
- (1) For each establishment employing not more than five (5) persons\$220.00
 - (2) Six (6) persons and not more than ten (10) persons440.00
 - (3) Eleven (11) persons and not more than twenty-five (25) persons660.00
 - (4) Twenty-six (26) persons and not more than fifty (50) persons882.00
 - (5) More than fifty (50) persons1,100.00
 - (6) For each school food establishment (fee includes two (2) inspections per year)215.00

(b) A fee of fifty dollars (\$50.00) in addition to those listed above will be charged for inspection of existing food establishments that change ownership and do not require a new certificate of occupancy to be issued.

(c) A fee of one hundred fifty (\$150.00) in addition to the appropriate permit fee listed above in section (a) will be charged for inspection and permit of a food establishment that has been operating without a permit.

(d) The owner or operator of a restaurant as defined in chapter 36 which chooses to have a designated smoking area shall pay a one-time fee in the amount of fifty dollars (\$50.00) to cover inspection expenses in order to establish that:

(1) A bar or dining area within the restaurant which is designated as a smoking area is in compliance with the definition of an enclosed area as set forth in section 36-1; and

(2) The outdoor seating areas of the restaurant designated as smoking areas are so designated in accordance with subsection 36-6(8).

(e) Temporary food establishments shall secure a permit more than three (3) days before beginning operation and shall pay a fee of thirty dollars (\$30.00) per stand, per day, per event. In the event that the temporary food establishment does not secure a permit more than three (3) days before beginning operation they shall pay a fee of thirty-five dollars (\$35.00) per stand, per day, per event. Each event is considered a separate permit period. The fee shall be paid prior to commencing operations. Permit fees are non-refundable. However, the date of the event may be rescheduled or the event may be canceled and rescheduled if the applicant makes a request to reschedule in person at the development and business service center at least two (2) business days prior to the event.

(f) A special event that has two or more ~~than one~~ temporary food establishments ~~establishment~~ or booths ~~booth~~ shall have an event sponsor/coordinator. It shall be the responsibility of the event sponsor/coordinator to collect the temporary food establishment permit fees from the participants so that all fees may be paid to the department with a single payment. These fees shall be paid at least three (3) days in advance of the event as directed in this section.

(g) A temporary food establishment at a farmers market may operate one day a week for a calendar month as a single event if the event sponsor/coordinator for a farmers market submits the applications and all fees necessary to the department for the temporary food establishments located at the special event. Temporary food establishments located at a farmers market shall pay a fee of forty five dollars (\$45.00) per location per single event.

(hg) A person or organization is allowed a maximum of four (4) special events in a calendar year unless provided that:

- (1) The special events are held on properties overseen by the city or Bexar County, or a and multi-use facility that is are used for trade shows or conventions are exempt from this restriction; or
- (2) A person or organization obtains a permit pursuant to subsection (g); or Persons or organizations may petition the director or his representative for an exemption to this limitation.
- (3) The director or his representative approves a person's or an organization's petition for an exemption to this limitation.

(ih) A temporary food establishment may operate for a maximum of fourteen (14) consecutive days after which all operations must cease unless granted an exemption by the director.

(ji) An annual fee of seventy-five dollars (\$75.00) shall be charged for a farmers market/flea market/trade show food establishment permit. Persons not requiring an annual permit may opt to obtain a temporary food establishment permit for special events.

Chapter 13, Article IV., Mobile Food Establishments, Section 13-63, Operation requirements and restrictions, is amended as follows:

Sec. 13-63. – Operation requirements and restrictions.

(a) Mobile food establishments are subject to the following requirements and restrictions unless specifically addressed otherwise:

(1) It shall be unlawful for an afoot food vendor to sell any potentially hazardous food within the city. It shall be unlawful for an afoot food vendor to sell from a stand or other temporary structure located upon any public street, sidewalk, right-of-way, or other adjacent public or private area without a permit as required under this chapter.

(2) It shall be unlawful for the operator of a mobile food establishment as defined in subsections 13-62(e)(2)—(6) to remove the food from the mobile establishment to vend from a stand or other temporary structure located upon any public street, sidewalk, right-of-way, or other adjacent public or private area without a permit as required by this chapter; except that mobile food establishments

may sell produce from no more than three (3) tables that are six (6) feet long and stand at least eighteen (18) inches above the ground, and that are located adjacent to the permitted mobile food establishment.

(3) It shall be unlawful to operate a mobile food establishment on streets where a traffic hazard is created and as listed in exhibit No. 1 of subsection 16-236(b).

(4) Mobile food establishments may operate in parks subject to the requirements set in section 22-2.

(5) Mobile food establishments may stop in a public street, or right-of-way, provided:

- a. This area is not in or within fifty (50) feet of an intersection;
- b. This area is not an area prohibited to the standing or parking of vehicles;
- c. All items are vended from the curbside of the vehicle or the rear of the vehicle;
- d. The mobile food establishment is in compliance with the requirement for hazard lamps as set forth in subsection 13-63(14); and
- e. The mobile food establishment is vending in a safe manner.

(6) Mobile food establishments may be stopped on private property, properly zoned and with the written permission of the property owner if approved flush type toilet facilities, connected to an approved type sewage system area are available on the private commercial property. Overnight parking is prohibited.

(7) Food vendors shall comply with this Code as well as with state and federal law and nothing in this article shall exempt a food vendor from zoning ordinances.

(8) Mobile food establishments operating within Market Square or El Mercado shall comply with the appropriate provisions of chapter 32, article II.

(9) No person shall operate a mobile food establishment within three hundred (300) feet of any public, private elementary, middle or high school grounds one hour before, during, and one hour after school hours.

(10) Mobile food vending operations shall not be carried on within three hundred (300) feet of any permitted food establishment as defined under article I. A mobile

food establishment may be exempt from this provision if written, notarized permission is given by the food establishment owner with regards to a mobile food establishment operating within three hundred (300) feet of his establishment. The written permission shall be kept with the mobile food establishment unit at all times as the unit is located within three hundred (300) feet of said food establishment.

(11) It shall be unlawful to operate a mobile food establishment in the downtown business district with the exception of vendors who have obtained a special permit from the city downtown operations department in addition to having all required valid mobile food establishment permit(s). The city manager or her designee shall have authority to establish policies and procedures governing the issuances and regulation of the special permit for mobile food establishments in the downtown business district to include distance requirements from schools and food establishments and access to restroom facilities.

(12) The hours of operation of any mobile food establishment operating in a residential area shall be 7:00 a.m. Central Standard Time to thirty minutes after sunset, except during the months of June, July and August, wherein such hours of operation shall be 7:00 a.m. Central Standard Time to 10:00 p.m. Central Standard Time.

(13) The total noise level of any mobile food establishment shall comply with chapter 21, article III. The mobile food establishment shall turn off all music and recorded messages while stationary, except when stopped at a controlled intersection.

(14) Mobile food establishments that are operating in a residential area shall comply with V.T.C.A., Transportation Code § 547.703. When stationary, the mobile food establishment must turn on its hazard lamps as defined in V.T.C.A., Transportation Code § 547.331, except when stopped at a controlled intersection.

(15) No mobile food establishment shall be parked in violation of section 35-311 of the unified development code.

(16) No food vendor or food handler who meets the requirements set forth in subsections 13-62(b)(10) or 13-63(17) shall be a sex offender registered with the state department of public safety or shall have been convicted of any sexual offense or any offense against a child as defined by applicable law.

(17) Prior to vending, each food vendor and food handler, who vends on a public street, sidewalk, or right-of-way, or who travels with a mobile food establishment

on a public street, sidewalk or right-of-way to or from a location where the food vendor or food handler vends, shall be required to obtain a written statement issued by the city police department certifying that the food vendor or food handler is not a sex offender registered with the state department of public safety and that the records reviewed by the city police department indicate that the food vendor or food handler has not been convicted of any sexual offense or any offense against a child as defined by applicable law. The basic requirements for submitting requests for criminal backgrounding of persons engaged in mobile food vending are specific in exhibit 1 hereto on file in the office of the city clerk, and hereby adopted and incorporated herein for all purposes by reference.

(18) Each food vendor and food handler who is required under subsection (17) to obtain a written statement from the city police department must renew this written statement every two (2) years from the date of issuance by the police department of such written statement.

(19) The fee for each written statement from the city police department for persons age seventeen (17) and older as required in subsections (17) and (18) shall be the sum of the fees required to obtain the local, state, and national criminal histories for the applicant. There shall be no fee for the written statement for persons under the age of seventeen (17).

(20) Each food vendor and food handler who vends on a public street, sidewalk, or right-of-way, or who travels with a mobile food establishment on a public street, sidewalk or right-of-way to or from a location where the food vendor or food handler vends, shall carry a current written statement from the city police department, as required under subsection (17), on their person at all times while vending.

(21) It shall be unlawful for a person who has obtained a mobile food establishment permit pursuant to section 13-62, and to whom subsection 13-62(b)(10) applies, to hire or allow a food vendor or food handler to vend on a public street, sidewalk, or right-of-way, or to travel with a mobile food establishment on a public street, sidewalk or right-of-way to or from a location where the food vendor or food handler will vend, who has not first obtained a current written statement issued by the city police department as required by subsections (17) and (18).

(22) It shall be unlawful for a person operating a mobile food establishment to place or allow the placement of any table, chair, awning or other seating or eating area at, near or around the location of the mobile food establishment; provided, however, that this provision shall not be construed to conflict with or prohibit what

is allowed by subsection (2) for the display of produce by mobile food establishments.

(b) Subsections 13-63(a)(2), 13-63(a)(4), 13-63(a)(5), 13-63(a)(6), 13-63(a)(9), 13-63(a)(10) and 13-63(a)(22) shall not apply to mobile food establishments while operating at a special event.

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) ~~Effective January 1, 2010, Food~~ food handler certification ~~is~~ will be 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.
- (b) Food establishments that are required to have certified food handlers due to meeting the criteria provided in this section must meet this requirement within sixty (60) days from the date the establishment is notified by the director and maintain said certifications for all personnel performing open food handling for a period of six (6) months from the date of notification.
- (c) If a food establishment cannot meet the requirements of this section because of the termination or permanent transfer of a certified food handler, 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 handler; and
 - (2) Employ another certified food handler within sixty (60) days of the effective date of termination or permanent transfer of the certified food handler.

Chapter 13, Article VI., Certification of Food Establishment Personnel, Section 13-120, Food handler certification required for temporary food establishments, is amended as follows:

Sec. 13-120. - Food handler certification required for temporary food establishments.

Effective January 1, 2010, a ~~A~~ temporary food establishment with open food handling and operating four (4) or more days, or a temporary food establishment located at a farmers market and permitted under 13-27(g), must have:

- (1) At least one person in the establishment with food manager's certification or food handler's certification; or
- (2) A certified food manager on site to oversee the event; and
 - a. All booths must conspicuously post written guidelines on food handling and food safety that are approved by the department; and
 - b. All booth workers must also sign a statement that they have read and understand the posted food safety and handling guidelines.
- (3) Booth workers currently certified as food managers or food handlers are exempt from the requirement in subsection (2)b.

SECTION 3. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 236000000012 and General Ledger 4404191.

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. Violations occurring after the effective date of this ordinance shall be punished as provided in the revised Chapter 13 of the City Code of San Antonio. Violations prior to the effective date shall be punished under the former applicable Sections which shall remain in effect for that purpose.

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

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04/11/13
Item 13

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 shall become effective on May 1, 2013.

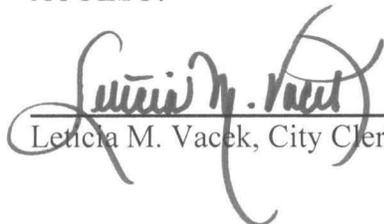
SECTION 11. Penalties provided for in the revised Chapter 13 of the City Code of San Antonio shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 11th day of April, 2013.



M A Y O R
Julián Castro

ATTEST:

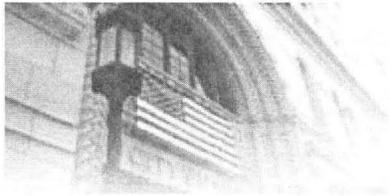


Leticia M. Vacek, City Clerk

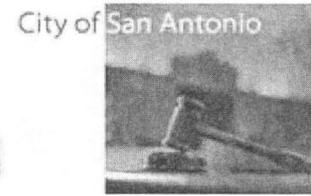
APPROVED AS TO FORM:



for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 13

Name:	13						
Date:	04/11/2013						
Time:	11:11:01 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance amending Chapter 13, "Food and Food Handlers" of the City Code of San Antonio, Texas, related to the regulation of temporary food establishments that prepare and sell food at farmers markets within the city, and the regulation of mobile food establishments operating at special events, and establishing permits and fees. [Gloria Hurtado, Assistant City Manager; Dr. Thomas L. Schlenker, Director, Metro Health]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				