

ORDINANCE NO. 2011-_____

AN ORDINANCE ADOPTING A NEW ARTICLE XI. “FARMERS’ MARKETS” IN CHAPTER 13 “LICENSES, PERMITS AND BUSINESS REGULATIONS” OF THE CODE OF ORDINANCES OF THE CITY OF WACO, MCLENNAN COUNTY, TEXAS TO PROVIDE FOR REGULATION OF FARMERS’ MARKETS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING A PENALTY CLAUSE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF WACO, MCLENNAN COUNTY, TEXAS:

Section 1. That Article XI. “Farmers’ Markets” in Chapter 13 “Licenses, Permits and Business Regulations” of the Code of Ordinances of the City of Waco, McLennan County Texas, is hereby adopted to read as follows:

ARTICLE XI. FARMERS’ MARKETS

Sec. 13-440. Definitions.

Agricultural Product means an agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state for use as human food, including:

- (1) Fish or other aquatic species;
- (2) Livestock processed for food or by-product;
- (3) Poultry processed for food or by-product;
- (4) Wildlife processed for food or by-product; and
- (5) Fruit, nut or vegetable product.

Farmers’ Market means an organized reoccurring operation at a designated location used by vendors primarily for the distribution and sale of locally produced agricultural products or a limited amount of locally produced non-agricultural products as set forth in Section 13-443. A farmers’ market, in and of it’s self, is not an event and is not a food establishment.

Farmers’ Market Permit means written approval to operate a farmers’ market issued by the City.

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Food Item Vendor means a vendor whose commercial inventory present at the beginning of each farmers' market session is comprised of at least eighty percent (80%) agricultural products and not more than twenty percent (20%) locally produced non-agricultural products.

Locally produced means raised, grown, made, crafted, processed, or produced within 150 miles of the city limits of the City of Waco.

Permittee means a person issued a farmers' market permit.

Simple Sample strictly means a sample of a single food product by itself with no additional food products. A simple sample may consist of two food products only when the primary food item of the vendor has a low viscosity (jam, cheese spread, dip). In such cases a solid food item (cracker, bread) may accompany the sample food item for sampling purposes only and still classify as a simple sample.

Vendor means a person who distributes, offers for sale, or sells locally produced agricultural products or a limited amount of locally produced non-agricultural products at a farmers' market.

Sec. 13-441. Farmers' Market permit required.

It shall be unlawful to operate a farmers' market:

- (1) without a valid farmers' market permit.
- (2) in violation of any provision of a farmers' market permit, this article, or any other applicable city ordinance or other law.

Sec. 13-442. Location of Farmers' Markets.

A farmers' market must be located in a zoning classification that allows farmers' markets as a permitted use.

Sec. 13-443. Operation of a Farmers' Market.

(a) A farmers' market shall not be operated more than twenty four (24) hours per week and more than twelve (12) hours in any twenty-four (24) hours period.

(b) At least eighty percent (80%) of the vendors must be food item vendors whose products are locally produced.

(c) At least eighty percent (80%) of the cumulative square footage area of all vending booths at the farmers' market must consist of locally produced agricultural products.

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(d) No more than twenty percent (20%) of the vendors at a farmers' market may operate with an inventory comprised of more than twenty percent (20%) locally produced non-agricultural products.

(e) Any vendor who offers prepackaged potentially hazardous/time and temperature control for safety (PHF/TCS) food at a farmers' market shall abide the following requirements:

- (1) Only vendors with a state food distribution, food manufacturing, or food wholesale license may sell processed foods.
- (2) The food manufacturing, food distribution, or food wholesale license must be prominently displayed at the vendor's booth throughout the duration of each farmer's market session.
- (3) Any processed foods must be commercially pre-packaged.
- (4) Vendors offering foods which required to be kept at any particular temperature as described in the Texas Food Establishment Rules and Article IV Food Service Establishments and Food Handlers, of this Chapter must be able to demonstrate that the food is consistently kept at the required temperature for the duration of any farmer's market event from the arrival to the departure of the vendor.
- (5) Ice that contacts food shall be made under conditions meeting the requirements of these rules. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Packaged food may not be stored in direct contact with ice if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(f) Each farmers' market must provide 1.25 parking spaces per vending booth.

(g) A farmers' market may display up to two temporary signs on site with a maximum area of thirty two square feet (32ft²) each. Four additional temporary signs, no larger than two square feet each (2ft²) may be displayed off site on a property where permission has been granted by the property owner. Each vendor may display one temporary sign. A vendor's sign shall be no larger than twenty square feet (20ft²). No sign shall be located in the public right of way.

(h) All retail activity and all retail products must be confined to the allocated retail vending space as shown on the site plan submitted with application in accordance with Section 13-446.

(i) The permittee or the permittee's designated representative must be present at the farmers' market location for all farmers' market functions, which includes any on site activities, preparation, clean up, organizing, loading or unloading, or setup associated with the farmers' market and have the authority to comply with directives from City code and health inspectors including providing corrections for identified violations.

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(j) Any outdoor farmers' market facilities, structures, signs, tents, tables or any other physical items associated with the farmers' market are considered temporary and are not permitted to remain on site outside of a permanent enclosed structure. Such items may be placed on site within two hours of the beginning of farmers' market operations and may remain on site for up to two hours after the conclusion of farmers' market operations. if the period of time between consecutive farmers' market operations lasts longer than two weeks. Any item remaining on site between farmers' market operations shall be neatly organized and stored as securely as possible to prevent damage to persons or property.

(k) Each vendor at a farmer's market shall meet all requirements of any other applicable law regulating the vendor's operation at the farmers' market, including, displaying of an appropriate license or permit and meeting required performance standards. The permittee shall be responsible for ensuring that each vendor complies with this subsection. If the permittee is also a vendor at the farmers' market, the permittee shall also meet all requirements of any other applicable law regulating such vendor's operation at the farmers' market.

(l) If the permittee desires to add a vendor to the list of participating vendors submitted in accordance with Section 13-446, the permittee shall submit an amended list of participating vendors to the Inspection Services Department prior to such vendor participating in the farmers' market.

(m) Any vendor not listed on the list of participating vendors submitted by the applicant in accordance with Section 13-446 or as amended in subsection (l) of this section and any vendor not providing the required insurance or indemnification agreement will not participate in the farmers' market.

Sec. 13-444. Sale of locally produced alcoholic beverages.

Any vendor selling locally produced alcoholic beverages must abide by all Texas Alcoholic Beverage Commission (TABC) rules and regulations. Sale of alcoholic beverages for on site consumption is prohibited. All pertinent TABC licenses and permits for such sales must be prominently displayed at the vending booth.

Sec. 13-445. Simple Samples and on site food preparation.

(a) Vendors may distribute samples of food items they are selling without a food establishment permit as long as the samples classify as simple samples as defined herein. The use of single use disposable utensils (toothpicks, sample cups) is allowed. In the case of low viscosity foods (cheese spread, jam), the use of a single solid edible item (cracker, bread) is also allowed. Vendors distributing samples of prepackaged potentially hazardous/time and temperature control for safety (PHF/TCS) foods must demonstrate that the samples are maintained at the same levels of food safety standards as the non sample items in keeping with section 13-443(e)(4) of this ordinance. Products must be protected from all sources of contamination.

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(b) A farmers' market permit does not authorize on site food preparation at a farmers' market. Appropriate permits from the Waco-McLennan County Public Health District and/or other pertinent public agencies will be required to prepare food on site (i.e. mobile food vending permit, food establishment permit, and open air vending permit).

1. Individual vendors may acquire a food establishment permit from the Waco-McLennan County Health District. A vendor with the appropriate permits to prepare food on site as a part of the farmers' market operation will count as a non food item vendor unless one hundred percent (100%) of the prepared food items offered for sale consist of locally produced agricultural products, in which case the vendor may be considered a food item vendor. Such vendors must comply with open air vending, food establishment, or mobile food vending regulations in addition to the requirements listed in this article.
2. A Farmers Market may apply for one food establishment permit to cover all vendors associated with the Farmers' Market. The details of such a permit would be determined through consultation between the McLennan County Health District and the Farmers' Market administrator/s. Vendors who sell prepared food products which are not comprised of 100% locally grown agricultural products will still be classified as a non food item vendor.

Sec. 13-446. Permittee's application and review.

(a) All applicants for a farmers' market permit shall apply for the permit from the Inspection Services Department. To facilitate the review, the applicant shall provide a site plan displaying the location of the farmers' market, layout of the allocated vending spaces with dimensions, temporary structures, furniture, signage, trash bins, a solid waste collection plan and parking, including parking spaces. The applicant shall also provide a list of all participating vendors and their production location information.

(b) The appropriate city departments through the existing city plan review process shall review all applications. Staff involved in the review shall place special provisions or conditions upon the applicant deemed necessary by staff including but not limited to screening, traffic control, lighting, and waste management.

(c) When the review process is complete, the Inspection Services Department will notify the applicant. Any modifications or special conditions and provisions imposed during the review shall be provided to the applicant in writing. When all conditions of the permit have been met, then the permit shall be issued by the Inspections Services Department unless denial is required by Section 13-450. The Inspection Services Department shall be responsible for enforcement of the provisions of this division.

Sec. 13-447. Length of permit; renewal.

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A farmers' market permit shall be valid for a period of one year from the date of issuance and may be renewed by applying in accordance with Section 13-446.

Sec. 13-448. Fees.

A permit fee will be charged at time of issuing the permit. The city council shall set the fee for the permit.

Sec. 13-449. Insurance or indemnification requirements for Farmers' Markets located on City-owned property.

(a) If a farmers' market is to be located on city-owned property, the applicant must obtain and retain a minimum of \$500,000 general liability and property damage insurance coverage, naming the city, its employees, officers and officials as additional insureds. Proof of such insurability shall be required when applying for a farmers' market permit. In addition, each vendor shown on the applicant's or permittee's list of participating vendors must either obtain and retain insurance meeting the requirements set forth in this subsection or execute a written agreement on a form approved by the city attorney to indemnify and hold harmless the city, its employees, officers and officials against all claims of injury or damage to persons or property arising out of the vendor's activities at the farmers' market.

(b) No on site farmers' market activities on city-owned property may commence until the applicant has filed with the city documents evidencing the required insurance being in full force and effect. No vendor may operate at a farmers' market on city-owned property without having either evidence of the required vendor insurance or the required indemnification agreement on file with the city.

Sec. 13-450. Other permits.

Permittees or vendors (if a specific permit applies to them) shall comply with all applicable regulations and obtain all other permits, franchises or licenses that may be required under the ordinances of the city or other agencies of the county, state, or federal government. Such permits may relate to health, safety, sale of alcohol or any other topic.

Sec. 13-451. Revocation, suspension or denial a permit.

The city may immediately revoke or suspend the permit, or deny either the issuance or renewal thereof, if it is found that:

- (1) The applicant or permit holder has violated or failed to meet any of the provisions of this article or conditions of the permit;
- (2) Any required licenses have been suspended, revoked, or canceled;
- (3) The permittee has violated any federal, state, or city law or regulation;

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- (4) The chief of the police department or the chief of the fire department has determined that the farmers' market would pose a serious threat to the public health, safety, or welfare; or
- (5) The applicant has made a false statement of material fact on an application for a farmers' market permit.

Sec. 13-452. Notice to applicant/permittee; appeals.

Upon denial, suspension or revocation, the city shall notify the applicant or permittee in writing either in person or by certified mail to the address listed on the application of the action taken and the reasons therefore. A person may appeal a decision to deny, revoke, or suspend a permit to the city council. Appeals shall be submitted to the city secretary in writing within 15 days following the date the applicant or permittee receives the decision. A hearing on the denial, suspension, or revocation will be scheduled for the next regular meeting of the city council that is more than six days away. The council will render a decision on the appeal within ten days of the hearing. A permittee shall not operate the farmers' market during the appeal process.

Section 2. That all ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

Section 3. If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionally, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 4. That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

Section 5. That a violation of this ordinance shall be a misdemeanor and the penalty for violating this ordinance shall be as provided for in Section 1-14 of the Code of Ordinances of the City of Waco, which shall be a maximum fine of \$500.00, and each day a violation exists shall be a separate offense.

Section 6. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given as required.

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PASSED AND APPROVED:

FIRST READING: 15th day of February, 2011.

SECOND READING: ____ day of _____, 2011.

Jim Bush, Mayor
City of Waco, Texas

ATTEST:

Patricia W. Ervin, City Secretary

APPROVED AS TO FORM & LEGALITY:

Leah Hayes, City Attorney

s:/ Legal/John/Planning/Ordinance/2011/Farmers' Market Ordinance – (2-8)