

ORDINANCE NO. 4076

AN ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES, BY ADDING ARTICLE VIII, REGULATING TEMPORARY OPEN AIR MARKETS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council desires to establish regulations governing the operation of a temporary retail operation known as a temporary open air market; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS:

SECTION 1. That Chapter 12 of Code of Ordinances of the City of Richardson, Texas, be and the same is hereby amended by adding Article VIII, "Temporary Open Air Market," to read as follows:

"CHAPTER 12 LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS

...

ARTICLE VIII. – TEMPORARY OPEN AIR MARKET

Sec. 12-221. Purpose.

The purpose of this chapter is to facilitate the promotion of temporary open air markets within the city to support the local economy, to encourage sustainable living, and to create a more positive image of the city.

Sec. 12-222. Definitions.

The following words and phrases as used in this article shall have the meanings as set forth in this section:

Applicant means a person who has filed a written application for a temporary open air market permit.

Director means the director of health or other person designated by the city manager to implement, administer, and enforce this chapter, and includes any designated representative of the director.

Permit holder means a person issued a temporary open air market permit.

Person means an individual, firm, partnership, corporation, association, or other legal entity.

Temporary open air market means a temporary outdoor market place on private property where individual vendors offer produce, food, or other products are distributed, offered for sale, or sold directly to consumers by the persons that have raised, grown, made, crafted, processed, or produced the products, approved foods such as fruits, eggs, vegetables, pasteurized dairy products and honey, and other allowed foods. Temporary open air market does not include a flea market or other gatherings or markets offering merchandise, personal effects, tools, or outdoor retail sale or promotion subject to Article IV of Chapter 12 of this Code.

Temporary open air market arts and crafts vendor means any person who operates, offers, or sells any non-food items.

Temporary open air market food vendor means any person who operates, offers, or sells food from an approved location on private property. Foods included are whole produce, plants, nuts, approved meats, honey, eggs, pasteurized dairy, foods not requiring time or temperature control for safety, prepared packaged foods and other approved foods.

Temporary open air market concession vendor means any person who prepares, operates, offers, serves, or sells unpackaged, ready to eat, foods requiring time or temperature control for safety intended to be consumed on site at time of purchase.

Temporary open air market permit means written approval to hold a temporary open air market issued by the director under this chapter.

Vendor means a person who distributes, offers for sale, or sells produce, merchandise, food, or other products at a temporary open air market.

Vendor permit means the written approval to participate as a vendor in a temporary open air market.

Sec. 12-223. General.

(a) A permit holder and vendors shall comply with the requirements of this article, unless otherwise restricted by applicable state or federal law, or otherwise provided for in this article. Any other outdoor retail sale or promotion must adhere to Chapter 12, Article IV, of this Code. It shall be unlawful for any permit holder, vendor, or person to violate any of the provisions of this article.

(b) The director of health shall implement, administer, and enforce the provisions of this article.

(c) The director has authority to issue a temporary open air market permit when requirements of this article have been met.

(d) The permit holder shall be responsible for the operation, conduct, and safety of a temporary open air market for which a permit has been issued.

(e) The city council shall establish permit and other fees for a temporary open air market permit holder and vendors by resolution from time to time.

Sec. 12-224. Application

(a) A person desiring to hold a temporary open air market shall apply for a temporary open air market permit by filing with the director a written application upon a form provided by the City for that purpose accompanied by a nonrefundable permit fee, if required. A permit for a temporary open air market may be issued to the applicant that only allows the market to be operated at the single location designated in the permit application.

(b) An application must contain the following information:

- (1) The name, address, and telephone number of the applicant and of any other persons responsible for the conduct of the temporary open air market.
- (2) The street address of the proposed location of the temporary open air market; the name, address, and telephone number of the property owner.
- (3) A description of the temporary open air market, the proposed months, days, dates and hours of operation for the market.
- (4) Any other information the director determines necessary for the administration and enforcement of this chapter.

(c) The building official, city departments, and the director may prescribe licenses, permits, and authorizations required by other city ordinances or applicable law, restrictions, regulations, safeguards, and other conditions necessary for the safe and orderly conduct of a temporary open air market, to be incorporated into the permit before issuance.

(d) After reviewing the application and comments, the director shall issue the temporary open air market permit unless denial is required herein. A temporary open air market permit expires one (1) year after issuance and may be renewed by applying in accordance with this section.

Sec. 12-225 Denial; Appeal; Revocation

(a) The director shall deny a temporary open air market permit if:

- (1) a temporary open air market permit has been previously granted in the calendar year to another temporary open air market that is located within one mile of the proposed market and has the same or overlapping operating dates and times as the proposed market;
- (2) the proposed temporary open air market will unreasonably disrupt the orderly flow of traffic, and no reasonable means of rerouting traffic or otherwise meeting traffic needs is available;
- (3) the applicant fails to adequately provide for:
 - a. the protection of the vendors and attendees at the temporary open air market;
 - b. maintenance of public order in and around the temporary open air market location;
 - c. crowd security, taking into consideration the size of the market; or
 - d. emergency vehicle access.
- (4) the applicant fails to comply with or the proposed temporary open air market will violate a city ordinance or other applicable law, unless the prohibited conduct or activity would be allowed under this chapter;
- (5) the applicant makes a false statement of material fact on an application for a temporary open air market permit or fails to properly complete an application for a market permit;
- (6) the applicant fails to provide proof that the applicant possesses or is able to obtain a license or permit required by another city ordinance or other applicable law for the conduct of all activities included as part of the temporary open air market;
- (7) the applicant has had a temporary open air market permit revoked within the preceding 12 months;
- (8) the applicant fails to pay any outstanding fees assessed under this article for the proposed temporary open air market or for a past temporary open air market;
- (9) the chief of the police or fire departments or the director determines that the temporary open air market-would pose a serious threat to the public health, safety, or welfare;

- (10) the applicant or any other person responsible for the conduct or sponsorship of the neighborhood temporary open air market is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or other person; or
 - (11) the applicant fails to acquire or maintain approval from the property owner to operate the temporary open air market on the property identified in the application.
- (b) The director shall revoke a temporary open air market permit if:
- (1) the permit holder failed to comply with or the temporary open air market is in violation of any provision of the temporary open air market permit, a city ordinance, or any other applicable law;
 - (2) the permit holder made a false statement of material fact on an application for a temporary open air market permit or failed to properly complete an application for a temporary open air market permit;
 - (3) the chief of the police or fire department or the director determines that the temporary open air market poses a serious threat to the public health, safety, or welfare;
 - (4) the permit holder failed to pay any outstanding fees assessed under this article for the proposed temporary open air market or for a past temporary open air market;
 - (5) the permit holder or any other person responsible for the conduct or sponsorship of the temporary open air market is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the permit holder or other person; or
 - (6) the permit holder fails to acquire or maintain approval from the property owner to operate the temporary open air market on the property identified in the application.

(c) Appeal. If the director denies the issuance or renewal of a permit or revokes a permit, the director shall send to the applicant or permit holder by certified mail, return receipt requested, written notice of the denial or revocation and of the right to an appeal. The applicant or permit holder may appeal the decision of the director to the city manager or designee by submitting a written request to the director within 10 business days after receipt of such denial or revocation. The decision of the city manager shall be final.

Sec. 12-226. Operation of a temporary open air market.

(a) A temporary open air market may only be operated on weekend days of Saturday and Sunday and on Mondays that are recognized national holidays.

(b) A temporary open air market may not be operated on more than 3 consecutive days.

(c) The temporary open air market may only be operated in accordance with the schedule filed with the director at the time of permit application. Amendment to the schedule may be approved by the director during the calendar year if the changes do not conflict with the schedule of another temporary open air market. An amendment request must be received by the director at least 10 days before implementing any changes.

(d) All litter, tents, stalls, food, merchandise, and other evidence of the temporary open air market must be removed from the premises at the end of each market day.

(e) The permit holder shall be responsible for the operation and conduct of the temporary open air market and shall be present or may designate a person in charge who shall be present at the temporary open air market during the hours of operation.

(f) Except as otherwise provided in this article, products that may be sold at a temporary open air market include but are not limited to, fruits, vegetables, honey, eggs, nuts, herbs, mushrooms, seeds, dairy products; prepared foods requiring time or temperature controls for safety, concessions, prepackaged food from a licensed facility; prepared foods not requiring time or temperature controls for safety, meat: frozen, prepackaged and inspected by USDA or equal and non-food items: arts, crafts, live plants and flowers. The permit holder shall be responsible to ensure that the vendors comply with this section.

(g) No animals may be sold, offered for sale or adoption, displayed, transferred or given away at any temporary open air market.

(h) The permit holder shall maintain a list of all participating food vendors. The list shall be maintained for at least ninety (90) calendar days from the date of the end of the temporary open air market. This list shall include, at a minimum:

- (1) The name, address, and phone number of the vendor;
- (2) The date(s) the vendor operated at the temporary open air market;
- (3) A list of the food items offered by the vendor for each date operated at the temporary open air market;
- (4) A copy of any applicable permits held by the vendor; and

- (5) The address or location of each food item's origin, including information on where the food items were grown, cultivated or otherwise obtained by the vendor.
- (i) Temporary open air market vendor shall comply with the following:
 - (1) Vendors desiring to participate in a temporary open air market shall apply for a vendor's permit by filing with the director a written application upon a form provided by the City for that purpose accompanied by a nonrefundable permit fee, if required. It is unlawful for any vendor to participate in a temporary open air market without first having a valid vendor permit issued by the director.
 - (2) Vendors that offer, sell, sample or distribute foods requiring time or temperature controls for safety shall have a person in charge that can show proof of successfully passing a Texas Department of State Health Services (TDSHS) recognized certified food handler course.
 - (3) Vendors that offer, sell, or distribute only prepackaged foods not requiring time or temperature controls for safety and plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, are exempt from the certified food handler requirement.
 - (4) Vendors that offer, sell, sample or distribute foods requiring time or temperature controls for safety shall comply with the City of Richardson Health Department Regulations and Texas Food Establishment Rules (TFER).
 - (5) Vendors that offer, sell, sample or distribute foods requiring time or temperature controls for safety shall comply with all regulations specified in the food regulations in this chapter.
 - (6) Vendors that offer, sell, sample or distribute foods requiring time or temperature controls for safety shall submit a temporary open air market food vendor application accompanied by a non-refundable application fee, if required, before operating at the temporary open air market.
 - (7) Unless operating under the Texas Cottage Food Industry Law, vendors that offer, sell, sample or distribute prepackaged foods shall ensure prepackaged foods are labeled according to the Texas Food Establishment Rules (TFER) requirements.
 - (8) Unless operating under the Texas Cottage Food Industry Law, vendors that offer, sell, sample or distribute prepackaged foods shall possess Texas

Department of State Health Services manufactured foods license if required.

- (9) Unless operating under the Texas Cottage Food Industry Law, home preparation or storage of foods is not allowed.
- (10) Vendors that offer, sell, sample, or distribute foods under the Texas Cottage Food Industry Law shall follow labeling practices as specified by the Texas Cottage Food Industry requirements.
- (11) Vendors shall comply with the sign regulations in this article.

Sec. 12-227. Food.

(a) Preventing contamination.

- (1) Food display. Except for plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by use of packaging; counter, service line, or sneeze guards that comply with National Sanitation Foundation (NSF) or equivalent personnel or staff, or by other means approved by the regulatory authority.
- (2) Approved source. Only food from an approved source as defined in the Texas Food Establishment Rules (TFER) or by Texas Cottage Food Industry Rules may be offered at a temporary open air market.
- (3) Prohibited items. Fresh non-frozen fish, foraged foods, game animals, gleaned foods, and non-pasteurized dairy items may not be sold, offered for sale, sampled, displayed, served or consumed at a temporary open air market.
- (4) Temperature requirements. Food temperatures must be in compliance with this article. Equipment used to hold foods shall maintain required temperatures for the duration of the hours of operation of the temporary open air market, including preparation.
 - a. Frozen meats, poultry, and seafood shall be maintained at or below zero degrees (0°) Fahrenheit for the duration of the market, including transportation to the market.
 - b. Eggs, prepared foods requiring time or temperature controls for safety, and refrigerated dairy items shall be maintained at or below forty one degrees (41°) Fahrenheit, or at or above one hundred thirty five degrees (135°) Fahrenheit for the duration of the temporary open air market, including transportation to the market.

(5) Sampling. Sampling is allowed in compliance with the following standards:

- a. Sampled food shall be offered to the consumer in individual servings and shall not be offered on a self-service basis. Portions shall be adequately protected from contamination as determined by the Director of Health or his designee.
- b. Only single-service articles may be given to the consumer for use.
- c. Foods requiring time or temperature controls for safety offered for sampling shall follow proper time and temperature controls as outlined in the Texas Food Establishments Rules (TFER).
- d. At least one (1) thermometer accurate to +/- two degrees (2°) Fahrenheit shall be on-site for each piece of equipment used to hold proper temperatures.
- e. Hand wash facilities compliant with article are required for any vendor conducting sampling.

(b) Functionality of equipment.

- (1) Equipment used to keep foods subject to this article frozen or refrigerated shall comply with TFER and be able to maintain required temperatures for the duration of operations.
- (2) Tables used within the vending area shall be made of non-porous material and be easily cleanable.
- (3) Utensils used for sampling shall be made of non-porous material and shall be disposable unless approved by the director.

(c) Equipment, numbers and capacities.

- (1) Hand wash facilities shall be provided for each vendor conducting sampling operations. A portable hand sink or other facilities or methods as approved by the director may be used if it satisfies the listed requirements.
- (2) Where a hand wash facility is required, a waste tank with a larger capacity than the potable source water tank shall be provided.
- (3) A hand wash facility is not required for vendors with only prepackaged products and plants, nuts in the shell and whole, raw fruits and vegetables

that are intended for hulling, peeling or washing by the consumer before consumption.

(4) Trash receptacles shall be available to each vendor. Trash shall be disposed of daily at the designated location as provided by the market operator or offsite as needed to prevent pests.

(d) Physical facilities.

(1) Vendors shall be located on a concrete, asphalt, or other approved surface providing adequate drainage.

(2) Vending areas shall be covered, except for those vendors selling plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption.

Sect. 12-228. Signage.

(a) Individual vendors may attach one (1) sign to their respective booth. Sign shall not exceed twenty four (24) square feet.

(b) No more than six (6) signs shall be erected on any frontage of the temporary open air market. Signs may be for purposes of promoting either the temporary open air market or individual vendors of the temporary open air market. Total square footage of all signs may not exceed thirty six (36) square feet.

(c) Any allowed sign shall be located on private property and at least ten feet (10') from the back of curb.

(d) No cloth, paper, banner, flag, device or other similar advertising matter shall be permitted to be attached, suspended from or allowed to hang loose from any sign, building, structure, motor vehicle, tree, shrub, or bush.

(e) Signs that are held by or attached to a human being are prohibited. A human sign includes a person dressed in costume for the purpose of advertising or otherwise drawing attention to an individual, business, commodity, service, activity, or product.

(f) Signs that move, flash, are animated or similar are prohibited.

(g) A sign may not cause a visibility obstruction.

(h) Signs shall not be hand painted or stenciled nor constructed of paper, cardboard, or similar non-durable material.

SECTION 2. That all provisions of the ordinances of the City of Richardson in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Richardson not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

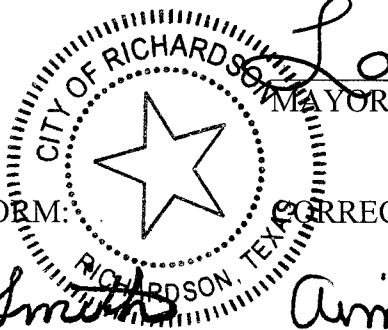
SECTION 4. That an offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Code of Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Richardson as heretofore amended and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and each and every day such violation shall continue shall be deemed and constitute a separate offense.

SECTION 6. That this Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Richardson, Texas, on the 6th day of
October 2014.

APPROVED:



Laura N. Jan

APPROVED AS TO FORM:

CORRECTLY ENROLLED:

Peter G. Smith

Annee Nemer

CITY ATTORNEY
(PGS:10-2-14:TM 64143)

CITY SECRETARY