

ORDINANCE NO. _____

An ordinance amending Chapter 17, "Food Establishments," of the Dallas City Code, by amending Section 17-1.6 and Chapter 50, "Consumer Affairs," of the Dallas City Code by amending Sections 50-152, 50-157, 50-158, 50-160, and 50-162; adding new Sections 50-167.1 and 50-173; providing requirements for serving or distributing food on public or private property; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 17-1.6, "Defenses For Certain Types of Activities," of Article I, "Food Establishments Generally," of Chapter 17, "Food Establishments," of the Dallas City Code is amended to read as follows:

~~"SEC. 17-1.6. EXCEPTIONS [DEFENSES FOR CERTAIN TYPES OF ACTIVITIES].~~

~~[It is a defense to prosecution under t]his chapter does not apply to a [that, at the time of the offense, the] person who is charged was]:~~

- (1) conducting food operations that are licensed, and inspected at least once a year, under federal or state law (as illustrated by, but not limited to, milk producers, day care facilities, nursing homes, and meat processors);
- (2) selling, distributing, transporting, or storing a raw agricultural commodity (including, but not limited to, raw vegetables and fruit, and pure honey) by the original producer, provided that the sale, distribution, transportation, or storage is on property owned or leased by the original producer;
- (3) selling, distributing, or serving food at an event, party, or other special gathering that is not open to persons other than the members or invited guests of the sponsor, provided that there is no public advertisement of the event, public solicitation of funds at or for the event, or participation by the general public in the event; or

(4) conducting the retail sale or distribution of non-time/temperature control for safety food from a fixed facility if the food is acquired and sold or distributed in cans, bottles, or other prepackaged containers that are not opened before obtained by a consumer, and no food manufacturing, processing, or preparing operations are conducted at the facility[; or

(5) ~~servicing or distributing food, without charge, to homeless individuals on public or private property, provided that the person:~~

~~(A) sent a notice within the time required by subparagraph (B) to the director (by United States mail, facsimile, electronic mail to the addresses or numbers provided by the director, via the City's 311 call center, or on the City's Code Compliance Department's website) containing the following information:~~

~~(i) the name of the individual or organization that was or will be serving or distributing food to the homeless;~~

~~(ii) the date or dates when food was or will be served or distributed to the homeless;~~

~~(iii) the times of day when food service and distribution is anticipated to or did begin and end on each date listed in the notice;~~

~~(iv) the street address or addresses of where food was or is anticipated to be served or distributed to the homeless or, if the location has no street address, then a description of the location by street block number or by naming the nearest intersecting streets; and~~

~~(v) the approximate or expected number of food preparers and servers on the site where the food was or will be served or distributed and the approximate or expected number of individuals that were or will be served, provided the number of individuals that were or is anticipated to be served exceeds 75 at a single location;~~

~~(B) sent the notice required in subparagraph (A) at least 24 hours before the service or distribution of food to the homeless will commence, if it is anticipated that more than 75 people will be served, or within 48 hours after the service or distribution of food to the homeless has concluded, if it is anticipated that 75 or fewer people will be served at a single location;~~

~~(C) if the person is an individual, had attended a free city sponsored food safety training class within the 24 months preceding the service or distribution of food to the homeless or, if the person is an organization, had at least one person who has attended a free city-sponsored food safety training class or has taken the class to become a certified food handler in the State of Texas within the 24 months preceding the service or distribution of food to the homeless present at all times when food was being served or distributed to the homeless, although this requirement applies only so long as the city sponsors a free food safety training class at least once during each three month period during a calendar year;~~

~~(D) did not serve or distribute time/temperature control for safety to the homeless, unless the food has been stored at a temperature of:~~

~~(i) 41° F. (5° C.) or below; or~~

~~(ii) 135° F. (57° C.) or above;~~

~~(E) transported the food in a clean conveyance and, if the food was a time/temperature control for safety food, as that phrase is defined in the Texas Food Establishment Rules, as amended, served or distributed it within four hours after preparation;~~

~~(F) used one of the following methods of sanitizing hands before preparing, serving, or distributing food for the homeless:~~

~~(i) a hand sanitizer containing at least 70 percent alcohol or another substance capable of killing 99.9 percent of the bacteria on hands within 30 seconds of application;~~

~~(ii) disposable gloves; or~~

~~(iii) handwashing equipment that included at a minimum:~~

~~(aa) a sink, or a five-gallon container with a spigot that provides free-flowing water and a catch bucket to collect wastewater from handwashing; and~~

~~(bb) soap and individual paper towels;~~

~~(G) properly disposed of any wastewater generated from any handwashing equipment used in the preparation, service, or distribution of food to the homeless into a sanitary sewer system and did not dispose of the wastewater on the ground or into the stormwater drainage system; and~~

~~(H) brought a sufficient number of trash bags to dispose of the solid waste generated by the food provided by the servers and used best efforts to remove or cause the removal of all trash or debris from the feeding site that was generated by the service or distribution of food to the homeless, and deposited the trash or debris in a public trash receptacle, or in a private trash receptacle if permission from the receptacle owner was obtained].”~~

SECTION 2. That Section 50-152, “Declaration of Policy,” of Division 1, “In General,” of Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended to read as follows:

“SEC. 50-152. DECLARATION OF PURPOSE [~~POLICY~~].

It is the policy of the city to promote the protection of the public health, safety, and welfare by the regulation of street vendors operating inside the city and these regulations are intended to promote the fair and orderly use of public and private spaces to foster a vibrant, accessible, and safe community environment. Therefore t[~~F~~]he provisions of this article are to be construed, according to the fair import of their terms, to effect this policy.”

SECTION 3. That Paragraph (12) of Section 50-157, “Definitions,” of Division 1, “In General,” of Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended to read as follows:

“(12) PUBLIC PROPERTY means any property open or devoted to public use [~~or owned by the city~~] including, but not limited to, sidewalks, streets, parkways, or esplanades.”

SECTION 4. That Paragraph (14) of Section 50-157, “Definitions,” of Division 1, “In General,” of Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended to read as follows:

“(14) ~~STREET VENDOR~~ or VENDOR means a person who, personally or through an agent, engages either in a business of selling, distributing, or offering for sale goods or services, or the service of distribution of food or drinks free of charge to members of the general public in a public place from any structure or vehicle that is not affixed to the ground or from no structure or vehicle. The term does not include:

(A) any person operating, or employed in the operation of, a licensed taxicab, limousine, bus, shuttle, non-motorized passenger transport vehicle, or motor vehicle tow service;[-]

(B) [~~The term does not include~~] a stand that only offers the occasional sale of lemonade or other nonalcoholic beverages on private property or in a public park by an individual younger than 18 years of age; or

(C) any person distributing food or drinks:

(i) from a private residence or private space;

(ii) as part of a private, invitation-based, or ticketed event not open to the general public, including but not limited to, family gatherings, neighborhood events, block parties, or organized events held at public facilities such as recreation centers, parks, or similar venues; or

(iii) as part of, or incidental to, an event conducted pursuant to a city permit, reservation, or authorization.”

SECTION 5. That Section 50-158, “Vendors on Public Property,” of Division 2, “Vending on Public Property,” of Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended to read as follows:

“SEC. 50-158. VENDORS ON PUBLIC PROPERTY.

(a) A person commits an offense if the person, either personally or through an agent, occupies public property in the city for the purpose of operating as a street vendor [selling, distributing, or offering for sale services or goods, including, but not limited to, food, drinks, flowers, plants, tickets, or souvenirs].

(b) [It is a defense to prosecution under this section does not apply to a [that the] person selling, distributing, or offering for sale services or goods, or to a person distributing or serving food or drinks free of charge, who:

(1) is doing so in connection with the transaction of official government business;

(2) is doing so by authority of a contract with the city to operate a concession on designated areas of public property;

(3) is selling, distributing, or offering for sale only periodicals from a coin-operated machine by authority of a license to operate the machine;

(4) is selling, distributing, or offering for sale goods or services from a vehicle by authority of and in compliance with a CBD concession license as provided for in this article;

(5) is selling, distributing, or offering for sale vegetables, produce, or other perishable commodities at the Dallas Farmers Market (as defined in Section 29A-2 of this code), in compliance with Chapter 29A of this code and with the market’s agreements and covenants with the city;

(6) is selling, distributing, or offering for sale a food or beverage from a mobile food unit in accordance with Section 50-159 of this code;

(7) is selling, distributing, or offering for sale goods or services as authorized by and in compliance with a special event permit;

(8) is selling, distributing, or offering for sale only printed matter that is not commercial printed matter, including, but not limited to, newspapers and magazines, and the selling, distributing, or offering for sale is not being conducted from machines or other structures that occupy public property;

(9) is operating a vehicle for hire;

(10) is selling, distributing, offering for sale, or delivering the goods or services to a person in a structure or vehicle that is affixed to the ground, or to a person who possesses a special event permit or a CBD concession license; [ø]

(11) is not receiving payment [remuneration] from the person being given the goods, [ø] services, food, or drinks, and the person distributing the goods, [ø] services, food, or drinks has complied with the requirements of Division 7 of this article [~~does not use any type of vehicle or stand, any part of which touches the ground, when distributing the goods or services, and the method of distribution does not interfere with traffic flow on public streets or sidewalks.~~]; or

(12) is an individual younger than 18 years of age who is conducting the occasional sale of lemonade or other nonalcoholic beverages from a stand in a public park.

(c) In addition to any enforcement action by a peace officer or the director for a violation of this section, any person who is a victim of an act prohibited under this section, or who witnesses a violation of this section, may file a complaint with the city attorney. Evidence to support a conviction for a violation of this section may include, but is not limited to, testimony of witnesses, videotape evidence of the violation, and other admissible evidence.

~~[(d) This section does not apply to the occasional sale of lemonade or other nonalcoholic beverages from a stand in a public park by an individual younger than 18 years of age.]”~~

SECTION 6. That Section 50-160, “Vendors on Private Property,” of Division 3, “Vending on Private Property,” of Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended to read as follows:

“SEC. 50-160. VENDORS ON PRIVATE PROPERTY.

(a) A person commits an offense if the person, either personally or through an agent, [he] occupies any privately-owned property within the city for the purpose of operating [~~conducting business~~] as a street vendor.

(b) This section does not apply to ~~[It is a defense to prosecution under Subsection (a) of this section that]:~~

(1) a ~~the~~ business that is ~~[was]~~ authorized by a valid certificate of occupancy or is ~~[was]~~ otherwise specifically allowed under the Dallas Development Code or another city ordinance to sell, distribute, or offer for sale services or goods;

(2) a ~~the~~ person that has the written permission of a private property owner to conduct a street vending business on the property ~~[was conducting the street vending business in the central business district] and:~~

(A) possesses~~[e]~~ a valid CBD concession license issued under this article; or

(B) possesses~~[e]~~ a valid mobile food unit permit issued by the Department of State Health Services under the Texas Food Establishment Rules, as amended, 25 Texas Administrative Code Chapter 228 ~~[- if the person was a mobile food unit];~~

~~[(C) had the written permission of an owner of the private property on which the business was conducted; and~~

~~(D) was not conducting the business operation or using any structure in the business operation in violation of any applicable city ordinance or state or federal law or regulation; or]~~

(3) a person not receiving payment from a person being given food, drinks, or services, and the person distributing the food, drinks, or services has complied with the requirements of Division 7 of this article; or ~~[the person was a mobile food unit conducting the street vending business outside the central business district and:~~

~~(A) possessed a valid mobile food unit permit issued by the Department of State Health Services under the Texas Food Establishment Rules, as amended, 25 Texas Administrative Code Chapter 228;~~

~~(B) had the written permission of an owner of the private property on which the business was conducted; and~~

~~(C) was not conducting the business operation or using any structure in the business operation in violation of any applicable city ordinance or state or federal law or regulation];~~

(4[e]) ~~[This section does not apply to]~~ the occasional sale of lemonade or other nonalcoholic beverages from a stand on private property by an individual younger than 18 years of age.”

SECTION 7. That Section 50-162, “Central Business District Concession License,” of Division 5, “Central Business District Concession Licenses,” of Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended by adding a new Subsection (d) to read as follows:

“(d) A CBD concession license is not required for a person who is not receiving payment from the person being given the goods, services, food, or drinks, and the person distributing the goods, services, food, or drinks has complied with the requirements of Division 7 of this article.”

SECTION 8. That Division 6, “Miscellaneous Requirements for Street Vendors in the Central Business District,” of Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended by adding a new Section 50-167.1, “Service and Distribution of Food or Drinks Free of Charge,” to read as follows:

“SEC. 50-167.1. SERVICE AND DISTRIBUTION OF FOOD OR DRINKS FREE OF CHARGE.

The requirements of this division do not apply to a person who is not receiving payment from the person being given the goods, services, food, or drinks, and the person distributing the goods, services, food, or drinks has complied with the requirements of Division 7 of this article”

SECTION 9. That Article XII, “Street Vendors,” of Chapter 50, “Consumer Affairs,” of the Dallas City Code is amended by adding a new Division 7, “Service and Distribution of Food Free of Charge,” to read as follows:

“Division 7. Service and Distribution of Food or Drinks Free of Charge.

SEC. 50-173. PERMIT REQUIRED.

(a) This division applies to all individuals and organizations, regardless of religious, philosophical, or other motivation for serving or distributing food. No provision of this division may be construed or applied to favor or disfavor any person or group based on religious or other expressive motivation.

(b) A person wishing to serve or distribute food or drinks free of charge on public or private property shall obtain a permit from the director prior to the anticipated distribution. There is no charge for the permit. The application must be submitted to the director at least two business days before the service or distribution of food or drinks will commence. The director shall issue a 30-day permit to any applicant who submits a completed application meeting the requirements of

this section. The director may only deny a permit if the proposed service or distribution would create an imminent threat to public health or safety, and any denial must be in writing and state the specific reasons. The applicant may appeal a denial to the city manager or designee within two business days after the date of determination, who shall issue a written decision within two business days. For purposes of this subsection, “imminent threat to public health or safety” means a significant threat or danger to health that requires immediate action to prevent injury or illness.

(c) An application for a permit under this section must contain the following information:

- (1) the name of the individual or organization that will be serving or distributing food or drinks;
- (2) the date or dates within a 30-day period when food or drinks will be served or distributed;
- (3) the times of day when food or drinks service or distribution is set to begin and end on each day listed on the application;
- (4) the street address or addresses where food or drinks will be served or distributed, or a description of the location where food or drinks will be served or distributed by street block number or by naming the nearest intersecting streets for each day listed on the application;
- (5) verification that at least one person who has attended a free city-sponsored food safety training class or has taken the class to become a certified food handler in the State of Texas within the preceding 24 months will be onsite to supervise the service or distribution of food or drinks; and
- (6) the anticipated number of food preparers or servers of food or drinks and the anticipated number of individuals to be served.

(d) Food may not be served or distributed under a permit issued pursuant to this section unless:

- (1) for any food that is time/temperature controlled for safety, such food has been stored at a temperature of:
 - (A) 41° F. (5° C.) or below; or
 - (B) 135° F. (57° C.) or above;
- (2) the food is pre-packaged and is not considered time/temperature controlled for safety such as canned goods, granola bars, bottled water, bagged potato chips, or pre-packaged snack cakes and candy bars;

(3) the food was transported in a clean conveyance and, if the food was a time/temperature control for safety food, as that phrase is defined in the Texas Food Establishment Rules, as amended, served or distributed it within four hours after preparation; and

(4) one of the following methods was used to sanitize hands before preparing, serving, or distributing food or drinks:

(A) a hand sanitizer containing at least 70 percent alcohol or another substance capable of killing 99.9 percent of the bacteria on hands within 30 seconds of application;

(B) disposable gloves; or

(C) handwashing equipment that included at a minimum:

(i) a sink, or a five-gallon container with a spigot that provides free-flowing water and a catch bucket to collect wastewater from handwashing; and

(ii) soap and individual paper towels.

(e) A permit holder shall properly dispose of wastewater generated from any handwashing equipment used in the preparation, service, or distribution of food. A permit holder shall not pour wastewater on the ground or into the storm water drainage system.

(f) A permit holder shall provide a sufficient number of trash bags to dispose of the solid waste generated by the food or drinks provided by the servers, and use best efforts to remove or cause the removal of all trash or debris from the feeding site that was generated by the service or distribution of food or drinks. The permit holder shall deposit trash bags and any other debris in a public trash receptacle, or in a private trash receptacle if permission from the receptacle owner was obtained.

(g) The method of distribution of food or drinks may not interfere with traffic flow on public streets or sidewalks.

(h) A certified food handler or a person who attended the city-sponsored food safety training class shall be present and must display their food safety training or certified food handler certificate during the preparation, service, and distribution of the food or drinks.

(i) The applicant, permittee, or any person serving or distributing food or drinks free of charge may be held responsible for any violation of a provision of this section.”

SECTION 10. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500 for each violation.

SECTION 11. That Chapters 17 and 50 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 12. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 13. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 14. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

TAMMY L. PALOMINO, City Attorney

By _____
Assistant City Attorney

Passed _____