

Memorandum



CITY OF DALLAS

DATE October 21, 2010

TO Members of the Transportation and Environment Committee:
Linda L. Koop (Chair), Sheffie Kadane, (Vice Chair), Jerry Allen, Tennell Atkins,
Carolyn R. Davis, Angela Hunt, Delia Jasso, Pauling Medrano, Ron Natinsky,
Vonciel Jones Hill

SUBJECT Code Amendments for Neighborhood Markets –
Addendum Item # 5 on October 26, 2010 City Council Agenda

SUBJECT

An ordinance adding Chapter 29A and amending Chapters 17 and 42A of the Dallas City Code to: **(1)** provide permitting procedures, fees, and operational requirements for neighborhood farmers markets in the city; **(2)** modify temporary food establishment requirements as they relate to neighborhood farmers markets; and **(3)** modify special event permit requirements as they relate to neighborhood farmers markets - Estimated Revenue: \$2,100

BACKGROUND

Community interest has been indicated in support of neighborhood farmers markets which are temporary events on private property that serve as a marketplace for multiple local farmers/growers and handcrafters to sell or distribute their products directly to consumers. This ordinance provides permitting procedures, fees, and operational requirements for neighborhood farmers markets in the city.

The permit will allow the markets to operate from 8 a.m. to 7 p.m. for no more than 28 non-consecutive market days per calendar year in non-residential areas and outside of the Central Business District where otherwise prohibited by ordinance. One permit per calendar year will be issued to a specific organizer and will be for a specific location. Market applicants must pay an annual fee of \$200 if the market will have 25 or fewer vendors or \$300 if the market will have 26 to 50 vendors. At least one half of the vendors of a market must sell produce or other food items. All products distributed or sold at the neighborhood farmers markets must have been raised, grown, made, crafted, processed, or produced by the vendor in a Texas county completely or partially located within a 150-mile radius of Dallas County. Neither resale of goods nor sale of live animals is allowed. Products that may be sold at a neighborhood farmers market include, but are not limited to, fruits, vegetables, honey, eggs, nuts, herbs, mushrooms, meats, dairy products, prepared food such as baked goods, arts and crafts, and garden items.

Modifications to temporary food establishment and special event ordinances are made as they relate to the new neighborhood farmers market ordinance. Vendors that sell potentially hazardous food must comply with temporary food establishment requirements. In conjunction with neighborhood farmers markets, the temporary food establishment annual fee will be \$100 for each booth or stall at the first market location and \$50 for each booth or stall at each additional market location.

PRIOR ACTION / REVIEW (COUNCIL, BOARDS, COMMISSIONS)

Neighborhood farmers markets were briefed to the Transportation and Environment Committee on December 14, 2009, April 12, 2010, and June 14, 2010.

FISCAL INFORMATION

Estimated Revenue: \$2,100



Jill A. Jordan, P.E. Assistant City Manager
Assistant City Manager

- c: The Honorable Mayor and Members of the City Council
Mary K. Suhm, City Manager
Thomas P. Perkins, Jr., City Attorney
Deborah Watkins, City Secretary
Craig Kinton, City Auditor
Judge C. Victor Lander, Administrative Judge
Ryan S. Evans, First Assistant City Manager
A.C. Gonzalez, Assistant City Manager
Forest E. Turner, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Edward Scott, Director, Controller's Office
Helena Stevens-Thompson, Assistant to the City Manager – Council Office

ORDINANCE NO. _____

An ordinance amending Sections 17-1.5, 17-9.2, and 17-10.2 of CHAPTER 17, “FOOD ESTABLISHMENTS”; adding CHAPTER 29A, “NEIGHBORHOOD FARMERS MARKETS,” (composed of Sections 29A-1 through 29A-15); and amending Section 42A-5 of CHAPTER 42A, “SPECIAL EVENTS,” of the Dallas City Code, as amended; defining terms; providing permitting procedures, fees, and operational requirements for neighborhood farmers markets in the city; modifying temporary food establishment requirements and special event permit requirements as they relate to neighborhood farmers markets; providing a penalty not to exceed \$2,000; 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 Subsection (b)(6) of Section 17-1.5, “Definitions,” of Article I, “Food Establishments Generally,” of CHAPTER 17, “FOOD ESTABLISHMENTS,” of the Dallas City Code, as amended, is amended to read as follows:

“(6) FOOD ESTABLISHMENT:

(A) The term means an operation that:

(i) sells, stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; 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; remote catered operations; conveyance used to transport people; institution; or food bank; and

(ii) 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.

(B) The term includes 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; a restaurant; a grocery store; an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off premises; and regardless of whether there is a charge for the food.

(C) The term does not include a produce stand that only offers whole, uncut fresh fruits and vegetables or an establishment that offers only prepackaged foods that are not potentially hazardous, except that the term does include an establishment that sells ice cream, frozen custard, soft serve dairy products, gelato, or other frozen desserts.”

SECTION 2. That Subsection (b)(16) of Section 17-1.5, “Definitions,” of Article I, “Food Establishments Generally,” of CHAPTER 17, “FOOD ESTABLISHMENTS,” of the Dallas City Code, as amended, is amended to read as follows:

“(16) TEMPORARY FOOD SERVICE ESTABLISHMENT means:

(A) a food establishment that operates at a fixed location for a limited period of time in conjunction with:

(i) a plaza event for which a permit has been issued by the city under Chapter 35;

(ii) a special event for which a permit has been issued by the city under Chapter 42A;

(iii) a special event conducted with written permission of the city on property under the control of the park and recreation board, on property of the "convention center" or "reunion arena" as defined in Section 43-127 of this code, or on property of the "municipal produce market" as defined in Section 29-3 of this code;

(iv) a temporary carnival or circus conducted with written authorization of the building official under Section 51A-4.206(2) of the Dallas Development Code;

(v) an activity or event conducted entirely inside a facility that is primarily and routinely used to hold exhibitions, conventions, concerts, symphonies, plays, sporting events, or similar activities or events at which food is customarily served or offered for sale; [øø]

(vi) a single event or celebration conducted on any nonresidential premises as an accessory use under Section 51A-4.217 of the Dallas Development Code; or

(vii) a neighborhood farmers market for which a permit has been issued under Chapter 29A of this code; or

(B) a concessionaire operating under a seasonal contract with the city on property owned or operated by the city.”

SECTION 3. That Section 17-9.2, “Requirements for Temporary Food Establishments,” of Article IX, “Temporary Food Establishments and Catering Services,” of CHAPTER 17, “FOOD ESTABLISHMENTS,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 17-9.2. REQUIREMENTS FOR TEMPORARY FOOD ESTABLISHMENTS.

(a) Authority. The director shall issue a permit, in accordance with applicable food establishment permit and fee requirements set forth in Article X, to a temporary food service establishment if:

(1) the director finds that the operation will not result in a health or safety hazard or a nuisance;

(2) the operation is limited to a single, fixed location, which may include one or more facilities at the location;

(3) the establishment submits proof to the director that it has obtained all city, state, and federal permits and authorizations necessary to conduct a temporary food service operation, including, but not limited to the following:

(A) an out-of-town vendor must submit a copy of its current local health permit and a copy of its last health inspection from the local health department where the vendor is located; and

(B) a food manufacturer must submit a copy of its state manufacturer's license;

(4) the establishment and its location comply with all requirements of this chapter, the Dallas Development Code, and any other applicable city ordinance or state or federal law; and

(5) the completed application for the permit to operate a temporary food service establishment is received by the director at least 48 hours before the scheduled commencement of the activity or event for which the permit is issued.

(b) Exception. A permit is not required for a temporary food service establishment that does not serve potentially hazardous food and the weekly gross income of which does not exceed \$100.

(c) Limit on permits issued for same premises or address. No more than one temporary food service establishment permit may be issued within any calendar quarter for the same premises or street address, even if the permits are issued to different temporary food service establishments. This subsection does not apply if the permit is issued in conjunction with an activity or event described in Section 17-1.5(b)(16)(A)(i), (ii), (iii), (iv), ~~through~~ (v), or (vii) of this chapter.

(d) Expiration. A temporary food service establishment permit expires:

(1) upon expiration of a special event permit, plaza event permit, neighborhood farmers market permit, or other written authorization of the city issued in conjunction with the temporary food service establishment permit for an activity or event described in Section 17-1.5(b)(16)(A)(i), (ii), (iii), ~~through~~ (iv), or (vii) of this chapter;

(2) upon expiration of a concession agreement executed by the city in conjunction with the temporary food service establishment permit for an activity or event on property owned or operated by the city; or

(3) 14 days after the issuance of a temporary food service establishment permit for an activity or event described in Section 17- 1.5(b)(16)(A)(v) or (vi) of this chapter or upon termination of the activity or event, whichever occurs first.

(e) Food and ice preparation and service. A temporary food establishment required to be permitted under this chapter shall not:

(1) prepare, serve, sell, or distribute any food not approved in advance by the director;

(2) prepare potentially hazardous food, except that an establishment may prepare potentially hazardous food that is approved in advance by the director and does not require substantial preparation prior to consumption (including, but not limited to, pre-formed hamburgers, beef fajitas, sausages, hotdogs, and frankfurters) or may provide potentially hazardous food that is:

(A) obtained by the establishment in precooked, individual servings;

(B) stored at a temperature of:

(i) 41° F. (5° C.) or below using mechanical refrigeration (ice chests are not allowed for maintaining cold temperatures); or

(ii) 135° F. (57° C.) or above using mechanical holding units in each boot to ensure the proper temperature is maintained (canned heat or Sterno is not allowed for maintaining hot temperatures outdoors); and

packaged; (C) served to a consumer in the container in which it was originally

product is: (3) prepare, serve, sell, or distribute raw seafood or poultry, except when the

the freezer into a fryer; or (A) pre-cut, breaded, and frozen and ready to be directly placed from

(B) precooked;

(4) allow open and unprotected displays of food (when using chafing dishes, only hinged lid dishes are allowed so that at least half of the food remains covered at all times);

(5) permit consumption of ice or contact of ice with food unless the ice is:

(A) obtained from a source that is approved as safe by the director;

(B) in chipped, crushed, or cubed form;

(C) obtained in single-use plastic or wet-strength paper bags that are sealed by the manufacturer and unopened until used by the establishment; and

(D) dispensed from a container that is continuously drained into a waste receptacle approved by the director;

(6) store food in contact with water or undrained ice, except that wet storage of a beverage in a pressurized container is permitted if the water used:

(A) contains not less than 50 mg/l of available chlorine; and

(B) is maintained in a clean condition; or

(7) use water from a source that is not approved as safe by the director.

(f) Operational requirements. An establishment operating under authority of this article shall comply with all of the following requirements:

(1) Protect each food and food-contact surface from contamination, including, but not limited to, complying with the following requirements:

(A) All condiments, including, but not limited to, onions, relish, peppers, catsup, and mustard, that are available for customer self-service must be available in individual packets or from an approved dispenser.

(B) All foods, food containers, utensils, napkins, straws, and other single service articles must be stored at least six inches off the floor and adequately protected from splash, dust, insects, weather, and other contamination.

(C) When self-service ice dispensers are not used, ice scoops are required.

(D) Effective hair restraints (such as nets and caps) are required in food preparation and service areas. Food, beverage, and tobacco consumption is prohibited inside food booths, food preparation areas, and food service areas. Gum chewing is prohibited in food preparation and food service areas.

(E) Food handling personnel must wash their hands as frequently as necessary to maintain clean hands, even if disposable gloves are used. Nails must be closely trimmed and maintained. Long fingernails (natural, sculptured, etc.) or chipped nail polish is prohibited.

(F) Animals may not be located within 50 feet of a temporary food establishment or food service area.

(2) Install equipment in a way that permits cleaning and sanitizing and that is not likely to cause adulteration of food, including, but not limited to, complying with the following requirements:

(A) A container of soapy water solution must be provided for washing dirty utensils. This is for emergency use only.

(B) A sanitizer solution must be provided to sanitize clean utensils and equipment. The required residual of 50-100 ppm chlorine may be obtained by placing one tablespoon of bleach in one gallon of water for the sanitizer. Other approved sanitizers may be used. Test papers must be provided to ensure that proper sanitizer concentration is achieved. All utensils must be taken to a commissary location daily to be properly washed, rinsed, and sanitized.

(C) Wastewater (including but not limited to wastewater from handwashing, utensil washing, sinks, and steam tables) must be placed in an approved container until properly disposed. All wastewater must then be disposed of into a sanitary sewer system or in a manner that is consistent with federal, state, and local regulations and requirements relating to liquid waste disposal.

(3) Provide hot and cold running water, under pressure, in a quantity sufficient to maintain personal hygiene of employees and the cleanliness and sanitation of the establishment, except that cold running water that is not under pressure may be used when the establishment will be in operation for fewer than four consecutive calendar days.

(4) Provide a convenient handwashing facility with soap and individual paper towels for persons preparing and serving food, including, but not limited to, complying with the following requirements:

(A) The handwashing facility must have at least a 5-gallon container with a spigot that provides free flowing water.

(B) The handwashing facility must have a catch bucket to collect wastewater from hand washing.

(5) Comply with federal, state, and local regulations and requirements relating to liquid waste disposal.

(6) Use only equipment and utensils that meet the standards set forth in Article IV of this chapter, if the establishment will be in operation for four or more consecutive calendar days.

(7) Use only equipment approved by the director if potentially hazardous foods will be served by the establishment.

(8) Maintain a full-time, on-site food service manager who is currently registered under Article II of this chapter if the establishment will be in operation for four or more consecutive calendar days, except that multiple establishments under the same ownership and management that are operating at the same activity or event may use the same full-time, on-site food service manager.

(g) Design and structural requirements. The design and structural material of a facility that houses a temporary food service establishment must be approved by the director. Each facility must:

(1) be enclosed by barriers at least 32 inches high that prevent customers from entering food preparation areas;

(2) have a serving counter with a depth of at least 12 inches;

(3) have floors constructed of concrete, asphalt, tight-fitting wood, or other similar, easily cleanable material kept in good repair;

(4) if the temporary food service establishment is outdoors, have over every food preparation and serving area a fire resistant overhead covering that protects the interior of the facility from the weather; and

(5) comply with all design and structural standards that may be established by the director for temporary food service establishments.”

SECTION 4. That Subsection (i) of Section 17-10.2, “Additional Requirements,” of Article X, “Compliance and Enforcement,” of CHAPTER 17, "FOOD ESTABLISHMENTS," of the Dallas City Code, as amended, is amended to read as follows:

“(i) Temporary food service fee.

(1) Before the director issues a permit to a temporary food service establishment, the applicant for the permit shall pay the city a nonrefundable permit fee of \$190, plus \$5 for each day of operation for each facility from which the establishment is operated. A maximum nonrefundable annual fee of \$100 for each facility will be collected from concessionaires operating under contract with the city park and recreation department or the municipal produce market. A maximum nonrefundable annual fee of \$200 for each facility will be collected from concessionaires operating at a school stadium. A maximum nonrefundable annual fee of \$100 for each booth or stall at the first market location and \$50 for each booth or stall at each additional market location will be collected from a vendor operating at a neighborhood farmers market permitted under Chapter 29A of this code.

(2) Section 17-10.2(i)(1) does not apply to a temporary food service establishment that:

(A) does not serve potentially hazardous food; and

(B) the weekly gross income of which does not exceed \$100.”

SECTION 5. That the Dallas City Code, as amended, is amended by adding new CHAPTER 29A, entitled “NEIGHBORHOOD FARMERS MARKETS,” to be composed of Sections 29A-1 through 29A-15, to read as follows:

“CHAPTER 29A

NEIGHBORHOOD FARMERS MARKETS

ARTICLE I.

GENERAL PROVISIONS.

SEC. 29A-1. PURPOSE.

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

SEC. 29A-2. DEFINITIONS.

In this chapter:

(1) APPLICANT means a person who has filed a written application for a neighborhood farmers market permit.

(2) CENTRAL BUSINESS DISTRICT means the area bounded by Woodall Rogers Freeway on the north, Central Expressway and Julius Schepps Freeway on the east, Interstate Highway 30 on the south, and Interstate Highway 35E on the west.

(3) CITY means the city of Dallas, Texas.

(4) DIRECTOR means the person designated by the city manager to implement, administer, and enforce this chapter, and includes any designated representative of the director.

(5) NEIGHBORHOOD FARMERS MARKET or MARKET means a temporary, outdoor marketplace on private property:

(A) where produce, merchandise, 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;

(B) for which the estimated number of vendors and attendees for any day of the market does not exceed 1,000;

(C) that is not being operated as part of a special event permitted under Chapter 42A of this code; and

(D) that involves one or more of the following activities:

(i) Sale of merchandise, food, or beverages on private property where otherwise prohibited by ordinance.

(ii) Erection of stalls or tents on private property where otherwise prohibited by ordinance.

(iii) Placement of portable toilets on private property where otherwise prohibited by ordinance.

(iv) Placement of temporary no-parking, directional, over-size, or identification signs or banners on private property where otherwise prohibited by ordinance.

(6) NEIGHBORHOOD FARMERS MARKET PERMIT means written approval to hold a neighborhood farmers market issued by the director under this chapter.

(7) PERMIT HOLDER means a person issued a neighborhood farmers market permit.

(8) PERSON means an individual, firm, partnership, corporation, association, or other legal entity.

(9) VENDOR means a person who distributes, offers for sale, or sells produce, merchandise, food, or other products at a neighborhood farmers market.

SEC. 29A-3. GENERAL AUTHORITY AND DUTY OF DIRECTOR.

(a) The director shall implement, administer, and enforce the provisions of this chapter.

(b) The director has authority to issue a neighborhood farmers market permit that authorizes one or more of the activities described in Section 29A-2(5) when requirements of this chapter have been met.

SEC. 29A-4. CHAPTER CUMULATIVE.

(a) The provisions of this chapter are cumulative of all city ordinances. Tent permits, building permits, electrical permits, food establishment permits, alcoholic beverage permits and licenses, and all other permits and licenses required by ordinance or other law for specific activities to be conducted in conjunction with or as part of the neighborhood farmers market must be applied for separately, in accordance with the applicable ordinance or law. The director shall receive and coordinate applications for any city-issued permit or license required in addition to the neighborhood farmers market permit.

(b) Application for a neighborhood farmers market permit authorizes appropriate city departments to issue permits for the activities described in Section 29A-2(5) in locations where the activity would otherwise be prohibited by ordinance.

ARTICLE II.

NEIGHBORHOOD FARMERS MARKET PERMITS.

SEC. 29A-5. APPLICATION; ISSUANCE.

(a) A person desiring to hold a neighborhood farmers market shall apply for a neighborhood farmers market permit by filing with the director a written application upon a form provided for that purpose. Only one permit for a neighborhood farmers market will be issued to the same applicant within a calendar year, and that permit will only allow the market to be operated at the single location designated in the permit application. Each application must be accompanied by the required application fee. An application must be filed not less than 30 days before the neighborhood farmers market is to begin. The director may waive the 30-day filing requirement if the application can be processed in less than 30 days, taking into consideration the number and types of permits required to be issued in conjunction with the neighborhood farmers market.

(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 neighborhood farmers market.

(2) The street address of the proposed location of the neighborhood farmers market; the name, address, and telephone number of the property owner; and a copy of the consent required by Section 29A-10(b), if applicable.

(3) A description of the neighborhood farmers market, including a proposed schedule of the dates and hours of operation for the market (not to exceed 28 operating days in any calendar year, none of which may be consecutive days).

(4) The estimated number of vendors and attendees for each day of the market.

(5) A drawing showing the area to be used for the neighborhood farmers market, along with proposed structures, tents, fences, barricades, signs, and banners.

(6) Provisions for parking with a designation of where "No Parking" signs will be used.

(7) Details of the sale of merchandise or the sale or serving of food or alcoholic or nonalcoholic beverages at the market, including but not limited to the names of participating vendors, a description of items to be sold, and the percentages of food and nonfood items to be sold.

(8) Details of how the applicant will clean up after the neighborhood farmers market each day.

(9) Proof that the applicant possesses or is able to obtain all licenses and permits required by this code or other city ordinances or by state law for the conduct of the neighborhood farmers market.

(10) If the applicant is a corporation, copies of a current certificate of account status issued by the Texas Comptroller's Office and a current certificate of existence issued by the Texas Secretary of State's Office, or, if the corporation is not incorporated in or holding a certificate of authorization in the State of Texas, copies of similar current certificates from the state in which the corporation is incorporated.

(11) A description (including but not limited to the name, date, location, and size) of each neighborhood farmers market that the applicant conducted or sponsored, or participated in conducting or sponsoring, within the preceding two years.

(12) Any other information the director determines necessary for the administration and enforcement of this chapter.

(c) Upon receipt of the completed application, the director shall forward a copy of the application to the building official and the departments of police, fire-rescue, risk management, code compliance, and public works and transportation. The building official and each department shall review the application and return it, with any comments, to the director within 10 working days after receipt.

(d) The building official, 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 neighborhood farmers market, to be incorporated into the permit before issuance.

(e) After reviewing the application and comments, the director shall issue the neighborhood farmers market permit unless denial is required by Section 29A-12. A neighborhood farmers market permit expires January 1 of each year and may be renewed by applying in accordance with this section.

SEC. 29A-6. FEES.

(a) An applicant for a neighborhood farmers market permit shall pay the following fees to conduct the market:

(1) A nonrefundable application fee of:

(A) \$200 for a neighborhood farmers market in which the estimated number of vendors does not exceed 25; or

(B) \$300 for a neighborhood farmers market in which the estimated number of vendors is more than 25 but does not exceed 50.

(2) All fees for permits and licenses required by other city ordinances to conduct specific activities in conjunction with or as part of the neighborhood farmers market.

SEC. 29A-7. INDEMNIFICATION.

An applicant for a neighborhood farmers market permit must execute a written agreement to indemnify the city and its officers and employees against all claims of injury or damage to persons or property, whether public or private, arising out of the conduct of the market.

SEC. 29A-8. DENIAL OR REVOCATION.

(a) The director shall deny a neighborhood farmers market permit if:

(1) a neighborhood farmers market permit has been previously granted in the calendar year to another neighborhood farmers 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 neighborhood farmers 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 neighborhood farmers market;

(B) maintenance of public order in and around the neighborhood farmers 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 neighborhood farmers 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 neighborhood farmers market permit or fails to properly complete an application for a neighborhood farmers 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 neighborhood farmers market;

(7) the applicant has had a neighborhood farmers market permit revoked within the preceding 14 months;

(8) the applicant or a vendor at the applicant's market has committed, within the preceding 14 months, two or more violations of a provision of a neighborhood farmers market permit or this chapter;

(9) the applicant fails to pay any outstanding fees assessed under Section 29A-6 of this chapter for the proposed neighborhood farmers market or for a past neighborhood farmers market;

(10) the applicant has conducted or sponsored another neighborhood farmers market during the same calendar year in which the proposed neighborhood farmers market is to be held;

(11) a neighborhood farmers market has been conducted at the location of the proposed neighborhood farmers market on at least 28 days during the same calendar year in which the proposed market is to be conducted;

(12) the chief of the police department, the chief of the fire-rescue department, or the director determines that the neighborhood farmers market would pose a serious threat to the public health, safety, or welfare;

(13) the applicant or any other person responsible for the conduct or sponsorship of the neighborhood farmers market is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or other person;

(14) the applicant has a history of conducting or sponsoring neighborhood farmers market in a disorderly, unsafe, unsanitary, or fiscally irresponsible manner; or

(15) the applicant, if it is a corporation, fails to provide copies of a current certificate of account status and current certificate of existence as required by Section 29A-5(b)(10).

(b) The director shall revoke a neighborhood farmers market permit if:

(1) the permit holder failed to comply with or the neighborhood farmers market is in violation of any provision of the neighborhood farmers 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 neighborhood farmers market permit or failed to properly complete an application for a neighborhood farmers market permit;

(3) the chief of the police department, the chief of the fire-rescue department, or the director determines that the neighborhood farmers market poses a serious threat to the public health, safety, or welfare;

(4) the permit holder failed to pay any outstanding fees assessed under Section 29A-6 of this chapter for the proposed neighborhood farmers market or for a past neighborhood farmers market;

(5) the permit holder or any other person responsible for the conduct or sponsorship of the neighborhood farmers 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, if it is a corporation, failed to provide copies of a current certificate of account status and current certificate of existence as required by Section 29A-5(b)(10).

SEC. 29A-9. APPEAL FROM DENIAL OR REVOCATION OF A NEIGHBORHOOD FARMERS MARKET PERMIT.

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 a permit and license appeal board in accordance with Section 2-96 of this code.

ARTICLE III.

MISCELLANEOUS PROVISIONS.

SEC. 29A-10. LOCATION OF A NEIGHBORHOOD FARMERS MARKET.

(a) A neighborhood farmers market may not be conducted:

(1) in the central business district;

(2) in a single family, duplex, or townhouse zoning district as defined in the Dallas Development Code;

(3) within one mile of another neighborhood farmers market permitted under this chapter that has the same or overlapping operating dates and times;

(4) at any location other than the one listed in the permit application; or

(5) at any location where one or more neighborhood farmers markets have already been conducted a total of 28 days during the particular calendar year.

(b) If the permit holder does not own the property on which the neighborhood farmers market will be conducted, the permit holder shall obtain the written consent of the property owner to conduct the market on the property. The permit holder shall present the written consent to the director or any peace officer upon request.

SEC. 29A-11. OPERATION OF A NEIGHBORHOOD FARMERS MARKET.

(a) A neighborhood farmers market may not be operated more than 28 days in a calendar year and may not be operated on consecutive days.

(b) A neighborhood farmers market may only be operated between the hours of 8 a.m. and 7 p.m. on any day of the week.

(c) The neighborhood farmers 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 neighborhood farmers market. An amendment request must be received by the director at least 10 days before implementing any changes.

(d) No more than 50 vendors may participate in a neighborhood farmers market. Each stall area used by a vendor may not exceed 10 feet by 10 feet.

(e) When the main use of the property is open for business, not more than 25 percent of the total area of the parking lot for the property may be used for a neighborhood farmers market.

(f) All litter, tents, stalls, food, merchandise, and other evidence of the neighborhood farmers market must be removed from the premises at the end of each market day.

SEC. 29A-12. PRODUCTS AT A NEIGHBORHOOD FARMERS MARKET.

(a) Products that may be sold at a neighborhood farmers market include, but are not limited to the following:

(1) Fruits, vegetables, honey, eggs, nuts, herbs, and mushrooms.

(2) Meats.

(3) Dairy products.

(4) Prepared foods, including but not limited to baked goods, packaged foods, and oils.

(5) Arts and crafts, including but not limited to jewelry, candles, natural skin care products, soaps, art, knitting, quilts, and pottery.

(6) Garden items, including but not limited to plants, flowers, and soil.

(b) At least one half of the vendors participating in a neighborhood farmers market must sell produce or other food items.

(c) All products distributed, offered for sale, or sold at a neighborhood farmers market must have been raised, grown, made, crafted, processed, or produced by the vendor in a Texas county completely or partially located within a 150-mile radius of Dallas County, except that the 150-mile radius requirement does not apply to produce or other food items determined by the director to be unavailable from vendors in the radius area. No products may be offered for resale.

(d) Live animals may not be distributed, offered for sale, or sold at a neighborhood farmers market.

SEC. 29A-13. VENDOR'S STATEMENT.

(a) Each calendar year before vending at a neighborhood farmers market, a vendor shall sign and provide to the permit holder a written statement that:

(1) all products to be distributed, offered for sale, or sold at the neighborhood farmers market by the vendor have been raised, grown, made, crafted, processed, or produced by the vendor in compliance with all applicable federal, state, and local laws and in a Texas county completely or partially located within a 150-mile radius of Dallas County (or in an area from which the director, pursuant to Section 29A-12(c), allows certain produce or other food items to be distributed, offered for sale, or sold at the market because of the unavailability of those items from vendors in the radius area); and

(2) no product is being offered for resale.

(b) The permit holder shall maintain a vendor statement for each vendor operating at the neighborhood farmers market and shall present the vendors' statements to the director or any peace officer upon request.

ARTICLE IV.

ENFORCEMENT.

SEC. 29A-14. OFFENSES.

(a) A person commits an offense if he commences or conducts a neighborhood farmers market:

(1) without a neighborhood farmers market permit; or

(2) in violation of any provision of a neighborhood farmers market permit, this chapter, or any other city ordinance or applicable law.

(b) It is a defense to prosecution under this section that the neighborhood farmers market was being lawfully conducted pursuant to a valid special events permit issued under Chapter 42A of this code.

(c) The culpable mental state required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code.

SEC. 29A-15. PENALTY.

(a) A person who violates a provision of this chapter or a requirement of a neighborhood farmers market permit is guilty of a separate offense for each day or part of a day during which the violation is committed or continued.

(b) Each offense is punishable by a fine not to exceed:

(1) \$2,000 for a violation of a provision of this chapter or a requirement of a neighborhood farmers market permit governing fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(2) \$500 for all other violations of this chapter or requirements of a neighborhood farmers market permit.”

SECTION 6. That Section 42A-5, “Exemptions,” of Article I, “General Provisions,” of CHAPTER 42A, “SPECIAL EVENTS,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 42A-5. EXEMPTIONS.

The provisions of this chapter do not apply to:

- (1) a special event conducted entirely on:
 - (A) property under the control of the park and recreation board;
 - (B) the "convention center" or "reunion arena" as defined in Section 43-127 of this code; or
 - (C) the "municipal produce market" as defined in Section 29-3 of this code;
- (2) a parade, as defined in Section 28-186(4) of this code, for which a permit has been issued under Article XVI of Chapter 28 of this code, [;] except that a special event permit must be obtained for any activity not covered by the parade permit that is conducted in conjunction with the parade and that comes within the definition of a special event; [ø]
- (3) a demonstration at a fixed location other than the roadway of a street; or
- (4) a neighborhood farmers market, as defined in Section 29A-2(5) of this code, for which a permit has been issued under Chapter 29A of this code, except that a special event permit must be obtained if the market is being conducted in conjunction with other activities for which a special event permit is required by or has been issued under this chapter.”

SECTION 7. That, unless specifically provided otherwise by this ordinance or by state law, a person violating a provision of this ordinance governing fire safety, zoning, or public health and sanitation, including dumping of refuse, is, upon conviction, punishable by a fine not to exceed \$2,000 and that a person violating any other provision of this ordinance is, upon conviction, punishable by a fine not to exceed \$500.

SECTION 8. That CHAPTERS 17 and 42A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance. Any proceeding, civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 9. 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 10. That this ordinance will take effect on January 1, 2011, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By _____
Assistant City Attorney

Passed _____

LC/DCC/00489A