

ORDINANCE NO. 202306-04-113

AN ORDINANCE OF THE CITY OF NEW FAIRVIEW, TEXAS AMENDING CHAPTER 5, BUSINESS REGULATIONS BY ADDING ARTICLE 5.08 "FARMERS MARKET," SECTIONS 5.08.001-5.008.012, ESTABLISHING CERTAIN REGULATIONS RELATING TO OPERATION OF A FARMERS MARKET ON CITY PROPERTY; PROVIDING FOR ISSUANCE OF A FARMERS MARKET VENDOR PERMIT; PROVIDING FOR PERMIT FEES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE OF \$500.00 PER OFFENSE; PROVIDING FOR AN EFFECTIVE DATE, AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of New Fairview is a general law municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas; and

WHEREAS, the City possesses all of the rights, powers, and authorities possessed by all general law municipalities, including the authority to regulate land uses under Chapter 211 of the Texas Local Government Code, as amended; and

WHEREAS, the City Council desires to provide business regulations governing the conduct of Farmers Markets in those districts where such use is allowed; and

WHEREAS, the City Council further desires to establish a Farmers Market at City Hall, to operate seasonally and finds it to be in the public interest to amend the Code of Ordinances to establish a Farmers Market.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, THAT:

SECTION 1: All of the above findings are hereby found to be true and correct and are hereby incorporated into the body of the Ordinance as if fully set forth herein.

SECTION 2: 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 New Fairview, Texas, and that sections of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 3: 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 New Fairview, which shall be a maximum fine of \$500.00, and each day a violation exists shall be a separate offense.

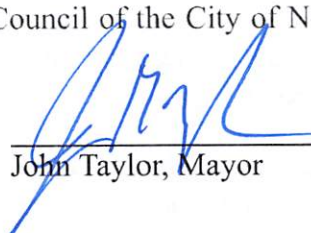
SECTION 4: That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5: This Ordinance (which includes Exhibit A, attached, and incorporated within for all purposes) shall be cumulative of all other ordinances of the City, and shall not repeal any of the provisions of those other ordinances or in those instances where the provisions of other ordinances are in direct conflict with the provisions of this Ordinance.

SECTION 6: Should any section, subsection, sentence, clause, or phrase of this Ordinance (which includes Exhibit A, attached hereto, and is incorporated within) be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance (which includes Exhibit A, attached hereto, and is incorporated within) shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance (which includes Exhibit A, attached hereto, and is incorporated within), and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 7: This Ordinance shall become and be effective from and after its passage and publication as required by law.

PASSED AND APPROVED by the City Council of the City of New Fairview, Texas on this the 20th day of June 2023.



John Taylor, Mayor

ATTEST:

Brooke Boller, City Secretary

EXHIBIT "A"

From and after the effective date of this Ordinance, the New Fairview Municipal Code of Ordinances Chapter 5, Business Regulations, is amended by adding Article 5.08, titled "Farmers Market" to read as follows:

ARTICLE 5.08. FARMERS MARKET

Sec. 5.08.001. Definitions

For purposes of this Article, the following words and phrases shall have the following meanings:

Farmers Market means a designated location used for a recurring event at which a majority of the vendors are Farmers or other food producers who sell food directly to consumers, including at least two vendors who meet the definition of "Farmer" as defined in this section and may include vendors who meet the definition of "food producer," also as defined in this section. In addition, a Farmers Market may include vendors who are not "Farmers" or "food producers," provided that "Farmers" and "food producers" constitute the majority of vendors who participate in the Market throughout the year. Vendors may also sell crafts, handmade goods, and processed and/or pre-packaged food meant to be consumed off-premises. A Farmers Market is not a food establishment and operates on a seasonal basis.

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.

Farmer means a person or entity that produces agricultural products including, but not limited to, fruits, vegetables, fungi, grains, fiber, honey, dairy products, meat, poultry, or eggs, by practice of the agricultural arts upon land that the person or entity owns, rents, leases, or to which the person or entity otherwise has access.

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

Farmers Market Vendor means a person who:

- 1) Offers or sells food typically known as "farm grown", "farm originating", or "farm obtained", such as whole produce, plants, nuts, certain meats, honey, egg, and pasteurized dairy products;
- 2) Offers or sells crafts typically known as "handmade" and originating from a trade or occupation of the sort requiring skill and training, particularly manual skill combined with a knowledge of the principles of the art;

- 3) Offers or sells secondhand goods, or resale goods;
- 4) Offers or sells prepared food for off-premises consumption in compliance with all applicable federal, state, and local laws and regulations;
- 5) Conducts a performance at no charge to the general public, including performing arts such as dance, music, opera, theater and musical theater, magic, illusion, mime, spoken word, puppetry, and circus arts; or
- 6) Provides free information, products, or services from an entity that has received a determination letter from the Internal Revenue Service stating that the organization has been determined to be an exempt organization pursuant to 26 U.S.C. § 501(c)(3) (i.e., §501(c)(3) of the Internal Revenue Code of 1984), which determination letter has not been revoked.

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 New Fairview.

Food Producer means a person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person is selling. The term does not include a person who only packaged or repackaged a food product.

Permittee means a person issued a Farmers Market permit.

Potable water means drinking water.

Public restroom means a restroom facility which includes multiple toilets and sinks for handwashing, which are open to and available to the public. Does not include portable restroom facilities, except such as may otherwise be permissible on City-owned property.

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.

Sec. 5.08.002 Farmers Market permit required.

It shall be unlawful to operate a Farmers Market:

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

Sec. 5.08.003 Location of Farmers Markets.

A Farmers Market must be located in a zoning classification that allows Farmers Markets as a permitted use.

Sec. 5.08.004 Operation of a Farmers Market.

- (a) A Farmers Market shall not be operated for 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.
- (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 Farmers 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 Farmers 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, unless held on City -owned property.
- (g) A Farmers Market may display up to two temporary signs on site with a maximum area of thirty-two square feet (32 ft) each. Four additional temporary signs, no larger than two square feet each (2 ft) 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 (20 ft). No sign shall be located in the public right of way, unless so placed by the City.
- (h) All retail activity and all retail products must be confined to the allocated retail vending space

(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 County health inspectors including providing corrections for identified violations.

(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 the Farmers Market operations and may remain on site for up to two hours after the conclusion of Farmers Market operations.

(k) Each vendor at a Farmers 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 5.08.005, 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 5.08.005 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. 5.08. 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.

(b) A Farmers Market permit does not authorize on-site food preparation at a Farmers Market. Appropriate permits from Wise County 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 Wise County.
2. A vendor with the appropriate permits to prepare food on site as a part of the Farmers Market operation will count as a nonfood 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 any County open air vending, food establishment, or mobile food vending regulations in addition to the requirements listed in this article.

Sec. 5.08.005 Permittee's application and review.

(a) All applicants for a Farmers Market permit shall apply for the permit from the City Clerk. 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 City Clerk 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 City Clerk, unless denial is required by **Section 5.08. 010**.

Sec. 5.08.006 Length of permit; renewal.

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 5.08.005**.

Sec. 5.08.007 Fees.

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

Sec. 5.08.008 Permit Requirements for Farmers Market located on City-owned property.

(a) If a Farmers Market is to be located on City-owned property and operated by the City or its designee, the applicant must obtain and retain a minimum of \$500,000 general liability and property damage insurance coverage, and one million dollars (\$1,000,000.00) per accident or injury incurred

(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.

- (c) No person shall be allowed to sell food, crafts, or goods until first having received a permit issued pursuant to this Section.
- (d) Permits issued pursuant to this Section may only be issued to a person or entity operating as a Farmers Market vendor at the Farmers Market.
- (e) Application for a New Fairview Farmers Market permit shall be submitted on a form provided by the City containing such information as required by the City Administrator, but which shall contain at least the following:
 - (1) The name, address, and telephone number of the Farmers Market Vendor. If the Farmers Market Vendor is a business entity and not an individual person, the name of the entity and the responsible person authorized to obligate the entity to contractual agreements;
 - (2) Dates on which the Farmers Market Vendor desires to conduct business at the City-owned and operated Farmers Market;
 - (3) The permit fee in the amount established by the City Council; and
 - (4) A certificate of insurance showing the applicant maintains commercial general liability insurance written by a carrier licensed in the State of Texas in the amount of not less than five hundred thousand dollars (\$500,000.00) per person, and one million dollars (\$1,000,000.00) per accident or injury incurred.
- (f) In addition, every vendor must sign and comply with the New Fairview Farmers Market Code of Conduct. Failure to sign and/or comply with the Code of Conduct could result in the revocation of the permit and the ability to participate in the Farmers Market.
- (g) The City Administrator shall be authorized to determine the completeness of each Farmers Market vendor permit application under this section and to issue a permit based on said application.
- (h) The City Administrator shall be authorized to revoke a Farmers Market vendor permit upon a determination that the Farmers Market vendor has failed to comply with the provisions of the permit.

Sec. 5.08.009 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. 5.08.010 Revocation, suspension, or denial of 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;
- (4) The Mayor 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. 5.08.011 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.

Sec. 5.08.012 Permit Fee.

The City Council may from time to time establish the permit fee(s) to be charged to vendors to operate a Farmers Markets, or any Farmers Market located on city property, which fee(s) shall be included in the City's Master Fee Schedule. Any permit fee required by this Section shall be non-refundable once paid.

The permit fee for a Farmers Market located on city property may be waived to an entity providing free information, products, or services which has received a determination letter from the Internal Revenue Service stating that the organization has been determined to be an exempt organization pursuant to 26 U.S.C. § 501(c)(3) (i.e. §501(c)(3) of the Internal Revenue Code of 1984), which determination letter has not been revoked.