



Neighborhood Enhancement

ENVIRONMENTAL HEALTH

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March 26, 2019

TO: Mayor and City Council

RE: Proposed COSM Food Ordinance

Background

The current City of San Marcos (COSM) Food Ordinance, Chapter 18, adopted the 25 Texas Administrative Code, Chapter 229, known as the 2006 Texas Food Establishment Rules (TFER).

In October 2015, the State of Texas repealed the 2006 TFER and replaced it with the 25 Texas Administrative Code, Chapter 228 which is the current version of the Texas Food Establishment Rules referred to as the 2015 TFER. The 2015 TFER is the current state law that all food establishments must comply with in order to operate in the State of Texas.

Staff recommends updating the current COSM Food Ordinance to reflect current state law by incorporating the 2015 TFER with amendments to address the local needs of our community.

Dating back to December 2017, staff conducted numerous stakeholder meetings and public outreach initiatives. A health and community committee was formed with representatives from fixed, mobile, and temporary food establishments. The committee identified local concerns to address when updating the COSM Food Ordinance. A presentation at the August 21, 2018 City Council work session briefed the Council on the progress being made toward updating the COSM Food Ordinance.

A new Environmental Health Manager was hired in January 2019. Recent initiatives to finalize the draft COSM Food Ordinance and improve the customer experience include:

- Streamlining the draft COSM Food Ordinance from 37 pages to 16 pages
- Revising and simplifying food permit application forms, including reducing the mobile food unit permit application form from 12 pages to 2 pages, while still protecting food safety
- Providing variances allowed under state law to provide flexible permitting and reduce the frequency of application submittals, reviews, and approvals
- Developing online food permit applications, renewals, and payments with the assistance of COSM Permit Manager and third-party vendor
- Began utilizing iPads in the field to better record and manage food inspections
- Began testing and implementation of the cloud-based food inspection field reporting software
- Created an e-mail list of over 500 stakeholders to solicit comments on the COSM Food Ordinance draft and to notify of upcoming Council work session

- Met with representatives from the farmers' market association and downtown association to discuss their specific concerns and
- Published the draft of the COSM Food Ordinance to the City's website with a link to submit comments

Draft Ordinance

In addition to incorporating the 2015 TFER by reference, the proposed ordinance adds local amendments to address the specific needs of the community. Highlights of the draft ordinance are:

- Includes language which will adopt future changes in state law by reference so COSM can stay current with the latest version of the Texas Food Establishment Rules
- Provides local changes, clarifications, and amendments to address concerns raised by stakeholders, as well as provide for a clear and concise food ordinance
- Provides for permit flexibility and a common-sense approach to permitting
- Creates a seasonal food permit option for recurring events
- Increases the time allowed for a food establishment employee to obtain a food handler card from 1st day of employment to 45th day to accommodate industry hiring practices
- Establishes a farmers' market ordinance section
- Clarifies that farmers' market vendors that do not sell a Time/Temperature Control for Safety (TCS) food are not required to obtain a food permit
- Waives fees and allows annual permitting for non-profit organizations, reducing the frequency of obtaining permits from as many as 26 times per year to 1 time per year in many cases
- Allows mobile food units to use an electrical connection in lieu of an onboard generator, reducing noise and environmental pollution, while providing a continual, non-disrupted electrical supply for refrigerators and hot holding units
- Requires mobile food units that use flammable fuels, such as propane, for cooking to meet all fire and explosion safety standards established by the manufacturer and local fire codes

Staff Recommendation

Staff recommends adopting the new COSM Food Ordinance, which incorporates the current state food laws and creates local amendments to address the specific needs of the community.

During stakeholder meetings, representatives with the San Marcos Farmers' Market and Downtown Association (DTA) expressed concerns regarding permits and fees. Each stakeholder has submitted letters which have been included in the Council packets for consideration.

Farmers' Market

Staff recommends the \$10.00 permit fee per vendor as requested by the San Marcos Farmers' Market. Only farmers' market vendors who sell potentially hazardous foods (e.g., cut watermelon, cut cantaloupes, raw eggs, and meat) are required to obtain a local health permit. Of those, the food inspections at the market are quick and usually take only 5-10 minutes. Additionally, Environmental Health has not had any complaints on the operations of the farmers' market. Please note that most farmers' market vendors are exempted from permitting by state law.

Downtown Association (DTA)

DTA was initially offered waived fees and annual permitting if the vendors would apply for the permits through DTA, which is a non-profit association. The DTA did not want to assume liability on behalf of

individual businesses participating in the 3rd Thursday wine walk events and elected not to obtain permits in this manner. Staff has since met with Ms. Baggett of DTA numerous times to find a mutually acceptable arrangement for permitting. All options offered are included in the ARF in the Word document titled "Options for DTA 031119".

Ms. Baggett submitted a letter dated March 15, 2019, which is included in this ARF, and titled "Downtown Association March 2019". She is requesting individual permits for downtown businesses at a reduced rate of \$50 annually, with seven conditions to meet code and ensure food safety. The seven conditions were mutually agreed upon in the last meeting between staff and Ms. Baggett. However, in that same meeting, staff advised Ms. Baggett that fees are determined by the City Council and that staff would forward her request for consideration. Please note that the current fee for a temporary event is \$50.75 per event and the current fee for an annual food permit is \$304.50.

In the proposed ordinance there is a new seasonal permit, valid for up to 270 days with conditions, available to all business owners with a proposed fee of \$101.50. Staff is in full support of the seasonal permit option and feel that the seven conditions are adequate and would fulfill the needs for the permit.

Staff does not recommend the reduction in fees proposed in the DTA letter based on the following:

1. Staff is concerned with creating disparity amongst other local businesses not in the DTA who would want to convey food to the public and receive the same permit and reduced fees;
2. The downtown area is defined in different ways in city codes and maps. There is no clear determination of who this would include, or if the intent is only to include businesses that are members of the Downtown Association.
3. If all businesses in San Marcos were offered the same permit and reduced fees, the increase in requests for these permits could overcome our current system and staff. The revenue generated would not cover the cost of permitting and inspections.
4. The reduction in fee would be a benefit to an independent business where the benefit is primarily for the individual business and would not be in accordance with the proposed fee policy.
5. Unlike fixed food establishments and mobile food units, non-food related businesses are not typically designed for the preparation or conveyance of food to the public and often lack the safety features required of these establishments.

Staff recommend resolving this issue with seasonal permits, with the seven stated conditions, in accordance with state laws, at the seasonal permit rate that is proposed. This option is fair and equitable with what would be offered to other businesses in San Marcos.