

12/2/14

ORDINANCE NO. 29595

An ordinance amending Chapter 17, "Food Establishments," of the Dallas City Code by amending Section 17-1.6, "Defenses For Certain Types of Activities,"; revising requirements for persons serving or distributing food to the homeless; 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, as amended, is amended to read as follows:

**"SEC. 17-1.6. DEFENSES FOR CERTAIN TYPES OF ACTIVITIES.**

(a) It is a defense to prosecution under this chapter~~[-except as provided in Section 17-1.6(b);]~~ that, at the time of the offense, the person 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;

(4) conducting the retail sale or distribution of non-potentially hazardous 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) ~~[a church, civic, or other charitable organization]~~ serving or distributing food, without charge, to homeless individuals on public or private property, provided that the person [organization]:

(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 at [www.dallascityhall.com/code\\_compliance/index.html](http://www.dallascityhall.com/code_compliance/index.html)) containing the following information ~~[was conducting that activity at a location approved by the director after considering criteria including, but not limited to, the availability of]~~:

(i) the name of the individual or organization that was or will be serving or distributing food to the homeless ~~[portable toilets or other restroom facilities for the homeless and for persons preparing and serving food to the homeless];~~

(ii) the date or dates when food was or will be served or distributed to the homeless; ~~[equipment and procedures at the location for the lawful disposal of waste and wastewater; and]~~

(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 ~~[equipment and procedures at the location for hand washing];~~

(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 ~~[had written consent from the property owner to conduct that activity on the property];~~

(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 [was currently registered with the director (on a form provided by the director that is required to be completed on an annual basis) to conduct that activity on the property];

(D) ~~did not serve or distribute [conducted the activity in accordance with all terms and conditions of the registration as required by the director, including, but not limited to, the following:~~

(i) ~~at least one person who has attended a city-sponsored food safety training class must be present at all times when food is being served to the homeless;~~

(ii) ~~no] potentially hazardous food [may be served] to the homeless, unless the food has been stored at a temperature of:~~

(i) ~~[(aa)] 41° F. (5° C.) or below; or~~

(ii) ~~[(bb)] 135° F. (57° C.) or above;~~

(E) ~~[(iii) feed must be] transported the food in a clean conveyance and, if the food was a potentially hazardous food as that phrase is defined in the Texas Food Establishment Rules, as amended, 25 TAC § 229.161 et seq., [must be] served or distributed it within four hours after preparation;~~

(F) ~~[(iv)] used one of the following methods of sanitizing hands before preparing, serving, or distributing food for the homeless [where non-prepackaged food is served to the homeless, a convenient handwashing facility must be provided for persons preparing and serving the food, and the handwashing facility must include at a minimum]:~~

(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

~~[(v) wastewater generated at the feeding site (including but not limited to wastewater from handwashing, utensil washing, sinks, and steam tables) must be placed in an approved container until properly 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; and~~

~~(vi) the feeding site must be left in a clean, waste-free condition; and~~

~~(E) had met annual training requirements for safe food handling as required by the director].~~

(b) Compliance with the requirements of Section 17-1.6(a)(5) only serves as a defense to prosecution for a violation of Chapter 17 of this code and is not a defense to prosecution for any violation that is committed under any other chapter of this code, any other city ordinance, or any state or federal law [A person commits an offense if he violates, or fails to comply with, a term or condition of a homeless feeding registration issued pursuant to Section 17-1.6(a)(5)]."

SECTION 2. That Chapter 17 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 3. 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 4. 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. City staff is directed not to publish this ordinance unless and until an agreed final judgment in the case styled *Big Hart Ministries Association Inc., et al. v. City of Dallas*, Case No. 3:07-CV-00216-P, in the form of the agreed final judgment submitted to the United States District Court for the Northern District of Texas by the City, is entered, and if that

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agreed final judgment is not entered in the case within 180 days of the date of passage of this ordinance, this ordinance shall be rendered void.

APPROVED AS TO FORM:

WARREN M.S. ERNST, City Attorney

By Eileen Ernst  
Assistant City Attorney

Passed DEC 10 2014

**PROOF OF PUBLICATION – LEGAL ADVERTISING**

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

**DATE ADOPTED BY CITY COUNCIL** DEC 10 2014

**ORDINANCE NUMBER** 29595

**DATE PUBLISHED** DEC 13 2014

**ATTESTED BY:**