

City of Houston, Texas, Ordinance No. 2012-_____

AN ORDINANCE AMENDING CHAPTER 20 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO FEEDING THOSE IN NEED; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston appreciates those who take part in the charitable act of providing food for those in need and finds and determines that such activities are of general benefit to the health, safety, and welfare of all citizens; and

WHEREAS, to ensure the safety of the food providers, the food, and the recipients of the food, it is necessary to amend Chapter 20 of the Code of Ordinances to include a process of training and no-fee registration for those individuals who provide such food; and

WHEREAS, the City Council finds and determines that the use of selected park properties with suitable facilities, as designated by the director of parks and recreation, by properly trained and registered providers of food for the needy is consistent with park purposes for such selected parks; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Chapter 20 of the Code of Ordinances, Houston, Texas, is hereby amended by adding new Sections 20-5 and 20-6 that read as follows:

"Sec. 20-5. Charitable feeding activities.

(a) Notwithstanding any provision of this article to the contrary, a religious, community-based, or other charitable organization or individual desiring to conduct feeding activities without charge, payment or other compensation, to benefit those in need at a location off-site from organization property, shall complete and submit to the health officer a feeding registration form and shall otherwise comply with the requirements of this section. The registration shall be on a form prescribed by the health officer, shall include the name, address, contact information (including telephone number, FAX

number, email address, and name or names of contact person(s)) and any other information deemed necessary by the health officer to assure compliance with this section. Any changes to the information on the registration form shall be submitted to the health officer within five calendar days of when any such changes occur. The registration form shall be approved or rejected by the health officer on the basis of the completeness of the information submitted by the applicant. The registration must be completed and approved by the health officer before feeding activities may be conducted. There shall be no fee charged for the registration. A valid registration issued under this section shall be presented to the health officer or other authorized agents of the city upon request. No registration form shall be required if the feeding activity is within the scope of and is performed by the holder of a current, valid food dealer's permit, mobile food service medallion or temporary food dealer's permit issued by the health officer pursuant to section 20-36 or 20-37 of this Code, and is in full compliance with article II of this chapter. This feeding registration (also referred to as a 'charitable feeding registration') shall not replace the requirement for a food dealer's permit for those organizations routinely conducting on-premise feeding activities. A registration issued under this subsection shall remain in effect as long as the registrant continues to conduct feeding activities in accordance with the requirements of this section, unless the feeding registration is suspended or revoked in accordance with subsection (f) or (g) of this section. A valid registration issued according to this subsection remains the property of the department and may be required to be surrendered to the health officer to be voided upon revocation or when it has been used in an unlawful manner.

(b) Following registration and other compliance as provided herein, a religious, civic, or other charitable organization or individual seeking to serve or distribute food, without charge, payment or other compensation, to individuals at locations off-site from organization property ('charitable feeding activity') may do so, provided that the organization:

- (1) Conducts the charitable feeding activity at a location approved by the health officer after considering criteria including, but not limited to:
 - a. The availability of equipment, personnel, and facilities at the feeding location as well as adequate procedures in place for the lawful disposal of waste and wastewater;

- b. The availability of equipment and procedures at the feeding location for hand washing; and
 - c. Evidence establishing that the feeding location is consistent with the need to provide such service in and meets the needs of the adjacent community.
- (2) Has written consent from the property owner to conduct the charitable feeding activity on the property;
- (3) Is currently registered with the health officer pursuant to this section to conduct such activity on the property;
- (4) Conducts the charitable feeding activity in accordance with all terms and conditions as required by the health officer, including, but not limited to, the following:
 - a. At least one person who has attended a city-sponsored or approved food safety training class and has received an appropriate charitable feeding certification (also referred to as a 'certification') accordingly, shall be present at all times when food is being prepared and served. A person in possession of a valid food service manager's certification issued under section 20-53 of this Code shall be deemed to have met this requirement. No fee shall be charged to a person attending any city-sponsored food safety training class for the specific purpose of obtaining a charitable feeding certification issued by the health officer under this section. A certification obtained in this manner shall be marked as only for charitable feeding in accordance with this section and shall be valid for a period of five years. A valid food service manager's certification or charitable feeding certification under this section shall be presented to the health officer or other agents of the city upon request. A valid charitable feeding certification issued according to this subsection (b)(4)a remains the property of the department and may be required to be surrendered to the health officer to be voided upon revocation or when it has been used in an unlawful manner.

- b. Food shall not be stored or prepared in a private residence.
- c. All food served must meet the food protection, storage, and sanitation requirements specified in sections 20-21.1 through 20-21.14 of this Code determined by the health officer as applicable to the charitable feeding activity.
- d. Food shall be transported to the feeding location in a clean conveyance and shall be served within four hours after preparation or within four hours after removal from temperature control.
- e. Food not served within four hours after preparation or within four hours of removal from temperature control shall be discarded.
- f. Where non-packaged or non-wrapped food is served, a convenient hand-washing facility shall be provided for persons preparing and serving the food. The hand-washing facility shall include at a minimum:
 - [1] A five-gallon or greater covered insulated container with a spigot that provides free-flowing potable warm water and a catch bucket to collect wastewater from hand-washing; and
 - [2] Soap and individual paper towels.
- g. Except when washing fruits and vegetables as specified under section 20-21.4(b) of this Code, agents or employees of a registered religious, civic, or other charitable organization or individual may not contact exposed, ready-to-eat foods with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment to handle such ready-to-eat foods. Bare hand contact with other than ready-to-eat foods shall be minimized whenever possible.

- h. Wastewater generated at the feeding location, including but not limited to wastewater from hand-washing, utensil washing, sinks, and other equipment, shall be placed in an approved container until properly disposed of into a sanitary sewer system or disposed of in another manner that is consistent with federal, state, and local regulations and requirements relating to liquid waste disposal.
- i. The feeding location shall be left in a clean, waste-free, litter-free condition.

(c) Prior to approval of an application for registration under subsection (a) of this section, the health officer shall inspect the proposed locations to determine compliance with the provisions of this section. No additional approval inspections will be required if an organization or individual registered under this section is issued a permit pursuant to section 20-6(a) and the park has been approved by the director of parks for charitable feeding activities and the registration holder is in compliance with this section.

(d) If the health officer denies an application under subsection (a) or subsection (b) (4) (a) of this section or denies approval of a proposed feeding location, the director shall provide the applicant a written notice of the reasons for denial. The applicant may request a hearing regarding the application by submitting to the director a written request for hearing that is received in the director's office within 15 days following the date the notice of denial is mailed to the applicant. If an appeal is timely filed, the director shall refer the matter to a hearing officer appointed by the director for a hearing with respect to whether the application meets the criteria of section 20-5 of this Code. The hearing officer shall promulgate rules for hearings, including provisions for notice to the applicant of the date, time, and place of the hearing. The hearing officer shall conduct a hearing and shall make a determination whether the application for registration, certification, or approval of a proposed location should be granted in accordance with this section.

(e) In making a determination regarding the registration, certification, or approval of a location, the hearing officer shall consider whether the location complies with the requirements of this section. If the application or location is approved by the hearing officer, the director shall issue the registration, certification, or location approval to the applicant. If the application is denied by the hearing officer, the applicant shall be provided a

written notice of the reasons for denial. There shall be no appeal from the denial of an application pursuant to the hearing officer's findings; the hearing officer's determination shall be final.

(f) The health officer may suspend a registration issued under subsection (a) of this section, or the approval of a feeding location, or a certification issued under subsection (b)(4)a of this section, for non-compliance with the requirements of this section or if the charitable feeding activity constitutes a substantial hazard to public health, with notice as is reasonable under the circumstances. Suspension is immediate when a substantial hazard to public health exists; otherwise suspension is effective upon service of notice as provided herein. Where a feeding registration, feeding certification, or approved feeding location is suspended, charitable feeding activity shall immediately cease.

- (1) Whenever a feeding registration, approved location, or feeding certification is suspended, written notice shall be given to the registration holder or feeding certification holder. The notice shall set forth:
 - a. The specific conditions regarding the feeding certification, feeding registration, or approved feeding location that are in violation of this section or that constitute a substantial hazard to public health;
 - b. That a hearing will be held before a hearing officer;
 - c. The date, time and place of the hearing;
 - d. That the feeding registration holder or feeding certification holder may appear in person and/or be represented by counsel, may present testimony and may cross-examine all witnesses;
- (2) The hearing shall be held not later than ten days after the date the charitable feeding registration, approved location, or charitable certification is suspended.
- (3) Whenever a feeding registration or feeding certification is suspended, it shall be surrendered to the health officer upon service of the notice described in subsection (f)(1) of this section.

- (4) All hearings shall be conducted by a person designated by the director of health and human services, who shall be referred to as the hearing officer. The director shall not designate any person to perform the duties of hearing officer under this section who has participated in the inspection of the feeding location, or has prior knowledge of the allegations or circumstances discovered in the inspection or inspections, except the person designated as hearing officer may, prior to the hearing, receive a copy of the notice given to the registration holder or feeding certification holder.
- (5) All hearings shall be conducted under rules consistent with the nature of the proceedings; provided, however, the following rules shall apply to the hearings:
 - a. All parties shall have the right to representation by a licensed attorney though an attorney is not required.
 - b. Each party may present witnesses in his own behalf.
 - c. Each party has the right to cross-examine all witnesses.
 - d. Only evidence presented before the hearing officer at the hearing may be considered in rendering the order.
- (6) If the feeding registration holder or feeding certification holder fails to appear at the hearing at the time, place, and date specified, the city shall present sufficient evidence to establish a prima facie case showing violation of this section or conditions constituting a hazard to public health that formed the basis of the suspension of the feeding registration, approved location, or feeding certification.
- (7) If the hearing officer finds that the feeding registration, feeding certification, or approved location was, in fact, in violation of this section or that it constituted a hazard to public health, the hearing officer shall make written findings of fact and shall order the feeding registration, feeding certification, or approved feeding location suspended until all violations of this section are corrected and any conditions constituting a hazard to public health are eliminated. A copy of the findings and order of the

hearing officer shall be sent by certified mail, return receipt requested, to the holder of the certification or registration.

- (8) If the hearing officer finds that the public interest will be adequately protected by a warning or other penalties authorized under this article, he may reinstate the feeding registration, approved feeding location or feeding certification.
- (9) Whenever the reasons for a suspension no longer exist, the registration holder or feeding certification holder shall notify the health officer that the conditions under which the registration, approved location, or feeding certification was suspended have been corrected and that an inspection is requested. The inspection shall be conducted as soon as possible after the request is received and in no event no later than three regular working days after the receipt of the request for inspection.

(g) The health officer may revoke a registration issued under subsection (a) of this section, or the approval of a feeding location, or a certification issued under subsection (b)(4)a of this section if:

- (1) The registration holder or agent or employee thereof interferes with an inspection by a health officer of an approved feeding location; or
- (2) There are repeated or serious violations of this section; or
- (3) There are repeated or serious violations of federal or state food laws.

Prior to revocation, written notice shall be given to the registration holder. The notice shall set forth:

- (1) The grounds upon which the health officer will seek revocation of the feeding registration, certification, or approval of a feeding location;
- (2) The specific violations of this section or of federal or state law upon which the health officer will rely in seeking revocation;
- (3) That a hearing will be held before a hearing officer;

- (4) The date, time, and place of the hearing; and
- (5) That the registration holder or certification holder may appear in person and/or be represented by counsel, may present testimony and may cross-examine witnesses.

The hearing shall be held in accordance with subsections (f)(4) through (f)(6) of this section. After completion of the hearing the hearing officer shall make written findings as to whether or not grounds exist for revocation of the feeding registration, certification, or approval of location. If the hearing officer finds that grounds do exist for revocation, the hearing officer shall revoke the registration, certification, or approval of location for up to 180 days. A copy of the written findings shall be sent by certified mail, return receipt requested, to the registration or certificate holder. If the address of the registration or certificate holder is unknown, or if the findings are returned undelivered, the findings shall be served on the person in charge of the approved location. Upon service of a written notice that the charitable feeding registration, approved location, or charitable certification has been revoked as provided herein, all charitable feeding activity shall cease immediately. If the registration or certification is revoked, it shall be surrendered by the registration or certification holder to the health officer. Reinstatement of a feeding registration, certification, or approval of a location that has been revoked shall require re-application as if it were an initial application. No new feeding registration, certification, or approval of a location shall be considered until the expiration of the revocation period.

(h) Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$2,000.00; provided however, if such person is convicted of an offense under this article which offense is also a violation of the penal laws of the state, such person shall be subject to the penalties set out in the penal laws of Texas for the offense. Each day a violation of this article continues shall constitute a separate offense.

Sec. 20-6. Use of city parks for charitable feeding activities.

(a) An initial list of parks with areas deemed by city council as appropriate for charitable feeding activities in accordance with subsection (b) of this section is attached to Ordinance No. _____¹ as Exhibit A and

1. City Secretary shall insert the number of this Ordinance.

is incorporated herein for all purposes. In addition, the director of parks and recreation may on his own initiative designate areas of other city parks as appropriate for charitable feeding activities. An organization or individual registered under section 20-5 of this Code to conduct charitable feeding activities may do so in such designated park areas; a permit issued pursuant to article III of chapter 32 of this Code to the charitable organization or individual desiring to sponsor a charitable feeding activity shall be required for each feeding event.

(b) In determining the appropriateness of an area of a particular park for charitable feeding activities, the director of parks and recreation shall consider the following:

- (1) The availability of adequate existing park facilities to support the feeding activities, such as rest rooms, trash receptacles and similar accommodations;
- (2) The compatibility of the existing park facilities with feeding activities; arboretums, baseball fields, tennis courts, parks with special shrubs or vegetation, or other similar specialized facilities would be unsuitable for feeding activities;
- (3) The adequacy of the size of the available park space for feeding activities;
- (4) Legal restrictions on the use of the park property;
- (5) Reliable statistical data and similar information indicating a demonstrable need for such feeding in the immediate vicinity of the park property.
- (6) Whether or not a park area has been used for charitable feeding purposes an excessive number of times in the previous month to the detriment of the particular park and its other uses, the intent being to distribute such feeding activities among multiple parks to mitigate the wear and tear and other impacts of such activities on each individual park.

(c) Providing specialized equipment or facilities as required under section 20-5 of this Code for a charitable feeding activity shall remain the responsibility of the permittee.

(d) The director of parks and recreation shall maintain a list of park properties with areas approved for charitable feeding activities pursuant to this section. Upon his own initiative, and based on the criteria contained in section 20-6(b) of this Code, the director of parks and recreation may determine that a park area, including areas of those parks listed in Exhibit A to Ordinance No. _____² herein, should no longer be approved for charitable feeding purposes, and should be removed from said list."

Section 3. That, in accordance with newly adopted Section 20-6(a) of the Code of Ordinances, Houston, Texas, the City Council hereby approves and adopts the initial list of parks and areas attached as Exhibit A as appropriate for charitable feeding purposes.

Section 4. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign

2. City Secretary shall insert the number of this Ordinance.

this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this ____ day of _____, 2012.

APPROVED this ____ day of _____, 2012.

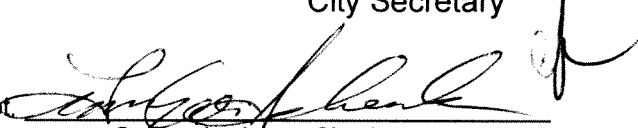
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

 Prepared by Legal Dept.

LWS:asw 02/20/2012


Senior Assistant City Attorney

Requested by Stephen L Williams, Director, Health and Human Services Department

L.D. File No. 0380800068001