

ORDINANCE NO. 1103

**AN ORDINANCE OF THE CITY OF KEMAH, TEXAS, ESTABLISHING REGULATIONS FOR OPEN AIR MARKETS WHICH REQUIRE AN INCREASED LEVEL OF REGULATION TO ENSURE THAT SUCH USES DO NOT BECOME A DETRIMENT TO THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC, ESTABLISHING A PERMIT PROCESS, PROVIDING A PENALTY PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS, FARMERS' MARKETS OR OPEN AIR MARKETS HAVE BECOME POPULAR; AND**

**WHEREAS, THE CITY OF KEMAH WISHES TO ENCOURAGE THEIR AVAILABILITY WHILE IT ESTABLISHES MINIMUM STANDARDS FOR THE HEALTH, SAFETY AND WELFARE OF ITS CITIZENS AND THE PUBLIC; AND**

**WHEREAS, THE AVAILABILITY OF PRODUCE AND FOODSTUFFS FOR SALE CREATES A SPECIAL NEED FOR CONCERN THAT THOSE MINIMUM STANDARDS OF STATE HEALTH CODE CRITERIA FOR LICENSING, INSPECTION AND SAFETY ARE MET;**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMAH, TEXAS THAT:**

**1. Definitions.**

- a. "Farmers' Market" or "Open Air Market" are interchangeable terms as used herein. They mean a market on a qualifying site for participating vendors in designated booth or stall or table spaces where they display, and offer for sale to the public, various products, wares, produce, foodstuffs, services, arts and crafts or newly repurposed items. This includes but is not limited to prepared foods and value added farm products. Locally grown and harvested farm products and value added farm products are encouraged. No resale of items from a retailer or wholesaler. No Garage Sale type items. Resale of items is prohibited unless newly refurbished for repurposed. Unique/original art and crafts are encouraged.
- b. "Conditional Use Permit" shall be a permit or license from the City that allows sales and displays of certain (but not all) goods, wares, produce, services, foodstuffs, arts and crafts and newly repurposed items under certain limited standards specified herein and not otherwise.
- c. "Market" means a place where sellers or vendors invite and welcome the members of the public who may enter for the purpose of purchasing items displayed or offered for sale by the vendors or sellers.

**2. Prohibition of operating a Market outside an enclosed structure unless a Conditional use permit has been issued; Requiring Compliance with the terms of**

**the Permit.** Any Market conducted inside a structure or building that has four walls, a floor, a roof, plumbing, electricity, hot water, heating and air conditioning and refrigeration shall fall without and be free of the permit requirement constraints of this Ordinance requiring a conditional use permit as herein defined, if the structure or building that houses the sales area in its entirety is compliant with the Texas Health Code regulations applicable to the sale of prepared food products and/or value added Farm Products and is fully compliant with all applicable City codes and Ordinances. This exception shall include a structure or facility that has existed at that site as a non compliant but grandfathered non conforming use (since the structure as built predates the passage of any Ordinance that would have prohibited such a structure had the other code or Ordinance in question been in effect when the structure was built). Such an enclosed structure shall be grandfathered from the requirement of a conditional use permit so long as it is not expanded, added on to, replaced or renovated to the extent that it requires a building permit for the alteration or change or so long as it is not damaged by force majeure more than 50% of its value or square footage. But such a structure must meet the minimum health standards of the state for the display and/or sale of prepared foods or value added farm products for such display and sales to be lawful in the grandfathered structure.

Otherwise, no person, firm or corporation or manager of property shall use, operate or allow to be used or operated a property in Kemah, Texas for a Market of any kind if some or all of the display of goods and marketing occurs outside an enclosed structure, including but not limited to a Farmer's Market or an Open Air Market, on real property in the City of Kemah, Texas, unless the outside use or operation is conducted pursuant to a current and valid Conditional Use Permit for a Farmers' Market or Open Air Market, issued by the City after code approval of the structures and parking facilities on the property. Such a Conditional Use Permit may allow outside sales under a structure without sides if that structure has a functional roof and has been issued a building permit for such a covered but not enclosed structure. Such under cover outside sales and display are the only outside sales and display that are to be permitted herein. The holder of the permit shall require (in writing) any vendors using the permitted premises to be familiar with these rules, regulations and conditions, to follow these rules, regulations and conditions and to vacate the premises if they violate these rules, regulations and conditions. The failure to so control the conduct of the individual vendors shall subject the holder of the permit to the risk of revocation of the permit after notice of opportunity to cure and hearing.

### 3. **Exclusions.**

- a. The limited exclusion from the conditional use permit requirement for grandfathered preexisting enclosed structures specified in the preceding section, so long as the display and sale of prepared food and value added farm products are conducted in areas or structure that meet or exceed any state health requirements applicable to the sale of such items.
- b. An entertainment venue of more than 20 acres in size with a common theme and purpose of use wherein boardwalks, restaurants, bars, shops and amusements are constructed, municipally approved and maintained are excepted from this Ordinance

if the open air sales are restricted to and conducted within the approved controlled facilities and premises.

- c. Notwithstanding any other provision to the contrary, a Farmer's Market vendor may prepare and distribute samples of food at an open air market under a covered structure compliant with this Ordinance if the Farmers' Market vendor complies with the sanitary conditions in Section 437.0203 (c) of the Texas Health and Safety Code.
- d. A cottage food production operation as that term is defined in Chapter 437 of the Texas Health and Safety Code is exempt from the conditional use permit requirements of this Ordinance but not from the sanitary conditions requirements of said Chapter 437. A framers' market or open air market vendor may conduct a cooking demonstration only if the vendor accurately verifies in writing with the operator of the market where the demonstration shall occur or is occurring that the market is in compliance with the establishment operator requirements of Section 437.0203(c) of the Texas Health and Safety Code and the vendor complies with all other requirements of Section 437.0203 of the Texas Health and Safety Code, especially the sanitary condition requirements above referenced.

4. **Sanitary Requirements.**

- a. A person, firm or corporation operating an open air market or operating as a vendor of food products at an open air market shall comply with and meet or exceed all sanitary conditions for prepared foods or value added farm products called for in Chapter 437 of the Texas Health and Safety Code as specified hereinabove.
- b. A person, firm or corporation operating an open air market or operating as a vendor at an open air market shall comply with The Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter K (Texas Food Establishment Rules) if prepared foods or value added Farm Products are displayed and/or offered for sale to the public. These are rules regarding equipment, floors, dust control, ceilings and outer openings of food preparation areas.
- c. The market manager shall be responsible for ensuring compliance with these minimum sanitary requirements provisions and for ensuring that all shared or common facilities and operations of the market comply with this Ordinance.
- d. The City Code Enforcement officer may inspect each open air market vendor's booth offering food products as is necessary for the enforcement of these minimum sanitary requirements.
- e. If a vendor does not correct violations at the time of inspection, or within specified time limits, the Code Enforcement officer may immediately order the booth to suspend operations. Repeated violations by an open air market vendor operating at an open air market without a valid permit or with a suspended permit constitutes an offense under this Ordinance.

5. **Criteria and Application for a Conditional Use Permit.** The minimum criteria (or standards) for a conditional use permit by the City for such a market featuring display or sales outside of enclosed and permitted structures and for the continued operation of said property under the permit as a market shall be as follows:

The applicant shall file with the code enforcement officer of the City a sworn application that sets forth:

- a. The name of the owner of the property. The owner shall be the applicant.
- b. The legal description of the parcel of land where the market shall be located and operated. The location of all vehicle parking areas set aside and to be maintained and used only for that purpose. For all new sites where a permitted Farmer's Market or Open Air Market shall be located, these areas shall be paved with hard surface materials meeting City requirements for such hard surfaces and shall be striped to designate proper parking spacing. Existing sites operating with valid permits at the time of passage of this Ordinance be exempt from these parking requirements unless they seek to expand, renovate or replace said covered structure(s). The location of all areas where items for sale shall be displayed and the approved (by City) covered structure where the outside display and sales shall occur. A survey by a licensed surveyor depicting vehicle parking areas, setback lines on all sides of at least 7 feet where no structures or parking may take place or be permitted, and the dimensions and condition of all the undercover vendor sites where vendor spaces, stalls or tables shall be located.
- c. The name, address and telephone number (including cell phone number), and e mail or text message contact data of the owner and the actual person in charge of the day to day management of the market (if other than the owner of the land where the market is located).
- d. A drawing (certified by an engineer) of the covered structures on site depicting materials utilized in the structure, dimensions of the structure, and the nature of the impervious cover of the structure where booths, stalls or tables shall be located for utilization as the only places where goods, wares, produce or foodstuffs, arts and crafts, services or newly repurposed items (as opposed to items characterized as antiques, bric a brac, collectibles or the like which are not permitted for outside display or sale) shall be offered for sale to the public. All goods, wares, produce or foodstuffs shall only be offered for sale from such a covered structure. No sales of any items or services may be conducted from a location not covered by a permitted structure.
- e. A statement that the site is not within 4000 feet of another Farmers' Market or Open Air Market (measured at the nearest property lines) and is and shall remain in compliance with this rule of distance and all other City Ordinances, codes and or regulations and is and shall remain in compliance with all state or federal regulations applicable to such business and/or activities.
- f. A statement that Applicant owner is not delinquent in the payment of any ad valorem taxes due to the City. Such delinquencies shall be a basis for denial of a permit. After notice and opportunity to cure, delinquency in payment of ad valorem taxes shall be a basis for revocation of the conditional use permit for the market until the delinquent taxes are paid. Failure of a vendor to promptly pay State of Texas sales tax when due shall be a basis for removal from the market.
- g. A commitment of the owner/applicant and operator for the owner that the owner or operator shall, at all times the market is operating, keep on site for inspection by the City a written record of all vendors selling on site at any time, listing the name,

- address, contact data, birthdates and driver's license numbers of the persons manning or occupying the booth, stall or table, as well as a copy of the current valid Texas sales tax certificate listing the market site in the City as the point of sale for reporting of sales for sales tax purposes. Any vendor selling but not listed shall be subject to removal from the site until so qualified. The owner/operator shall be responsible for keeping this list current. Multiple violations of this or any other requirement of the Ordinance shall be a basis for revocation of the conditional use permit for the entire market. A person, firm or corporation named in a conditional use permit for such a market, shall be deemed to be the person, firm or corporation in charge of these management responsibilities, unless otherwise authorized by the City in writing.
- h. The market shall only operate between the hours of 8 am and 5 pm on any day it is open to the public.
  - i. Any lights used to illuminate the site shall be designed and installed so as to reflect away from adjoining property(ies) and away from all public rights of way.
  - j. Restroom facilities shall be available on site and shall be maintained by the holder of the permit at all times in a clean and sanitary condition. The Code Enforcement Officer of the City is authorized to promulgate, require and enforce guidelines as to the nature and number of restroom facilities required per estimated occupancy of the site at any given time.
  - k. The permit shall be valid for a term of one calendar year or any part of a year. The annual fee shall be \$1,000.00 for the permit good for up to ten (10) vendor spaces; plus \$100.00 per each additional vendor space. An expired permit is not a valid permit.

All goods, wares, produce or foodstuffs services, arts and crafts and newly repurposed items shall only be displayed and offered for sale under a covered structure that has met all building codes and been granted approval of same by the Code Enforcement Officer of the City so that the Conditional Use Permit for such a Farmers' Market or Open Air Market may be considered when all the other criteria of this Ordinance are met. It shall be unlawful to display or offer for sale such items from a booth, stall, table or site that is not covered by a qualifying impervious structure with a roof. There is no requirement for sides or flooring for the outside structure but there shall be a roof to cover all such items offered for sale. No tents, awnings or temporary covers shall qualify as a covered structure. Live or recorded music or other forms of live entertainment shall be permitted and may be utilized subject to noise level regulation by the City. Rides, inflatable products or animal or mechanical rides shall not be permitted.

6. **Responsibilities of the Holder of the permit. Consequences.** It shall be the responsibility of the holder of the permit to obtain and maintain at all times for City inspection on demand: The name address and contact information for each vendor conducting business on site, including the vendor's sales tax number or certificate listing that site in the City as the point of sale for sales tax purposes. No vendor may remain on site or leave goods, wares or produce or foodstuffs or anything else on site unless that vendor is properly documented as a qualifying vendor under the valid conditional use permit. Failure to keep current written records of these vendors shall be grounds for revocation of the conditional use permit. Failure to comply with all requirements of this

Ordinance or of other applicable City Ordinances or applicable state or federal law or regulation.

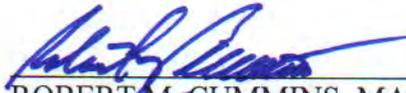
7. **Display.** No display of goods, wares, produce or foodstuffs or any other items or services for sale shall be located on any set back area or permitted designated parking area. No display of items on the ground. All products/items should be displayed on tables with the exception of those too large or heavy.
8. **Prohibition of existing markets onto abutting or nearby properties.** No Farmers' Market or Open Air Market shall be approved or permitted if it abuts the market site permitted or is proposed to be located within 4000 feet of another Farmers' Market or Open Air Market (measured at the nearest property lines) licensed hereunder. The premises licensed shall remain in compliance with all other City Ordinances, codes and or regulations and in compliance with all state or federal regulations applicable to such business and/or activities.
9. **Commercial Vehicles.** The Market shall not involve the use of commercial vehicles for the display or sale of any items, food or services, from the premises beyond those commercial vehicles needed by the vendors for the delivery of their approved merchandise for sale.
10. **Requirement for fencing.** No Farmer's Market or Open Air Market shall be granted a conditional use permit to operate where an abutting use is a residence at the time the application is filed unless the application and site plan also calls for and requires opaque fencing at least eight feet (8') above grade on the side abutting the residence is approved, actually installed and maintained by the owner of the property and the permit holder.
11. **Maintenance by owner.** At all times the permitted market site shall be maintained by the owner and operated by the owner or operator in a manner that eliminates the growth of weeds, the accumulation of trash and rubbish or the presence of any other unsightly or unsanitary condition that would constitute a nuisance or public health or safety concern. Should such a condition appear, the owner of the property shall be notified in writing by the City and a reasonable time to cure the condition shall be given in the notice. If the condition is not timely cured, the violation may be prosecuted and the existence of the condition shall be a basis for revocation of the permit.
12. **Safety.** The holder of the permit shall operate the site in such a manner that the pedestrian and vehicular traffic on site is arranged and directed in a manner that provides a safe venue for all involved. Commercial vehicles may not be used to display items for sale and shall be removed from the site after the delivery of items to any vendors in the market.
13. **Violations.** Remedy for non-compliance in addition to fines or penalties: After notice and hearing before council, City Council may revoke any Conditional Use Permit for violation of any provision of this Ordinance of upon proof of a permit having been obtained under false pretenses or misrepresentation(s) of facts in the application, or

Council may suspend the right to use the property as a market for three, six or twelve months based on the severity of the violations proven at an administrative hearing before council.

14. **Penalty.** This is an Ordinance dealing with health and safety, so, any violation of this Ordinance shall be a Class C misdemeanor punishable by fine not to exceed \$2,000.00 and each day shall constitute a separate violation.
15. **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

PASSED AND APPROVED ON FIRST READING THIS THE 6TH DAY OF NOVEMBER, 2013.

PASSED AND APPROVED ON SECOND READING THIS THE 4TH DAY OF DECEMBER, 2013.

  
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ROBERT M. CUMMINS, MAYOR

ATTEST:   
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MARISELA GARCIA,  
CITY SECRETARY