

05/03/11
04/20/11

34-O-11

AN ORDINANCE

Amending Chapter 25, "Farmers' Market," of Title 3, "Business Regulations," of the Evanston City Code, Related to the Regulation of Farmers' Markets

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Chapter 25 of Title 3 of the Evanston City Code be amended to read as follows:

3-25-1: DEFINITIONS:

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| EVANSTON CHARITABLE ORGANIZATION | Any organization with its headquarters or primary place of operation within the City of Evanston and defined under applicable Illinois and federal tax code provisions as not-for profit. |
| FARMERS' MARKET | A designated space within the City of Evanston in which at regularly prescribed intervals, approved vendors may sell agricultural products and other goods directly to the public in accordance with this ordinance. |
| FOOD DEMONSTRATION | Exhibit featuring food preparation by restaurants, caterers, and nutritional educators, who reside in or have a place of business in Evanston. |
| HOME GROWN ARTIST: | An artist or artisan with a residence, studio, or place of business in Evanston or who works as an artist or artisan in Evanston. |
| IMMINENT HEALTH HAZARD | A product, practice, circumstance, or event that poses a significant threat or danger of injury to the health and safety of persons without immediate correction or cessation. |
| LOCAL/LOCALLY | Of a Midwestern State as defined by the United States Census Bureau; specifically, the states of Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. |
| MARKET MASTER | The Director of the Parks, Recreation, and Community Services Department, or other |

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| | individual selected by the Evanston City Manager or his/her designee to organize and regulate the farmers' markets. |
| VENDOR | An approved individual, farm, business, or organization selling or offering for sale at Evanston farmers' markets items deemed saleable under this Chapter. |

3-25-2: SUPERVISION AND CONTROL OF MARKET:

This Chapter applies to all farmers' markets within the City of Evanston (the "City") at which vendors need City approval to operate.

The City, at all times, shall have the right to relocate or discontinue a market, to specify the days and times of its use, to regulate what goods may be sold, and to stipulate which vendors may sell within the market.

The Market Master or his or her designee shall review the application of any vendor wishing to offer items for sale at the markets, issue permits and collect fees therefore, assign spaces to vendors, maintain a system of bookkeeping for the markets, maintain the markets' cleanliness, and enforce the market regulations and issue penalties as necessary.

3-25-3: YEARLY AND DAILY SPACE RENTAL FEES:

(A) Rental Of Space Required. No vendor shall sell or offer for sale any product without having first applied for a space at the market and paid the applicable fees. Fees shall be paid in advance of space occupancy.

(B) Yearly Rentals. An approved application and payment of the yearly space rental fee shall entitle a vendor to its designated market space for one calendar year (365 days), starting the first day of the market season, unless its vending space is closed or the space is revoked for a violation of this Chapter or other law.

(C) Daily Rentals. A vendor may obtain a daily permit, entitling the vendor to occupy space in the market for one day, and sell goods in accordance with all the provisions of this Chapter, unless its vending space is closed or the space is revoked for a violation of this Chapter or other law.

(D) Amount of Fees. The applicable yearly or daily space rental fees shall be determined annually by the City of Evanston and collected by the Market Master.

3-25-4: APPLICATION REQUIREMENTS

(A) An applicant for a vending space at a farmers' market shall submit to the Market Master, along with the required fee, an application containing all of the following information:

1. Name and address of applicant;
2. Products for which vending space is sought;
3. Affidavit certifying that articles offered for sale are locally grown, cultivated, created, produced, or prepared;
4. Affidavit certifying that articles offered for sale are: (a) of the vendor's own growing, cultivation, creation, production, or preparation; or (b) from the actual raiser, cultivator, creator, producer, or preparer and that the applying vendor is authorized sell such products, with full disclosure to the consumer of their source;
5. For farmer-vendors, a description of farming practices and copies of any certifications (showing certifying body and date of certification);
6. Evidence that the vendor's real estate and property taxes and Illinois sales taxes have been paid during the previous market season;
7. State sales tax permit number. Vendors must hold a current Illinois sales tax license in order to qualify for a space at a farmers' market; and
8. Proof of insurance coverage in an amount and form approved by the City. Under no circumstances shall the City insure or indemnify any vendor, nor shall the City be liable in contribution for any damages for which a vendor is deemed liable.

(B) Applications shall be approved in the sole and exclusive discretion of the Market Master, but under no circumstances shall an application be approved unless all of the information and documentation required by subsection (A) is provided.

3-25-5: SPACE ALLOCATION:

Once a vendor's application is approved and its fee paid, the vendor shall be assigned a vending space. Assignment of spaces is within the Market Master's exclusive discretion, and shall be generally, but not necessarily, in accordance with the order in which applications are submitted and fees are paid.

3-25-6: ADDITIONAL REQUIREMENTS FOR VENDORS:

(A) No vendor shall sell at a farmers' market within the City unless it:

1. Resides or operates locally; and
2. Sells items: (a) Of the vendor's own growing, cultivation, creation, production, or preparation; or (b) originating from another grower, cultivator, creator, producer, or preparer that gives its explicit written permission to the vendor to sell its items on its behalf.

(B) Each vendor shall post within its allocated market space signs approved by the Marker Master or his/her designee stating:

1. Vendor's legal name;
2. Vendor's home location;
3. The general type of items being offered for sale by the vendor, such as fruit, produce, or baked goods; and
4. The name of each item offered for sale and the name and location of the source.

(C) Vendors shall be financially self-sufficient and operate at no cost to the City.

(D) No vendor shall solicit business by hawking or crying out.

3-25-7: SALEABLE ITEMS:

(A) Items allowable for sale at the markets:

1. Must be locally grown, cultivated, created, produced, or prepared;
2. Must conform to all federal, state, and local public health and food safety regulations; and
3. Shall include:
 - (a) Produce such as fruits or their juices, and vegetables;
 - (b) Edible grains, nuts and berries;
 - (c) Apiary products, maple sugar, and syrups, only if properly labeled in accordance with state standards for labeling;
 - (d) Baked goods as specified in part (D) of this section;
 - (e) Meat, fish, poultry, eggs, and dairy products including natural cheeses; provided that vendors may sell only USDA prepackaged meat from animals from their own farms, and that the sale of such meat must conform to the Illinois Retail Food Store Sanitation Rules and Regulations and the Evanston Health and Sanitation Code.
 - (f) Cut or potted flowers and plants;

- (g) Artwork and hand-crafted items, if sold during Home Grown Artists events; and
- (h) Prepared foods, either as part of Food Demonstrations or with the approval of the Market Master.

(B) Items not allowable for sale at the markets shall include those that are:

1. Unwholesome or spoiled; or
2. Prohibited by the Evanston Department of Public Health.

(C) Items sold according to weight must be sold in accordance with the established standards for weight of the State of Illinois and City of Evanston.

(D) The sale of bread shall be allowed by vendors that are food establishments licensed by the City of Evanston under the following conditions:

1. The bread must have been made from all fresh ingredients and processed on-site at the licensed food establishment, including all mixing, shaping, final proofing, and baking. No bread can be sold if the dough has been prepared off-site, even if it is baked on the premises of the licensed food establishment;
2. Eligible vendors of bread shall be those licensed food establishments where bread and pastries are the primary items for sale, such as bakeries; and
3. Charitable and not-for-profit organizations that are not licensed food establishments may not sell bread as "vendors" at the farmers' markets, but shall be occasionally permitted to sell bread and other baked goods, in the discretion of the Market Master, at "special events" as defined in this chapter and subject to the limitations prescribed.

3-25-8: PUBLIC HEALTH AND SAFETY:

At all times, all vendors and participants at the farmers' markets shall comply with all applicable local, state, and federal laws pertaining to public health and food safety, including, but not limited to: hand-washing, food protection and storage, food labeling, food service (including temperature regulation), and vector control.

(A) General Provisions. At all times vendors shall transport and display food with adequate protection against contamination. Delivery trucks and other equipment for transportation and display shall be kept clean. Vendors shall not allow any waste, garbage, or refuse to remain on or near the vending space after the close of market hours on any market day. No vendor shall sell or offer for sale any items requiring a written statement from the Evanston Director of Public Health that the product is in compliance with storage and display standards, without first obtaining such statement.

(B) Incorporation of Local Law. Title 8 of the Evanston City Code, "Health and Sanitation," is incorporated herein, and the penalties specified therein shall apply in full force. Vendors and other sellers or preparers of food at the farmers' markets shall comply at all times with Title 8 and all other local laws and regulations pertaining to public health, sanitation, food preparation, and food safety. Failure to comply with all such local laws may result in the revocation of vending space, in the discretion of the Evanston Director of Public Health or his/her designee.

(C) Incorporation of State and Federal Law. Vendors and other sellers or preparers of food at the farmers' markets shall comply at all times with all state and federal laws and regulations pertaining to public health, sanitation, food preparation, and food safety. Failure to comply with all such laws may result in the revocation of vending space, in the discretion of the Evanston Director of Public Health or his/her designee.

(D) Access. The Director of Public Health or his/her designee, upon the presentation of identification, shall be permitted to enter any vending space, food demonstration space, or special event space in a farmers' market for the purposes of making inspections to determine compliance with this Chapter and other applicable law. The Director of Public Health and his/her designees shall be permitted to examine records of the vendor or other seller or preparer of food, to obtain information pertaining to the food and supplies purchased, sold, received, or used.

(E) Closure. At any time, the Director of Public Health or his/her designee may, in his or her exclusive discretion, require the immediate closure of any booth, stand, or other vending space presenting an imminent health hazard. In the event of such closure, all vending, marketing, and associated activity must cease until approval to operate is granted after inspection.

(F) Except as otherwise provided by law, the following shall be prohibited within any farmers' market:

1. Live animals and pets, other than service animals; and
2. Riding of bicycles, scooters, skateboards, and the like, including motorized versions of the same, except as required to accommodate a physical disability.

3-25-9: SPECIAL EVENTS:

Any activity that takes place on the grounds of a farmers' market but is not the sale of food items that are locally grown, cultivated, created, produced, or prepared, and sold by an approved vendor under this Chapter shall be designated a "special event" and shall be subject to the limitations in this section.

(A) Home-Grown Artists Events:

1. Shall be approved by and held on dates designated by the Market Master;
2. Shall be limited to the number of artists' tents designated by the Market Master; and
3. Shall be held in a contained area of the market as designated by the Market Master.

(B) Food Demonstrations:

1. Shall be approved by and held on dates designated by the Market Master;
2. Shall be limited to the number of demonstration stations designated by the Market Master;
3. Shall be held in a contained area of the market as designated by the Market Master; and
4. Shall be pre-approved by the Director of Public Health or his/her designee and shall at all times comply with all applicable public health and sanitation laws and regulations as set forth in Section 3-25-8.

(C) Fundraising Bake Sales:

1. Evanston charitable organizations shall be permitted occasionally to sell or distribute baked items at farmers' markets to raise funds or awareness, but not as a routine business. Nothing in this section entitles a charitable or not-for-profit organization to operate as a "vendor" within the meaning of this Chapter;
2. Fundraising bake sales shall be held only with the prior approval of the Market Master, who shall reasonably limit the number of vending spaces designated for such use on any given market day; and
3. A fundraising bake sale may consist of the sale of only home-baked breads, pastries, and like baked items not requiring refrigeration. The items may be prepared in non-inspected kitchens; however, it is strongly recommended that the preparation of food items for sale take place in a licensed food establishment or controlled environment such as a club or church kitchen.

(D) Additional special events to be held in conjunction with the farmers' markets shall be conducted and regulated under the sole discretion and authority of the Market Master.

3-25-10: ENFORCEMENT AND PENALTIES:

Any person violating any of the provisions of the Chapter shall be subject to a fine not to exceed five hundred dollars (\$500.00), or, alternatively, the penalty prescribed in any applicable provision of the Evanston City Code. A separate offense shall be deemed committed each day such violation shall continue. The Market Master may, in his/her sole discretion, revoke the vending space of any vendor or special-event space holder for violations of this Chapter, irrespective of the severity, number, or duration of said violations.

SECTION 3: That any and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That if any provision of this Ordinance 34-O-11 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance 34-O-11 that can be given effect without the invalid application or provision, and that each invalid provision or invalid application of this Ordinance is severable.

SECTION 5: That this Ordinance 34-O-11 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: May 9, 2011

Approved:

Adopted: May 23, 2011

June 2, 2011

Elizabeth B. Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar
W. Grant Farrar, Corporation Counsel