ORDINANCE NO. 3711

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARROLLTON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING TITLE XI, CHAPTER 116, RESTAURANTS AND FOOD ESTABLISHMENTS, BY ESTABLISHING NEW SECTIONS TO BE ENTITLED FARMERS MARKETS REGULATIONS, ESTABLISHING THE PURPOSE AND SCOPE; ESTABLISHING REQUIREMENTS GOVERNING THE PERMITTING, OPERATIONS AND MAINTENANCE OF FARMERS MARKETS AND THE PERMITTING AND OPERATIONS OF FARMERS MARKET FOOD VENDORS; AMENDING TITLE III, CHAPTER 31, THE COMPREHENSIVE FEE SCHEDULE OF THE CODE OF ORDINANCES OF THE CITY REGARDING A FEE RELATED TO FARMERS MARKETS AND FARMERS MARKET FOOD VENDORS; AMENDING TITLE III, CHAPTER 34, MUNICIPAL BOARDS, COMMISSIONS AND ADVISORY COMMITTEES OF THE CODE OF ORDINANCES OF THE CITY REGARDING APPEALS TO THE PROPERTY STANDARDS BOARD; PROVIDING FOR A PENALTY UP TO $2000 PER DAY; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND, PROVIDING FOR AN EFFECTIVE DATE ON AND AFTER ITS ADOPTION AND PUBLICATION.

WHEREAS, the City of Carrollton, Texas (the "City") is a Home Rule municipality possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter;

WHEREAS, Section 54.004 of the Texas Local Government Code provides that a home rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants;

WHEREAS, the City Council desires to enact an ordinance which regulates the permitting, operations and maintenance of farmers markets and farmers market food vendors;

WHEREAS, the City Council aims to promote farmers markets and farmers market food vendors to support the local economy, to encourage sustainable lifestyles and to create a vibrant community life within the city; and,

WHEREAS, the City Council finds that it is necessary and proper for the good government, health and safety of the City to adopt regulations relating to farmers markets and farmers market food vendors in order to prevent food-borne diseases, to reduce the risk of injury to its citizens, and to provide for a safe community experience by the public;

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

SECTION 1

The above and foregoing premises are found to be true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2

The Code of Ordinances of the City of Carrollton Title XI, Chapter 116, Restaurants and Food Establishments is hereby amended to add Sections 116.80 to 116.88, relative to regulations regarding farmers markets and farmers market food vendors, to read as follows:

"FARMERS MARKETS REGULATIONS

IN GENERAL

Sec. 116.80. – Purpose and Scope.

(A) Subsections 116.80 to 116.88 shall be known as the City of Carrollton Farmers Market Regulations.

(B) The purposes of the Farmers Market Regulations are to provide a clean, safe and healthful environment for the public while promoting Farmers Markets and Farmers Market food vendors to support the local economy, to encourage sustainable lifestyles and to create a vibrant community life within the city, through the regulation of the permitting, operations and maintenance of Farmers Markets and Farmers Market food vendors.

(C) The Farmers Market Regulations establish the permitting standards and procedure for all Farmers Markets and Farmers Market food vendors; the operations and maintenance minimum requirements; and, penalties and remedies to achieve the public health and safety purpose of these sections.

(D) All Farmers Markets and Farmers Market food vendors shall comply with the Texas Food Establishment Rules, as adopted by the City of Carrollton ("TFER"). Unless deleted, amended, expanded, or otherwise changed herein, all provisions of said rules shall be fully applicable and binding, except where the City of Carrollton Code of Ordinances provides specific provisions which shall prevail over general provisions of these rules.

(E) The City of Carrollton establishes the following standards to further protect public health and to prevent food borne illnesses and injury; however, nothing in this chapter shall be construed to waive the City's governmental immunity from suit or from liability.

Sec. 116.81 - Administration.

The City Manager or his designee shall administer, implement, and enforce the provisions of this chapter. Any powers granted to, or duties imposed upon the City Manager, or his designee, may be delegated by him to other City personnel or authorized representatives.

Sec. 116.82 – Reserved.

Sec. 116.83. General.

(A) A Farmers Market operator permit holder and Farmers Market food vendor shall comply with the requirements of the Farmers Market Regulations, unless otherwise restricted by applicable state or federal law. Outdoor retail sale or promotion that is not part of an approved Farmers Market must adhere to Chapter 113, Peddlers and Solicitors of this Code.

(B) The DCO shall implement, administer, and enforce the provisions of this ordinance.

(C) The DCO has authority to issue a Farmers Market and Farmers Market food vendor permit when requirements of the Food Market Regulations and all other applicable laws, including ordinances, have been met.

(D) The Farmers Market operator permit holder shall be responsible for the operation, conduct, and safety of a temporary open air Farmers Market for which a permit has been issued.

Sec. 116.84. Application

(A) A person desiring to hold a Farmers Market shall apply for a Farmers Market operator permit by filing with the DCO a written application upon a form provided by the City for that purpose and accompanied by a non-refundable permit application fee. Each permit for a Farmers Market issued shall allow the Farmers Market to be operated at a single approved location that is in compliance with this ordinance.

(B) An application must be fully completed by the person responsible for operating the Farmers Market ("Applicant") and shall include the following information:

(1) The name, address, and telephone number of the applicant and of any other persons, assisting in the operation of the Farmers Market.

(2) Proof of identity of the person named in the application. If the person is a corporation or other legal entity, proof of identity of a principal agent of such entity.

(2) The street address(es) of the proposed location of the Farmers Market; the name, address, and telephone number of the property owner(s) or landlord(s).

(3) A description of the Farmers Market, and the proposed months, days, dates and hours of operation.

(4) Any other information the DCO determines necessary for the administration and enforcement of this chapter.

(C) The application must be accompanied with a signed and dated letter from the property owner(s), landlord(s) or other authorized person(s) in control of the property signifying the use of the location, length of time of the use and other property conditions that may impact food safety, sanitation and security.

(D) The DCO may demand proof that licenses, permits, and authorizations required by other city ordinances or applicable law have been obtained, and may also incorporate additional requirements into the permit before issuance including restrictions, regulations, safeguards, and other conditions prescribed in order to protect the health and safety of the Farmers Market participants, customers, visitors, or the community and to promote the safe and orderly conduct of a Farmers Market.

(E) Upon submission of an application for a Farmers Market permit, and a determination by the DCO that all requirements for a permit have been met, , the DCO shall issue the Farmers Market permit unless denial is required herein. If the DCO determines there is no detriment to the public health and safety, and that it is in the interests of fulfilling the purposes of this chapter to approve a permit, the DCO may issue a permit approving a Farmers Market that excepts from the permit the portion of the application that would have otherwise required denial. A Farmers Market permit expires one (1) year from the issue date.

Sec. 116.85 Denial; Appeal; Revocation

(A) The DCO shall deny or revoke a Farmers Market permit if:

(1) A Farmers Market permit has been granted to another Farmers Market that is located within one mile of the proposed market and has the same or overlapping operating dates and times as the proposed market;

(2) The DCO determines the proposed Farmers Market will unreasonably disrupt the orderly flow of traffic, and no reasonable means of rerouting traffic or otherwise meeting traffic needs is available;

(3) An applicant fails to adequately provide for:

(a) the protection of the vendors and attendees at the Farmers Market;

(b) the maintenance of public order in and around the Farmers Market location;

(c) the maintenance of sanitary conditions on the premises,

(d) crowd security, taking into consideration the size of the market; or

(e) emergency vehicle access.

(4) The applicant, or the proposed Farmers Market, fails to comply with a city ordinance or other applicable law;

(5) The applicant makes a false statement on an application for a Farmers Market permit or fails to properly complete an application for a Farmers Market permit;

(6) The applicant fails to provide proof that the applicant possesses or is able to obtain a license or permit required by another city ordinance or other applicable law for the conduct of all activities included as part of the Farmers Market;

(7) The applicant has had a Farmers Market permit revoked within the preceding twelve months;

(8) The applicant fails to pay any fees assessed under the Food Market Regulations or other applicable laws, including ordinances, for the proposed Farmers Market or for a past Farmers Market;

(9) The Fire Chief or the Police Chief or the DCO determines that the Farmers Market would pose a serious threat to the public health, safety, or welfare;

(10) The applicant or any other person responsible for the operation of the Farmers Market is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or such other responsible person;

(11) The applicant fails to acquire or maintain approval from the property owner to operate the Farmers Market on the property identified in the application; or

(12) The applicant fails to comply with any additional requirements or demands made during the application and permitting process by the DCO as provided for in this chapter.

(B) Appeal. If the DCO denies the issuance or renewal of a permit or revokes a permit, the applicant or permit holder may appeal the decision of the DCO to the Property Standards Board by submitting a written request for an appeal hearing to the DCO within ten (10) business days after receipt of such denial or revocation. The decision of the Property Standards Board shall be final.

Sec. 116.86. Operation of a Farmers Market.

(A) A Farmers Market may only be operated on weekend days of Saturday and Sunday and on Mondays that are a legal public holiday listed in 5 USCS 6103 (2015).

(B) A Farmers Market may not be operated for more than three (3) consecutive days.

(C) The Farmers Market may only be operated in accordance with the schedule approved by the DCO at the time of permit application. Amendment to the schedule may be approved by the DCO during the calendar year if the changes do not conflict with the schedule of another Farmers Market, and that otherwise meets the requirements of this ordinance. An amendment request must be received by the DCO at least ten (10) days before implementing any changes.

(D) All litter, tents, stalls, food, merchandise, and other evidence of the Farmers Market must be removed from the premises at the end of each market day.

(E) The Farmers Market operator permit holder shall be responsible for the operation and conduct of the Farmers Market and shall be present or may designate a person in charge who shall be present at the Farmers Market during the hours of operation.

(F) Except as otherwise provided in the Food Market Regulations or other applicable law, including ordinances, products that may be sold at a Farmers Market include but are not limited to:

(1) produce including fruits, vegetables, honey, eggs, nuts, herbs, mushrooms, seeds, pasteurized dairy products;

(2) prepared foods requiring time or temperature controls for safety;

(3) concessions, including prepackaged food from a licensed facility; prepared foods not requiring time or temperature controls for safety;

(4) meat: frozen, prepackaged and inspected by USDA; or equal; and

(5) non-food items: arts, crafts, live plants and flowers.

The permit holder shall be responsible to ensure that the vendors comply with this section.

(G) No animals may be sold, offered for sale or adoption, displayed, transferred, conveyed, exchanged or given away at any Farmers Market.

(H) The Farmers Market operator permit holder shall maintain a list of all participating Farmers Market food vendors for each date a Farmers Market is conducted. The list shall be maintained for each Farmers Market date and for at least one hundred eighty (180) calendar days from the date of the end of the Farmers Market. This list shall be made available to any code enforcement officer of the City upon request at least forty-eight (48) hours prior to the Farmers Market until the end of the 180-day retention period and shall include, at a minimum:

(1) The name, address, and phone number of all vendors and other persons providing any service to or at the Farmers Market;

(2) The date(s) the vendor operated at the Farmers Market;

(3) A list of all items offered by all vendors for each date operated at the Farmers Market;

(4) A copy of any applicable permits held by any vendor; and

(5) The address or specific location of each food item's origin, including information on where the food items were grown, cultivated or otherwise obtained by the vendor.

(I) All Farmers Market food and concession vendors shall comply with the following:

(1) Farmers Market food or concession vendors desiring to participate in a Farmers Market shall apply for a Farmers Market food vendor's permit by filing with the DCO a written application upon a form provided by the City for that purpose accompanied by a non-refundable permit fee. It is unlawful for any food or concession vendor to participate in a Farmers Market without first having a valid Farmers Market food vendor permit issued by the DCO. A Farmers Market food vendor's permit shall only be issued to persons that have raised, grown, made, crafted, processed, or produced the products or approved foods.

(2) Farmers Market food vendors who offer, sell, sample or distribute foods requiring time or temperature controls for safety shall have a person in charge who can show proof of successfully passing a Texas Department of State Health Services (TDSHS) recognized, certified food handler course.

(3) Farmers Market food vendors who offer, sell, or distribute only prepackaged foods not requiring time or temperature controls for safety and plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, are exempt from the certified food handler requirement.

(4) Farmers Market food vendors shall comply with the City of Carrollton Environmental Services Department Food Regulations, Texas Food Establishment Rules (TFER) and with all regulations specified in this chapter.

(5) All vendors operating as cottage food production operations, as that term is defined in the Texas Health and Safety Code shall comply with the Texas Health and Safety Code and with all other statutes and regulations applicable to such food production operations.

(6) Farmers Market food vendors that offer, sell, sample or distribute prepackaged foods shall possess a Texas Department of State Health Services manufactured foods license, if required, and ensure prepackaged foods are labeled according to the Texas Food Establishment Rules (TFER) requirements, except as provided in the Texas Health and Safety Code for cottage food production operations.

(7) Home preparation or storage of foods is not allowed, except as provided in the Texas Health and Safety Code for cottage food production operations..

(8) Farmers Market food vendors shall comply with the sign regulations applicable in the City.

(9) All Farmers Market concession vendors shall be compliant with food safety requirements including providing: equipment capable of furnishing adequate hot-holding and/or cold-holding; a three (3) compartment sink set-up; thermometers; handwashing set-up; sanitizing buckets and wiping cloths; proper wastewater disposal; food handler hair restraint; and gloves or utensils for food handling.

Sec. 116.87. Food.

(A) Preventing contamination.

(1) Food display. Except for plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by use of packaging, counter, service line, or sneeze guards that comply with National Sanitation Foundation or equivalent, or by other means approved by the DCO.

(2) Approved source. Only food from an approved source as defined in the TFER or by statutes or regulations applicable to cottage food production operations, may be offered at a Farmers Market.

(3) Prohibited items. Fresh non-frozen fish, foraged foods, game animals, gleaned foods, and non-pasteurized dairy items may not be sold, offered for sale, sampled, displayed, served or consumed at a Farmers Market.

(4) Temperature requirements. Food temperatures must be in compliance with the Food Market Regulations. Equipment used to hold foods shall maintain required temperatures for the duration of the hours of operation of the Farmers Market, including preparation.

(a) Frozen meats, poultry, and seafood shall be maintained at or below zero degrees (0°) Fahrenheit for the duration of the market, including transportation to the market.

(b) Eggs, prepared foods requiring time or temperature controls for safety, and refrigerated dairy items shall be maintained at or below forty-one degrees (41°) Fahrenheit, or at or above one hundred forty degrees (140°) Fahrenheit for the duration of the Farmers Market, including transportation to the market.

(5) Sampling. Sampling is allowed in compliance with the following standards:

(a) Sampled food shall be offered to the consumer in individual servings and shall not be offered on a self-service basis. Samples shall be prepared beforehand. There shall be no cutting or slicing onsite. Samples shall be adequately protected from contamination as required by subsection (1) of this section, or as approved by the DCO.

(b) Only single-service articles may be given to the consumer for use.

(c) Foods requiring time or temperature controls for safety offered for sampling shall follow proper time and temperature controls as outlined in TFER.

(d) At least one (1) thermometer accurate to +/- two degrees (2°) Fahrenheit shall be on-site for each piece of equipment used to hold proper temperatures.

(B) Functionality of equipment.

(1) Equipment used to keep foods frozen or refrigerated shall comply with TFER and be able to maintain required temperatures for the duration of operations.

(2) Tables used within the vending area shall be made of non-porous material and be easily cleanable.

(3) Utensils used for sampling shall be made of non-porous material and shall be disposable unless a different material or utensil is approved in writing by the DCO.

(C) Equipment, numbers and capacities.

(1) Hand wash facilities shall be provided for each Farmers Market food vendor. A portable hand sink or other facilities or methods as approved by the DCO may be used if it satisfies the listed requirements.

(2) Where a hand wash facility is required, a waste tank with a larger capacity than the potable source water tank shall be provided.

(3) Trash receptacles shall be available to each Farmers Market food vendor. Trash shall be disposed of daily at the designated location as provided by the market operator or offsite as needed to prevent pests.

(D) Physical facilities.

(1) All vendors shall be located on a concrete, asphalt, or other approved surface providing adequate drainage.

(2) Food vending areas shall be covered, except for those vendors selling plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption.

AUTHORITY OF ENFORCEMENT

Sec. 116.88. - Penalty.

It shall be unlawful for any person to violate any provision of this chapter, and any such violation shall be deemed to be a misdemeanor and, upon conviction of such violation, such person shall be punished by a penalty as set forth in section 10.99 for each offense. Each and every day any such violation continues shall be deemed to constitute a separate offense."

SECTION 3.

The following definitions shall be added to Section 116.01 – Definitions:

"*Approved.* Acceptable to the City based on a determination as to conformance with appropriate standards and/or good public health practices.

Farmers Market. An outdoor market place on private property of at least ten (10) acres or on public property as approved by the DCO where produce, food, or other products are distributed, offered for sale, or sold directly to consumers by the persons that have raised, grown, made, crafted, processed, or produced the products or approved foods. A Farmers Market does not include a flea market or other gatherings or markets primarily offering merchandise, personal effects, tools, or outdoor retail sale or promotion.

Farmers Market concession vendor. Any person who prepares, operates, offers, serves, or sells unpackaged, ready to eat, foods requiring time or temperature control for safety intended to be consumed on site at time of purchase.

Farmers Market permit. The written approval from the DCO to hold a Farmers Market at a specific location. Such permit is non-transferable.

Farmers Market operator permit holder. A person who has applied for a Farmers Market operator permit and has been issued a Farmers Market operator permit by the DCO. Such permit is non-transferable.

Farmers Market food vendor. Any person who operates, offers, or sells approved food items at a Farmers Market. Foods included are whole produce including fruits and vegetables, plants, nuts, approved meats, honey, eggs, pasteurized dairy, honey, foods not requiring time or temperature control for safety, prepared packaged foods and other approved foods.

Farmers Market food vendor permit. The written approval from the DCO for a person to participate as a food or concession vendor in a Farmers Market. Such permit is non-transferable.

Person. Any individual, firm, partnership, association, corporation, company, governmental agency, club, or organization of any kind.

Premises Tract(s) of land including the grounds and any permanent or temporary buildings, structures, or other appurtenances."

SECTION 4.

Section 31.01, Establishment of Fees for City Services, of Chapter 31, Comprehensive Fee Schedule, of Title III, Administration, of the Carrollton Code of Ordinances is amended to add subsection (D)(4) and shall read as follows:

"(4) Farmers Markets:

Health permit for Farmers Market operator permit	$150.00 per year
Health permit for Farmers Market food vendor	$50.00 per year
Health permit for Farmers Market concession vendor	$150.00 per year"

SECTION 5.

Section 34.040, Creation, composition, powers and duties, Property Standards Board, of Chapter 34, Municipal Boards, Commissions and Advisory Committees, of Title III, Administration, of the Carrollton Code of Ordinances is amended to add subsection (C)(8) and shall read as follows:

"(8) The Board shall conduct the hearings on appeals provided in Chapter 116, Section 116.85, Farmers Market Regulations, of this code."

SECTION 6.

If any section, subsection, sentence, paragraph, clause, phrase, or provision in this Ordinance or application thereof to any person or circumstance, shall be adjudged invalid or held unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect. This ordinance shall be cumulative of all provisions of ordinances of the City of Carrollton, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 7.

Except as herein amended, Chapter 116 Restaurants And Food Establishments, Chapter 31, Comprehensive Fee Schedule, and Chapter 34, Municipal Boards, Commissions and Advisory Committees, of the Carrollton Code of Ordinances, as amended, shall remain in full force and effect. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified, and affirmed.

SECTION 8.

This ordinance shall become and be effective on and after its adoption and publication.

DULY PASSED AND APPROVED by the City Council of the City of Carrollton, Texas, this 3rd day of November, 2015.

CITY OF CARROLLTON, TEXAS

Matthew Marchant, Mayor

ATTEST:

Krystle Nelinson, City Secretary

APPROVED AS TO FORM:

Susan Keller
Assistant City Attorney

APPROVED AS TO CONTENT:

Scott Hudson
Environmental Services Director