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PROSECUTION OF MOBILE FOOD VENDORS IN MUNICIPAL COURT

by
Robin E. Harris, Assistant City Attorney,

Criminal Prosecution Division

City of Austin Law Department



Robin is an Assistant City Attorney with the City of Austin's Criminal Prosecution Division. As a municipal court prosecutor, Robin handles traffic cases, fine-only criminal offenses, and municipal code violations.

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Spawn of the Taco Truck

This is a challenging subject to because of the varied methods of dealing with this growing segment of the food business. In Austin we handle the matters as fine-only criminal offenses. Some jurisdictions take care of the matters administratively by revoking permits or requiring an operator to post a bond. Finally, the matter can be handled civily through injunctions and other penalties.

Authority for Criminal Prosecution

In Texas, authority for health code related violations to be heard in municipal court comes from the Government Code:

> *Sec. 29.003. JURISDICTION. (a) A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction in all criminal cases that:*
>
> *(1) arise under:*
> *(A) the ordinances of the municipality; or*
> *(B) a resolution, rule, or order of a joint board operating an airport under Section 22.074, Transportation Code; and*
> *(2) are punishable by a fine not to exceed:*
> *(A) $2,000 in all cases arising under municipal ordinances or resolutions, rules, or orders of a joint board that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or*
> *(B) $500 in all other cases arising under a municipal ordinance or a resolution, rule, or order of a joint board.*

The City of Austin Code allows for both criminal and civil enforcement options:

ARTICLE 8. PENALTIES; INJUNCTIONS.

§ 10-3-211 OFFENSES AND PENALTIES.

(A) A person commits an offense if the person knowingly provides false information on an application for a food manager certificate or food handler registration.

(B) A person commits an offense if the person uses a food manager certificate or food handler registration that has not been issued to the person by the health authority.

(C) A person commits an offense if the person knowingly provides false information on an application for a permit required by this chapter.

(D) A person commits an offense if the person uses a permit that has not been issued to the person by the health authority.

(E) A person commits an offense if the person performs an act prohibited by this chapter or fails to perform an act required by this chapter.

(F) A person commits an offense if the person operates a booth for the sampling of food products at a farmers market without a valid permit or with a suspended permit.

(G) A person commits a separate offense each day that the person performs an act prohibited by this chapter or fails to perform an act required by this chapter.

(H) Except as otherwise provided, proof of criminal negligence is required for conviction of an offense under this chapter. Proof of a higher degree of culpability than criminal negligence constitutes proof of criminal negligence.

(I) An offense under this section is a fine only offense and is punishable by a fine not to exceed $2,000.

§ 10-3-212 INJUNCTION.

The health authority may seek to enjoin violations of this chapter.

Culpable Mental State

The Government Code allows for punishment amounts of up to $2000 for "public health and sanitation" violations. Proof that a defendant acted with recklessness, knowledge or intent is required for a fine exceeding $500. Some offenses with fines up to $500 can have the mental requirement waived, but it must be expressly stated in the ordinance.

Resolution Options

Balancing

One of the most important considerations is balancing the business interests of the community and prosecuting violations of the law.

No Contest Plea

This is similar to a plea of guilty and counts as a criminal conviction against the defendant. The fine is often reduced for first time offenders, but it depends on the facts and history of the case. Repeated, multiple, or severe violations may not warrant a reduction in the penalty amount.

Deferred Disposition

Deferred Disposition is an option to have the case dismissed so it is not entered as a conviction on a criminal record. The defendant enters a plea of "no contest" to the offense and the court agrees to defer the proceedings for up to 180 days. During that time, the defendant must comply with a number of conditions to have the case dismissed. Common terms for dismissal involve paying a special expense fee to the court, completing a number of community service hours, submitting the business to follow up inspections, and having no further violations for the length of the deferral period.

ISSUES RELATED TO DEFERRED DISPOSITION:

- Power of the criminal record
- Offer one or not?
- Problems with follow up inspection
- Community Service

An example deferred disposition form is attached to this presentation.

Trial

Sometimes a case cannot be resolved by a no contest plea or deferred disposition. At that point trial is the only remaining option. Presenting one of these cases to a judge or jury and getting them to agree with the city's view on whether an ordinance has been violated is not complicated as long as the reasoning is clearly presented. This can involve:

- Clearly stating the importance of the ordinance
- Defining terms used in industry regulation
- Walking the fact finder through the permitting and inspection process with the witness
- Making sure the reason for enforcement is unambiguous

Conclusion

The growing number of mobile food vendors creates some interesting issues for city governments. Is it a trend that can be dealt with using existing ordinances, or a long-term shift in business models that will require new regulation? With some creative ordinance drafting there can be just as many enforcement options as there are potential food options.

CAUSE NO _____

STATE
V.
_____

IN THE MUNICIPAL COURT
CITY OF AUSTIN
TRAVIS COUNTY, TEXAS

ORDER DEFERRING POSITION: Health Violation
Mobile Vendor

The defendant having been charged with a Health Violation indicated above did appear and being called to plead, entered a plea of "No Contest" to the offense. The Court, having considered the matter, accepts the Defendant's plea, finds the Defendant guilty, and enters a judgment that the State of Texas for the use and benefit of the City of Austin have and recover from the defendant a fine and court cost of $_____. The Court further defers proceedings for a period as indicate below and, on the Defendant showing completion of the terms set forth below, will dismiss the charge. If the complaint is dismissed, court cost and a special expense in the amount state in Term No. 1 will be imposed.

If the Defendant fails to complete all or any of the terms and conditions stated below, the court will schedule a revocation hearing for the defendant to show cause why the evidence was not timely submitted. If no good cause is shown, the Court will enter an adjudication of guilt and impose sentence. If a judgment of guilty is entered, a conviction will result, and a fine will be assessed in the amount listed in above paragraph one. The amount to be paid pursuant to term No. 1 below will be applied to the court costs and fine assessed. Any outstanding fine will be immediately due and payable.

Therefore the court having entered a judgment on defendant's plea at the time the plea was made, it is hereby ordered during the deferral period, which ends on _____ the defendant is to:

1. Pay the Court a court cost & special expense fee in the amount of $_____on or before _____. Credit card payments accepted at Municipal Court: 974-4640 or www.austintexas.gov/court.
2. Receive no scores below 75 on routine Dept. of Health inspections throughout the deferral period.
3. Perform _____ hours of community service at an approved nonprofit agency, appropriate for rehabilitative purposes.
4. SUBMIT to the Municipal Court on or before the end of the deferral period all required Community Service documentation showing that the number of hours designated has been completed.
5. Commit no offense against the laws of the State of Texas and the City of Austin.

Food business information: http://www.austintexas.gov/department/business-applications-and-guides

DATE: _____

_____
Municipal Court Judge, City of Austin

_____
Assistant City Attorney

PLEA OF NO CONTEST: I hereby plead no contest to the offense charged, waive my right to trial by judge or jury, and agree to the conditions stated above. I understand that my failure to comply with any of the above terms will constitute grounds for the Court to find me guilty and impose the fine assessed.

_____
Defendant's or Attorney's Signature

City of Austin Municipal Court PO BOX 2135, Austin, TX, 78768 (512) 974-4800
NORTH OFFICE: 12425 Lamplight Village Avenue / SOUTH OFFICE: 5700 Manchaca Road
www.austintexas.gov/court