



**CITY OF BEAVERTON  
STAFF REPORT**

**TO:** Planning Commission

**STAFF REPORT DATE:** October 19, 2016

**HEARING DATE:** October 26, 2016

**STAFF:** Steve Regner, Associate Planner

**SUBJECT:** **TA2016-0006 (Food Carts and Temporary Uses Text Amendment)**

**REQUEST:** The City proposes to amend the Beaverton Development Code to modify Food Cart Pod and Temporary Use Mobiles Sales regulations. The proposal will allow for above ground water and wastewater storage tanks for Food Cart Pods, regulate fence heights for Food Cart Pods, and relax requirements for Temporary Mobile Sales permits related to duration and colocation. The update will affect Chapters 40 and 60 of the Development Code

**APPLICANT:** City of Beaverton - Planning Division

**APPLICABLE CRITERIA:** Development Code Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

**RECOMMENDATION:** Staff recommend the Planning Commission review the proposal, take public testimony, deliberate on the proposal and make a recommendation to City Council.

**1. Summary of Proposed Text Amendment**

City staff have prepared a Text Amendment to modify the code that regulates Food Cart Pods within the City of Beaverton. Currently, Food Cart Pods must be served by permanent utility connections to public water and sanitary sewer lines, and all utility lines must be undergrounded. However, staff has consistently received feedback from the development community that these requirements were too costly, deterring property owners from pursuing Food Cart Pods on their property. Staff has proposed new text that would allow for aboveground water and wastewater storage tanks, and allowing for water, wastewater, and electrical lines serving the carts to remain above ground. Proposed text amendments also set standards for fence heights, which was not specifically addressed in the initial Food Cart Pod regulations.

Staff is also proposing modifying rules regulating Temporary Mobile Sales, which most commonly take the form of food trucks. Staff has heard from property owners and employers that they are seeking to provide alternative lunchtime options for their employees, especially in business parks. According to these owners, clusters of food trucks are high on wish lists of their tenants and employees. Currently, any Food Truck (or other Temporary Mobile Sales) must obtain a permit if on site for more than one hour. Two notable requirements for the permit is that the Food Truck can only be on site for seven hours, and only one permit can be issued per site.

In an effort to respond to desires from the community to allow for groupings of Food Trucks, staff is proposing to allow Food Trucks on site for up to three hours without obtaining a permit. Additionally, staff is proposing that any site can have up to three Temporary Mobile Sales permits issued per site. These changes will allow to the temporary clustering of Food Trucks while ensuring the city maintains some level of review for Food Trucks and other Temporary Mobile Sales.

On September 14, 2016 staff held a work session with the Planning Commission to discuss Food Cart Pods and Temporary Mobile Sales. This proposal reflects the discussion of that work session. Staff have summarized the proposed amendments below and all amendments are shown in the attached Exhibits.

## **Chapter 40**

Staff is proposing to modify the Threshold and Approval Criteria for Temporary Mobile Sales application.

### *Threshold – Hours on Site*

Currently, a permit must be obtained if the Temporary Use is on site for longer than one hour. To allow for greater flexibility for property owners, business owners, and Food Truck owners, staff is proposing to change the threshold to three hours. This would allow for a group of Food Trucks to locate on site for up to three hours without a permit. Three hours would allow for a Food Truck or Trucks to, at minimum, park on site, have 30 minutes of prep time, serve food for two hours, and have 30 minutes of cleanup and leave the site. Many business owners do not have a set one hour lunch period, but often two offset lunch periods. This increase in threshold would allow for a greater number of potential customers to patronize the Truck or Trucks.

### *Approval Criteria – Permits per Site*

Current regulations allow one Temporary Mobile Sales permit be issued per site each year. This explicitly prohibits clustering of Food Trucks. Staff is proposing to modify Approval Criteria 13 to allow for up to three Temporary Mobile Sales permits per site per year. This amendment will permit another way to allow for small scale clustering of food trucks

## **Chapter 60**

Staff proposes to modify utility requirements and add fencing requirements for Food Cart Pods.

### *Wastewater*

Following the adoption of the Food Cart Pod regulations, staff began to receive feedback from potential Food Cart Pod operators that the utility undergrounding and permanent utility connection requirements were too costly. Between the actual construction costs for installing the utilities and the System Development Charge (SDC) fees, potential operators shared that the initial investment would be too large, and deterred them from moving forward with developing a Food Cart Pod. This issue was one of the more heavily discussed topics at the April 26, 2016 Developer's Roundtable. Staff heard from property owners and potential managers that the undergrounding costs were too high, and from an established Food Cart Pod developer that if the utilities were required to be undergrounded, his Pod would have been too costly to be developed.

Staff reached out to the Oregon Department of Environmental Quality (DEQ) seeking clarification on the agency's position on above ground wastewater storage tanks. Based on initial research, staff concluded that DEQ did not permit above ground wastewater storage tanks, though DEQ did not respond to staff's inquiry during their initial research phase.

Staff recently did receive more information from DEQ, clarifying that above ground wastewater storage tanks are not in conflict with DEQ regulations, as long as they were owned and serviced by a DEQ licensed pumper. Based on this information, staff is proposing to allow for Food Cart Pods to use above ground wastewater storage tanks, consistent with DEQ regulations. Screening of the storage tanks is also required.

### *Potable Water*

Similar to the public sanitary sewer connection, staff received feedback that the SDC fees related to connection to the public water system made developing Food Cart Pods cost-prohibitive. Under direction from the Planning Commission, staff conducted further research to determine if there was a certain sized potable water holding tank that would ensure that a Food Cart would have sufficient water to support sanitary food handling conditions. Staff located existing state regulations that set minimum potable water tank sizes based on the class of the food cart. Oregon Health Authority's 2012 Food Sanitation Rules Section 5-3 Mobile Water Tank and Mobile Food Establishment Water Tank sets forth requirements for in-cart potable tanks, including tank size. Staff is proposing to amend the potable water requirements for Food Cart Pods by allowing above ground tanks, designed and constructed to meet the standards set forth in Section 5-3 of OHA's Food Sanitation Rules.

### *Fencing*

In an effort to limit regulation when first developing the Food Cart Pod code section, Planning staff recommended that Food Cart Pods be exempt from Design Review, with specific regulations for small structures like canopies and storage sheds. These structures can be up to 120 square feet and 15 feet tall without additional permitting. Fences were omitted from these regulations. The result of this omission is that any fence within a food cart pod could be up to 15 feet tall. This was not the intent behind the regulation. Staff is proposing that Food Cart Pods be held to the same fence standard as all proposals subject to Design Review. This standard states that the front yard fence height maximum is three feet, and fences along all other property lines can be up to eight feet tall. Front yards that front on a Collector or Arterial can be up to six feet tall.

## **2. Public Comment**

Public notice was provided consistent with Section 50.50 of the Development Code. As of the date of issuance of the staff report and recommendation there were no written comments from the public submitted to the record. Staff have also not received any written comments from Metro, Washington County, or the Oregon Department of Land Conservation and Development (DLCD) staff.

## **3. Facts and Findings**

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA2016-0006 (Food Cart and Temporary Uses Text Amendment):

### ***Development Code Approval Criteria***

#### ***1. The proposal satisfies the threshold requirements for a Text Amendment application.***

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is any proposed change to the Development Code, excluding changes to the zoning map. TA2016-0006 proposes to make changes to Chapters 40 and 60 of the Development Code, as shown in the attached Exhibits. Therefore, staff find that approval criterion one has been met.

#### ***2. All City application fees related to the application under consideration by the decision-making authority have been submitted.***

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Planning Division, which is a General

Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff find that approval criterion two is not applicable.

**3. *The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.***

Metro's Urban Growth Management Functional Plan (UGMFP) is the document that defines how local governments are to implement the Metro Regional Goals and Objectives. The UGMFP is comprised of the following titles:

- Title 1: Requirements for Housing and Employment Accommodations
- Title 2: Regional Parking Policy (Repealed and moved to Title 4 of the Regional Transportation Functional Plan (RTFP))
- Title 3: Water Quality and Flood Management
- Title 4: Industrial and Other Employment Areas
- Title 5: Neighbor Cities and Rural Reserves
- Title 6: Centers, Corridors, Station Communities and Main Streets
- Title 7: Housing Choice
- Title 8: Compliance Procedures
- Title 9: Performance Measures (Repealed)
- Title 10: Functional Plan Definitions
- Title 11: Planning for New Urban Areas
- Title 12: Protection of Residential Neighborhoods
- Title 13: Nature in Neighborhoods
- Title 14: Urban Growth Boundary

The City is required to bring its land use regulations into conformance with the UGMFP. The Development Code has been amended to incorporate several Policies of the UGMFP. This proposed text amendment does not conflict with the UGMFP.

The proposed Text Amendment modify existing Food Cart Pods and Food Truck regulations, already allowed in the city.

As part of the City's standard noticing procedures, Metro was sent a copy of the DLCD notice, which contained reference to the draft text and summary of the changes, similar to the Exhibits hereto. Therefore, staff find that approval criterion three has been met.

**4. *The proposed text amendment is consistent with the City's Comprehensive Plan.***

Staff find that the following Comprehensive Plan Policies apply to this proposal:

*9.2.2.2.b Ensure regulations and codes are consistent with and complementary to one another, and are easy to understand and implement.*

The Food Cart and Temporary Uses Text Amendment fits within the existing policy framework of the Development Code and is consistent with other provisions within the Code. Code provisions are consistent with and complementary to one another.

**Comprehensive Plan Compliance Summary:** Therefore, staff find that the proposed amendment complies with all applicable Comprehensive Plan policies and is consistent with the City's Comprehensive Plan and that approval criterion four has been met.

**5. *The proposed text amendment is consistent with other provisions within the City's Development Code.***

The text amendment is intended to work within the existing framework of the Development Code, modifying thresholds and approval criteria for existing applications as well as Special Requirements. The proposed amendments do not create conflicts with other provisions of the Development Code. Therefore, staff find that the approval criterion has been met.

**6. *The proposed amendment is consistent with all applicable City ordinance requirements and regulations.***

Staff has not identified any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendment. Therefore, staff find that approval criterion six has been met.

**7. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

Staff have determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff find that approval criterion seven has been met.

***Other applicable approval criteria***

As a post-acknowledgement amendment to the City's Development Code, the proposed text amendment is subject to ORS 197.175(1), which requires that the City demonstrate that the proposed text amendment be consistent with the relevant Statewide Planning Goals. Staff have determined that the following goals apply:

- |         |         |         |         |
|---------|---------|---------|---------|
| Goal 1  | Goal 2  | Goal 6  | Goal 9  |
| Goal 10 | Goal 11 | Goal 12 | Goal 13 |
| Goal 14 |         |         |         |

***Goal 1 Citizen Involvement To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.***

Staff find that the City has provided adequate notice and opportunity for public involvement for the proposed text amendment and public hearing.

*Goal 2 Land Use Planning To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

Staff find that the proposed text amendment fits within the established process and framework. Furthermore, the findings contained within this report establish an adequate factual basis for the proposal.

*Goal 6 Air, Water and Land Resources Quality To maintain and improve the quality of air, water and land resources of the state.*

The relaxed time and place regulations for Temporary Uses only allow for more food trucks to be located on site, which will not have a negative impact on the air, water, or land resources. Food Cart Pods will be required to comply with applicable air, water, and land quality requirements, as would other uses. Food Cart Pods are required to connect to either public sanitary sewer or DEQ approved holding tanks. As such the proposal will not have a negative impact on the air, water, or land resources of the state.

*Goal 9 Economy of State To diversify and improve the economy of the state*

The modification of Food Cart and Temporary Use regulations within the City of Beaverton relaxes the regulations, likely resulting in expanded opportunities for small businesses. Staff find that the proposal will not have a negative impact on the economy of the state.

*Goal 10 Housing To provide for the housing needs of the citizens of the state.*

As stated above in response to the Comprehensive Plan Policies relating to housing and Metro Title 1, staff find that the proposal will not negatively impact the ability of the City to meet its share of the housing needs of the citizens of the state.

*Goal 11 Public Facilities and Services To plan and develop a timely, orderly, and efficient arrangement of public facilities and service to serve as a framework for urban and rural development.*

Staff find that the proposal will not impair the City's ability to provide the necessary services.

*Goal 12 Transportation To provide and encourage a safe, convenient and economic transportation system.*

Staff find that the proposal does not, by itself, authorize any additional development and therefore will not have a negative effect on the transportation system of the City or

surrounding area. All future development will be reviewed through the existing land use review procedures.

*Goal 13 Energy Conservation To conserve energy.*

Staff find that the proposed changes will not change the City's ability to conserve energy or promote energy-efficiency measures.

*Goal 14 Urbanization To provide for an orderly and efficient transition from rural to urban land use.*

Staff find that the proposal only applies to already urbanized land and therefore does not alter the transition from rural to urban land use.

State Land Use Goal Compliance Summary: Therefore, staff find that the proposed text amendment complies with all of the applicable State Planning Goals.

#### **4. Conclusions**

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7 of the Development Code.

#### **5. Staff Recommendation(s)**

Staff offers the following recommendation for the conduct of the October 26, 2016 public hearing for TA2016-0006 (Food Cart and Temporary Uses Text Amendment):

- A. Conduct the public hearing and receive all public testimony relating to the proposal.
- B. Consider the public testimony and the facts and findings presented in the staff report, deliberate on policy issues and other issues identified by the Commission or the public.
- C. Recommend **APPROVAL** of text amendment application TA2016-0006 (Food Cart and Temporary Uses Text Amendment) to the City Council.

#### **6. Exhibits**

- Exhibit 1.1 Text of Proposed Changes
- Exhibit 1.2 Clean Copy of Proposed Changes
- Exhibit 1.3 Section 5-3 of Oregon Health Authority's 2012 Food Sanitation Rules