

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strike through~~. Staff comments, in *italics*, are for context and are not a part of the revisions.)

CHAPTER 14.01 PURPOSE AND DEFINITIONS**

14.01.020 Definitions

Mobile Food Unit. Any vehicle that is self-propelled or that can be pulled or pushed down a sidewalk, street, highway or waterway, on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer.

Mobile Food Unit Pod. Four or more mobile food units on the same lot, parcel, or tract.

Temporary Structures. Trailers, mobile ~~homes~~food units, prefabricated buildings, or other structures that can readily be moved or which are not attached in a permanent manner to a permanent foundation and are used for residential or business purposes.

~~**Temporary Vending Carts.** A trailer or other vehicle that does not exceed 16 feet in length, has functional wheels, an axle for towing, is not attached in a permanent manner to a permanent foundation and is self-contained for sanitary sewer. A temporary vending cart may be mobile (i.e. does not remain stationary for longer than a few hours), or remain stationary, as permitted by Section 14.08.050.~~

Staff: The definition of mobile food unit aligns with language contained in OAR Chapter 333, Division 150, which contains Oregon Health Authority food sanitation rules. The City has discretion as to what constitutes a "Pod" where additional requirements are triggered. These definitions replace the definition for "temporary vending carts," which is deleted. Definition of temporary structures is being modified to eliminate outdated reference to mobile homes and adds reference to mobile food units. At its 5/24/21 work session, the Commission recommended that "Pods" be defined as four or more mobile food units.

CHAPTER 14.09 TEMPORARY ~~STRUCTURES PERMITS~~USES

14.09.010 Purpose

The purpose of this section is to provide some allowance for short-term uses that are ~~truly~~ temporary in nature, where no permanent improvements are made to the site, and the use can be terminated and removed immediately. Temporary activities include special events as defined in [9.80.010](#) of the Newport Municipal Code, temporary living quarters, construction trailers, leasing offices, ~~vending carts~~mobile food units, kiosks, storage buildings, and similar structures.

Staff: Chapter title is being changed from structures to uses, which is more consistent with the purpose statement. Mobile food units are introduced as a type of temporary use, which is appropriate given that they are vehicles.

14.09.020 Special Events Structures

Placement of special events structures is regulated under [Chapter 9.80](#) of the Newport Municipal Code.

14.09.030 Temporary Living Quarters

Notwithstanding any other restrictions and prohibitions in this code, a recreational vehicle may be used as a temporary living quarters subject to the following conditions:

- A. The request for temporary living quarters must be in conjunction with a valid, active building permit.
- B. The time limit shall be no longer than one (1) year from issuance. After the expiration of the time limit, the recreational vehicle used for the temporary living quarters must no longer be used for on-site living purposes.
- C. The recreational vehicle used as the temporary living quarters must be self-contained for sanitary sewer.
- D. Temporary living situations for non-residential projects may use a job shack or other such structure instead of a recreational vehicle as the living quarters and may have a portable toilet instead of a self-contained unit.
- E. The location of the temporary living quarters on the site shall satisfy the vision clearance requirements as set forth in [Section 14.21](#) of the zoning code.

- F. Prior to the issuance of a temporary living quarters permit, the applicant shall sign an agreement that the applicant shall comply with the provisions of this subsection.

14.09.040 Temporary Structures for Other Than Special Events

Notwithstanding any other restrictions and prohibitions in this code, a temporary structure not associated with a special event may be erected subject to the following:

- A. The permit, if approved, shall be issued for a period not to exceed two (2) years. Upon like application and approval, the permit may be renewed for up to an additional (1) year.
- B. Temporary structures are limited to ~~commercially and industrially~~commercial, industrial, water-related, or water-dependent zoned properties.
- C. No permanent changes will be made to the site in order to accommodate the temporary structure.
- D. Permission is granted by the property owner.
- E. Sanitary facilities will be made available to the site.
- F. The structure does not interfere with the provision of parking for the permanent use on the site.
- G. The structure satisfies the vision clearance requirements of the zoning code.
- H. Approval is obtained from the City Building Official if the structure is to be erected for 180 days or longer.
- I. For temporary structures that are to be placed in one location for 12 or more consecutive months, a bond or cash deposit for the amount required to remove the temporary structure, if not removed in the required time frame, shall be placed in an interest-bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.

Staff: Revision is housekeeping in nature. City has previously interpreted that commercial and industrial includes water-related and water-dependent zoned areas. This change makes it explicit.

~~14.09.050 — Temporary Vending Carts~~

~~Notwithstanding any other restrictions and prohibitions in this code, a temporary vending cart, not associated with a special event, may be located within the City of Newport subject to the following:~~

~~A. Temporary vending carts may be located on commercially-zoned property that is at least ½ mile from a permanent eating and drinking establishment.~~

~~B. Temporary vending carts and any accessory improvements (such as seating) are limited to privately-owned properties, and may encroach onto public property or public right-of-way only if the city consents to the encroachment as provided in Chapter 4.10 of the Newport Municipal Code.~~

~~C. The items available for sale from temporary vending carts are limited to food and beverages for immediate consumption. Requests to have a different item or service considered shall be submitted in writing to the City Manager, who shall determine if the item or service:~~

~~1. Can be vended from a regulation size temporary vending cart;~~

~~2. Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk;~~

~~3. Involve a short transaction period to complete the sale or render the service;~~

~~— 4. Not cause undue noise or offensive odors; and~~

~~— 5. Be easily carried by pedestrians.~~

~~D. A permit for a temporary vending cart, if approved, shall be issued for a period not to exceed two (2) years. Upon expiration of a permit, a temporary vending cart must immediately cease operation, and must be permanently removed within seven (7) days.~~

~~E. At least one trash and one recycling receptacle will be made available to the public.~~

~~F. The City of Newport receives a signed statement that the permittee shall hold harmless the City of Newport, its officers and employees, and shall indemnify the City of~~

~~Newport, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activities of the permittee. Permittee shall furnish and maintain public liability, products liability, and property damage insurance as will protect permittee, property owners, and city from all claims for damage to property or bodily injury, including death, which may arise from operations of the permittee. Such insurance shall provide coverage of not less than \$1,000,000 per occurrence. Such insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insured the City of Newport, their officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the City Recorder of the City of Newport.~~

~~G. A bond or cash deposit for the amount required to remove the temporary vending cart, if not removed in the required time frame, shall be placed in an interest-bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.~~

Staff: This section is being replaced by Sections 14.09.050 and 14.06.060 below.

14.09.050 Mobile Food Units

Notwithstanding any other restrictions and prohibitions in this code, a mobile food unit, not associated with a special event, may be located within the City of Newport subject to the following:

A. The lot, parcel or tract upon which the mobile food unit will be placed is zoned for commercial, industrial, or water-related use; and

POLICY OPTION

B. The lot, parcel or tract upon which the mobile food unit will be placed is located at least 500 feet from the grounds of any elementary or secondary school when said school(s) are in session. For the purpose of this subsection, "in session" is the period of time commencing one-half hour prior to the start of the school day and ending one-half hour after dismissal at the end of the school day; and

Staff: This policy option responds to concerns raised in the 6/28/21 and 7/12/21 letter from the Lincoln County School District, in which the District expressed concerns about allowing food carts/trucks to locate on private property in close proximity to their facilities. This is distinguishable from their other request, which is for the City to retain the existing 500-foot separation requirement in NMC Chapter 4.10 that applies to vending within public rights-of-way or on public property.

The Commission received written testimony from Janet Webster on 7/11/21, Front Street Marine, LLC (Steven Webster) on 7/12/21, and Victor Mettle on 7/12/21 objecting to the District’s request and refuting their rationale, particularly as it relates to student safety and the nutritional quality of food truck/cart products.

This option imposes a 500-foot buffer around elementary and secondary schools where mobile food units would be prohibited. The District’s justification for the requirement relates, among other things, to a concern that allowing food carts could compromise a free lunch program they offer that relies upon student participation and would potentially conflict with closed campus policies that they have in place for the middle school, or are considering for grades 9 and 10 at the high school.

If the Commission elects to pursue this option, then a modest number of commercial properties south of the high school and north/south of Yaquina View elementary would be impacted. There are no commercial, industrial, or water-related properties within 500-feet of Sam Case Elementary or the middle school. A map illustrating the 500-foot buffers was included in the 7/12/21 meeting packet. Staff recommends the Commission impose the 500-foot limitation if there is a chance the introduction of mobile food units in close proximity to secondary schools could compromise the District’s free lunch program. Such a concern is reasonable considering the number of students that benefit from the program, and even with the limitation in place, the code changes will make available a substantial amount of private property to mobile food units.

POLICY OPTION

C. The lot, parcel or tract upon which the mobile food unit will be placed is located outside of the Nye Beach or Bayfront

parking districts, the geographic boundaries of which are defined in NMC Section 14.14.100, unless the use is a Mobile Food Unit Pod; and

Staff: This policy option has been added, at the Commission’s request, in response to public testimony received at the 7/12/21 public hearing from the owners of the Taphouse and Chowder Bowl in Nye Beach, and Clearwater Restaurant along the Bayfront. The rationale is that there is too much congestion in these areas and that mobile food units would pull business away from established restaurants that are struggling to bounce back from the pandemic. Mobile food unit pods would be permitted in these districts. Those that testified in support of this allowance argued that Pods are more permanent, with a level of investment that is comparable to permanent eating and drinking establishments. NMC 14.14.100 includes boundary descriptions for the districts and is logical in that it coincides with areas where timed parking is used to manage parking demand. A map illustrating the district boundaries is included with the 7/26/21 agenda packet materials.

POLICY OPTIONS

D(1) Written consent is obtained from the property owner where the mobile food unit is to be placed; and

or

D(2) Written consent is obtained from the property owner where the mobile food unit is to be placed and from the owner of any adjacent property occupied by an eating and drinking establishment; and

or

D(3) Written consent is obtained from the property owner where the mobile food unit is to be placed and from the owners of each adjacent lot or parcel; and

Staff: The requirement that written consent be obtained from property owner is a given; however, if the Commission is concerned about the impact a mobile food unit may have on brick and mortar eating or drinking establishments than staff has included optional language that would require sign-off from owners of adjoining properties (Option D(2)). A third

option, requiring sign-off from the owners of each adjacent lot or parcel irrespective of whether or not they are developed with an eating or drinking establishment, is included as well but would be more difficult to justify. Staff recommends the Commission pursue Option D(1) or D(2).

- E. The mobile food unit is placed such that it or any associated structure does not occupy required landscaping or obstruct a sidewalk, drive isle, fire lane, clear vision area or accessible parking; and
- F. 10-feet of clearance is maintained between each mobile food unit and between such units and existing or proposed buildings; and
- G. Mobile food unit service windows are to be oriented to pedestrians (i.e. no drive thru windows) and if directed toward a public right-of-way shall maintain a minimum five (5) foot separation from the right-of-way; and
- H. Electrical connection(s) are placed on the ground and covered with a cable protection ramp or equivalent where crossing drive isles or pedestrian paths; and
- I. Any power generating equipment separate from and external to the mobile food unit is located at least 10-feet from other mobile food units and buildings and is fully screened from view; and
- J. Signage associated with each mobile food unit is limited to that which is permanently affixed to the vehicle in accordance with NMC 10.10.070, and one portable a-frame sign that complies with the parameters outlined in NMC 10.10.060(E); and
- K. Awnings, if any, are fully attached to the mobile food unit and located entirely on the subject lot, parcel, or tract; and
- L. Each mobile food unit is limited to a single piece of outdoor cooking equipment situated no less than 10-feet from the unit and any building; and
- M. A minimum of one (1) trash receptacle per mobile food unit is located on the lot, parcel, or tract with at least 10-feet of separation between the receptacle(s) and combustible fuel tanks; and

N. Mobile food units parked for more than two (2) hours or that provides customer seating shall be situated within 500-feet of an accessible restroom with handwashing facilities; and

O. The permit for a mobile food unit other than a mobile food unit pod, if approved, shall be issued for a period not to exceed two (2) years. Upon like application and approval, the permit may be renewed for additional (2) year intervals.

Staff: The provisions above apply to the placement of mobile food units on private property (as opposed to the provisions of Chapter 4.10 that apply to public rights-of-way). They draw from the code concepts discussed at the 4/12/21 work session and sample codes reviewed at that 3/22/21 work session. Some of the concepts also borrow from codes adopted by the City's of Beaverton and Corvallis. This is structured as a ministerial action with review and approval by the Community Development Department without notice, which is consistent with how other temporary uses are handled. As a ministerial action, the standards must be clear and objective.

A number of the provisions also integrate with Oregon Health Authority requirements outlined in OAR Chapter 333, Divisions 150 and 162 (enclosed) and requirements of the Oregon Building and Fire Codes. Generators are permissible but must be screened and they would be subject to decibel limitations of the City's noise ordinance.

14.09.060 Mobile Food Unit Pods

In addition to complying with the provisions of NMC 14.09.050, a mobile food unit pod may be located within the City of Newport subject to the following:

A. The mobile food units include a sheltered common customer seating area that conforms with the following parameters:

1. Has a maximum of 50 percent of the structure enclosed with walls or sides. Membrane structures may be fully enclosed; and

2. Are not more than 15-feet in height.

B. Each mobile food unit is connected to city sanitary sewer service, water, and a permanent power source located on the lot, parcel, or tract; and

- C. Existing uses on the lot, parcel or tract upon which the mobile food unit pod is to be located possess off-street parking that satisfies the requirements of NMC Chapter 14.14; and
- D. One off-street parking space is provided for each mobile food unit plus one space for every 150 square feet of seating; and
- E. The lot, parcel, or tract shall be landscaped in accordance with NMC Chapter 14.19; and
- F. Areas occupied by customers are illuminated when mobile food units operate during hours of darkness, with fixtures that are downward directed and shielded to prevent glare on abutting properties; and
- G. Use of generators is prohibited; and
- H. Review and approval shall be subject to a Type I decision making procedure as set forth in NMC Chapter 14.52.

Staff: Mobile food unit pods are defined as four or more units on a lot, parcel, or tract. This can be adjusted. The concept is that at this density they need to move closer towards standards that would apply to brick and mortar eating and drinking establishments. This is where the requirement that seating be provided comes into play. Given Newport's climate, a requirement that the seating be sheltered is reasonable. The limitation that a non-membrane shelter be no more than 50% enclosed helps facilitate continuity of the Pod by ensuring visibility between mobile food units and seating areas and it avoids triggering assembly occupancy and related provisions of the Oregon Structural Specialty Code that could significantly drive up the cost of a project. Connection to public water and sewer will trigger SDCs, a cost that is similarly borne by brick and mortar establishments. Use of a permanent power source alleviates the need for generators, which could be a noise issue when several are running in a concentrated area.

Off-street parking and landscaping requirements trigger for a pod; whereas, they are not a consideration for sites with one or two mobile food units. Brick and mortar eating and drinking establishments must satisfy these same requirements.

After the Commission's 7/12/21 hearing, but prior to the 7/26/21 hearing, staff amended Subsection 14.09.050(O) and added Subsection (H). Given the level of investment associated with a Pod development, it would be difficult for the City to justify the approval being limited to two (2) years with an option for renewal every two (2) years.

14.09.~~060~~070 Permits Not Transferable Unless Approved

Permits authorized by this section are not transferable to another person or location unless approved by the Community Development Director.

14.09.~~070~~080 Approval Authority

Unless otherwise provided, placement of temporary structures is subject to review and approval by the Community Development Director as a ministerial action.

14.09.~~080~~090 Application Submittal Requirements

In addition to a land use application form with the information required in Section 14.52.080, applications for temporary ~~structures-uses~~ shall include the following:

- A. A site plan, drawn to scale, showing:
1. The proposed location of ~~the~~ temporary structures, mobile food units, seating areas, and amenities, as applicable.
 2. Existing buildings.
 3. Existing parking.
 4. Access(es) to the parking areas.
 5. Any additional structures, seating areas, and amenities associated with the temporary structureuse.
 6. The location and size of trash receptacles.
 7. Utilities.
 8. Existing signs and signs associated with the temporary structureuse.

9. ~~Temporary structure~~ Building elevations or photos of proposed temporary structures or mobile food units.

10. ~~The location of drive-up windows~~ (The location of an accessible restroom with handwashing facilities, if applicable).

- B. A signed agreement stating that the applicant is aware of the limitations and conditions attached to the granting of the permit and agrees to abide by such limitations and conditions.
- C. A description of the types of items sold or services rendered, if applicable.
- D. A valid copy of all necessary permits required by State or local health authorities, and other required licenses or permits, such as business license or sign permit obtained by the applicant and maintained on site.

Staff: The submittal requirements have been updated to account for mobile food units as an application type.

~~14.09.090~~ 100 Fire Marshal Inspection

Prior to the issuance of any permit, the Fire Marshal shall inspect and approve any temporary structure to assure conformance with the provisions of the Fire Code.

~~14.09.400~~ 110 Construction Trailer Exemption

Construction trailers located on the site upon which construction is to occur that are used during the course of the construction project are exempt from the process outlined in this section and may be permitted at the time of building permit approval provided said structures comply with the building code and the vision clearance requirements of the zoning code.