

CITY OF NEWPORT
ORDINANCE NO. 2187

**AN ORDINANCE AMENDING CHAPTERS 4.10, 11.05, 12.15, 14.01, AND 14.09
RELATED TO THE OPERATION OF FOOD TRUCKS AND FOOD CARTS
IN THE CITY OF NEWPORT**

(NEWPORT FILE NO. 1-Z-21)

Findings:

1. Newport's existing laws limit food carts and food trucks (collectively "mobile food units") to privately owned commercial property that is at least ½ mile from permanent eating and drinking establishments. Vending of this nature on public property is limited to special events or specifically designated areas, and the City offers a narrow set of licensing options for mobile operators who want to vend from public parking areas, requiring they move every 15 minutes.
2. These rules have proven to be too strict, and the City Council, as part of its goal setting, concluded that it is timely and appropriate to update these laws to provide additional options for individuals that wish to operate a mobile food unit(s) within the City.
3. To that end, the Newport Planning Commission and Commission Advisory Committee held work sessions on March 22, 2021, April 12, 2021, and May 24, 2021 to consider the City's existing regulations and model ordinances, potential changes they wanted to see to the City's regulations, and a draft set of proposed amendments. Being satisfied that the amendments accurately reflected desired outcomes, the Planning Commission formally initiated the legislative amendment process at its May 24, 2021 regular meeting.
4. Newport Municipal Code (NMC) Chapter 4.10, relating to vending on public property and streets, is being amended to allow mobile food units to setup in commercial and industrial areas for up to two (2) hours, except City Center, Nye Beach and the Bayfront where they are to be limited to designated vending areas. The changes further provide:
 - a. Size allowances for designated vending areas (as opposed to mobile) may be set by Council resolution, with the expectation that some locations will be large enough that they are suitable for mobile food units; and
 - b. Vendors must demonstrate that they have obtained all necessary permits from state or local health authorities or other required licenses; and
 - c. Liability insurance requirements are being increased to match current City requirements; and
 - d. Existing requirements that mobile vendors in residential areas must move every 15-minutes and are prohibited within 500-feet of schools will be retained; and

- e. Licenses to vend in designated vending areas will be issued on a first come, first served basis, except that preference will be given to operators that are renewing their license; and
 - f. Vending may continue to be allowed as part of an approved Special Events Permit.
5. Revisions to NMC Chapters 14.01 and 14.09, relating to vending on private property, will allow mobile food units on property zoned for commercial, industrial, and water-related uses with property owner consent, subject to a temporary use permit. The changes further provide:
- a. Applicants must show that their unit has been licensed by the Lincoln County Health Department and that the location they have selected, and manner in which they are operating, satisfies clear and objective standards designed to promote health and safety and avoid nuisance impacts; and
 - b. If four (4) or more mobile food units are to be located on a property, the development becomes a Mobile Food Unit Pod, subject to additional standards such as connecting to sewer, permanent power, provision of sheltered outdoor seating, restroom facilities and lighting; and
 - c. Mobile Food Units must be at least 500-feet from schools and will be allowed only as pods in City Center, Nye Beach and the Bayfront.
6. Proposed amendments to NMC Chapters 11.05 and 12.15 clarify that mobile food units are vehicles that are not subject to building codes, and that System Development Charges are payable only if the development is a pod.
7. Public hearings before the Planning Commission were held on July 12, 2021 and July 26, 2021 to consider and refine the proposed amendments and, after considering evidence and argument in the record, the Commission recommended the City Council adopt the changes.
8. Testimony was generally supportive of the changes, with the most contentious issues being whether or not mobile food units should be prohibited within 500-feet of schools, and limited to pods on private property in Nye Beach and the Bayfront. The Lincoln County School District requested the 500-foot separation requirement because it is concerned that units located any closer to their facilities would be so attractive to students that it would exacerbate truancy and risk the financial viability of their free lunch program by drawing away too many paying students. Testimony in favor of limiting mobile food units to pods in Nye Beach and the Bayfront relate to the level of congestion in these tourist-oriented areas, and a concern that allowing an unlimited number of mobile food units would exacerbate those conditions. The Planning Commission agreed with those that raised these concerns and is recommending a set of amendments that address them.

9. On August 16, 2021, the Newport City Council met in work session to review the proposed amendments and rationale the Planning Commission provided for each of the changes.

10. The City Council held a public hearing on September 7, 2021 regarding the question of the proposed amendments and, after considering evidence and argument in the record, voted in favor of their adoption with the changes requested by the Commission, and an additional modification to allow mobile food units in City Center in the same manner as Nye Beach and the Bayfront. The Council concluded that the amendments are necessary and further the general welfare of the community.

11. Information in the record, such as affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted in support of the amendments below.

Section 2. Chapter 4.10 of the Newport Municipal Code is hereby amended as set forth in the attached Exhibit "A."

Section 3. Chapters 11.05 and 12.15 of the Newport Municipal Code are hereby amended as set forth in the attached Exhibit "B."

Section 4. Chapters 14.01 and 14.09 of the Newport Municipal Code are hereby amended as set forth in the attached Exhibit "C."

Section 5. This ordinance shall take effect 30 days after its adoption.

Date adopted and read by title only: Sept 7, 2021

Signed by the Mayor on Sept. 10, 2021.
Council President

cm hall
CM Hall, Council President

ATTEST:

Derrick I. Tokos
Derrick I. Tokos, Community Development Director

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

CHAPTER 4.10 VENDING ON PUBLIC PROPERTY

4.10.005 Findings and Purpose

- A. The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic.
- B. Unrestricted vending on public streets, sidewalks and other public places would interfere with the primary use of those public areas. However, vending on the public streets and sidewalks and upon certain public property that is limited to times and locations that minimize interference with public use promotes the public interest by contributing to an active and attractive pedestrian environment.
- C. The purpose of this chapter is to preserve the ability to use streets, sidewalks and other public places for their primary purposes while allowing limited vending in those areas to protect the public health, safety, and welfare.

4.10.010 Definitions

The following definitions apply within this chapter.

Business Vending Area. Public property determined by the City Council by resolution to be areas where vendors may sell or offer to sell food, beverages, merchandise or services from a stand.

Stand. Any table, showcase, bench, rack, pushcart, or wagon or other vehicle used for the displaying, storing or transporting of articles offered for sale by a vendor, or otherwise used in connection with any activities of a vendor. Stand does not include any item carried by a vendor and not placed on the ground or pavement for use or display.

Mobile Stand. A stand that is moved from place to place and that is engaged in vending from a single location in the public right of way for no more than 15 minutes in residential zoned areas or up to 2 hours at a time elsewhere in the city.

Fixed standStand. A stand at which vending occurs for more than 15 minutes in residential zoned areas or more than 2 hours at a time in a single location elsewhere in the city. Even

if a stand is easily movable, it is a fixed stand if it remains in place for more than 15 minutes in a residential zoned area or 2 hours elsewhere in the city in the course of a vending activity. For purposes of the definitions of “~~mixed-mobile~~ stand” and “fixed stand,” single location includes s 100 feet in all directions.

Vending. The activity of selling or offering for sale any food, beverage, merchandise or service on public property, streets or sidewalks from a stand, from the person or otherwise.

Vendor. Any person engaged in the activity of vending, whether directly or indirectly.

Staff: The City last amended this section with Ordinance No. 2112, an ordinance that was adopted in May of 2017. That ordinance included a sunset clause that required further City Council action, a step that did not occur, meaning the changes were revoked as of January 1, 2018. Ordinance No. 2112 changed the transition point from mobile to fixed stands from 15 minutes to 30 minutes to better accommodate food trucks. The proposed change extends that timeframe further to two (2) hours. A two (2) hour transition point aligns with Oregon Health Authority regulations that require access to an accessible restroom within 500-feet of the food truck. An endorsement for mobile vending authorizes a user to lawfully park for short periods of time on public streets throughout the city. Introducing a restroom verification requirement isn't something that could be reasonably accomplished in this context. Retaining the 15-min. transition point for residential zoned areas effectively limits vending in those areas to traditional, transient operators such as ice cream sales. The reference to “residential areas” has been clarified to read “residential zoned areas” at the request of the Commission (5/24/21 work session).

4.10.015 Vending On Public Property

- A. It shall be unlawful to engage in any vending activity upon any street, sidewalk, or other public property of the city except as specifically allowed by a vending endorsement on a business license or an exemption allowed by Subsections B. or C. of this section.
- B. Vending on any city-owned or city-administered property other than rights of way or business vending areas is prohibited without a Special Event Permit issued pursuant

~~to NMC Chapter 9.80 written agreement with the city.~~ Any vending ~~by written agreement with the city~~ authorized by a Special Event Permit is exempt from the prohibition on vending stated in Subsection A. of this section.

- C. Vending on sidewalks by persons under 13 years of age with the permission of the adjacent property owner is exempt from the provisions of this chapter, provided that the vending activity cannot block the sidewalk. The sole remedy under this section shall be the relocation of the activity so that the sidewalk is not blocked.

Staff: Private activities conducted on public property other than rights-of-way or business vending areas require a Special Event Permit. That clarification was made with Ord. No. 2170. This section of the code is being amended to direct persons to the Special Event permitting process.

4.10.020 Application

An application for a business license with a vending endorsement shall contain the following additional information:

- A. The names, residence and business addresses and residence and business telephone numbers of each person who may be engaged in operating such business or stand.
- B. A description of the type of food, beverage, merchandise or service to be sold or offered for sale as part of the vending operation.
- C. The location(s) where any stand(s) will be located.
- D. A description and photograph or drawing of any stand to be used in the operation of the business. The requirement for a drawing or photograph may be waived for stands operated on sidewalks adjacent to the place of business of the license holder.
- E. Proof of liability insurance covering personal injury and property damage, with coverage limits of at least ~~\$500,000~~ \$2,000,000, naming the city as an additional insured.

F. A valid copy of all necessary permits required by State or local health authorities, and other required licenses or permits, such as a sign permit if permissible, obtained by the applicant and maintained on site.

Staff: Insurance requirement is updated to align with current City practice. This was noted in the regulatory concept memo distributed at the 4/12/21 work session. Consistent with direction from the Commission, subsection (F) was added to ensure mobile food units operating within rights-of-way or on public property have been inspected and have all required permits before receiving a license to operate. The clause aligns with similar language that applies to private properties.

4.10.025 Vending Locations

A. Fixed stands are permitted only within:

1. Business vending area locations, or
2. The sidewalk area immediately adjacent to the applicant's place of business and the standards of Section 4.10.035 are met. Stands authorized under this agreement must be operated by the operator of the adjacent business.

B. The vending endorsement for a fixed stand shall specify the location where the fixed stand may be located and is valid only for that location.

C. The Council may, by resolution, limit the number of fixed stands at each business vending area. ~~If the applications~~ Applications for a vending endorsement for fixed stands in a business vending area ~~exceed the maximum number of fixed stands, endorsements shall be awarded by lot from the applications received by May 31 for the period beginning July 1. shall be issued on a first come, first served basis, except that preference is to be given to vendor(s) that possessed a vending endorsement to operate at the business vending area the previous fiscal year.~~

Staff: This change was requested by Commission members at the 7/12/21 public hearing. The rationale is that a vendor that invested time, energy and resources into a fixed stand at a business vending area should not be at risk of losing the vending opportunity every time their license is up for renewal.

- D. Vending other than from fixed stands are not specific to a location but are subject to the restrictions in [Section 4.10.035\(A\)](#).
- E. Vending endorsements for stands at business vending area locations are limited to one stand. Vending endorsements for areas adjacent to a permanent place of business may include more than one stand.

4.10.030 Fees

- A. ~~An endorsement application surcharge of \$10.00 or such other amount as may be established by Council resolution shall be~~ A surcharge shall be added to the business license application fee ~~if a vendor's endorsement is applied for to recover the city's administrative costs for processing vending endorsement applications.~~ An entity exempt from payment of the business license fee is exempt from payment of the endorsement application surcharge.
- B. An additional fee ~~of \$50.00 per calendar month of operation~~ shall be charged for each fixed stand in a business vending areas and for each mobile stand. The endorsement shall list the months that the stand may operate. Endorsements may be amended to add months, but no refunds shall be given if the licensee does not exercise all rights under the endorsement.
- C. An additional fee ~~of \$50.00 per calendar month, not to exceed a total of \$250.00 per calendar year,~~ shall be charged to holders of endorsements to operate stands adjacent to the business, as permitted by [Section 4.10.025\(A.\)](#)(2.). The endorsement shall list the months that the stands may operate. Endorsements may be amended to add months, but no refund shall be given if the licensee does not exercise all rights under the endorsement.
- D. Vending endorsement fees shall be established by resolution of the City Council.

Staff: This section has been amended to remove references to specific dollar amounts in favor of having the fees set by resolution. It is a housekeeping change that the City has been making as sections of the Municipal Code are amended.

4.10.035 Restrictions

A. No vendor shall:

- 1(a) Vend within 500 feet of the grounds of any elementary or secondary school during the period 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;

Staff: The Planning Commission received testimony from Janet Webster that the City needs to address the provision barring vending in road rights-of-way or on public property that is within 500-feet of an elementary or secondary school when school is in session (ref: 3/26/21 and 4/12/21 emails). Her concern namely relates to its potential impact on private property that she and her husband own that is not impacted by these regulations, since the Chapter 4.10 provisions are limited to road rights-of-way and public property.

The Commission considered Ms. Webster's comments when it met in work session to consider the draft amendments and indicated that it could potentially support lifting the prohibition as it relates to secondary schools (i.e. the middle and high school). Before acting upon any such change, the Commission asked staff to meet with the District. That meeting occurred on 6/23/21 and the School District provided written testimony on 6/28/21. The District requests that the City retain the existing standard, indicating, among other things, 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. This is documented in letters dated 6/28/21 and 7/12/21. 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.

Following the 7/12/21 hearing, the Commission requested that the District provide additional information about the

free lunch program and asked that these two options be kept on the table for further consideration on 7/26/21.

The Planning Commission received the information it requested from the District and, after taking testimony, elected to retain the existing 500-foot limitation. In doing so, the Commission accepted the District's arguments that introducing mobile food units in close proximity to secondary schools could compromise the District's free lunch program and increase truancy. Further, even with the 500-ft limitation in place, the code changes will make available a substantial amount of right-of-way to food trucks/carts, consistent with the Council's goal.

2. Vend within the City Center, Nye Beach or Bayfront parking districts, the geographic boundaries of which are defined in NMC Section 14.14.100, except within a business vending area or as authorized by a Special Event Permit issued pursuant to NMC Chapter 9.80.

Staff: This provision was added, at the Commission's request, in response to public testimony received at the 7/12/21 hearing. A request was made that food trucks/carts be limited to pods in Nye Beach and the Bayfront given the level of activity and congestion in these areas. The proposed language leaves in place the option of vendors operating within the districts if they are located within a business vending area or as part of a Special Event Permit. 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 demand. After taking testimony, the Commission elected to include the language as part of its recommendation, with a request that the City Council designate a small number, possibly 2 or 3, additional business vending areas along the Bayfront sized sufficient to accommodate mobile food units. At its 9/7/21 meeting, the Council elected to add City Center to this provision.

3. Vend between the hours of 9:00 P.M. and 6:00 A.M.
4. Leave any stand unattended.
5. Sell food or beverages for immediate consumption along rights-of-way or public property that front an eating or drinking establishment or in areas where aif

litter receptacles ~~are~~is not available within 25 feet of the vendor.

Staff: This change addresses the second bullet point in the 7/6/21 letter from Hallmark Inns and Resorts, Inc., requesting the Commission prohibit food carts/trucks from setting up in a parking space that is in front of an existing eating or drinking establishment. This would help prevent friction between users and avoids what could be viewed as unfair competition for patrons. Following the 7/12/21 hearing, the Commission confirmed that this revision is warranted.

6. Leave any location without first picking up, removing and lawfully dispersing of all trash or refuse remaining from sales made by the vendor or otherwise resulting from the vendor's activities.
7. If vending is from a stand, allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the stand.
8. If the license includes a stand, expand the stand beyond what is described in the application and allowed in the permit.
9. Vend anything other than that which the vendor is licensed to vend;
10. Violate any city ordinance regulating sound or noise.
11. Vend within any portion of ~~any-a~~ vehicle travel lane ~~portion of any~~within a street other than at times when the street is closed to allow vending. This prohibition does not prohibit the use of mobile stands legally parked and selling to persons not within the vehicle ~~use travel lane portion~~ of a street. For the purpose of this subsection, "legally parked" means the vehicle is located within a striped parking stall or other area designated for vehicle parking.

Staff: This subsection has been revised for clarity. At its 5/24/21 work session, the Commission inquired as to whether or not a vehicle can park across multiple striped parking spaces. The Police Chief indicated that he is unaware of a law that would prevent that from occurring, so language has been added to define legally parked, in

the context of vending, as being parked within a striped stall or other area designated for parking.

12. Operate a stand without displaying a copy of the business license with the vending endorsement on the stand or engage in other vending activity without having the business license with vending endorsement immediately available for inspection.
- B. No vendor selling other than at a fixed stand shall vend at any location where the sidewalk is not at least eight feet in width, or within 10 feet of an entrance way to any building or within 20 feet of any crosswalk or intersection. No vendor shall block or allow customers to block a sidewalk.
 - C. No vender shall allow his or her stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure without the owner's permission.
 - D. Vending activities, whether from a stand or otherwise, shall be conducted in such a way as to not block pedestrian use of a sidewalk. Pedestrian use is considered blocked if two persons cannot pass each other walking in opposite directions.

4.10.040 Vending Stands

- A. Vending stands licensed for business vending areas shall not exceed five feet in length and five feet in height, excluding canopies and umbrellas, unless an alternative vending stand size limitation is established for a business vending area(s) by City Council resolution.

Staff: The Commission considered three options that get at the size allowances for vending stands at "business vending areas," which are public sites designated for vending by Council resolution. Areas currently designated include the plaza at the Nye Beach Turnaround (up to 3 licenses) and the lift station site at Hatfield and Bay Blvd (up to 2 licenses). One option would have retained the existing language, which limits the size of stands to a footprint that can accommodate food vending pushcarts or small tables for retail sales. Another option would have expanded the size allowance for a stand to accommodate a food truck/cart, in line with the recommendation listed under the third bullet point of the 7/6/21 letter from Hallmark Inns and Resorts, Inc. Ultimately,

they elected to recommend the above language, which gives the City Council the option of identifying, by resolution, business vending areas where stands larger than 5-ft x 5-ft are appropriate. As for that future Council resolution, the Commission would like to see it retain the 5-ft x 5-ft size limitation in Nye Beach.

- B. Umbrellas and canopies shall be a minimum of seven feet above the sidewalk. Umbrellas or canopies may not exceed 100 square feet in area.
- C. Vending stands on sidewalks adjacent to the licensee's place of business are permitted only in the following areas:
 - 1. On SW Coast Highway between SW Angle Street and SW Fall Street.
 - 2. On SW Bay Boulevard between SW Bay Street and SE Eads Street.
 - 3. On Hurbert Street between SW 7th Street and SW 9th Street.
 - 4. In the area bounded by Olive Street on the south, NW 6th Street on the north, NW High Street and NW Coast Street on the east and the Pacific Ocean on the west, including both sides of each named street. For purposes of this section, "Olive Street" means both Olive Street and the area that Olive Street would occupy if it continued straight to the Pacific Ocean west of SW Coast Street.
 - 5. Any other location designated by the Council by resolution.

4.10.045 Denial and Revocation

- A. A vendor's endorsement may be denied or revoked for any of the following causes:
 - 1. Fraud or misrepresentation contained in the application for the business license with vending endorsement.
 - 2. Fraud or misrepresentation made in the course of carrying on the vending business.

3. Conduct of the vending business in such manner as to create a public nuisance or constitute a danger or hazard to the public health, safety, or welfare.
4. Violation of any provision of this subchapter or of any other law or regulation relating to the vending business.
5. Felony convictions or misdemeanor convictions involving moral turpitude. In deciding whether to deny an application for a past conviction, the city may consider the length of time since the conviction, whether the applicant appears to have been successfully rehabilitated, and the risk to the public.
6. Failure to obtain or maintain liability insurance covering personal injury and property damage, with policy limits of at least \$~~500,000.00~~2,000,000 and naming the city as an additional insured.

Staff: The liability insurance amount has been increased to align with the change that was made to Section 4.10.020.

4.10.050 Appeal

If an application is denied or a license is revoked, the license holder may appeal by filing a written appeal with the city manager. The deadline for an appeal of a denial is 15 days after a denial is mailed, and the deadline for an appeal of a revocation is two days after the revocation is delivered. A revocation sent by mail shall be deemed delivered two business days after the date of mailing. The Council shall hear and decide the appeal at its next regular meeting held at least 10 days after the filing of the appeal. The decision of the Council shall be final.

4.10.055 Violation

Violation of any provision of this chapter is a civil infraction, with a maximum penalty of \$500.00. Each day during which a violation shall continue is a separate offense. Violations of separate provisions are separate infractions.

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

CHAPTER 11.05 BUILDING CODES

11.05.180 Exemptions

~~Temporary Vending Carts~~Mobile Food Units that are permitted in accordance with ~~the~~ Newport ~~Zoning Code and Ordinance section 2-2-29.030 Municipal Code Chapter 14.09 and~~ are not permanently attached to a foundation, ~~they~~ are considered vehicles (not a building or structure), and the Oregon Structural Specialty Code does not apply.

Staff: These revisions are need to address changes to terminology and to accurately cross-reference the section of the code that will regulate mobile food units.

CHAPTER 12.15 SYSTEM DEVELOPMENT CHARGES

12.15.060 Exemptions

A. The following actions are exempt from payment of SDCs:

1. Additions to multi-family and other dwelling units that are assessed SDCs on an Equivalent Dwelling Unit basis, provided the addition does not result in a new dwelling unit.
2. An alteration, addition, replacement, change in use or permit or connection that does not increase the parcel's or structure's use of a public improvement system is exempt from payment for the SDC payment applicable to that type of improvement. Some redevelopment may be subject to some types of SDCs and not to others.
3. Temporary and seasonal uses, including special events, ~~vending carts~~ mobile food units (other than pods), and patio or deck seating associated with eating or drinking establishments.

Staff: With this change, persons establishing a mobile food unit pod (i.e. four or more mobile food units on a property) will be required to pay system development charges commensurate to the developments impact on public services. Revisions to NMC Chapter 14.09 require that pods be connected to city wastewater services and that they offer sheltered seating to guests. These are more permanent site improvements with impacts that may be more year-round than seasonal. Three or fewer mobile food units on a property will not be required to pay SDCs.

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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 ~~homesfood 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
- 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: Subsection (B) responds to concerns raised in the 6/28/21, 7/12/21, and 7/24/21 letters 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 District's principal concerns are that food trucks/carts, if located close by, could undermine the financial stability of the free/reduced lunch program that they offer, and exacerbate truancy.

The Commission received written testimony from Janet Webster on 7/11/21 and 7/25/21, Front Street Marine, LLC (Steven Webster) on 7/12/21, and Victor Mettle on 7/12/21 objecting to the District's request, asking that the District clarify how the free/reduced lunch program would be impacted and refuting their arguments related to student safety and the nutritional quality of food truck/cart products.

After taking testimony at its 7/26/21 hearing, the Commission elected to recommend the 500-foot buffer, impacting a modest number of commercial properties south of the high school and north/south of Yaquina View Elementary. There are no commercial, industrial, or water-related properties within 500-feet of Sam Case Elementary or the Newport Middle School. A map illustrating the 500-foot buffers was included in the 7/12/21 meeting packet.

C. The lot, parcel or tract upon which the mobile food unit will be placed is located outside of the City Center, 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 provision was 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. The City Council, at its 9/7/21 hearing asked that City Center be treated the same as Nye Beach and the Bayfront. A map illustrating all three district boundaries was distributed prior to ordinance adoption.

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

Staff: The Planning Commission considered three options. The first is to require an applicant obtain written consent from the owner of the property upon which the mobile food unit(s) are to be sited. A second option would have required consent from adjoining properties as well if they were occupied by eating or drinking establishments. A third option would have required the sign-off from the subject owner and the owners of each adjoining lot or parcel irrespective of whether or not the adjoining property is developed with an eating or drinking establishment. Ultimately, the Commission elected to recommend the first option, concluding that it is most consistent with how the City approaches proposed land uses.

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. As Subsection (H) is structured, Pods would not be subject to land use permit renewal requirements.

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 structure use~~.
 6. The location and size of trash receptacles.
 7. Utilities.
 8. Existing signs and signs associated with the ~~temporary structure use~~.
 9. ~~Temporary structure b~~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.