



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, July 12, 2021 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

This will be a hybrid meeting, which means that it will be held electronically, via Zoom, with a limited number of people (up to 15) allowed to attend in-person. The meeting will be live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190.

Anyone interested in making public comment is allowed to attend in-person, subject to congregant limitations (up to 15).

Anyone wishing to provide real-time, virtual public comment should make a request at least four hours prior to the meeting, at publiccomment@newportoregon.gov, and request the Zoom meeting information.

Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. The e-mail must be received at least four hours prior to the scheduled meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting, and pursuant to the municipal code.

1. CALL TO ORDER AND ROLL CALL

Jim Patrick, Bill Branigan, Lee Hardy, Bob Berman, Jim Hanselman, Gary East, and Braulio Escobar.

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of May 24, 2021.

[Draft PC Work Session Minutes 05-24-2021](#)

2.B Approval of the Planning Commission Regular Session Meeting Minutes of May 24, 2021.

[Draft PC Reg Session Minutes 05-24-2021](#)

2.C Approval of the Planning Commission Work Session Meeting Minutes of June 14, 2021.

[Draft PC Work Session Minutes 06-14-2021](#)

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

5. PUBLIC HEARINGS

5.A File No. 1-Z-21: Food Truck and Food Cart Amendments.

[Memorandum](#)

[Attachment A](#)

[Attachment B](#)

[Attachment C](#)

[Attachment D](#)

[Attachment E](#)

[Attachment F](#)

[Attachment G](#)

[Attachment H](#)

[Attachment I](#)

[Additional Testimony - Bonnie Hendren](#)

[Additional Testimony - Janet Webster](#)

[Additional Testimony - Victor Mettle](#)

[Additional Testimony - LCSD](#)

[Additional Testimony - Steve Webster](#)

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
May 24, 2021
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Bob Berman, Lee Hardy, Jim Hanselman, Braulio Escobar, Gary East, and Bill Branigan.

PC Citizens Advisory Committee Members Absent: Dustin Capri, and Greg Sutton.

City Staff Present by Video Conference: Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

Public Members Present by Video Conference: Meg Reed, and Susannah Montague.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.
2. **Unfinished Business.**
- A. **Status Update South Beach / US 101 Corridor Refinement Plan.** Tokos noted the South Beach Urban Renewal Plan had to be coded by the end of 2025. Also the planning process would evaluate the redevelopment opportunities for a 2.3-acre agency owned property at NE 15th and US 101.

Tokos explained that the consultants completed an initial round of stakeholder engagement, a draft opportunity and constraints report, and were developing a set of online survey questions for a public survey that would launch towards the end of June. A Spanish language video-conference discussion session would be held as well. Tokos reported that staff would meet with the consultants on May 24th to provide feedback on the draft opportunities and constraints report before it was presented to the Newport Urban Renewal Agency at its June 21, 2021 meeting. There were placeholders in the report for wastewater management options at the airport. That information would be plugged into the document prior to the Agency's June 21 51 meeting. The code audit component of the project would begin in mid-June, and the Planning Commission would have a role in shaping those outcomes. The entire project was slated to wrap up in November. Berman thought the information that was submitted showed they were doing a very comprehensive job.

- B. **Review DLCD/City Evaluation of Beach Access Points Prioritized for Resiliency Retrofit.** Tokos reported that the boardwalk at Agate Beach would be updated to 14 feet instead of the 10 feet currently noted on the draft resiliency plan. Berman reminded that the Commission had been told before that it would be difficult to do a permanent structure at Agate Beach, and he asked if the new boardwalk would be robust. Tokos had concerns about the bridge and thought they could ask them to look at this harder. He also noted that the State Parks were engaged in the process and had given feedback on this. Berman pointed out that it looked like the plan implied there was a parking lot at 68th Street, but it was just a gravel area. Tokos noted the initial concept pushed this on a private property and they were told to come up with a design that didn't go well into the adjoining property. They still needed to clean up the graphic.

Hanselman questioned how big the parking area at Schooner Creek was that wasn't a part of the diagram. Berman reported it was had about five parking spots. Branigan asked if they should be spending this much money for five cars where there wasn't anywhere else to park on 68th Street and US 101. Tokos noted they were under no obligation to spend the money. This project was funded by DLCD and NOAH to look at what it would take to improve these beach access points so they were more resilient. Hanselman asked if they had any concept of usage for the access points. He noted that Agate Beach had more traffic than 68th Street. Tokos explained that the Nye Beach turnaround and Agate Beach had more traffic. They ruled out the surfer access

area partly because of the geologic issues of the area. Tokos explained the Nye Beach turnaround was a good way to address things because it had an aging seawall. To be able to both buttress the seawall, and provide accessible access seemed like an artful solution, but it would be pricy. They might have NOAH resiliency grant money that could pay for a substantial part of the costs. Hanselman thought this was a highly popular access point and they were on point to shore it up and make sure the access was usable.

Meg Reed addressed the Commission and noted she was looking for their input and comments for the final report. She noted that 68th Street wasn't as populated and would be a big design, but the geology of the other sites would be much more difficult to do something that would function in the event of an earthquake. Reed agreed that the Nye Beach turnaround was a good spot to go with, but noted it was expensive. She hoped there would be more graphic representation on the report. Escobar asked if there was ever consideration of enhanced access closer to the North Jetty. Reed reported this had been evaluated but wasn't included partly because of the steepness of the trails making it too difficult. Patrick thought they should consider making a trail from of the Coast Guard access onto the Bay. He thought there was a road there and it would be a good area to cut a trail for beach access

Berman asked what consideration had been given to the South Beach State Park. Reed explained they decided not to include this because funding for this evaluation was limited, and State Parks had jurisdiction at this location. She thought State Parks was coming up with plans but hadn't evaluated the seismic retrofits for some trails. Patrick thought they might want to tie this into the time it took to get to safe zone areas from the surface spots back to Agate Beach to make sure there was enough time to make it in an evacuation. Reed reported the whole city was included in the evaluation that Patrick was referring to. She thought that all areas to the north had decent evacuation times. If someone was on the beach it would be more difficult to evacuate to high ground in time though.

Tokos asked if the designs had been run by DOGAMI. Reed reported that she had sent them the initial drawings but never heard back from them. She would try to follow up with them and get back to KPFF. Tokos thought it would be good for them to take a look at it and reflect on how the solutions affected where they landed in respect to their Beat The Wave modeling, if at all. Hanselman questioned if the South Jetty had been evaluated. Branigan added that a lot of surfers used the South Jetty and the road to it was rough. Reed agreed that this area was tricky. OSU researchers were doing modeling in this area to see how the decision making affected the overall area.

- C. **Review of Draft Code Amendments Related to Food Trucks & Carts.** Tokos acknowledged the email Janet Webster had submitted. He explained she was a property owner who was thinking about doing a food cart pod on her property.

Tokos reviewed the draft revisions to NMC Chapter 4.10. The nature of the changes made it more realistic for mobile stands outside of residential areas. Tokos explained that what he had heard was that the Commission wanted these left out of residential areas. This had been reflected in the amendments. Berman asked if "residential areas" were defined in the code. Tokos noted he tried to shy away from getting too much into zoning codes and discussions that were not a part of the zoning ordinance. They could add "zoned for residential purposes" which were the R-1 through R-4 zones. Tokos would clear up the language.

Hanselman asked if they should expand the two hours to five hours for food trucks. Tokos explained that under Oregon Health Authority rules they would need to have accessible restrooms if they went past two hours. There would be no way to verify this in a right-of-way (ROW) and why it was two hours.

Susannah Montague addressed the Commission and asked if the two hour time limit applied to fixed stands. Tokos confirmed it did not apply to fixed stands and was tailored for food trucks that moved around. Branigan asked if city owned parking lots were considered ROWs. Tokos reported that when there was vending done on city owned parking lots, they would need a special events permits. The time limit applied to ROWs and the fixed business areas. Montague asked if the city would ever consider renting a portion of a parking lot to a fixed

stand. Tokos explained the City Council could designate a fixed stand spot in a public parking lot if they wanted to but they were not pursuing it at that time.

Berman asked if a truck hauling a food cart could legally take up multiple parking spaces. Tokos would follow up with the Police Department on this and get back to him.

Tokos reviewed the fee section next and noted the fees were not set by ordinance anymore. This meant that anywhere fees were noted they were taken out.

Montague asked if there would be a time limit for fixed stands. Tokos reported the code did not include a time limitation for fixed stands.

Berman asked if Section 4.10.025(A)(2) meant that they couldn't authorize someone else to operate a food cart on their private lot. Tokos explained this concerned the sidewalk area adjacent to a business. Assuming that the sidewalk was big enough to do vending, this would authorize vending on the sidewalk only for the owner of the business. Berman asked if the owner could give a non-employee the option to vend in this area. Tokos explained the owner would need to be the one operating the vending and they couldn't have a third party vendor. He reminded that these rules were for vending on public property, not on the business' private property. If there was enough space and width in front of a business on the ROW to put a stand right outside their business, they could get an endorsement to put their product there. Escobar suggested modifying it to say "operated by the operator of the business with the operator's approval." Tokos thought they could tweak the language. Montague reported that there were a lot of food carts in Eugene in parking lots of businesses. Tokos noted this section wasn't typically a food cart and would almost always be retail product on the sidewalks. This was because sidewalks weren't typically wide enough to accommodate food service.

Berman asked for clarification on what the random lottery award was as it related to endorsement renewals. He asked if it was possible for someone not to get a renewal because they weren't chosen in a lottery. Tokos reported they didn't have many issues with fixed stands because the locations were so limited. If this was to be expanded for other locations they could run into this. Berman wanted to see someone with an existing license have the option to continue it and renew the endorsement to keep operating. Hanselman asked if the boardwalk was a city or Port property. Tokos reported this was a city property but the Port had rights to cross it.

Tokos asked for the Commission's thought on lifting the restriction on vending in close proximity to elementary or secondary schools. Escobar asked how far this pushed vending away from schools. Tokos reported it eliminated vending right in front of a school and thought it would be a good discussion to have with the school district. Hanselman noted he worked at a high school with an open campus and explained how it harmed attendance. Vending meant kids would want to go across the streets and was hazardous. Hanselman thought dealing with the school district was an appropriate thing to do.

Berman asked what it meant in the draft when it said that endorsements could be amended to add months but not refunds would be allowed. Tokos explained that the Finance Department had people pay for their endorsement fees, then decide not to go forward with the endorsement and ask for refunds. Berman thought this should say there would be no refunds and then say they could add months to the endorsement by paying a monthly fee. Tokos would look at cleaning up the language.

Patrick noted that the Lincoln County Commons was by a school. Tokos explained this wouldn't affect them because the rules weren't for private property, they were for ROWs. He asked the Commission for their thoughts on if they should leave the language as is or go to the school district for their input. Patrick thought they should leave it as it was and not delete secondary. Branigan thought they should contact the school district to find out what they would like. Hanselman thought they should talk to each individual school. Escobar was comfortable with what was drafted. Tokos would reach out the school district about the possibility as it related to the secondary school and see what their thoughts were.

Tokos reviewed the vending stands revisions next. The changes expanded the size of the stands to allow some

food carts or trailers. Berman thought they should reevaluate the felony convictions prohibitions. Tokos would take a look at this.

Berman thought that if they weren't going to give out violations for multiple days and not abide by the code, they shouldn't include it in the code.

Montague asked if the Commission had a preferred area in town they wanted to see a fixed pod or stand at. Tokos noted the changes on the code did not have a preference for these areas but opened the door to commercial and other options in the city.

Montague asked if the requirement to get approval from adjacent property owners under Section 14.09.050(B) was a standard requirement. Tokos reported this was a discussion for the Commission on how to handle the competition piece. Montague asked if this was standard for a brick and mortar restaurant to get adjacent property owner approval. Tokos confirmed it was not. He explained if the Commission wanted to do this, the argument would be that the brick and mortar had to invest more in their business, and if a food truck could park in front of their location, it wasn't fair and a point of friction. Escobar noted that the draft didn't say it wasn't limited to competing food businesses. Tokos reported they could do this, and it was an option for the Commission to consider. Montague thought it would be nice if the businesses were unrelated.

Chair Patrick closed the meeting and noted that they would continue the discussion at the end of the regular session meeting that evening.

3. Adjourn. The meeting adjourned at 7:00 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers by Video Conference
May 24, 2021

Planning Commissioners Present by Video Conference: Jim Patrick, Bob Berman, Jim Hanselman, Lee Hardy, Braulio Escobar, Gary East, and Bill Branigan.

City Staff Present by Video Conference: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Hanselman, Branigan, Berman, Hardy, Escobar, East, and Patrick were present.

2. **Approval of Minutes.**

A. **Approval of the Planning Commission Regular Session Meeting Minutes of May 10, 2021.**

MOTION was made by Commissioner Berman, seconded by Commissioner East to approve the Planning Commission Regular Session Meeting Minutes of May 10, 2021 as written. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Public Hearings.** At 7:02 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. None were heard. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. **File 4-CUP-21.**

Tokos reviewed the staff report and explained that studios were referenced generally as entertainment oriented retail use which were permitted outright in a C-2 zone and therefore eligible for a conditional use approval in a W-2 zone.

Proponents: Steve Palmer addressed the Commission. He explained that the studio would be a history themed studio with costumes and props for vintage photos. Palmer showed examples of the photographs that would be taken. Berman asked if they would be offering any traditional photo shoots. Palmer explained this was mainly for tourists and would be themed photography.

Opponents: None were heard.

Hardy didn't have a problem with the idea. East thought it would be fun and good addition. Escobar didn't have a problem with it. Branigan thought it would be entertaining. Berman thought it was a perfect fit with the tourist area. He thought they could clean up the terminology in terms of personal services and look at the provisions in the future. Berman was in favor. Hanselman was in favor and thought it was good idea for families. Patrick agreed with Berman's thoughts on personal services and thought that instead of making people go through the process they should be able to do this without a Commission review.

MOTION was made by Commissioner Escobar, seconded by Commissioner Berman to approve File 4-CUP-21 with conditions. The motion carried unanimously in a voice vote.

MOTION was made by Commissioner Escobar, seconded by Commissioner Berman to approve the Final Order and Findings for File 4-CUP-21 with conditions. The motion carried unanimously in a voice vote.

B. File 1-NB-21 / 2-CUP-21 (Continuation).

Tokos reminded that the public hearing was a continuation from the April 26th hearing. The Oregon Shores Conservation Coalition had requested an open record period, but they decided not to submit any further testimony. They were confused about the location of the geologic hazards area on the side, and the discussion about Dolphin Street being an alternative north/south route. Tokos reported there had been no additional testimony submitted. Hallmark had taken this time to address the concerns that had been raised by members of the public to put in pedestrian turn outs on property frontage. They also addressed conditions on the staff report to address parking issues, to do stamped crosswalks, and to do artistic concrete work in the veranda area. They submitted updated plans that were included in the Commission's packet. Patrick asked if the city had a problem with stacked concrete instead of pavers. Tokos reported they would work with Hallmark on this.

Berman wanted to propose that they add a condition to require a crosswalk be constructed from the northwest corner of Dolphin Street across to Don Davis Park. He thought the traffic on Coast Street to Elizabeth Street could be substantial for tourists walking across the street. Branigan noted the applicant's drawings showed a crosswalk on the western side of the addition. Berman noted that he wanted to see a crosswalk like that but on the other end of the facility across from Don Davis Park. Patrick pointed out that there was a crosswalk at Cliff Street and on Olive Street. Tokos noted if they added a crosswalk condition they would need to put in a clause to say it was subject to approval by the City Engineer. Patrick didn't think it was necessary because there was one a block away. He was concerned about people coming around the corner and not being able to see a pedestrian. Branigan agreed that it didn't need to be added. Hardy agreed with Patrick as well.

Hanselman asked if the applicant accepted the challenge to added EV stations and thought these should be included in any new development. Tokos thought there needed to be code work done to be able to give the criteria to require this work going forward. The criteria was not available to them for this application.

Hanselman thought the crosswalk at Cliff Street could be moved to Dolphin Street. He thought there would be more foot traffic on the north side of Olive Street and crossing at Cliff Street seemed like a reasonable place. He thought having an additional one at Dolphin would be overkill. Escobar agreed with Branigan and Patrick's thoughts on the crosswalk. East thought the crosswalk at Cliff Street was more sufficient. Having a crosswalk directly out of the park would be a little bit of a problem and he thought the one at Cliff Street would suffice.

Patrick open the hearing for deliberations at 7:25 p.m.

Hanselman thought they did a good job putting the design standards into the project. He had concerns with the building because it was in the Nye Beach Overlay. Hanselman didn't agree with the staff report stating that the four buildings exceeded the standards of the Nye Beach Overlay because the buildings were built before the standards were in place. He didn't think the decision should be made on buildings that were outliers of the Nye Beach design standards, and he was conflicted on the project as whole.

Berman thought it was beautifully designed. He didn't agree that it wasn't that exception given the buildings that were south of it. Berman thought they needed some kind of effort to make sure a developer didn't buy lots on Cliff Street and build something like this. He thought it kept with the general neighborhood feel and was in general support.

Branigan was in favor and thought they did a good job. He thought the addition would benefit everybody and they should move forward with it.

Escobar was impressed with how the applicant reached out to the community before the hearing. Most community members had modest concerns but were in favor of the project. Escobar thought that given the work put in and the lack of opposition with the project, he was in favor.

East thought the project was a perfect fit. He agreed that there needed to be some language that would not permit these types of buildings in Nye Beach.

Hardy thought the project had validity and didn't conflict with Nye Beach. She didn't have a problem with it. Hardy confirmed that she had reviewed the materials from the previous hearing in order to vote on the decision.

Patrick thought it was on the edge of the zone and made a transition. He was in favor of approving it.

MOTION was made by Commissioner Branigan, seconded by Commissioner East to approve File 1-NB-21/2-CUP-21 with conditions. The motion carried in a voice vote. Commissioner Hanselman was a nay.

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Final Order and Findings for 1-NB-21/2-CUP-21 with conditions. The motion carried in a voice vote. Commissioner Hanselman was a nay.

5. **New Business.** None were heard.

6. **Unfinished Business.**

7. **Action Items.**

A. **Initiate Legislative Process to Amend the Newport Zoning Ordinance Related to Food Cart.**

Tokos continued the review of the draft amendments from the work session meeting. He reviewed the amendments to the definitions, and mobile food units sections. Berman noted that “water dependent” had been left out of the mobile food units section. Tokos explained that this had been left out on purpose because they would have a hard time arguing with the State that food carts were acceptable on water dependent properties because it was a limited commodity on the Bayfront.

Hanselman asked if there would be restrictions on the location of food carts from other food establishments. Tokos explained there wouldn't be unless they added language saying they needed a signoff from a neighboring owner. He could play with the language to tailor it to say if they were setting up next to a brick and mortar they needed their consent. Berman thought it was fairly arbitrary and thought the language needed to be either tightened up or removed. Hanselman was more worried about the competitiveness and wanted something worked into the language. Tokos reminded that the discussion was for the initiation of the legislative process and the Commission would have a chance to review the changes. He would add different options for this in the language. Barman suggested having it broken out as options A, B and C.

Tokos noted that generators could be for one or two trucks, but not for a pod. Branigan asked if cable protections had yellow lines or if they were just black. Tokos would check on this.

Berman asked for clarification on the 10 feet for generators. Tokos explained that it was 10 feet from other units. Montague thought this would be a lot for a standalone unit, but not for a pod. Patrick asked what fully screened meant. Tokos explained this meant screened from view. Montague offered to reach out to the people building carts to see what the screening was. She reported she sent specs to Tokos to see

if they were permitted. Montague was confident the generators weren't loud and would meet a lot of the EPA standards.

Tokos reviewed the signage, awning, and receptacles language. He noted he could clean up the language to say the receptacles were one for every two units. Tokos asked for the Commission's preference. Berman thought everyone should have their own receptacle. Hanselman agreed.

Tokos reviewed the requirements for mobile food unit parked restrooms next. Montague reported that a porta-potty filled the restroom requirement for the County.

Tokos reviewed the mobile food unit pods section next. Hanselman asked what the cost would be to a vendor to set up a pod. Tokos explained that this was more expensive and would be similar to a brick and mortar restaurant set up. This could be a situation where the owner rented out spaces to a vendor. The draft code was set up so that two trucks didn't trigger the costs, but over two would trigger the costs. The Commission had to determine at what point a pod became a destination like a restaurant, and when they needed required seating. Patrick asked if they were requiring a certain amount of seating. Tokos didn't add anything to require this. It just said one parking space per every 150 feet of seating.

Montague was comfortable with the requirement for pods. She wanted to see it be four, not three, and questioned how they would connect into the sewer system. Tokos explained that the site would be developed with connection points at specific locations. Montague thought this seemed reasonable and she would want this. Patrick asked if they required the bathrooms for pods. Tokos noted a pod had to address all the things above and as soon as there was seating it was considered a restaurant. Berman asked if an owner or pod owners would apply. Tokos thought an owner would submit a pod application and then lease to vendors. A vendor would apply for a mobile unit.

Berman asked what would happen if they set the number to four in a pod, and someone pulled out. He asked how it would be enforced. Tokos explained this would just mean that there would be a spot open to lease to a new vendor. Berman questioned if the pods would be permanent or more transient. Tokos confirmed that a pod would be more permanent.

Tokos asked for the Commission's thoughts to see if they were comfortable initiating the process. Escobar thought that they should reconsider making a pod be a minimum of four units, not three. Patrick was okay with two. East thought four was good.

MOTION was made by Commissioner East, seconded by Commissioner Berman to initiate the legislative process to amend the Newport Zoning Ordinance related to food carts. The motion carried unanimously in a voice vote.

8. Director Comments. Patrick reported he would not be attending the first meeting in the July. Tokos reminded that there would be no meetings on June 28th.

9. Adjournment. Having no further business, the meeting adjourned at 8:08 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
June 14, 2021
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Bob Berman, Lee Hardy, Jim Hanselman, Braulio Escobar, Gary East, and Bill Branigan.

PC Citizens Advisory Committee Members Present by Video Conference: Greg Sutton.

PC Citizens Advisory Committee Members Absent: Dustin Capri (*excused*).

City Staff Present by Video Conference: Community Development Director (CDD) Derrick Tokos; Fire Chief, Rob Murphy; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.

2. **Unfinished Business.**

A. **Survey Questions for SB / US 101 Commercial-Industrial Corridor Refinement Plan.** Tokos explained that a final draft of the opportunities and constraints report would be presented to the Urban Renewal Agency on June 21st. The Agency would also have an opportunity to review and provide input on a series of online survey questions that were developed. ECONorthwest would provide a brief PowerPoint overview of the project for the Urban Renewal Agency meeting. That presentation would be recorded and made available on a webpage the City would host for the survey. A copy of the final Opportunity and Constraints report was to be posted on the website as well.

Tokos reported that there would be a virtual open house on July 9th. There would also be three different focused groups meeting scheduled with the Marine Science community, the South Beach general population, and a Spanish language oriented focused group. Tokos reported that they needed to award all Urban Renewal District projects by the end of 2025.

Branigan thought one of the big issues for the city was to improve bike and pedestrian access across Yaquina Bay bridge and he didn't see it included. Tokos explained that this was outside of what the Urban Renewal District funds could be used for. Hardy thought the first three questions where they were asked to describe South Beach should be asking them to give a single phrase, not a single word.

Berman asked if the bullet points on what the Urban Renewal dollars could fund were outside of the South Beach Urban Renewal Plan. Tokos confirmed this was correct. Berman asked what the Northern Shore Lands were. Tokos explained this was property owned by the Port of Newport and leased to NOAA.

Berman noted the "biggest challenges" bullet point didn't indicate if it was check boxes instead of bullet points. Tokos noted this would be done through a Survey Monkey and participants would be given choices.

Escobar asked if they had the dates of the three meeting yet. Tokos reported they didn't. The meetings would happen in sequence starting around the week July 12th for the Marine group, the week of July 19th for the Spanish language group, and then around July 26th for the South Beach group.

Branigan thought the Aquarium should also be asked for feedback. He thought they should also contact the South Beach church to participate in the general South Beach meeting. Berman thought Camp Grey and their staff, and every merchant in South Beach should be on the distribution list. He also thought Lincoln County should be included because there were county properties in South Beach. Escobar thought Central Lincoln PUD might want to be involved as well. Hanselman suggested adding the HOAs at that the Surf Land and Bayshore

communities. Tokos reported there would be postcards mailed through the carrier route distribution and this would pick up all of South Beach.

Berman pointed out that the memo following the refinement schedule referred to the Opportunity and Constraints report and at the end it referred to the Opportunity and Barriers report. He thought these should be the same. Berman also pointed out that the "we need your input" paragraph should have the benefit to the "tax base" changed to "business owners and South Beach, including residents, visitors, businesses and employees."

Branigan asked if it was necessary to include breweries in the types of restaurants since there was already one there. Tokos explained this was the option to see if they wanted additional ones and why it was included.

Berman thought that "mailing list" should be changed to "notification list" in the question asking if they wanted to be added to the mailing list.

- B. Alternate Design Standards for Low Volume Local Streets.** Tokos reviewed photographs of examples of the low volume streets in Newport. He explained they were trying to address a number of streets in the city that weren't built to the city standards and were built before the properties were annexed into the city. These were areas where it would be difficult to build streets to the standards. Tokos explained that there was also a need for more affordable housing. Street improvements were a challenge to affordable housing because it made projects not pencil out because of them. One way to tackle this for local streets was to allow those with low traffic volumes to go with a shared street concept. Tokos reviewed concepts of the low volume streets where they could be based off of average daily trips (ADT). The easiest way to figure this was by designating a single family dwelling as generating 10 trips a day. This meant that a 500 trip threshold equaled 50 homes. Hardy asked if he was saying a home generated 10 trips a day. Tokos confirmed this and explained it was a way to deal with it in a clear and objective way, and correlate them to a specific number.

Tokos reviewed the photographs of the low volume street examples and their ADTs. Berman asked if the ADT numbers assumed full build out or was it the current status. Tokos reported the lower numbers were the current status and the higher was more of the build out.

Tokos thought that what they needed to consider was to determine at what point the City considered a street that the city was responsible for maintenance for. Under the current code, if it was four or fewer homes served, it would be considered a driveway and the city wasn't accepting maintenance responsibility at that time for the road. This was approximately 40 ADT. Tokos thought 100 ADT on the chart should be changed to 150 because then 10-12 homes were served reasonably with a 12 foot road width with pullouts. A 500 ADT was right for the areas like Vista Drive and Golf Course Drive where they were dealing with the narrow street sections. Tokos noted that the paved widths that were noted were travel lanes with an assumption that there was some sort of gravel area for parking. These were areas with gravel for people to use to pull out of the way.

Berman asked if this meant the new standards that would apply to existing streets or if they were just examples of how the standards would be applied to new development. Tokos explained the standards would apply to the existing infill lots that hadn't developed on narrow streets. Currently the city required street widening for these. Tokos referred to lots on Spring Street as an example of ones that had to do improvements. He noted that what they were looking for with the ADT standards was to find something that worked better for infill development potential.

Berman asked how this related to new development for subdivisions. Tokos noted that they should give thought to if the existing standards were working well for existing neighborhoods, why would it be a problem for new ones. Escobar asked if they were trying to lower costs for development to allow more affordable developments. Tokos confirmed this was correct. A discussion ensued regarding existing width of streets on Golf Course Drive and Cherokee Lane. Hanselman thought there would be development that shouldn't take place if safety was a valuable trait for all the neighborhoods. Tokos explained the nice thing about a shared street standard was that in low volume areas it worked. This became a question about why they should require a much larger street sections. Sutton noted that NW 57th Street had properties that had staggered street improvements. This made the street look like it wasn't finished because the dead end of the street was wider than the actual street. Sutton thought the staggered improvements weren't a good appearance.

Hardy thought they almost needed a local improvement district for underdeveloped properties. Tokos noted that if they could get more reasonable standards in place for low volume streets, they may have property owners coming to the city to pave their gravel sub streets.

Patrick didn't have a problem with this being applied to new developments, and thought they needed to work on the safety side of things. He was unsure on how they could write the standards to get what they needed. Tokos explained they could look at what the experience servicing these areas was to look at what was working and what wasn't. This would help peg the breakpoint of the ADT numbers.

Fire Chief, Rob Murphy addressed the Commission and noted that the width of the fire engines were 10 feet, 6 inches long. This was a standard size and wouldn't change. Murphy asked the Commission to keep this in mind as they moved forward. He noted he had seen the impacts of wildfires the past year and they needed to take into consideration fire evacuations. This impacted fire trucks getting access when owners were trying to exit. Murphy thought that going down to 16 feet gave him the most concern. If they couldn't confirm there was a good gravel shoulder on a street, the shoulder would turn into a mud pit. Some streets had hard terrain and it was unrealistic to get access for fire trucks. Escobar asked if he had a recommended minim width. Murphy reported that 24 feet would be the recommendation. He noted they had already reviewed this when doing the Wilder development. They did tests at this location and determined they needed 24 feet for the trucks to get through and maneuver.

Tokos reminded that this was a balancing act the Commission was challenged with. The standards he presented for shared use came out of standard engineering concepts, and the shared use concept had been well vetted in an engineering perspective. It was doable and had been done already in communities. If they could get Golf Course Drive to a 16 feet in width with good pull outs in distinct location, it would be far better off than it was there currently. Tokos reported this community was comfortable with this concept but not with a 24 foot wide roadway. He noted that they could do carve outs in the vicinity of hydrants as well that wouldn't require the entire road section to match.

Escobar asked if they were trying to establish standards for future development or existing roads. Tokos reported it would be for both. Hardy thought that public safety would be paramount. Public opinion could be secondary for safety and a lot of times public opinion wasn't particularly educated. Tokos noted they could serve certain areas with secondary roads. and they already did this Berman thought it didn't sound like they would be below 100 ADT on the chart given Murphy's comments. He noted that if there was a street with 10 homes that had a drop off on one side, it would be a long way up for fire engines. Murphy thought this depended on how long the road was and noted that 150 feet was minimum to provide a turnaround for engines. He didn't have concerns turning around on narrow streets with four homes. He did have concerns when there were more like 20-40 homes on a run that was $\frac{1}{2}$ to $\frac{3}{4}$ of a mile. Tokos asked what the Fire Department's experience with Vista Drive had been. Murphy reported it was fairly good because there was good gravel on either side and had decent shoulders.

Escobar pointed out that there was tension on safety and economics when it came to street widths. He thought going forward that new developments should be done with safety in mind. Escobar thought that retrofitting existing streets would be a herculean task. Patrick noted that some of the streets such as Cherokee Lane wouldn't be able to go to 20 feet because the room for it just wasn't there. Murphy agreed that there were instances where they just couldn't add width to streets.

Tokos noted they asked the consultants to include a low volume street standard and he would pass along the Commission's comments to them as well. Patrick was worried they wouldn't be able to write rules to get the kind of design they wanted. Tokos reminded that Vista Drive was close to the PBOT standards which were a 16-foot width with 7-foot shoulders on each side. Murphy thought the shoulders were the key and it should be added to the standards. Tokos reminded that this would be a substantial cost savings on a street section. Hanselman questioned if it was possible to not have parking on the entire length of the road and require a certain number of pullouts. This way they could give developers a couple of different options to use in their design so safety wasn't hampered and the roadway was shared by the appropriate numbers of houses. Branigan thought

it sounded like it would be a case by case basis where geology played an important part in how it was designed. Tokos noted they could get there, but cautioned on how flexible they should make it.

Berman had a slight problem with the specs below 100. He thought if the length of the street was below 100, then they might be able to go down to the 12 feet. Patrick noted there was a difference between a 12 foot wide street and a 12 foot wide usable area. He thought they needed to pay attention to the shoulders and what the available space was.

C. Scope of Work for HB 2003 Compliant Housing Capacity Analysis and Housing Production Strategy.

Tokos noted the Commission they never got into determining the actual serviceability of residential property inside the Urban Growth Boundary (UGB). They didn't discuss if properties could be developed at price points that were affordable. The question was why were they relying on land in the UGB for housing that couldn't be developed in the next twenty years because they couldn't afford to develop it. Given where these properties were located, which ones could reasonably expect to actually be developed in price points that were affordable in Newport. Tokos reported there still needed to be work done on seasonal/second homes and they needed to get a handle on it collectively.

Tokos asked if there were other things the Commission wanted to see answered. Patrick thought they should add how much would be redeveloped with the new duplex rules. Berman asked if they had any information on long term rentals. Tokos explained they would have this information through the census. Tokos hoped they could compare the data with utility billing for seasonal housing to see what the numbers were.

A discussion ensued regarding the wetlands and timber land restraints for Newport. Sutton asked if an infill study had been done. Tokos reported it had been done in bulk and they would break it down by area.

3. Unfinished Business.

A. Updated Planning Commission Work Program. Tokos noted that he didn't add the two rounds of outreach for the South Beach project on July 9th through the end of July. The next outreach for Transportation System Plan (TSP) would be at the end of July and go through August.

Tokos pointed out the joint work session meeting with the City Council scheduled in September. There was a possibility this might be moved around because it was tentative at that time. Tokos reported there would be more discussions on the TSP when they brought the tech memos into a plan. The consolidated plan would happen sometime in September.

Tokos explained that now that there was a budget, there would be a discussion on the metering/permit program on the Bayfront happening in September. This would give them time to get a committee recruited.

Berman asked what happened to Memo #9 for the TSP. Tokos explained he thought the Commission had seen this memo before, and it had been reviewed out of order.

Patrick reported he would be gone on the July 12th meeting.

Tokos reported the city would be sending a mailer to brick and mortar restaurants in Newport concerning the food trucks public hearing to get their input.

4. Adjourn. The meeting adjourned at 7:17 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

PLANNING STAFF MEMORANDUM
FILE No. 1-Z-21

- I. **Applicant:** Initiated at the direction of the City Council, by motion of the Newport Planning Commission on May 24, 2021.
- II. **Request:** Amendments to Section 4.10, Vending on Public Property; Section 11.05, Building Codes; Section 12.15, System Development Charges; and Chapter 14, Zoning Standards, related to the operation of food trucks and food carts (collectively, "mobile food units") in the City of Newport.
- III. **Findings Required:** This is a legislative action whereby the City Council, after considering a recommendation by the Newport Planning Commission, must determine that the changes to the Newport Municipal Code (NMC) are necessary and further the general welfare of the community (NMC 14.36.010).
- IV. **Planning Staff Memorandum Attachments:**
 - Attachment "A" – July 7, 2021 mark-up of revisions to the listed NMC chapters
 - Attachment "B" – Minutes from the 3/22/21, 4/12/21, and 5/24/21 Commission work sessions
 - Attachment "C" – Aerial image illustrating a potential 500-foot school buffer
 - Attachment "D" – Email confirmation of 35-day DLCD PAPA notice
 - Attachment "E" – Public hearing notice sent to all licensed eating and drinking establishments and legal publication (includes summary of proposed code changes)
 - Attachment "F" – Comments from Susannah Montague 3/2/21 through 7/7/21
 - Attachment "G" – Comments from Janet Webster 3/22/21 through 7/6/21
 - Attachment "H" – Letter from Lincoln County School District, dated 6/28/21
 - Attachment "I" – Letter from Hallmark Inns & Resorts, dated 7/6/21
- V. **Notification:** The Department of Land Conservation & Development was provided notice of the proposed legislative amendment on May 25, 2021 (Attachment "D"). Notice of the July 12, 2021 Planning Commission hearing was mailed to eating and drinking establishments located within the city limits on June 18, 2021 and published in the Newport News-Times on Friday, July 2, 2021 (Attachment "E").
- VI. **Comments:** Comments provided in response to the notice or otherwise received as of July 8, 2021 are included as attachments to this report.
- VII. **Discussion of Request:** Newport's existing laws limit food carts and food trucks to privately owned commercial or industrial properties that are at least a 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 very narrow set of licensing options for mobile operators who want to vend from parking areas along public streets, requiring they move every 15 minutes.

One of the City Council's goals is to update these laws to provide additional options for individuals that wish to setup a food cart or operate a food truck within the City. The Planning Commission met in a work session on March 22, 2021 to review the City's existing regulations, and model ordinances

from other jurisdictions. On April 12, 2021 the Commission met again to review an outline of potential code changes and provided city staff with direction as to the elements they wanted to see in a code update. The Commission reviewed an initial draft of the code update at its May 24, 2021 work session and elected to initiate the public hearings process by motion that same evening. Copies of the work session minutes are enclosed (Attachment "B").

The draft code changes apply to private property, public property, and street rights-of-way, the key elements of which are as follows:

Private Property

- Food Trucks and Food Carts (called "Mobile Food Units") will be allowed in commercial, industrial, or water-related areas regardless of how close they might be to permanent eating and drinking establishments, subject to a City issued temporary use permit. The draft amendments include policy options where the Commission could choose to impose a 500-foot buffer from schools (when in session) and require that Mobile Food Unit operators obtain written authorization from neighboring land owners in circumstances where the neighboring property is developed with an eating or drinking establishment.
- 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 will be operating, satisfies standards designed to promote health and safety and avoid nuisance impacts.
- If four (4) or more trucks or carts locate on a property, the development becomes a Mobile Food Unit Pod. Additional standards apply to Pods that are akin to what is required of permanent eating and drinking establishments, such as providing sheltered guest seating, restroom facilities, and off-street parking. Pods will also be required to have city sewer connections and permanent power for each mobile food unit and will be subject to the same City impact fees as permanent eating and drinking establishments.

Public Property (including streets)

- Size allowances for fixed based vending at City designated locations (e.g. the Nye Beach Turnaround) will be enlarged to accommodate many types of mobile food units. The draft amendments include policy options for different sized vehicles.
- Vendors interested in setting up in street parking areas will be allowed to stay up to 2 hours at any given location in commercial, industrial, or water-related areas. The 15-minute limit will continue to apply in residential zoned areas.
- Insurance requirements will be increased for persons obtaining a business license to vend on public property.
- Use of City property other than streets that are not specifically designated for vending will continue to be limited to special events.
- The draft amendments include policy options where the Planning Commission could elect to remove or retain an existing 500-foot separation requirement for vending near schools (when in session) and prohibit the sale of food and beverages for immediate consumption along rights-of-way or public property that fronts a permanent eating or drinking establishment.

The City's building code laws (NMC Chapter 11.05) are being amended to clarify that Mobile Food Units are exempt from its provisions because they are vehicles. The City's System Development Charge Code Chapter 12.15) is similarly being amended to clarify that Mobile Food Units, other than Pods, are exempt from the fees due to the temporary or seasonal nature of the uses.

More detailed explanations of each code change are included in the staff commentary contained in the draft code amendments (Attachment "A").

VIII. Conclusion and Recommendation: The Planning Commission should review the proposed amendments and make a recommendation to the City Council as to whether or not they are necessary and further the general welfare of the community. This would be done by motion and vote of the Commission members present. In making a motion the Commission should specifically reference the policy options or any other revisions they wish to see incorporated as part of their recommendation.

If the Commission is not prepared to make a recommendation, or desires additional information or code revisions before it does so, then it may continue the hearing to a date certain. The Commission's next regular meeting hearing date/time would be July 26, 2021 at 7pm.

Derrick I. Tokos, AICP
Community Development Director
City of Newport

July 8, 2021

July 7, 2021 Revisions to NMC Chapter 4.10, Vending on Public Property

(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 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 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 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 done accomplished in this context. Retaining the 15-minute transition point for residential areas effectively limits vending in those areas to the traditional, transient operators such as ice cream sales.

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.

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.

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 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.
- 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.

POLICY OPTIONS

- 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;

or

- 1(b) 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: You 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.

The Commission can retain the existing limitation, as shown with option 1(a) or it could amend the prohibition as it relates to secondary schools as shown with option 1(b). My recommendation would be to go with option 1(a) which retains the existing 500-foot limitation. The District's concerns are reasonable and even with the limitation in place, the code changes will open up a substantial amount of right-of-way to food trucks, consistent with the Council's goal.

2. Vend between the hours of 9:00 P.M. and 6:00 A.M.
3. Leave any stand unattended.

POLICY OPTIONS

- 4(a) Sell food or beverages for immediate consumption if litter receptacles are not available within 25 feet of the vendor.

or

- 4(b) 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 ~~if~~ litter receptacles ~~are~~-is not available within 25 feet of the vendor.

Staff: This set of policy options address the second bullet point in the 7/6/21 letter from Hallmark Inns and Resorts, Inc. It would be reasonable for the Commission to 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. Option 4(b) implements the change. Option 4(a) retains the existing language.

5. 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.
6. 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.
7. If the license includes a stand, expand the stand beyond what is described in the application and allowed in the permit.
8. Vend anything other than that which the vendor is licensed to vend;
9. Violate any city ordinance regulating sound or noise.
10. Vend within any portion of any vehicle travel lane portion of any 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 portion of a street.
11. 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

POLICY OPTIONS

A(1) Vending stands licensed for business vending areas shall not exceed ~~five-sixteen (16)~~ feet in length and ~~five-ten (10)~~ feet in height, excluding canopies and umbrellas.

or

A(2) Vending stands licensed for business vending areas shall not exceed ~~five-eighteen (18)~~ feet in length and ~~five-ten (10)~~ feet in height, excluding canopies and umbrellas.

Staff: These changes expand the size allowance for a stand to accommodate a trailer or small food truck. It is the same change that was made in Ordinance No. 2112, which sunset. Current stand size limitations are sufficient to accommodate push carts, but not trailers. A set of policy options has been added to address the third bullet point in the 7/6/21 letter from Hallmark Inns and Resorts, Inc. The Commission should keep in mind that this code provision is limited to "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). The Commission should also consider space constraints in these areas, with larger vehicles equating to fewer licenses.

- 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.

July 7, 2021 Revisions to NMC Chapters 11.05 and 12.15, Relating to Building Codes and System Development Charges

(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.

(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 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: Definition of mobile food unit aligns with language contained in OAR Chapter 333, Division 150, which contains Oregon Health Authority food sanitation rules. 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 May 24, 2021 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:

----- POLICY OPTIONS -----

A(1) The lot, parcel or tract upon which the mobile food unit will be placed is zoned for commercial, industrial, or water-related use; and

or

A(2) The lot, parcel or tract upon which the mobile food unit will be placed is zoned for commercial, industrial, or water-related use and 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 set of policy options responds to concerns raised in the June 28, 2021 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.

Option A(1) contains language the Commission reviewed at previous work sessions, which would limit food carts/trucks to commercial, industrial, and water-related properties. Option A(2) adds additional language imposing the 500-foot limitation.

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 recommend Option A(2) then a modest number of commercial 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 is included in the meeting packet. My recommendation would be to impose the 500-foot limit (i.e. Option A(2)). The District's concerns are reasonable and even with the limitation in place, the code changes will make available a substantial amount of private property to mobile food units.

POLICY OPTIONS

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

or

B(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

B(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 a brick and mortar eating or drinking establishments than I have included optional language that would require sign-off from owners of adjoining properties (Option B(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. My recommendation would be that the Commission pursue Option B(1) or B(2).

C. 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

D. 10-feet of clearance is maintained between each mobile food unit and between such units and existing or proposed buildings; and

E. 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

F. 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

G. 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

H. 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

- I. Awnings, if any, are fully attached to the mobile food unit and located entirely on the subject lot, parcel, or tract; and
- J. 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
- K. 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
- L. 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
- M. 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 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 April 12, 2021 work session and sample codes reviewed at that March 22, 2021 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.

Staff: Mobile food unit pods are defined as three 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.

14.09.060070 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.

14.09.070080 Approval Authority

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

14.09.080090 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~~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.

14.09.090100 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.

14.09.400110 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.

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
March 22, 2021
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, Braulio Escobar, Gary East, and Bill Branigan.

PC Citizens Advisory Committee Members Present by Video Conference: Dustin Capri.

PC Citizens Advisory Committee Members Absent: Greg Sutton.

City Staff Present by Video Conference: Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

Public Members Present by Video Conference: Brodie Becksted and Heidi Rogers.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.
2. **Unfinished Business.** None were heard.
3. **New Business.**
 - A. **Citizen Proposal to Amend the W-2" Water-Related" Zone District to Allow Personal Service Retail Uses Subject to Conditional Use Approval.** Tokos reviewed the Water-Related and Water-Dependent Zoning map. He noted the Becksted was interested in establishing real estate office in the W-2 zone which would need a text amendment to the city's zoning code.

Brodie Becksted and Heidi Rogers addressed the Commission. Becksted gave the history of the property on the Bayfront, sharing how it started as a dwelling and how it was converted into a commercial property. There had been different businesses in it over the years and they currently wanted to do a real estate office at the location. Becksted thought this would be a good use because it would be owner occupied and not so seasonal. He asked for the Commission's thoughts.

Berman noted there was a reason for the original zoning on the Bayfront so they would not end up with a lot of businesses that weren't typically tourist in this area. This was the same in Nye Beach. Becksted reported that the majority of their business was based online and mobile. He thought they could do something different in this area because it wasn't in the thick of all the retail. Rogers added that they thought it would be a popular place and would attract other real estate agents to the area. She thought that real estate use would add energy to the Bayfront. Becksted agreed and gave an example of how Hawaii allowed real estate offices in popular tourist areas. He noted that they wanted to invest in Newport and thought this would fill a void in a vacant area.

Escobar asked where their staff would park. Becksted explained that this use would need less parking than retail. This had been one of their concerns and noted they were also concerned about parking metering being implemented on the Bayfront. Capri thought that the demand on parking from their office would be for one or two employees. Becksted reported they had 13 brokers in their office, and one or two were in the office each day. Everything was pretty mobile for them. Becksted thought the parking demand would be less than the previous tenant who had done a tasting room for a winery. He also noted that he owned Newport Brewing and thought it would be nice to do tastings at this site and comingle with the real estate office to promote both businesses. Capri thought this was a great idea. Becksted thought it would be a good spot to have tastings and get more exposure, but noted this would be a small amount of use. Branigan thought it was a good idea.

Tokos added that effectively what the Commission would be looking at was the conditional use process where personal service uses would be permissible anywhere in the W-2 zone, and wasn't site specific.

East asked if Becksted would be doing a small retail area for their brewery at this location. Becksted gave an overview of how they would operate offering drinks to go and taps at the location. He noted it would mainly be real estate services. Capri thought that this was a safer bet because W-1 and W-2 land was at a premium, and the risk of other professional service industries going in there was pretty low. Becksted noted that trying to find a tenant in a property like this was tough because of the cost of renting the property. He wanted to put energy in the area to try to promote it. Branigan agreed and didn't see an issue with this. Patrick noted the list of what they could do there wouldn't be viable at the price range. This property was at the dead end and he would be happy with anything that would work in this area.

East thought it was a good idea and there wasn't a whole lot on that end that would restrict what they wanted to do. Patrick reminded that this would be a conditional use process and happy with it being this way. Berman thought it was something to look at but noted they needed to look at the bigger consideration. He was into looking at a proposal. Berman asked if it became a conditional use, what criteria would they have to meet. Tokos noted they would look at consistency with the area as one of the criteria to meet. There was more wiggle room on this standard than the others. Becksted reported this location could be a marijuana store but didn't think this would be a good use for it.

Hardy asked what the vacancy rate was. Becksted reported that the west and east sides of the Bayfront were pretty vacant but the middle was great. The ends of the Bayfront needed something different.

Hanselman had a problem making decisions based on one property. He didn't like expanding conditional uses in any zone and thought it was a can of worms because they couldn't predict what would come of it. He would much rather have this be an overall change of the Bayfront rather than focusing on one property.

Tokos thought they should do is next steps and work on what the language would look like for the application. There would be a public hearing before the Planning Commission to take into consideration any testimony. They would provide a recommendation to the City Council, who have a public hearing and make a change by ordinance.

Capri thought they should be looking at Becksted's project as a side note. He explained that with every project on the Bayfront, the second floor was the biggest challenge. It was difficult to do a second floor as commercial. There were a lot more potential uses when there was commercial on the ground floor with administrative or professional services above.

- B. Background and Initial Discussion of Options for Redrafting Food Cart Rules.** Tokos acknowledged the public comment that Janet Webster submitted to the Commission. This discussion fell under a City Council goal to update the food trucks, which had received some attention in recent years. This would be broken up into two pieces. The first would pertain to uses for mobile units in public rights-of-way (ROW) in contained units. The City of Newport's current mobile vendor rules fit the mobile food trucks like ice-cream trucks where they were only allowed to stop for no more than 15 minutes. The second part would be for fixed based vendors/stands which were limited to locations where the Council determined it was appropriate to allow them. The location by the Nye Beach Turn around was one of these locations and the location next to the Hatfield Pump Station at Hatfield Drive and Bay Blvd. Tokos reported that there had been growing interest in having mobile food trucks in Newport. He reviewed the two ideas that were included in the packet. There were different ways this could happen and he was hoping to get the general sense on what issues the Commission wanted to see addressed.

Hanselman asked for a clarification on the rules that restricted food carts from being located within a half mile perimeter from a food establishment. Tokos explained that around 2010, Wilder put together a proposal and submitted an application to amend the city's code to allow food carts on private properties. They were sensitive to the potential conflict with brick and mortar restaurants who had fixed biased costs such as system

development fees. They set up the proposed amendments such that food trucks were allowed as long as they were a half mile from a brick and mortar restaurant. The city adopted this but Wilder was never able to attract anyone at their location. The issues with food pods and mobile vehicles was a little different and had a few different nuances to them. This was why they were being addressed as a two different options. Berman asked if the half mile rules stemmed from one specific request, not in the insistence of restaurant owners. Tokos confirmed this was true. Because of this he didn't think they really needed engage or do outreach with the restaurant community because they would be so far away from them it really wouldn't be competition. Tokos noted there would be a public hearing notice process sent out to fixed based restaurant operators which would give them an opportunity to give testimony.

Branigan asked how long a mobile food truck could park at a given location and if there should be a time limit for them. Tokos thought there should be a around a five hour time limit. This would allow them to cover thing like shift workers on the Bayfront, and baseball tournaments in the field. Tokos noted this wasn't for food trucks that were permanent on private property because they would be connecting into the city services, have parking areas, and have some sort of enclosure for seating. This was something you would typically see in a pod configuration. Branigan asked if they would want to restrict how many food trucks could be at a specific location. Tokos would take a look at provisions like this, and how jurisdictions tackled it and why.

Capri didn't like allowing food trucks on public properties. He thought private properties made more sense because these businesses supported Newport every day through property taxes and all the fees they paid to operate their businesses. Tokos noted there were jurisdictions that don't allow trucks to park within public ROWs and required them to park on parking lots. He noted these may be public lots, though. Tokos would bring back examples of this. Escobar thought if they were at baseball fields they would already have permission beforehand. Tokos agreed and would be his expectation as well. He noted these were already accommodated by the city through special event permits.

Berman asked if someone could currently do a food truck at the Nye Beach turnaround. Tokos explained they couldn't because they were bigger than the size limitation. The hot dog cart that had been there previously was just a trailer and fit in the size limitations. Tokos thought they needed to be sensitive to the size of the spaces that they allowed food trucks to be located at as well. Hanselman thought big trucks were a problem and did take up a lot of space even if they were in a public ROW. He thought there could be private property owners who would be interested in these. Food courts in other cities seemed to do pretty well and were accepted by the community if they were located in an accessible locations. This came down to where were the tourist when they were in Newport. Hanselman reminded they were limited on where they could do food trucks in Newport and he wasn't opposed to introducing these to private properties. Branigan asked if they should limit where food trucks could park for five hours. Tokos noted that there was currently timed parking limits in the City Center, Nye Beach and the Bayfront.

Capri asked if pods were currently allowed on private properties in the city. Tokos explained that the half mile separation requirement pretty much put an end to that. This could and would be changed. You would find that to do pods with any kind of seating, necessitated having restrooms on site. If they weren't providing seating, they might not have to have a restroom onsite. East thought that an area like the old Undersea Gardens was an area to do this. He thought the area for trucks to park in town were limited.

Escobar noted that in Toledo there was a small hotdog stand. They were open from 11 a.m. to 3 p.m. and this seemed to work well. He thought five hours in a public space was excessive and he would be more supportive of a pod concept. Using a public street for five hours should have a lot of consideration and he thought there needed to be a tighter timeframe.

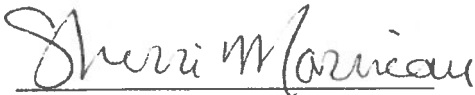
Berman thought it was important to separate out the semi fixed pods from the trucks. Tokos noted that with respect to pods some jurisdictions were using overhead power lines to accommodate them, which was a safety hazard. Because of this, some jurisdictions required power to be below ground and something to consider. Prohibition of outside generators, trash receptacles, the linkage with seating and onsite restrooms, and restrictions on blocking sidewalks were other things to think about.

Capri expressed concerns about how parking was going to be enforced. East noted that most of the traffic on the Bayfront was walking traffic, and it was easier to get quick and easy meals in this area. He didn't think anyone would be going there to specifically eat at these trucks and taking over parking. East didn't think parking would be an issue but thought it should be included. Capri thought it shouldn't be included because they couldn't enforce it. Tokos thought this should be different for pods and mobile food trucks.

Hanselman thought they should discuss the 15 minute limit for mobile food trucks. They needed a chance to make a living, and 15 minutes wasn't enough time to set them up. Tokos would bring options relative to how other jurisdictions were tackling the mobiles and how much time they were giving them. He noted that most jurisdictions didn't allow these in residential areas and asked for the Commission's thoughts. The Commission was in general agreement that they shouldn't be in residential. Branigan thought it would be nice to talk to a mobile food truck owner to understand what their business model was and get some insight on how to craft the rules and regulations. Tokos would look into inviting a mobile food truck owner to participate in another work session. He would be looking at the number of trucks at a specific location, parking on the ROW, general limitations other jurisdictions were doing for private properties, and options on the time limits for the mobile, and language on preserving residential areas.

- C. **Results of the Transportation System Plan Regulatory Review (Tech Memo #3).** The discussion was deferred to the next work session meeting.
 - D. **Updated Planning Commission Work Program.** No discussion was heard.
4. **Adjourn.** The meeting adjourned at 7:00 p.m.

Respectfully submitted,



Sherri Marineau,
Executive Assistant

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
April 12, 2021
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Bob Berman, Jim Hanselman, Braulio Escobar, Gary East, and Bill Branigan.

Planning Commissioners Absent: Lee Hardy (*excused*).

PC Citizens Advisory Committee Members Present by Video Conference: Dustin Capri, and Greg Sutton.

City Staff Present by Video Conference: Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

Public Members Present by Video Conference: Lisa Phipps, and Susannah Montague.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.

2. **New Business.**

A. **Yaquina Bay Estuary Management Plan Update.** Tokos introduced Lisa Phipps, the Department of Land Conservation and Development (DLCD) North Coast Regional Representative. Phipps presented a PowerPoint presentation concerning the Yaquina Bay Estuary Management Plan Update. She gave an overview of the project, its goals, and the process their agency had set out for completing the Plan update. The Plan, adopted almost 40 years before, included natural resource and land use inventories to inform where conservation and development areas should be established. It also served as a technical resource to support the development of local policies and regulations that influence how in-water work was to be performed. Phipps noted they built some dollars into the project to go to jurisdictions to assist with this process. They hoped that by providing some financial compensation for the jurisdiction's time it would help mitigate some of the challenges.

Capri entered the meeting at 6:03 p.m.

Branigan asked if the intent of the project was for local jurisdictions, was there any intent for this to become a legislative issue for the State. Phipps reported there wasn't and it was intended to address local needs. Berman asked what the adoption process would be, and if it would lay out requirements for the individual authorities to comply with the documents once it was adopted. Phipps explained the City of Newport already has an estuary plan. If changes were made to update the Comprehensive Plan, Ordinance, or both, then it would become the policy the city would follow. Tokos noted the city wasn't obligated to adopt anything, but thought there might be something in this plan the city would want to adopt. This would happen through a legislative process. Berman asked if Newport decided to adopt this, and the Port of Newport did not, how do conflicts get resolved. Phipps reported that the Port did not have to adopt this. The Port could agree on their own to adopt some of the policies, but this was a land use process for the city and the county.

Hanselman asked what kind of scientific expertise would be a part of the project. Phipps reported the consultants and stake holders would have a lot of expertise. The stakeholders included the Oregon Department of Fish and Wildlife, the Department of State Lands, NOAA Fisheries, and the Army Corp of Engineers. They were bringing in a lot of resource experts, industry representatives, natural resource groups, and political perspectives, as well as the consultants. Hanselman asked if the old plan was available to review. Phipps thought the City had it available, and the Estuary Management Plan was available on the DLCD's website.

Hanselman and Sutton expressed interest in being a representative on the committee. Tokos reminded there would need to be a motion made to designate the representative at that night's regular session meeting.

- B. Newport Beach Access Resiliency Plan Evaluation Memo.** Tokos reviewed his memorandum and explained how KPFF Consulting Engineers had been retained by the DLCD to evaluate beach access locations within the City of Newport to identify two to three locations best suited for seismic improvements and to provide recommendations on the scope and nature of such improvements. Their work could then be used by the City to secure funding to implement the recommendations, increasing the likelihood that the improved access points will be passable as points of egress following a nearshore Cascadia earthquake.

KPFF visited beach access points north of the Yaquina Bay Bridge, and reviewed available geotechnical documentation. They recommended the Nye Beach Turnaround, Agate Beach State Recreation Site, and Schooner Creek at NW 68th Street as candidate sites for retrofits. City staff and Meg Reed reviewed the document and concurred with the analysis. KPFF was developing a package of retrofit options for the three locations and expected to have concept drawings prepared within the next couple of weeks. This project was fully funded with a grant from the National Oceanic and Atmospheric Administration. Work had to be completed by the end of the fiscal year.

Patrick noted the descriptions of the Yaquina Bay North and South were listed as the same thing as well as the Lucky Gap North surfer access. Tokos noted they looked at both access points at the surfer access and walked both locations. There had been some difficulty at the access to the north side of this location to hold the toe of the stairs at this location when it came to creating an easier access from the stairs. The sand had eroded at this area, which made it difficult to access it and create a stable landing.

Berman asked how much the State Parks would be involved and what their policies were for maintaining access points. He thought there seemed to be a conflict on what was described in the memo and what State Parks insisted on. Tokos explained they had conveyed to KPFF that any retro fit working being done below the vegetation line, that would be subject to State Park jurisdiction, would have to be vetted with them before it landed in a final report to make sure there were no issues should those solutions be pursued in the future. Berman asked if this went through, did it mean a permanent bridge would be installed at Agate Beach to get over the creek. Tokos thought this might be a possibility. He noted this work would be completed by the end of the fiscal year because of the time limit on the NOAA funds. He would bring back their recommended solutions so the Commission had a chance to look at it.

3. Unfinished Business.

- A. Review Initial Draft of Code Amendments Related to Operation of Food Carts.** Tokos introduced Susannah Montague, a food cart owner who had made a presentation to the City Council on food carts. Montague explained that as far as the five hour time limit went, she thought it was reasonable for a fixed stand to be open for five hours shifts in lieu of moving the food cart every five hours. Her thoughts were to be open from 11 a.m. to 3 p.m. at the same location. Montague explained that for the location rules, she was okay with being a part of a pod but wasn't pursuing it at that time. She noted that the County standards to operate a food cart were already set high for them to get approved. She thought that using the County's existing requirements took a lot of the burden off of the Commission to insure only quality food carts and operators were in Newport. Montague also noted that the County required restrooms to be within five feet on the food cart and she met this standard with porta potties.

Berman asked Montague if she considered a trailer that was a permanently parked to be a mobile or fixed stand. Montague thought this should be a fixed stand. Berman asked for her thoughts on generator sounds. Montague noted that her current plan was to have a generator, but the more she thought of it she would need a location where they could plug into electricity and not use generator. Escobar asked if there was any reason for a five hour limit if they were to be a semi-permanent stand. Montague explained that she was trying to see how she could operate under the five hour time limit. She thought she could do this by being open for a total of five

hours. She would be happy with operating five hours or less a day, but didn't want to have to move her food cart every five hours.

Capri thought this made a lot of sense. He asked if someone was able to currently put a food truck on a privately owned property in Newport. Tokos noted that what they were currently addressing was if they could place a food cart on a private property in Newport. The five hour limit was a part of the initial discussion. Capri thought that if someone owned private property, and it was zoned for it, why would the City be against allowing them. Tokos reminded that this was what they were working on currently. He reviewed how the food truck rules came into play because of a request in the past for one to be placed at the Wilder development. Capri thought they should give consideration to trucks that wanted to buy a property and put a food truck there permanently. Escobar thought standalone food carts in Newport could benefit from this. Hanselman noted he was fine with food trucks being close to a brick and mortar restaurant, but thought a permanent truck on a private property would start to feel like a brick and mortar. A discussion ensued regarding the differences between brick and mortar restaurants and permanently fixed food trucks. Capri asked if people weren't allowed to do a pod on a private property in Newport under the current ordinance. Tokos confirmed this was correct.

Tokos acknowledged the public comment that was submitted by Janet Webster. She had a specific concepts she wanted to do on a property she had that was next to the School District. There was a separate vending code that prohibited vending close to schools. Tokos reminded the Commission that this was something they needed to take a look at.

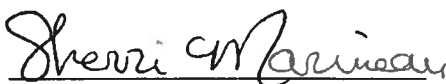
Tokos reviewed the concepts for mobile food trucks and cart regulatory changes with the Commission. Berman asked if more than one definition for mobile food trucks was needed. Tokos explained this was defined by the County and the State, and he was trying to use the same terminology throughout.

Montague noted that for the discussion on transient versus non-transient vendors, she was speaking as a non-transient vendor. She noted that a generator was a part of her current plan but she might not need one. Montague reported that the County and Portland did allow generators. The newer generators were quieter and less stinky. She offered to research these and report back to the Commission.

Hanselman asked Montague what size of generator was required for a food truck. He thought that if they were regulated by sound or size that could be a solution to allowing generators. Montague wanted to look into this before the Commission made a decision. Capri asked if there was a noise ordinance for the City. Tokos confirmed there was one with a certain decibel level requirement. Berman thought they needed to look at requiring generators to comply with the noise ordinance. Tokos would bring information on the noise ordinance back to the Commission.

4. **Adjourn.** The meeting adjourned at 7:00 p.m.

Respectfully submitted,



Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
May 24, 2021
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Bob Berman, Lee Hardy, Jim Hanselman, Braulio Escobar, Gary East, and Bill Branigan.

PC Citizens Advisory Committee Members Absent: Dustin Capri, and Greg Sutton.

City Staff Present by Video Conference: Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

Public Members Present by Video Conference: Meg Reed, and Susannah Montague.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.

2. **Unfinished Business.**

A. **Status Update South Beach / US 101 Corridor Refinement Plan.** Tokos noted the South Beach Urban Renewal Plan had to be coded by the end of 2025. Also the planning process would evaluate the redevelopment opportunities for a 2.3-acre agency owned property at NE 15th and US 101.

Tokos explained that the consultants completed an initial round of stakeholder engagement, a draft opportunity and constraints report, and were developing a set of online survey questions for a public survey that would launch towards the end of June. A Spanish language video-conference discussion session would be held as well. Tokos reported that staff would meet with the consultants on May 24th to provide feedback on the draft opportunities and constraints report before it was presented to the Newport Urban Renewal Agency at its June 21, 2021 meeting. There were placeholders in the report for wastewater management options at the airport. That information would be plugged into the document prior to the Agency's June 21 51 meeting. The code audit component of the project would begin in mid-June, and the Planning Commission would have a role in shaping those outcomes. The entire project was slated to wrap up in November. Berman thought the information that was submitted showed they were doing a very comprehensive job.

B. **Review DLCD/City Evaluation of Beach Access Points Prioritized for Resiliency Retrofit.** Tokos reported that the boardwalk at Agate Beach would be updated to 14 feet instead of the 10 feet currently noted on the draft resiliency plan. Berman reminded that the Commission had been told before that it would be difficult to do a permanent structure at Agate Beach, and he asked if the new boardwalk would be robust. Tokos had concerns about the bridge and thought they could ask them to look at this harder. He also noted that the State Parks were engaged in the process and had given feedback on this. Berman pointed out that it looked like the plan implied there was a parking lot at 68th Street, but it was just a gravel area. Tokos noted the initial concept pushed this on a private property and they were told to come up with a design that didn't go well into the adjoining property. They still needed to clean up the graphic.

Hanselman questioned how big the parking area at Schooner Creek was that wasn't a part of the diagram. Berman reported it was had about five parking spots. Branigan asked if they should be spending this much money for five cars where there wasn't anywhere else to park on 68th Street and US 101. Tokos noted they were under no obligation to spend the money. This project was funded by DLCD and NOAA to look at what it would take to improve these beach access points so they were more resilient. Hanselman asked if they had any concept of usage for the access points. He noted that Agate Beach had more traffic than 68th Street. Tokos explained that the Nye Beach turnaround and Agate Beach had more traffic. They ruled out the surfer access

area partly because of the geologic issues of the area. Tokos explained the Nye Beach turnaround was a good way to address things because it had an aging seawall. To be able to both buttress the seawall, and provide accessible access seemed like an artful solution, but it would be pricy. They might have NOAH resiliency grant money that could pay for a substantial part of the costs. Hanselman thought this was a highly popular access point and they were on point to shore it up and make sure the access was usable.

Meg Reed addressed the Commission and noted she was looking for their input and comments for the final report. She noted that 68th Street wasn't as populated and would be a big design, but the geology of the other sites would be much more difficult to do something that would function in the event of an earthquake. Reed agreed that the Nye Beach turnaround was a good spot to go with, but noted it was expensive. She hoped there would be more graphic representation on the report. Escobar asked if there was ever consideration of enhanced access closer to the North Jetty. Reed reported this had been evaluated but wasn't included partly because of the steepness of the trails making it too difficult. Patrick thought they should consider making a trail from of the Coast Guard access onto the Bay. He thought there was a road there and it would be a good area to cut a trail for beach access

Berman asked what consideration had been given to the South Beach State Park. Reed explained they decided not to include this because funding for this evaluation was limited, and State Parks had jurisdiction at this location. She thought State Parks was coming up with plans but hadn't evaluated the seismic retrofits for some trails. Patrick thought they might want to tie this into the time it took to get to safe zone areas from the surface spots back to Agate Beach to make sure there was enough time to make it in an evacuation. Reed reported the whole city was included in the evaluation that Patrick was referring to. She thought that all areas to the north had decent evacuation times. If someone was on the beach it would be more difficult to evacuate to high ground in time though.

Tokos asked if the designs had been run by DOGAMI. Reed reported that she had sent them the initial drawings but never heard back from them. She would try to follow up with them and get back to KPFF. Tokos thought it would be good for them to take a look at it and reflect on how the solutions affected where they landed in respect to their Beat The Wave modeling, if at all. Hanselman questioned if the South Jetty had been evaluated. Branigan added that a lot of surfers used the South Jetty and the road to it was rough. Reed agreed that this area was tricky. OSU researchers were doing modeling in this area to see how the decision making affected the overall area.

- C. Review of Draft Code Amendments Related to Food Trucks & Carts.** Tokos acknowledged the email Janet Webster had submitted. He explained she was a property owner who was thinking about doing a food cart pod on her property.

Tokos reviewed the draft revisions to NMC Chapter 4.10. The nature of the changes made it more realistic for mobile stands outside of residential areas. Tokos explained that what he had heard was that the Commission wanted these left out of residential areas. This had been reflected in the amendments. Berman asked if "residential areas" were defined in the code. Tokos noted he tried to shy away from getting too much into zoning codes and discussions that were not a part of the zoning ordinance. They could add "zoned for residential purposes" which were the R-1 through R-4 zones. Tokos would clear up the language.

Hanselman asked if they should expand the two hours to five hours for food trucks. Tokos explained that under Oregon Health Authority rules they would need to have accessible restrooms if they went past two hours. There would be no way to verify this in a right-of-way (ROW) and why it was two hours.

Susannah Montague addressed the Commission and asked if the two hour time limit applied to fixed stands. Tokos confirmed it did not apply to fixed stands and was tailored for food trucks that moved around. Branigan asked if city owned parking lots were considered ROWs. Tokos reported that when there was vending done on city owned parking lots, they would need a special events permits. The time limit applied to ROWs and the fixed business areas. Montague asked if the city would ever consider renting a portion of a parking lot to a fixed

stand. Tokos explained the City Council could designate a fixed stand spot in a public parking lot if they wanted to but they were not pursuing it at that time.

Berman asked if a truck hauling a food cart could legally take up multiple parking spaces. Tokos would follow up with the Police Department on this and get back to him.

Tokos reviewed the fee section next and noted the fees were not set by ordinance anymore. This meant that anywhere fees were noted they were taken out.

Montague asked if there would be a time limit for fixed stands. Tokos reported the code did not include a time limitation for fixed stands.

Berman asked if Section 4.10.025(A)(2) meant that they couldn't authorize someone else to operate a food cart on their private lot. Tokos explained this concerned the sidewalk area adjacent to a business. Assuming that the sidewalk was big enough to do vending, this would authorize vending on the sidewalk only for the owner of the business. Berman asked if the owner could give a non-employee the option to vend in this area. Tokos explained the owner would need to be the one operating the vending and they couldn't have a third party vendor. He reminded that these rules were for vending on public property, not on the business' private property. If there was enough space and width in front of a business on the ROW to put a stand right outside their business, they could get an endorsement to put their product there. Escobar suggested modifying it to say "operated by the operator of the business with the operator's approval." Tokos thought they could tweak the language. Montague reported that there were a lot of food carts in Eugene in parking lots of businesses. Tokos noted this section wasn't typically a food cart and would almost always be retail product on the sidewalks. This was because sidewalks weren't typically wide enough to accommodate food service.

Berman asked for clarification on what the random lottery award was as it related to endorsement renewals. He asked if it was possible for someone not to get a renewal because they weren't chosen in a lottery. Tokos reported they didn't have many issues with fixed stands because the locations were so limited. If this was to be expanded for other locations they could run into this. Berman wanted to see someone with an existing license have the option to continue it and renew the endorsement to keep operating. Hanselman asked if the boardwalk was a city or Port property. Tokos reported this was a city property but the Port had rights to cross it.

Tokos asked for the Commission's thought on lifting the restriction on vending in close proximity to elementary or secondary schools. Escobar asked how far this pushed vending away from schools. Tokos reported it eliminated vending right in front of a school and thought it would be a good discussion to have with the school district. Hanselman noted he worked at a high school with an open campus and explained how it harmed attendance. Vending meant kids would want to go across the streets and was hazardous. Hanselman thought dealing with the school district was an appropriate thing to do.

Berman asked what it meant in the draft when it said that endorsements could be amended to add months but not refunds would be allowed. Tokos explained that the Finance Department had people pay for their endorsement fees, then decide not to go forward with the endorsement and ask for refunds. Berman thought this should say there would be no refunds and then say they could add months to the endorsement by paying a monthly fee. Tokos would look at cleaning up the language.

Patrick noted that the Lincoln County Commons was by a school. Tokos explained this wouldn't affect them because the rules weren't for private property, they were for ROWs. He asked the Commission for their thoughts on if they should leave the language as is or go to the school district for their input. Patrick thought they should leave it as it was and not delete secondary. Branigan thought they should contact the school district to find out what they would like. Hanselman thought they should talk to each individual school. Escobar was comfortable with what was drafted. Tokos would reach out the school district about the possibility as it related to the secondary school and see what their thoughts were.

Tokos reviewed the vending stands revisions next. The changes expanded the size of the stands to allow some

food carts or trailers. Berman thought they should reevaluate the felony convictions prohibitions. Tokos would take a look at this.

Berman thought that if they weren't going to give out violations for multiple days and not abide by the code, they shouldn't include it in the code.

Montague asked if the Commission had a preferred area in town they wanted to see a fixed pod or stand at. Tokos noted the changes on the code did not have a preference for these areas but opened the door to commercial and other options in the city.

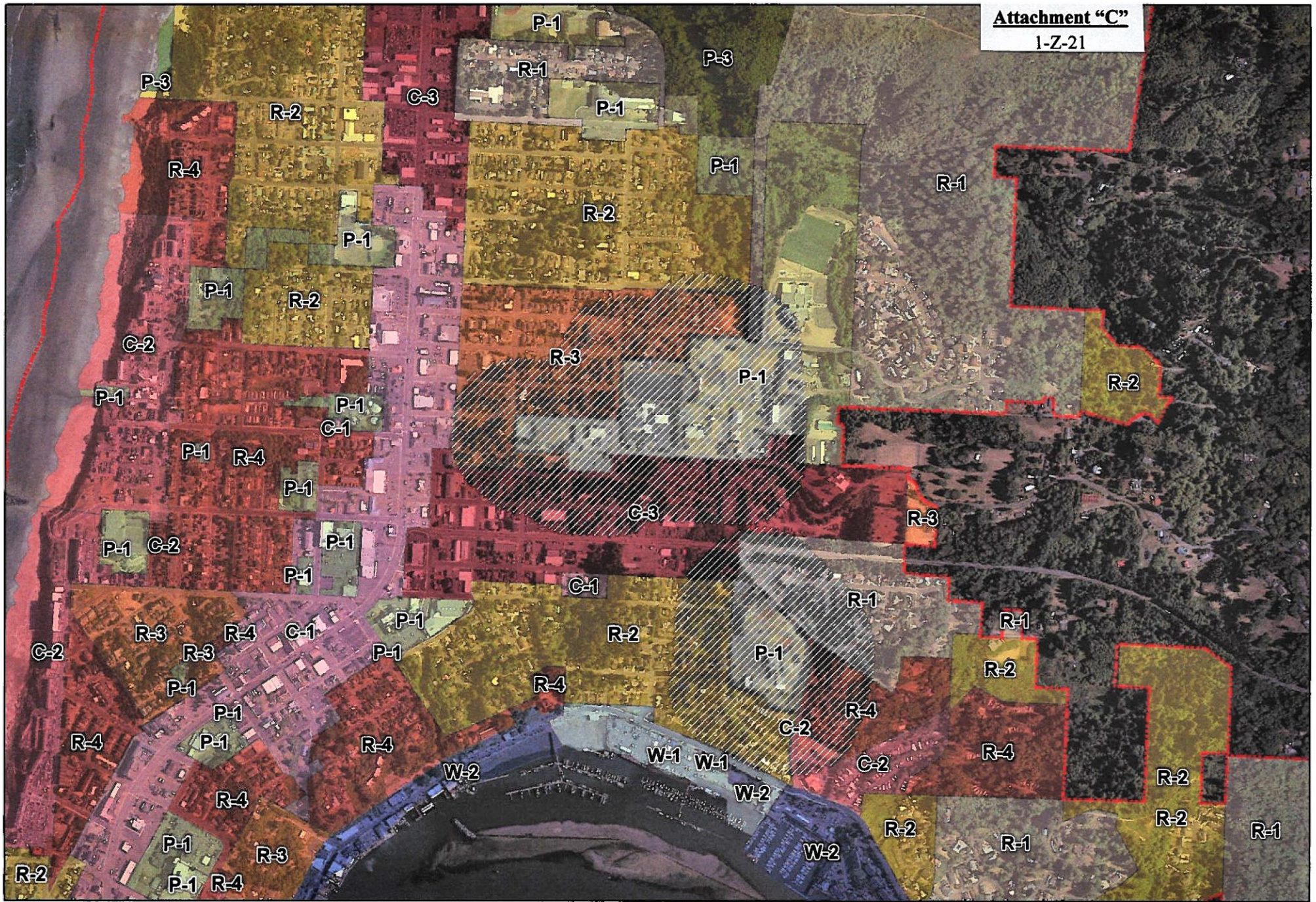
Montague asked if the requirement to get approval from adjacent property owners under Section 14.09.050(B) was a standard requirement. Tokos reported this was a discussion for the Commission on how to handle the competition piece. Montague asked if this was standard for a brick and mortar restaurant to get adjacent property owner approval. Tokos confirmed it was not. He explained if the Commission wanted to do this, the argument would be that the brick and mortar had to invest more in their business, and if a food truck could park in front of their location, it wasn't fair and a point of friction. Escobar noted that the draft didn't say it wasn't limited to competing food businesses. Tokos reported they could do this, and it was an option for the Commission to consider. Montague thought it would be nice if the businesses were unrelated.

Chair Patrick closed the meeting and noted that they would continue the discussion at the end of the regular session meeting that evening.

3. Adjourn. The meeting adjourned at 7:00 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant



City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
Phone: 1.541.574.0629
Fax: 1.541.574.0644

**Potential 500-ft Buffer from School Ground
(Impacted Areas Shown in White Cross-Hatch)**

Image Taken July 2018
4-inch, 4-band Digital Orthophotos
Quantum Spatial, Inc. Corvallis, OR

This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

0 500 1,000 2,000 Feet



Attachment "D"

1-Z-21

Derrick Tokos

From: DLCD Plan Amendments <plan.amendments@state.or.us>
Sent: Tuesday, May 25, 2021 8:27 AM
To: Derrick Tokos
Subject: Confirmation of PAPA Online submittal to DLCD

[WARNING] This message comes from an external organization. Be careful of embedded links.

Newport

Your notice of a proposed change to a comprehensive plan or land use regulation has been received by the Oregon Department of Land Conservation and Development.

Local File #: 1-Z-21

DLCD File #: 003-21

Proposal Received: 5/25/2021

First Evidentiary Hearing: 7/12/2021

Final Hearing Date: 8/2/2021

Submitted by: dtokos

If you have any questions about this notice, please reply or send an email to plan.amendments@state.or.us.

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING ¹

This meeting will be a hybrid meeting conducted by video-conference and a limited number of people (up to 15) are allowed to attend in person. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate by video-conference or in person in the hearing.

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, July 12, 2021, to review and make a recommendation to the City Council as to whether or not the following amendments should be adopted. A public hearing before the City Council will be held at a later date and notice will be provided for the Council hearing.

File No. 1-Z-21

Applicants: City of Newport.

Proposal: Amendments to Section 4.10, Vending on Public Property; Section 11.05, Building Codes; Section 12.15, System Development Charges; and Chapter 14, Zoning Standards, related to the operation of food trucks and food carts in the City of Newport. **A summary of the proposed changes is attached to the back of this notice.**

Applicable Criteria: Pursuant to Newport Municipal Code (NMC) Section 14.36.010: Findings that the amendment to the Zoning Ordinance is required by public necessity and the general welfare of the community.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Newport Comprehensive Plan and its implementing ordinances that a person believes applies to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development (Planning) Department (address below in "Reports/Application Material") must be received by 12:00 p.m. (Noon) the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant, those in favor or opposed to the application, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Application Materials: The staff report may be reviewed or purchased for reasonable cost at the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy., Newport, Oregon 97365, seven days prior to the hearing. The draft amendments can be viewed online at: <https://www.newportoregon.gov/dept/cdd/default.asp>. They are also available for inspection at no cost at this address, along with public testimony and other relevant materials. Copies of the documents may be purchased for reasonable cost.

Contact: Derrick Tokos, Community Development Director, (541) 574-0626; d.tokos@newportoregon.gov (mailing address above in "Reports/Application Materials").

Time/Place of Planning Commission Hearing: Monday, July 12, 2021; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Application Materials").

MAILED: June 18, 2021.

PUBLISHED: July 2, 2021/News-Times.

¹ This notice is being sent to the applicant, the applicant's authorized agent (if any), affected property owners, affected public/private utilities/agencies within Lincoln County, and affected city departments.

CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

COAST GUARD CITY, USA



phone: 541.574.0629

fax: 541.574.0644

<http://newportoregon.gov>

mombetsu, japan, sister city

City of Newport Food Truck and Food Cart Amendments Summary of Proposed Changes

Overview

Newport's existing laws limit food carts and food trucks to privately owned commercial or industrial properties that are at least a 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 very narrow set of licensing options for mobile operators who want to vend from parking areas along public streets, requiring they move every 15 minutes. One of the City Council's goals is to update these laws to provide additional options for individuals that wish to setup a food cart or operate a food truck within the City. A draft set of rule changes have been developed by the Planning Commission, the key elements of which are as follows:

Private Property

- Food Trucks and Food Carts (called "Mobile Food Units") will be allowed in commercial and industrial areas regardless of how close they might be to permanent eating and drinking establishments, subject to a City issued temporary use permit.
- 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 will be operating, satisfies standards designed to promote health and safety and avoid nuisance impacts.
- If four (4) or more trucks or carts locate on a property, the development becomes a Mobile Food Unit Pod. Additional standards apply to Pods that are akin to what is required of permanent eating and drinking establishments, such as providing sheltered guest seating, restroom facilities, and off-street parking. Pods will also be required to have city sewer connections and permanent power for each mobile food unit and will be subject to the same City impact fees as permanent eating and drinking establishments.

Public Property (including streets)

- Area allotments for fixed based vending at City designated locations (e.g. the Nye Beach Turnaround) will be enlarged to accommodate many types of mobile food units.
- Vendors interested in setting up in street parking areas will be allowed to stay up to 2 hours at any given location in commercial or industrial areas. The 15-minute limit will continue to apply in residential areas.
- Insurance requirements will be increased for persons obtaining a business license to vend on public property.
- Use of City property other than streets that are not specifically designated for vending will continue to be limited to special events.

Additional Information

Detailed information about the proposed changes is available on the City of Newport website at: <https://www.newportoregon.gov/dept/cdd/default.asp>. Questions or concerns may be directed to Derrick Tokos, Community Development Director at 541-574-0626 or d.tokos@newportoregon.gov.

Sherri Marineau

From: Sherri Marineau
Sent: Friday, June 18, 2021 12:19 PM
To: Derrick Tokos; Spencer Nebel; Robert Murphy; Michael Murzynsky; Joseph Lease; Jason Malloy; Laura Kimberly; Michael Cavanaugh; Beth Young; Clare Paul; Chris Janigo
Subject: Zoning Amendment - File 1-Z-21
Attachments: File No. 1-Z-21 Notice - PC.pdf

Attached is a notice concerning a land use request. The notice contains an explanation of the request and a date for the public hearing. Please review this information to see if you would like to make any comments. We must have your comments at least 10 days prior to the hearing period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Sherri Marineau
 City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 ph: 541.574.0629, option 2
 fax: 541.574.0644
s.marineau@newportoregon.gov



PUBLIC RECORDS LAW DISCLOSURE. This e-mail is a public record of the City of Newport, and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This e-mail is subject to the State Records Retention Schedule for Cities.

Sherri Marineau

From: Sherri Marineau
Sent: Friday, June 18, 2021 12:19 PM
To: 'odotr2planmgr@odot.state.or.us'; 'lisa.phipps@state.or.us'
Subject: Zoning Amendment - File 1-Z-21
Attachments: File No. 1-Z-21 Notice - PC.pdf

Attached is a notice concerning a land use request. The notice contains an explanation of the request and a date for the public hearing. Please review this information to see if you would like to make any comments. We must receive comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Sherri Marineau
 City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 ph: 541.574.0629, option 2
 fax: 541.574.0644
s.marineau@newportoregon.gov



PUBLIC RECORDS LAW DISCLOSURE. This e-mail is a public record of the City of Newport, and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This e-mail is subject to the State Records Retention Schedule for Cities.

NW Natural
ATTN: Dave Sanders
1405 SW Hwy 101
Lincoln City, OR 97367

Charter Communications
ATTN: Keith Kaminski
355 NE 1st St
Newport OR 97365

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

Central Lincoln PUD
ATTN: Randy Grove
PO Box 1126
Newport OR 97365

Email: Lisa Phipps
DLCD Coastal Services Center
lisa.phipps@state.or.us

Joseph Lease
Building Official

Rob Murphy
Fire Chief

Clare Paul
Public Works

Beth Young
Associate Planner

Jason Malloy
Police Chief

Mike Murzynsky
Finance Director

Laura Kimberly
Library

Michael Cavanaugh
Parks & Rec

Spencer Nebel
City Manager

Chris Janigo
Public Works

EXHIBIT 'A'
(Affected Agencies)

(1-Z-21)

OCEAN BLEU @GINO'S FISH
PO BOX 1225
NEWPORT OR 97365

OFF THE HOOK BAR & GRILL
PO BOX 501
NEWPORT OR 97365

PACIFIC BELLS DBA TACO BELL
111 W39TH ST
VANCOUVER WA 98660

PACIFIC KITCHEN AT NYE BEACH
5 CENTERPOINTE DRIVE #590
LAKE OSWEGO OR 97365

PIG-N-PANCAKE NEWPORT LLC
PO BOX 9
SEASIDE OR 97138

ROGUE ALES PUBLIC HOUSE
OREGON BREWING CO
748 SW BAY BLVD
NEWPORT OR 97365

SAIL INN CAFE LLC
1377 MOONSHINE PARK RD
LOGSDEN OR 97357

SANDBAR & GRILL
SANTOS HERNANDEZ
PO BOX 312
NEWPORT OR 97365

SEA GLASS BISTRO & LOUNGE
900 WASHINGTON ST STE 760
VANCOUVER WA 98660

SHARK'S SEAFD BAR
PO BOX 1653
NEWPORT OR 97365

SORELLA
1127 OLALLA RD
TOLEDO OR 97391

SUPER OSCAR'S MEXICAN
1226 N COAST HWY
NEWPORT OR 97365

SZABO'S STEAKHOUSE & SEAFOOD
5188 NE LUCKY GAP ST
NEWPORT OR 97365

TAPHOUSE AT NYE BEACH
193 NW 70TH ST
NEWPORT OR 97365

TENGU SUSHI
715 SW HURBERT STREET
NEWPORT OR 97365

THAI PORT RESTAURANT
859 SW BAY BLVD
NEWPORT OR 97365

THE CHOWDER BOWL AT NYE BEACH
742 NW BEACH DR
NEWPORT OR 97365

THE COFFEE HOUSE
J. MONTANO
PO BOX 2093
NEWPORT OR 97365

ULTRALIFE CAFE - NYE BEACH
715 NW BEACH DR
NEWPORT OR 97365

WOLF TREE BREWERY LLC
199 N WOLKAU RD
SEALROCK OR 973765

YUMMY BOWL RESTAURANT
554 SW COAST HWY
NEWPORT OR 97365

FILE NO. 1-Z-21

RESTAURANTS IN CITY OF NEWPORT

ABBY'S PIZZA INN
932 N COAST HWY
NEWPORT OR 97365

ARCTIC CIRCLE NEWPORT
340 N COAST HWY
NEWPORT OR 97365

ASIATICO SUSHI BAR INC
875 SW BAY BLVD
NEWPORT OR 97365

BARGE INN TAVERN
611 SE 3RD STREET
NEWPORT OR 97365

CAFE STEPHANIE
200 SE VIEW CT
NEWPORT OR 97365

CHALET RESTAURANT &
2026 N COAST HWY
NEWPORT OR 97365

CLEARWATER
611 SE 3RD ST
NEWPORT OR 97365

COAST&VINE
526 NW COAST STREET STE A
NEWPORT OR 97365

COASTIES ROASTIES
228 SW COAST HWY
NEWPORT OR 97365

COCA MOCHA JOE'S LLC
1630 N COAST HWY #9
NEWPORT OR 97365

DOMINO'S
2020 SE DIVISION ST
PORTLAND OR 97202

FISHTAILS, LLC
504 NW 56TH ST
NEWPORT OR 97365

FLASHBACK'S FOUNTAIN/JEG
PO BOX 2227
NEWPORT OR 97365

GEORGIE'S BEACHSIDE GRILL
% HALLMARK INNS
5 CENTERPOINTE DR, SUITE 590
LAKE OSWEGO OR 97035

GYRO GUYS
912 N COAST HWY
NEWPORT OR 97365

HILL BUFFET & GRILL
5251 N COAST HWY
NEWPORT OR 97365

HOOVER'S PUB & GRILL LLC
PO BOX 1073
NEWPORT OR 97365

KAM MENG CHINESE
4424 N COAST HWY 101
NEWPORT OR 97365

LA MAISON
315 SW 9TH ST
NEWPORT OR 97365

LA ROCA DEL MAR MEXICAN
RESTAURANT
PO BOX 1444
NEWPORT OR 97365

LOCAL OCEAN SEAFOODS INC
213 SE BAY BLVD
NEWPORT OR 97365

LUCKY THAI ELEPHANT LLC.
807 SW COAST HWY
NEWPORT OR 97365

MAZATLAN MEXICAN
404 SW COAST HWY
NEWPORT OR 97365

MOLLIE'S FOOD FOLLIES
763SE 2ND ST
TOLEDO OR 97391

MOMIJI NP LLC
122 N COAST HWY STE B
NEWPORT OR 97365

MO'S ANNEX
622 SW BAY BLVD
NEWPORT OR 97365

NEWPORT KUM YON LLC
1006 S COAST HWY
NEWPORT OR 97365

NEWPORT STEAK & SEAFOOD
1019 SW COAST HWY
NEWPORT OR 97365

NOODLE CAFE/CHENG
818 SW 13TH ST
NEWPORT OR 97365

NYE BEACH CAFE
POBOX 687
SOUTH BEACH OR 97366

ABBY'S PIZZA INN
932 N COAST HWY
NEWPORT OR 97365

ARCTIC CIRCLE NEWPORT
340 N COAST HWY
NEWPORT OR 97365

ASIATICO SUSHI BAR INC
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1377 MOONSHINE PARK RD
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TAPHOUSE AT NYE BEACH
193 NW 70TH ST
NEWPORT OR 97365

TENGU SUSHI
715 SW Hurbert Street
NEWPORT OR 97365

THAI PORT RESTAURANT
859 SW Bay Blvd
NEWPORT OR 97365

THE CHOWDER BOWL AT NYE BEACH
742 NW BEACH DR
NEWPORT OR 97365

THE COFFEE HOUSE/Montano
PO BOX 2093
NEWPORT OR 97365

ULTRALIFE CAFE - Nye Beach
715 NW BEACH DR
NEWPORT OR 97365

WOLF TREE BREWERY LLC
199 N Wolkau RD
Seal Rock OR 973765

YUMMY BOWL RESTAURANT
554 SW COAST HWY
NEWPORT OR 97365

**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING**

This will be a hybrid meeting which means that it will be held electronically, via Zoom, with a limited number of people (up to 15) allowed to attend in-person. The meeting will be live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190. Anyone interested in making public comment is allowed to attend in-person, subject to congregant limitations (up to 15). Anyone wishing to provide virtual public comment should make a request by noon on the day of the meeting, at publiccomment@newportoregon.gov, and ask for the Zoom meeting information. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. The e-mail must be received four hours before the scheduled date of the meeting. Written comments received by noon on a Planning Commission meeting date, will be included in the agenda packet.

The Newport Planning Commission will hold a public hearing on Monday, July 12, 2021, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 1-Z-21, amendments to Section 4.10, Vending on Public Property; Section 11.05, Building Codes; Section 12.15, System Development Charges; and Chapter 14, Zoning Standards, related to the operation of food trucks and food carts in the City of Newport. Pursuant to Newport Municipal Code (NMC) Section 14.36.010: Findings that the amendment to the Zoning Ordinance is required by public necessity and the general welfare of the community. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. (Noon) the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material for the amendments, and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above).

(FOR PUBLICATION ONCE ON FRIDAY, July 2, 2021)

ndue burden to
plicants to now
o take the build

adjacent properties to
get their own properties
armored, and most im-

that stretch of coast who
haven't already armored
to come to us and use this

www.co.lincoln.or.us/pc/
page/goal-18-exception-
public-hearing.

Beach pump sta-
ne Pacific Ocean.
Department also
t did not penalize
for, discharging
nfectected wastewa-
the Pacific Ocean
29, exceeding its
d chlorine efflu-
t on Feb. 12 and
ing raw sewage
e ground surface
undslide damaged
snes in northwest

Newport on Feb. 16.
"Newport created a
public health risk, as the
Pacific Ocean off New-
port's beaches is used
for water-contact récre-
ation," the DEQ's letter
reads. "These violations,
taken together, cause
concern about Newport's
management of its waste-
water collection, treat-
ment and disposal sys-
tem."

Water Treatment Plant
Supervisor Andrew Grant
told the News-Times all
of the releases were self
reported to the DEQ. The
raw sewage spill resulted
from a sanitary sewer
overflow, he said.
However, Grant said,
the non-disinfected
wastewater discharges
were not caused by the
disconnection of back-up
chlorine pumps but by

the failure of the chlori-
nation system. The back-
ups were removed years
prior to the spills, he
said. The whole system
is heavily modified, he
added, and they are seek-
ing to install a newly en-
gineered version.
City Manager Spencer
Nebel told the News-
Times, regarding the inci-
dents of non-disinfected
discharge, "I think it's im-

portant to note that this
wasn't untreated sewage,
it was treated wastewater
that didn't have chlorine
added."
City staff has met pre-
liminarily with DEQ rep-
resentatives to offer their
case, Nebel said, and de-
pending on whether the
department adjusts its
fine assessment, the city
will decide if it wishes to
formally appeal.

7/2/2021

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JY2

**SELF-STORAGE
PUBLIC SALE
SAFE-LOCK STORAGE**
3639 SE Ash
South Beach, Oregon
97366
Saturday 7/24/21 @
10:00am

P08 Brian Wilks
L18 Tracey Thompson
D11 Robert & Dede Johnston
I02 Leon Noble
C20 Kirk Tice
F27 Dashiell Love
M221 Jennifer Tenderella
Sale Subject to Cancel-
lation
Safe-Lock Storage
reserves the
Right to refuse any and
all bids
JY2 JY9 (28-09)

**REQUEST FOR
PROPOSALS -
MUNICIPAL COURT
JUDGE**
The City of Toledo is seek-
ing proposals for a Munic-
ipal Court Judge. The City
anticipates a two-year
contract, with options for
two-year renewals. Inter-
ested individuals and/or
firms are encouraged to
visit the City website at
www.cityoftoledo.org/rfps
for complete details on
how to submit proposals
for consideration. Submis-
sions are due by [end of
day] Wednesday, July 21,
2021, with an anticipated

start date of August 26,
2021. The City reserves
the right, at its sole dis-
cretion, to accept the
proposal most favorable
to the City's interest and
the right to waive minor
irregularities in propos-
al. Please contact City
Recorder Lisa Figueroa at
administration@cityofto-
ledo.org or 541-336-2267
extension 2060 for more
details. Posted: Thurs-
day, June 24, 2021 (www.
cityoftoledo.org) Publish:
Friday, July 2, 2021 & Fri-
day July 9, 2021 (Newport
News Times) JY2 JY9 (25-
09)

**PUBLIC NOTICE
NATIONAL OCEANIC
AND ATMOSPHER-
IC ADMINISTRATION
(NOAA) NATIONAL
OCEAN SERVICE (NOS)
Draft Programmatic En-
vironmental Impact State-
ment (PEIS) for Surveying
and Mapping Projects in
U.S. Waters for Coastal
and Marine Data Acqui-
sition Available for Pub-
lic Comment NOS has
prepared a Draft PEIS
in accordance with the
National Environmental
Policy Act to analyze the
potential environmental
impacts associated with
NOS's recurring data col-
lection projects to charac-
terize submerged features
(e.g., habitat, bathymetry,
marine debris). The Draft
PEIS is now available for
public review and com-
ment. The "action area"
for these projects encom-
passes United States
(U.S.) rivers, states' off-
shore waters, the U.S. ter-
ritorial sea, the contiguous
zone, the U.S. Exclusive
Economic Zone (U.S.**

EEZ), and coastal and
riparian lands. As a part
of the Proposed Action, NOS
may use active acoustic
equipment such as sub-
bottom profilers, single
beam and multibeam
echo sounders, side-scan
sonars, and Acoustic
Doppler Current Profilers.
The Draft PEIS analyzes
NOS data collection pro-
jects for a time period of
6 years. Publication of the
Draft PEIS on June 25,
2021 begins the 60-day
public comment period.
The Draft PEIS, fact
sheets, and a summary of
impacts can be accessed
online at: <https://ocean-service.noaa.gov/about/environmental-compliance/surveying-mapping.html>. Written comments
on the Draft PEIS will be
accepted on or before
August 24, 2021 and may
be submitted by one of
the following methods:
Federal e-Rulemaking
Portal: Go to <http://www.regulations.gov/>
NOAA-NOS-2021-0055.
Click the "Comment
Now!" icon, complete the
required fields, and enter
or attach your comments.
Mail: Please direct written
comments to DOC/NOAA/
NOS Environmental Com-
pliance Coordinator,
SSMC4-Station 13612,
1305 East West Highway,
Silver Spring, MD 20910.
E-mail: nosaa.ec@noaa.gov
For further informa-
tion contact Giannina
DiMaio, DOC/NOAA/
NOS, Environmental
Compliance Coordinator,
SSMC4-Station 13612,
1305 East West Highway,
Silver Spring, MD 20910,
nosaa.ec@noaa.gov, 240-
533-0918. J30 JY2 JY7

(24-07)
**NOTICE TO
INTERESTED PERSONS
IN THE CIRCUIT COURT
OF THE STATE OF ORE-
GON FOR THE COUNTY
OF LINCOLN PROBATE
DEPARTMENT.** In the
Matter of the Estate of
Kenneth Edward Fears,
Case No. 21PB04840;
Notice is hereby given that
Brian Haggerty has been
appointed personal rep-
resentative. All persons
having claims against
the estate are required to
present them with vouch-
ers attached to the per-
sonal representative at
PO Box 510, Newport, OR
97365, within four months
after the date of first pub-
lication of this notice or
the claims may be barred.
All persons whose rights
may be affected by the
proceedings may obtain
additional information
from the records of the
court, the personal rep-
resentative, or the attor-
neys for the personal
representative, Brian
Haggerty, OSB #980588,
Minor, Bandonis & Hag-
gerty, P.C., PO Box 510,
Newport, OR 97365, (541)
265-8888. Dated and first
published June 25, 2021.
J25 JY2 JY9 (23-09)

**NOTICE OF A PUBLIC
HEARING**
CITY OF NEWPORT; This
will be a hybrid meeting
which means that it will
be held electronically, via
Zoom, with a limited num-
ber of people (up to 15)
allowed to attend in-per-
son. The meeting will be
live-streamed at <https://newportoregon.gov>, and
broadcast on Charter

Channel 190. Anyone
interested in making pub-
lic comment is allowed to
attend in-person, subject
to congregant limitations
(up to 15). Anyone wish-
ing to provide virtual pub-
lic comment should make a
request by noon on the
day of the meeting, at
publiccomment@newportoregon.gov, and ask for
the Zoom meeting infor-
mation. Anyone wishing
to provide written public
comment should send the
comment to publiccomment@newportoregon.gov. The e-mail must be
received four hours before
the scheduled date of the
meeting. Written com-
ments received by noon
on a Planning Commis-
sion meeting date, will be
included in the agenda
packet. The Newport
Planning Commission will
hold a public hearing on
Monday, July 12, 2021,
at 7:00 p.m. in the City
Hall Council Chambers to
consider File No. 1-Z-21,
amendments to Section
4.10, Vending on Public
Property; Section 11.05,
Building Codes; Section
12.15, System Develop-
ment Charges; and Chap-
ter 14, Zoning Standards,
related to the operation of
food trucks and food carts
in the City of Newport.
Pursuant to Newport
Municipal Code (NMC)
Section 14.36.010: Find-
ings that the amendment
to the Zoning Ordinance is
required by public neces-
sity and the general wel-
fare of the community.
Testimony and evidence
must be directed toward
the request above or other
criteria, including criteria
within the Comprehensive

Plan and its implement-
ing ordinances, which the
person believes to apply
to the decision. Failure to
raise an issue with suffi-
cient specificity to afford
the city and the parties
an opportunity to respond
to that issue precludes
an appeal, including to
the Land Use Board of
Appeals, based on that
issue. Testimony may
be submitted in written
or oral form. Oral testi-
mony and written testi-
mony will be taken during
the course of the public
hearing. The hearing may
include a report by staff,
testimony from the appli-
cant and proponents, tes-
timony from opponents,
rebuttal by the applicant,
and questions and delib-
eration by the Planning
Commission. Written tes-
timony sent to the Commu-
nity Development
(Planning) Department,
City Hall, 169 SW Coast
Hwy, Newport, OR 97365,
must be received by 12:00
p.m. (Noon) the day of
the hearing to be included
as part of the hearing or
must be personally pre-
sented during testimony
at the public hearing. The
proposed code amend-
ments, additional materi-
al for the amendments,
and any other material in
the file may be reviewed
or a copy purchased at
the Newport Community
Development Department
(address above). Contact
Derrick Tokos, Commu-
nity Development Director
(541) 574-0626 (address
above). JY2 (18-02)

Attachment "F"

1-Z-21

From: Melanie Nelson
To:
Cc: Gloria Tucker
Subject: RE: City Ordinances
Date: Monday, March 08, 2021 4:38:24 PM

From: **Susannah Montague**
Date: Tue, Mar 2, 2021 at 8:11 AM
Subject: City Ordinances
To: s.nebel@newportoregon.gov <s.nebel@newportoregon.gov>

Good Morning Mr. Nebel,

My name is Susannah Montague, my husband and I both live and work in the Newport area. I've worked for Cafe Stephanie for over 4 years and my husband is a commercial fisherman and local boat owner. I'm hoping to start the process of requesting to adopt ordinances in Newport and it is my understanding that you're the person to contact! I'd like to open a fish and chips food cart using the fish my husband catches on our fishing boat, the Jo El, which fishes salmon and albacore tuna out of Newport. I think it is time for Newport to explore food carts as an easy and inexpensive option to showcase the sea food our city has to offer. You might be familiar with the ordinance changes Lincoln City recently adopted to allow for food carts in their city limits. Most other tourist destinations along the Oregon coast have them and are enjoying the vibrance they bring to their communities. Astoria, Seaside, now Lincoln City, Waldport, Yachats, Coos Bay, and Brookings all have thriving food carts that are contributing to their cities' revenues. I'm hoping to help Newport join them soon.

I've spoken with restaurant workers, citizens, city and county staff and all have shown support for allowing food carts.

I've attached the plans I have approved by the county so you can see what I'm working on.

The specific ordinances I'm referring to are: Newport Municipal Codes 4.10.010 - Requiring a mobile stand to move every 15 minutes and 14.09.050(A) Temporary vending carts may be located on commercially-zoned property that is at least ½ mile from a permanent eating and drinking establishment.

I think we can find ways to ease concerns people may have about food carts and generate revenue for the city through occupancy taxes and other means. Just as most restaurant owners welcome other businesses near them to create more draw and foot traffic, I think food carts will only add to Newport's growing and vibrant food scene.

With over 18 years experience in the food industry, 6 of which with food trucks, I am happy to help start this process for our city. Please consider this my formal request to place a proposed ordinance change on the City Council agenda for Council consideration. Please let me know how best to move forward and any questions or suggestions you may have for me. I'm really looking forward to talking with you and working with you! Thank you for your time.

Susannah Montague



Health and Human Services Department
Public Health Division - Environmental Health
36 SW Nye Street (Mailing)
255 Oregon Coast Hwy, Suite 203A
Newport, Oregon 97365

Telephone: (541) 265-4127
Fax: (541) 574-6252
TTY: 711



Public Health
Prevent Promote Protect

Lincoln County
Environmental Health

February 16, 2021

Susannah Montague
9191 NW Seal Rock St
Seal Rock, Oregon 97376

RE: Plan Review For: JoElle's Fish & Chips (LLC)

Dear Susannah,

Thank you for discussions held via phone to review your plans for JoElle's Fish and Chips Class 4 Mobile Unit. The plans you have submitted have been approved subject to stated conditions. Please note that the county and city municipalities in Lincoln County have different rules and ordinances pertaining to the operation of mobile units in their jurisdictions. Each will need to be contacted before conducting operations in that area.

Mobile Cart is a 12 ft. by 8 ft. trailer. Generator and propane tanks are mounted on the tongue of the trailer. Cart owner has a commercial fishing boat that will supply fish for cart. Inspector verified with Department of Agriculture that this is an approved source.

List of Equipment:

Three Sink
Hand Sink
Double Fryer with Type 1 Hood
27' Prep Table
24' Griddle
Beverage Air- B118 HC Stand Up Refrigerator
Beverage Air SPE27HC-B Elite Prep Cooler
Beverage Air WTF27AHC-23 Freezer

1. Mobile units must be capable of being mobile at all times of operation. The removal of wheels is prohibited.

2. Only foods prepared on the mobile unit or from an approved source may be served on the mobile unit. The plans, as submitted, qualify your mobile unit to be licensed as a Class 4 mobile food unit. Class 4 mobile units may cook raw foods like chicken, pork or fish.
3. Mass cooling of foods are not allowed on Mobile Cart/Trucks.
4. There is a three- sink noted on the plans that will be indirectly wasted into a floor sink. When conducting dish washing you need to assure you wash, rinse and sanitize with a solution of 50-100 ppm chlorine or 200-400 ppm quaternary ammonia.
5. A chlorine or quaternary ammonia test kit must be available to test the concentration of wipe cloth sanitizing solution.
6. A plumbed hand washing sink is available. The hand washing sink must have hot (+100F)/cold running water, soap, and disposable towels at all times.
7. The water heater is required to provide hot water at the hand sink and dishwashing at all times the facility is open. The water heater must provide hot water of at least 100°F at the handwashing sink and 110 F at the three-sink area.
8. The refrigerator unit must be equipped with a thermometer. Potentially hazardous foods must be kept at 41° F or less at all times, including during transportation.
9. A probe thermometer must be available and utilized for the purpose of checking internal temperatures of hot and cold foods.
10. All surfaces must be smooth, durable, sealed, non-absorbent, and easily cleanable.
11. All openings to compartments where food and beverage might be stored shall be equipped with closures which effectively exclude dust, dirt, insects, and rodents.
12. All cleaning supplies and toxic items must be stored separately from food, paper goods, and utensils.
13. All storage of food, drink, utensils, equipment, etc. must be at least 6'' off the floor.
14. Fuel tanks, tools, pumps, etc. must be located so that they are sealed from food service, storage, and preparation areas.
15. Any self-service of food or condiment must be protected from contamination through use of approved dispensers and/or sneeze guard. (During COVID self-service is not allowed)
16. A covered refuse receptacle will be provided at each location where food is served. Garbage will be disposed of daily on the mobile unit.

17. All liquid wastes must drain into the wastewater tank. The wastewater retention tank must be a permanently installed tank and must be sized 15 percent larger in capacity than the water supply tank. You have indicated that the potable water tank is 65 gallons and the gray water tank is 80 gallons. Tanks must be assessable for cleaning and inspections.
18. All water used on the mobile unit must come from an approved public water system. You plan to use water from approved PWS Seal Rock Water District. All liquid wastes from the wastewater tank must be properly disposed of in the sanitary sewer. **You plan to use RV dump station located at South Beach RV Dump.**
19. The water hose and couplings for filling the potable water tanks must be constructed of materials approved for drinking water and labeled for “potable water use only”, to ensure there is no confusion as to its only use and avoid cross contamination.
20. Compressed gas bottles must be fastened securely to a wall or stationary object at all times in such a manner as to prevent damage to the valve mechanism.
21. The mobile unit must be clearly marked: **JoElle’s Fish and Chips**. The lettering must be at least 2” in height and of a color contrasting with the background.
22. **All employees are required to have a current and valid food handlers’ card within 30 days of hire. All employees are excluded from work when the following symptoms are present: vomiting, diarrhea, fever, sore-throat accompanied by fever, jaundice.** This exclusion is in place as long as these symptoms are present and for 24 hours after symptoms have ended. During COVID, food staff must wear masks at all times.
23. A double hand wash (20 seconds each time) is required after using a restroom, touching bodily fluids (eyes, nose, mouth), coughing, or sneezing. Prevent food borne illness outbreaks by adhering to the following practices: no sick food handlers working on mobile unit; eliminate bare hand contact with ready to eat foods through the use of gloves/utensils; proper hand washing practices including when a double hand wash is required.
24. This mobile unit and its operations must meet all the Oregon rules applying to mobile units in the Oregon Revised Statutes, Chapter 624 and the Oregon Administrative Rule, Chapter 333.

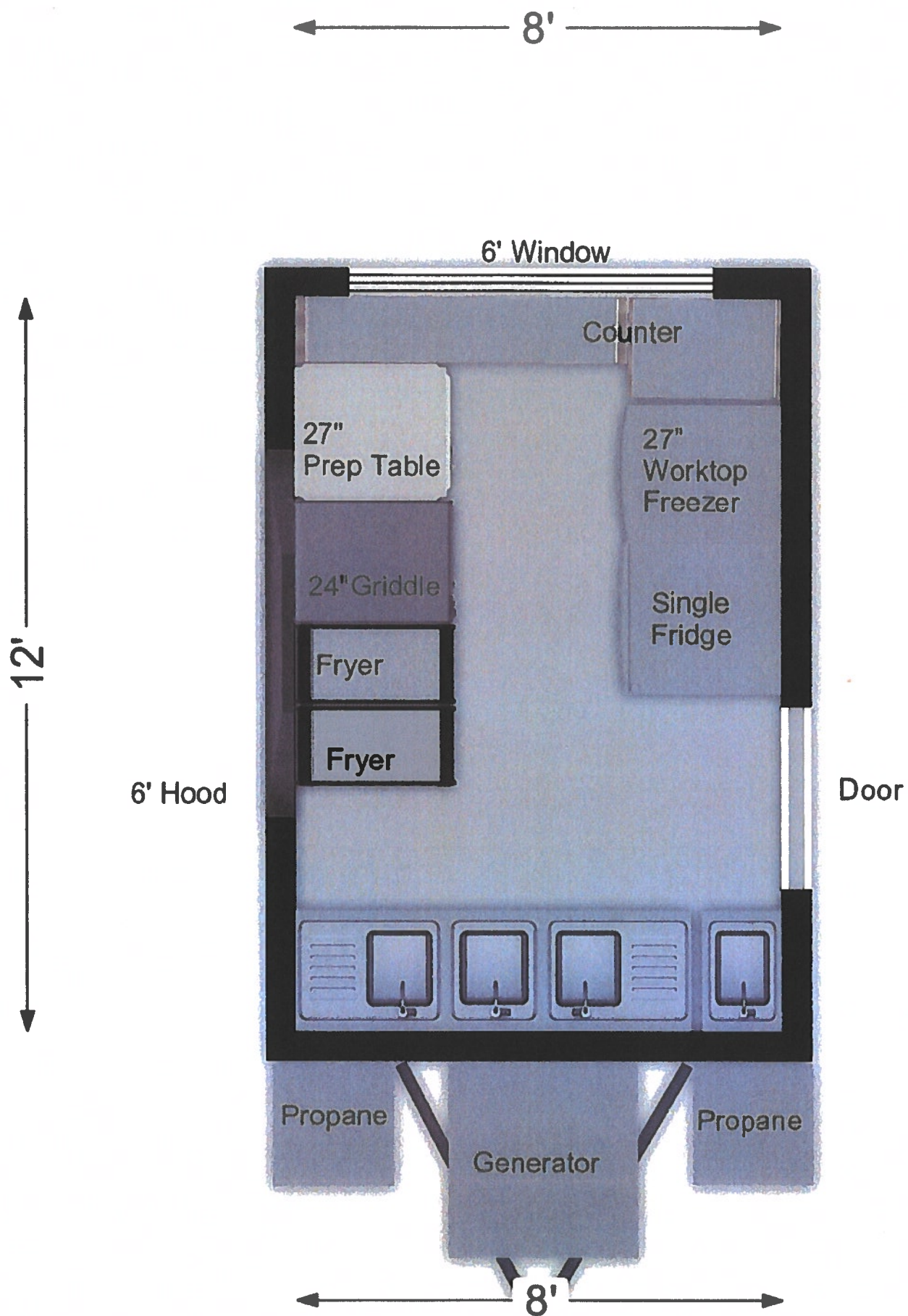
You are approved to move forward with the construction of your cart. When cart is complete please call to schedule a pre-opening inspection. Once your inspection is approved you will be able to apply for licensure.

If any future changes are necessary, it will be required that those changes are approved by Lincoln County Environmental Health Department prior to making any changes.

Congratulations on your new business in Lincoln County.

Sincerely,

Kaline Chavarria, REHS
Lincoln County Environmental Health



Thank you for your time and consideration. My name is Susannah Montague, my husband and I live and work in the Newport area. I've worked at a local restaurant for 5 years and my husband is a commercial fisherman. We own the fishing vessel Jo El. I'm here tonight to ask you to consider ordinance changes to allow for food carts or trucks in Newport. Most other tourist destinations on the Oregon Coast are enjoying the benefits of allowing food trucks in their cities. Astoria, Seaside, most recently Lincoln City, Walport, Yachats, Coos Bay and Brookings all have food trucks contributing to their cities revenues and food scenes. I hope Newport can join them soon. Food trucks offer an easy and inexpensive way to showcase our cities' seafood and regional specialties to tourists and locals. I've heard that a concern about food trucks is their effect on brick and mortar restaurants - With limited to no seating, and being somewhat seasonal or weather dependent, they won't interfere or threaten our established restaurants, in fact most restaurant owners welcome other businesses and eateries near them to generate more draw and foot traffic. Over the past 5 years I have watched every summer in Newport get busier and busier and watched our tourist season expand into almost year round. I think there is plenty of business and opportunity here for food trucks without taking any from established restaurants. There are many areas of town I think could benefit from the foot traffic and interest a food cart would create. For example, the Deco District, Dock Seven, Highway 101 frontage, in South Beach across from the Toyota Dealership and the Wilder Complex.

The specific ordinances I'm referring to are 14.09.050A and B. 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. I bring up section B because if the City were to lease property, or small sections of property, for example an under used parking lot, to a food cart, that could mean additional and continuous revenue for the City.

4.10.010 which defines Mobile Stands and Fixed Stands. A Mobile stand is defined as "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 at a time." While a "fixed stand" is a stand at which vending occurs for more than 15 minutes at a time in a single location. Even if a stand is easily movable, it is a fixed stand if it remains in place for more than 15 minutes in the course of a vending activity.

Ideally, a parked food cart that is not intruding in the public right of way could be categorized as a fixed stand and not required to move every 15 minutes, but could rather lease it's location from either the city or if it were on private property, from that owner, and remain there where customers can count on it.

I know that in Lincoln City, a concern was raised about how food trucks could contribute to a city's revenues. I hope food trucks can contribute to Newport's revenue through occupancy taxes and fees like I mentioned previously. The requirements to get approval from the county and the current city ordinances ensure that all food trucks and carts would be clean, well maintained and that they are not disruptive to the area in which they are parked.

With over 18 years in the food service industry, over 6 of which with food carts, I'd love to opportunity to help the Council in starting them in our city.

If you'd like to hear a little bit about the food cart I'd like to start I'd be happy to share that with you or I'd also be happy to try to address any more concerns you might have about food carts in Newport.

Thank you again for your time.

These are the specific ordinances I'd like to address with the Counselors during the March 15th City Council Meeting:

4.10.010

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 at a time.

Fixed stand. A stand at which vending occurs for more than 15 minutes at a time in a single location. Even if a stand is easily movable, it is a fixed stand if it remains in place for more than 15 minutes in the course of a vending activity. For purposes of the definitions of "mixed stand" and "fixed stand," single location include 100 feet in all directions.

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.

Derrick Tokos

From: Susannah Montague
Sent: Tuesday, April 6, 2021 6:02 PM
To: Derrick Tokos
Subject: Re: Contact Us - Web Form

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Derrick! Thank you for getting back to me! I would love the link to be able to attend the meeting on Monday, and I'd love a draft of the code language too. Thank you so much for including me! I'll be looking forward to Monday.

Susannah

On Tue, Apr 6, 2021 at 1:42 PM Derrick Tokos <D.Tokos@newportoregon.gov> wrote:
 Hi Susannah,

Thanks for reaching out and sharing your thoughts. I'll make sure to pass your comments along to the Planning Commission. With regards to your plans and county approval documents, I have a copy of what you submitted to the City Council. The Planning Commission will be holding a second work session on Monday at 6:00 pm. You are welcome to attend, as I am sure the Commission members would love to hear your perspective on the issue. The meeting will be held by video-conference, and I can follow-up with the link if that time works for you.

I am putting together some draft code language for the Commission to review. It should be ready by the end of the day on Thursday and I would be happy to send you a draft.

Derrick I. Tokos, AICP
 Community Development Director
 City of Newport
 169 SW Coast Highway
 Newport, OR 97365
 ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

-----Original Message-----

From: _____
Sent: Tuesday, March 30, 2021 6:18 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Contact Us - Web Form

[WARNING] This message comes from an external organization. Be careful of embedded links.

City of Newport, OR :: Contact Us - Web Form

The following information was submitted on 3/30/2021 at 6:18:00 PM

To: Derrick Tokos
Name: Susannah Montague

Subject: Food Trucks

Message: Good evening, Derrick!

I just got a chance to watch the video of the Planning Commission's work session on 3/22/2021. Thank you for talking through this with the Commission! I just had a couple of questions and information I think might be pertinent. The Commission mentioned the Bay Front and Nye Beach areas many times, but I actually do not want to be located in either, they are busy enough. I'm much more interested in the Deco District or the Wilder Complex, which also came up and I think could benefit from more development. You mentioned a 5 hour limit before moving, since mine is a fixed stand/trailer, if I were to be open for less than 5 hours in a day, would that meet that potential requirement?

A couple other issues that came up such as access to a restroom and waste disposal are actually already addressed and required by the county. The county requires a restroom within 500 feet, my plan got county approval by including a lease and regular service of a Port-a-Potty. Proper waste disposal and access to trash cans and recycling containers are also already required.

Did you receive a copy of my plans, design and county approval when I presented to the City Council? If not, I would love to get them to you for reference if you are interested.

Lastly, how would you suggest I stay involved and up to date while the Planning Commission and City Council move forward with this? Any advice would be greatly appreciated!

Thank you so much for your time and work on this!

Susannah Montague

Derrick Tokos

From: Susannah Montague <susannahmontague@gmail.com>
Sent: Wednesday, July 7, 2021 6:12 PM
To: Derrick Tokos
Subject: Re: Another Food Cart Question

Hi Derrick!

Thank you so much for sending this! I completely understand the school district's concerns, and Hallmark's, and I support them in their proposed changes to the draft language. I'd like to attend in person, if that is possible. Just let me know when and where, and I will be there. If we can not attend in person, please send me the link so I can attend by video conference.

I'll be looking forward to it!

Susannah

On Tue, Jul 6, 2021 at 4:27 PM Derrick Tokos <D.Tokos@newportoregon.gov> wrote:

Hi Susannah,

Here is a [link](#) to the current draft of the amendments. The staff report will post to the city website at the end of the week. We sent notice of the proposed changes to the school district and the eating and drinking establishments in town. To date, we have received two comments (attached). Let me know if you plan on attending the public hearing and prefer to participate by video-conference. That will be my queue to send you the login info.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

Attachment "G"

1-Z-21

Sherri Marineau

From: Janet Webster
Sent: Monday, March 22, 2021 9:58 AM
To: Public comment
Subject: Comments on food carts for the March 22 Work Session

[WARNING] This message comes from an external organization. Be careful of embedded links.

March 22, 2021

RE: Discussion on Redrafting Food Cart Regulations

Dear Planning Commission,

A revision of Newport's food cart regulations is overdue. The current regulations were drafted to address a specific situation and do not resonate with the current environment. During this past year, many residents and visitors would have welcomed more options to eat outdoors. Food carts present a simple way to accommodate social distancing while providing a variety of food at affordable prices.

Private property owners should be allowed to have food carts on their property if properly zoned and health standards maintained. This is almost impossible in most of Newport given the half mile restriction. "Permanent eating and drinking establishment" is not defined in the code. We have explored having a food cart pod on property we own across from the high school. This location would give students and teachers food options without driving or leaving the area. We are currently prohibited from moving forward on this due to the half mile restriction and the 500 foot restriction from a secondary school.

Too often, the City plans for tourists rather than considering the daily needs of residents. Food carts offer an alternative to chain fast food restaurants. They can be a way for a local entrepreneur to incubate a business. Locating them in areas that locals will use may alleviate the perception of competition with existing restaurants. Competition can be healthy as local people will go where the food is good and affordable.

I encourage you to look beyond simply identifying additional public right-of-ways and public property in high traffic areas. Consider what locals may want and what would add to the overall quality of life in Newport. I suggest starting over when drafting regulations as many cities have addressed the food cart issue and may have model ordinances that would work for Newport.

Sincerely,
 Janet Webster
 Newport, OR

April 11, 2021

To: Newport Planning Commission

From: Janet Webster

RE: Item 3.A. of the April 12, 2021 Planning Commission Work Session

Considerations Concerning Food Carts in Newport

In 2018, my husband and I had conversations with Spencer Nebel, Derrick Tokos and Peggy Hawker concerning the placement of food carts on private property. We were interested in developing property at 634 NE 3rd St in Newport. As part of the concept, we wanted to accommodate food service. Rather than construct a commercial kitchen, we wanted to encourage food carts and vendors to use space as places where their customers can order from the cart and eat in a covered area with access to restrooms. The location lends itself to serving the high school community and local work establishments.

Those conversations did not result any movement towards addressing changes in the code that would allow food carts on private property in Newport. I have outlined the main issues that I had found in the city code that prevent us from accommodating food carts.

- The siting restrictions:
 - According to Section 14.09.050 of Newport's Municipal Code, "*A. Temporary vending carts may be located on commercially zoned property that is at least 1/2 mile from a permanent eating and drinking establishment.*" Our property has several such establishments within 1/2 mile. Possibilities include limiting carts to certain zones (eg. C3, C1, Industrial zones) or shrinking the 1/2 mile to 200 feet.
 - What is a "*permanent eating and drinking establishment*": Does this include coffee stands and seasonal establishments?
 - Are restrictions concerning proximity to schools still relevant? Do these apply to both public and private property? *4.10.035 Restrictions: 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;*
- Definition of a regulation size temporary vending cart: *Can be vended from a regulation size temporary vending cart.* What is a regulation vending cart?
- The permit is only good for two years. There doesn't appear to be a means to extend or re-apply. *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.*

Thank you for addressing this issue.

Derrick Tokos

From: Janet Webster <janet.webster@charter.net>
Sent: Tuesday, July 6, 2021 5:32 PM
To: Derrick Tokos
Subject: Re: Comments on March 22 work session

Derrick,

I'm aware of the hearing. Thanks for sharing the current comments. I'll review and make public comments if appropriate.

Janet

On Jul 6, 2021, at 4:45 PM, Derrick Tokos <D.Tokos@NewportOregon.gov> wrote:

Hi Janet,

I wanted to reach out to make sure that you are aware of the July 12th public hearing where the Planning Commission will consider the food truck amendments, and to get back to you regarding the points you outlined below. A copy of your May 22nd email was provided to the Planning Commission for its May 24th work session where they considered the draft amendments.

Our office mailed notice of the proposed changes to the owners of eating and drinking establishments in town, and I met with the School District to discuss the revisions. So far, we have received two responses, one from the District and the other from Hallmark Resorts (enclosed).

The current draft set of amendments are on the City's website at: <https://www.newportoregon.gov/dept/cdd/default.asp>

Derrick I. Tokos, AICP
 Community Development Director
 City of Newport
 169 SW Coast Highway
 Newport, OR 97365
 ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

From: Janet Webster <janet.webster@charter.net>
Sent: Saturday, May 22, 2021 1:44 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Re: Comments on March 22 work session

Hi Derrick,

I cannot participate due to other commitments. Here are my comments/questions.

On the Vending on public property - how do you define elementary school? In Newport, the middle school at times has blended activities with the high school. Perhaps the definitions are outdated in this case. Better to use age groups of concern?

- Secondary schools include the middle school and high school. An elementary school would be grades k-5 given how Newport's system is presently structured. These terms are used elsewhere in the City code and in State Administrative Rules, so using them here provides consistency. Listing age groups of concern would be another reasonable approach.

14.09.050 - Mobile Units

B. How do you define "adjoining lots"? Is this a shared property line?

- An adjacent lot or parcel is one that shares a property line.

K. You allow an "outdoor smoker" but there may be other equipment that is better used outside of the food truck. Perhaps less prescriptive language.

- Good point. I believe the Commission discussed this at the 5/24 work session, and I'll work in a change as part of the staff report that would limit food trucks to a single piece of outdoor cooking equipment.

14.09.060 - Pods

B. The connection to city sewer and individual power are not needed if the trucks may move. Are you defining a pod as trucks that don't move? If you have a cluster of three or more that come and go, are the requirements for permanent hookups necessary?

- Pods are now defined as four or more mobile food units irrespective of whether or not they move. Three or fewer on a particular lot would not be required to hook up. The concept is that four or more units is enough density that the development needs to move closer to the standards that would apply to brick and mortar eating establishments. Thus the requirement for a sheltered common seating area, sewer/water connections, permanent power, compliance with off-street parking requirements, etc.

D. Parking is always an issue. Is there any allowance for use of adjacent parking? The requirement seems high given that many pods cater to walk-up customers who are parking elsewhere in the area and eating as part of the day.

- Off-street parking standards would only apply to pods. Shared parking arrangements are an option under the city's existing off-street parking code (ref: NMC 14.14.080).

I appreciate the revisions. They are an improvement on the old ordinance.

-Janet

On May 21, 2021, at 5:08 PM, Derrick Tokos <D.Tokos@NewportOregon.gov> wrote:

Hi Janet... the Planning Commission will be meeting in work session on Monday to review a draft set of Food Truck/Food Cart regulations. Here is a link to the meeting materials: <https://www.newportoregon.gov/citygov/comm/pc.asp>. If it goes well, they will initiate the formal legislative process at their regular session that evening, with an initial public hearing in July.

Let me know if you want to participate and we will send you a video-conference link.

Thanks,

Derrick I. Tokos, AICP

Community Development Director

City of Newport

169 SW Coast Highway

Newport, OR 97365

ph: 541.574.0626 fax: 541.574.0644

d.tokos@newportoregon.gov

From: Janet Webster <janet.webster@charter.net>

Sent: Friday, March 26, 2021 5:56 PM

To: Derrick Tokos <D.Tokos@NewportOregon.gov>

Subject: Re: Comments on March 22 work session

Thanks. You might ask planning commission members to walk the bay front and Nye Beach to get an idea of the locations that are currently authorized and see the flow of traffic and people.

-Janet

On Mar 26, 2021, at 5:37 PM, Derrick Tokos
<D.Tokos@NewportOregon.gov> wrote:

Hi Janet... will keep your comments in mind as we move forward, and I'll see that the Planning Commission receives a copy of your email.

Derrick I. Tokos, AICP

Community Development Director

City of Newport

169 SW Coast Highway

Newport, OR 97365

ph: 541.574.0626 fax: 541.574.0644

d.tokos@newportoregon.gov

From: Janet Webster <janet.webster@charter.net>

Sent: Friday, March 26, 2021 10:55 AM

To: Derrick Tokos <D.Tokos@NewportOregon.gov>

Subject: Comments on March 22 work session

[WARNING] This message comes from an external organization. Be careful of embedded links.

Hi Derrick,

You were asking the Planning Commission for input on the revision of the W-2 zoning code and the food cart ordinances. I have a couple of comments to add to the mix.

On the code change of allowable uses in the C-2: as parking is no longer a decider on the Bay Front, I would suggest that trash handling is. Businesses must have adequate space or a plan for handling their trash. A parking space in front of the business does not count. I also wonder what affect the proposed change would have on Nye Beach where conditional uses have not been well enforced. The Commission may want to consider the ramification city-wide of a change in the C-2 allowable uses.

One food trucks:

- Developing property for a pod would include SDC charges as any development.
- Nothing is currently allowed on private property if with the 1/2 mile. Defining permanent eating and drinking establishment would be helpful. The owner of the Cub Cave objects to anyone coming that area even though that is a seasonal, part-time establishment.
- A five hour time limits on the Bay Front could cover two shifts of fish plant workers as they start at 6 am when working at full steam.
- You need to address the provision barring a food truck within 500' of an elementary and secondary school. That prohibit a food truck pod anywhere off of Hwy 20 where there is some flat ground including our lots on 3rd St and the county fairgrounds.
- I reiterate my comment that I submitted that the Commission needs to plan for residents as well as tourists.
- You may want to look at Tillamook's food cart pod and how that was initiated. It's very useful for both locals and people passing through Tillamook.
- There's really only one food truck in Newport. If the Commission wants to hear from Mr. Canales, I suggest that you meet with him prior to a more formal meeting with the Commission. He lives in Lincoln City and may to be available for an evening meeting.

-Janet Webster

<July 12th Hearing Notice.pdf><comments.pdf>



LINCOLN COUNTY SCHOOL DISTRICT

Dr. Karen Gray
Superintendent

Attachment "H"

1-Z-21

District Office | Teaching & Learning Center
1212 NE Fogarty Street, Newport, OR 97365
PO Box 1110, Newport, OR 97365
T 541-265-9211 | F 541-265-3059
www.lincoln.k12.or.us

June 28, 2021

Derrick Tokos
Community Development Director
City of Newport

Mr. Tokos,

This letter is in reference to the proposed change in NMC Chapter 4.10, specifically 4.10.035 which states:

No vendor shall:

"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 the dismissal at the end of the school day."

In your proposed change, the words "or secondary" have been stricken and we in the Lincoln County School District vehemently disagree with this change. There are many reasons we oppose this change but here are a few:

1. We are considering a closed campus for grades 9 and 10 next year at Newport High School. There is an area directly across the street from our cafeteria which has been proposed as a food cart court. It would be extremely difficult for us to monitor students under our care when a food cart is right across the street from the high school and we are closing campus for half of the students. The same would be true for parking a food cart next to Newport Middle School as it is already a closed campus.
2. The already difficult traffic flow off 3rd Street by Newport High School would be exacerbated by having food carts available next to our high school. It's already hard enough to control the traffic there. This makes it worse and then it truly becomes a safety problem and a nuisance.
3. We have one of Oregon's highest per capita rates of student homelessness in Lincoln County. Our USDA/ODE food service program depends upon student participation in order to receive adequate federal reimbursement to break even and allow us to continue serving free meals to all students in Lincoln County. Allowing food carts so close to our campuses would endanger these free meal programs. It would be a cruel disservice and a further inequity for children whose parents cannot afford to purchase a meal by potentially taking away the only food they receive for the day.
4. Our food programs encourage healthy eating habits because we are required to adhere to the requirements of the Healthy Hunger Free Kids Act. Having food carts next to our schools encourages kids to eat food that is likely less nutritious than what we serve.

July 6, 2021

Derrick Tokos
Community Development Director
City of Newport

City of Newport Food Truck and Food Cart Amendments

Mr. Tokos,

We are happy to hear that the Planning Commission will be considering these changes at their meeting on July 12th.

We want to submit the following for consideration:

- The amendments for Private Property seem reasonable. Hallmark is considering providing additional food service via a "Mobile Food Unit" during peak times on our private property. This amendment appears to allow for that assuming health department approval and obtaining a temporary use permit.
- As the owner of two existing eating and drinking establishments in Newport (Georgie's and Pacific Kitchen), Hallmark does have a concern regarding the Public Property section. We don't believe that eliminating the restriction on setting up in front of an existing establishment is a good idea. We recognize that the previous requirement of locating one-half mile from existing establishments is probably too extreme. Optionally, restricting Mobile Food Units from setting up on the street in front of existing establishments seems reasonable. We would request that requirement be included in the amendment language.
- Please consider revising section 4.10.040 to read *eighteen (18) feet in length and ten (10) feet in height, excluding canopies and umbrellas*. Eighteen (18) feet is a relatively standard length for a full-service food trailer.
- Regarding section 14.09.050 – Mobile Food Units
In regards to the option B alternatives:
B1. Hallmark agrees with either option B1 or B2.
B3. Hallmark is not in agreement, as written, with option B3. As the mobile food unit will have to be placed on a properly zoned property, we would suggest a requirement for adjacent landowner's consent only if the operation is outside certain hours of operation (e.g., 8:00 am – 8:00 pm).

Thank you,
Hallmark Inns & Resorts Inc.



Ric Rabourn
President & CEO



Derrick Tokos

From: Bonnie Hendren
Sent: Sunday, July 11, 2021 11:06 AM
To: Derrick Tokos
Subject: Food carts

[WARNING] This message comes from an external organization. Be careful of embedded links.

If there are to be any in the Nye Beach turn around there must be 3 additional garbage can.

July 11, 2021

Newport Planning Commission

RE: Public Hearing on Food Truck and Food Cart Proposed Amendments

Thank you for working to revise the current city ordinances concerning the operation of food carts in Newport. Food trucks are an accepted alternative to traditional restaurants and “fast-food” establishments. Newport’s existing ordinances preclude the growth of a vibrant food truck culture and hence exclude Newport’s residents from enjoying access to fresh, nutritious and varied food choices.

I have expressed my concerns about particular pieces of the ordinances in earlier testimony to the Planning Commission during your work sessions. My comments on vending on public streets are limited to 1) a justification for increased insurance; and 2) the possibility of flexibility on the 2-hour limitation. I would like to see both of those issues discussed in terms of the reality of operations. They might sound simple on paper, but possibly problematic for those actually operating food trucks.

My following remarks address the proposal to strike the prohibition of operating a food truck within 500’ of a secondary school. As a property owner across the street from the Newport High School, I do not think that the existence of a food truck on that property will interfere with student safety or their access to nutritious food.

Traffic: The High School adjoins C-3 zoned land on its southside. This zoning allows a wide variety of permitted commercial uses including food service. The current traffic flow during week days is shaped by the ebb and flow of the school day – lots of traffic in and out of the parking lot at the beginning and end of the school day.

Student use of a food truck: While students from the High School may prefer to patronize a food truck over the school cafeteria, the primary audience in this area would be school staff and people working in the area who do not relish driving or walking to restaurants on Hwy 101.

Student safety: A closed campus is the prerogative of the School District and its responsibility. The existence of a food truck would not interfere with this policy. Operators of food trucks take care to provide an inviting atmosphere for their clients, including appropriate trash receptacles. Implying that food truck patrons are undesirable is specious.

Nutrition: Access to free meals through the School District is an important element of the food system of Newport. I would question whether one or two food trucks would significantly change the eligibility of the School District. The operators of food trucks that I am familiar with take pride in the product that they offer. It is fresh, nutritious and appealing to a wide audience.

In closing, I find the Lincoln County School District’s objections to changing the ordinance unconvincing. I encourage the Planning Commission to consider them with an eye to reality.

Thanks for your work on this issue. Food trucks are an economic development opportunity for our town and its entrepreneurs.

Sincerely,
Janet Webster

Newport, OR 97365

Sherri Marineau

From: Victor Mettle
Sent: Monday, July 12, 2021 10:41 AM
To: Sherri Marineau
Subject: Comments for PC Hearing Regarding Food Trucks

[WARNING] This message comes from an external organization. Be careful of embedded links.

Dear Planning Commissioners,

As a Retired Code Administrator/Planner with the City of Newport for over 26 years, and currently, as a consultant for Front Street Marine, which owns the property on SE 3rd Street south across the Newport High School (identified on the Lincoln County Tax Assessor's Map as 11-11-08-AA-00500 & 00401), I have had first-hand relationship with the existing out-of-date and obsolete ordinances, which the City is trying to amend.

My functions with the City as the Code Administrator and Planner in all those years included enforcing these early ordinances, which I also assisted in establishing in the first place as a planning staff. Some socioeconomic circumstances in the past -- such as the desire to protect the brick-and-mortar restaurants and the thoughts that some people have had that certain areas of Newport might look more bazaar as these units began to proliferate -- triggered the establishment of these ordinances.

Now, the world have changed drastically and as food trucks gain in popularity and are quickly becoming a food trend and dining destinations everywhere in America, the previous socioeconomic circumstances in Newport that triggered the establishment of the ordinances banning them have not only become impracticable, but are now desirable and welcome in Newport.

With regards to the issue of vending near schools, it has always been traditional and historic that food trucks and other street vendors are regulated in doing business near schools as to the times and locations of their business activities. But, even there have been efforts in some quarters to have those regulations change as well.

There have been groups of healthy school meals advocates who are even encouraging the location of USDA-compliant food trucks inside schools, and some schools are even sponsoring food trucks. Please refer to the following link in this email to read the reports and see images of this matter:

<https://chefannfoundation.org/blog/why-have-a-school-food-truck>

These advocates see USDA-compliant trucks as great ways to offer some healthy and delicious food to students. They argue that if students do not have vendors close at hand,

they tend to find convenience stores and fast food outlets within a few blocks that sell them unhealthy food.

As reference in the attached link, a school district (Boulder Valley School District) sponsors a food truck which the students have nicknamed “Munchie Machine” that is parked just outside the high schools’ front doors, of which that school district has determined that it has been a perfect solution to their lunch program.

Yet, it appears that the main opposition to this request you are about to hear would be coming from our school district of which Dr. Gray stated: “We **implore** you NOT to **change** this regulation as it relates to our schools. It is not good for kids. We have had enough to worry about with a full 15 months of Covid. This is not a welcome change for anyone in the Lincoln County School District. Please do not change this rule.”

As I indicated, certain socioeconomic circumstances triggered the establishment of the existing ordinances. Since then, the community has changed and those earlier socioeconomic circumstances now appear to be impractical. Thus, there is the need for the City to change its regulations to be consistent.

Good luck.

Victor Mettle

FRONT ST. MARINE, LLC

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541-265-9243

Derrick Tokos
Community Development Director
City of Newport

Greetings Derrick,

I write to you and the Planning Commission in response to comments submitted by Dr. Gray, Superintendent of LCSD. I take exception to the characterization of food carts as an element of development on Front St.'s property at 634 NE 3rd St. adjacent the high school and Fairgrounds.

- Private enterprise has no influence or say in the security or operation of the high school nor the behaviors of the student body while present on campus.
- I am unaware of traffic congestion on 3rd St. other than that resulting from arrivals and departures from the school parking lot relative to the school day.
- Availability of food service or lack thereof in proximity to the school has no bearing on governmental food subsidies to the student body.
- Characterizations of food quality, personal safety, trash and the clientele associated with a food cart operation are specious.

As you may be aware, Front St. has investigated several options for redevelopment of the property we call 634 NE 3rd St. The principal element of that being a fabric structure to house a multi use concept of farmer's market, flea market and special event venue. Food carts were considered as an amenity to that idea. Everyone should realize they are not necessary. We have also considered a commercial kitchen / commissary / food court to supply that part of the scheme. Parking and restrooms complete the concept. The former are all outright uses in the C-3 zone. Other projects and the pandemic event have shelved all of this for the time being.

In conclusion, food carts might be popular with people who live and work in the NE sector and nearby, exclusive of the student body. I am amazed that LCSD leadership feels threatened by something as basic as that, and fails to regard the addition to the tax base and school excise tax that commercial development provides.

Sincerely,

Stephen Webster
FRONT ST. MARINE LLC



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July 12, 2021

Mr. Derrick Tokos, Director
City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365

Re: **Draft Code Amendments Relating to Food Trucks & Carts**

Dear Mr. Tokos:

This office represents Lincoln County School District ("School District"). The School District is extremely concerned with the proposed changes to the Newport Municipal Code ("NMC"). While the School District has no issue with expanding food cart availability throughout the city generally, some of the recommended changes would be detrimental to the health, safety, and welfare of not just the children who attend school in Newport, but the community as a whole. This letter serves two purposes; to inform you of our concerns and to save grounds for appeal if the Planning Commission chooses to proceed with the current prospective language.

1. Health, Safety, Welfare, and the Public Interest

The proposed changes to the NMC do not promote the health, safety, and welfare of the community. Most notably, the language in Section 4.10.035(A)(1) should not be changed to erase the term "secondary." Currently, the NMC prohibits vending within 500 feet of secondary schools. It is unclear to us what the City would gain by allowing food cart vendors to set up shop outside secondary schools, the junior high and high schools, at any time between 6:00 AM and 9:00 PM. In fact, there is substantial evidence that the proposed changes would cause harm to the community while providing little or no real benefit to the City.

NMC 14.01.010 states that the purpose of zoning ordinances includes encouraging the most appropriate use of the land, to lessen congestion on streets, and to promote the public health, safety, and general welfare. Being able to place carts, or as mentioned in the Work Session on this matter, a whole pod near secondary schools would be incredibly detrimental and contrary to this purpose.

First and foremost, there are children in the community whose only meal each day comes from the USDA/ODE food service program. This program provides free lunches

to school children and is based on student participation. If student participation is reduced by competition from food carts near the secondary schools, those schools no longer qualify for the USDA Community Eligibility Provision which provides healthy meals to all students free of charge. By approving this change in the ordinance, the City could be depriving the most underprivileged group of children their only guaranteed meal of the day. Preventing children from being able to eat in order to create miniscule economic gain for a few select community members is unconscionable and runs contrary to existing law.

Second, all children who attend secondary schools will suffer to some extent. Placing carts so close to the high school increases the chances that students will skip class periods or avoid going to school altogether. Food carts are not the same as traditional restaurants or corner stores – they are uniquely attractive events, especially to secondary school age children. This is even truer considering how restrictive Newport has been in regards to food carts in the past. In the interest of preventing truancy, which has only negative immediate and long term repercussions, the proposed language should not be enacted.

Third, there are obvious dangers surrounding obesity. The current proposed language offers no way to review the food which would be sold outside schools. If the free market is to be believed, it is logical that a cart selling junk food at discounted rates would frequent the area. This profitability is at the expense of children's health. Students who eat foods with low nutritional value tend to perform worse in school. This poor performance negatively impacts Newport in the short and long terms. Because there is no scheme the City could implement which would monitor what or how much is being sold from the carts to the children, the problem should be avoided altogether by not editing the ordinance.

Fourth, there are serious concerns regarding safety outside the secondary schools. These concerns come in two forms, how children access the carts and interacting with strangers. The School District does not have the ability or resources to monitor the areas off of school property where food carts would be located. Newport High School is considering moving to a closed campus for all 9th and 10th grade students, which would only amplify all of these concerns. By making this change, the City would be creating a hot spot of traffic and activity right outside the junior high and high school. Increased traffic, without increased supervision, on already poorly regulated roads is a recipe for disaster. The proposed changes would create a safety problem and a nuisance. Additionally, we are concerned about the people who would be attracted to such a large group of children who are without supervision. For these reasons and more, the proposed changes would be violating the purpose of NMC 14.01.010.

The proposed change violates the NMC in multiple areas, some of which are not fully elaborated here due to time constraints. Further, the proposed language does not serve the public interest as required. There are two groups who will primarily benefit from removing the word "secondary" from the ordinance; a few food cart operators and the fewer land owners who are positioned near the school. In the Work Session notes, only one land owner is mentioned as being benefitted by the proposal. By expanding the ordinance to allow for food carts all around Newport, all the parties who benefit from food carts will already be positively impacted. Choosing to include the areas around secondary schools provides a minimal benefit when evaluated against the sweeping changes the City is already proposing.

The phrase “public interest” is not defined in the Code itself, but is defined by West's Encyclopedia of American Law, edition 2 as “Anything affecting the rights, health, or finances of the public at large.” This definition is clearly more than a statement of economics. Due to statutes, this Commission must determine if removing the word “secondary” is positively affecting the rights, health, or finances of the public at large.

It cannot be seriously argued that benefitting one land owner and minimally increasing the benefits to food cart owners is worth the damage it would cause to children and their families. Does the slight economic increase which would come from selling food to some children really serve public interest when it means that other children would lose their only meal of the day? Even if the public interest test was solely based on economic factors, the proposed language would still be unsound. In that instance, we would compare the economic benefits created by the food carts outside of secondary schools to the economic costs associated with poor performance at school based on malnutrition, obesity, and truancy. Please keep in mind that this decision will impact the City for decades to come. While the economic benefits would be apparent next fiscal year, it would take years for the economic detriments to become visible. We would ask the Planning Commission to consider the entire situation over the next several decades rather than the limited viewpoints which have been presented in letters up to now.

2. Zoning Changes

Despite what the City is calling this change to the NMC, it is, in essence, a change to the City's zoning ordinance. The City is proposing that traditionally and well defined non-residential activities will be allowed in residential areas. The City is de facto redefining the different uses in residential areas, yet the City has not met the requirements for making such a change. This would defy the provision 14.03.040, as well as other provision in the NMC and ORS. Further, the City has violated the notice requirements surrounding such zoning changes. Additionally, the City has violated Goal 1 of the State Comprehensive Plan, as well as other sections of the NMC and other ordinance, by failing to involve the public as required.

We also object to the meeting requirement that only those who are able to attend in person are able to provide public comments. The City is only allowing 15 people to attend this meeting in person, yet is preventing everyone who cannot attend in person from making comments during the meeting. Those who do not attend in person must make a request by noon the day of the meeting, rather than having the same right to participate as those in attendance. Submitting a comment several hours prior to the meeting is fundamentally different from being able to speak at the meeting. This violates the principals of community participation and creates a barrier to both access and to free speech. The State of Oregon has successfully re-opened and there is no reason to limit attendance. Even if there was a compelling reason to limit attendance, those who are not able to attend in person must receive the same rights to participation as those who can.

3. Comprehensive Plans

The proposed changes to the ordinance would violate both the Newport and State Comprehensive Plans. The State Comprehensive Plan is applied to cities through ORS

197.010. State Comprehensive Plan Goal 2 states that cities must conform to their local Comprehensive Plans. This proposed change does not conform to the current Newport Comprehensive plan and thus violates Goal 2, as well as the other goals such as Goal 9. Further, we believe that if this proposed language is approved, it would demonstrate that the Newport Comprehensive Plan is not based on facts and would thus violate Goal 2 in a different way.

The Newport Comprehensive Plan is the basis for land use decisions in Newport. The only area where the proposed language would correspond to the local Plan is in its relation to the economic opportunities that would come with allowing food carts. Again, the School District is not opposed to adding more food cart availability in general, just near the schools themselves. Newport's Economic Opportunity Analysis required by OAR 660-009-0015 states that "The conclusion of the economic opportunities analysis is that Newport has enough land to accommodate the forecast for employment growth over the next 20-years." So, changing the zoning requirements to allow for more economic opportunity seems unnecessary.

To summarize, the potential benefits of expanding food truck ordinances to this degree are clearly outweighed by the severe detriments it would cause to not just the most disenfranchised children of Newport, but to the community as a whole. The School District would like to see the proposed language edited to continue to exclude secondary schools from being the target of food carts and pods. We believe that the proposed language exceeds the City's jurisdiction, improperly construes the applicable law, and that the City failed to follow the procedure applicable to the matter before it in a manner which could prejudice the substantial rights of local community members.

Sincerely,



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