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**LONG RANGE PLANNING  
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**Food Carts in Unincorporated Washington County**

**For Presentation at the January 24, 2017 Board Work Session**

**Issue**

Increasing interest in food carts has led to numerous inquiries being received by Current Planning on where carts may locate, and how a property owner can host one or more food carts. At present, the Washington County Community Development Code (CDC) does not acknowledge or regulate food carts as a separate and distinct land use from a brick-and-mortar restaurant. Lacking specific regulation, the County only allows food carts through the same process, standards, and fees that apply to a restaurant located in a permanent building. At issue is whether or not food carts should be treated differently than restaurants in the CDC.

If CDC amendments to address food carts are deemed necessary or desirable, a number of issues would need to be addressed. These include issues of public safety, community compatibility, compliance with environmental and health regulations, and level and type of land use regulation.

**Recommendation**

Following a work session discussion on this issue, staff requests direction from the Board of County Commissioners (Board). Options discussed in this issue paper include:

***Option 1:*** Take no action at this time.

***Option 2:*** Direct staff to move forward with developing CDC regulations specific to food carts as a Tier 1 task in the draft 2017 Long Range Planning Work Program, with policy direction as appropriate. Options for regulatory changes are included in the analysis section of this paper.

***Option 3:*** Place on Work Program as a Tier 2 task for potential CDC regulation development in a future year if resources allow.

In considering these options, this paper will provide a background on the food cart phenomenon, how various governmental agencies and jurisdictions regulate this kind of use, and an analysis of options moving forward.

## **Background and Regional Context**

This paper provides background information on food carts in Washington County, surveys regional approaches to their regulation, and provides an analysis of implications for Washington County. At issue is the lack of food cart specific regulations within the Community Development Code (CDC), which requires Current Planning staff to regulate food carts in the same manner as permanent development, with no consideration or allowance for their mobility, land use impacts, and impermanent nature. This lack of distinction is not intentional, but rather because food carts are an unanticipated activity that was not accounted for when the code was written. In recent years other jurisdictions have encountered this same issue, both locally and nationally, with many choosing to allow and regulate food carts as an interim or temporary use, as their physical form make it difficult to meet development regulations designed for larger, more permanent structures.

The topic is timely because Current Planning has been fielding an increasing number of inquiries regarding the hosting and operation of food carts within the unincorporated areas of the County. Driving the popularity and demand for carts is a greater public interest in and acceptance of food carts, and the increasing number of food carts operating within the Portland metropolitan area. Thanks in part to local and national media, and organizations like Travel Oregon, “food cart culture” has become associated with the Oregon identity. Carts are also being viewed as a workplace amenity, with companies such as Intel and PacTrust hosting food truck days for the benefit of their employees and tenants. While this increased demand for carts has created opportunities for startup businesses, the temporary and ad-hoc nature of these mobile vehicles has caused some regulatory challenges for state and local jurisdictions.

Food cart businesses have expressed frustration with the current situation. It appears that the steep costs in both time and money discourage compliance with the County’s land use regulations, with many food cart related visitors to the permit center either abandoning their efforts or choosing to operate outside of the land use process.

As described by Current Planning, the typical proposal is to site one or more food carts on an existing commercial property. These sites are attractive because carts generally need water and electricity for sustained operations, and desire to be located in areas of high vehicular or pedestrian traffic. Depending on existing conditions, the applicant may be required to go through a Type II land use review and make substantial improvements such as underground utility extensions, street and sidewalk improvements, and installation of grease interceptors and stormwater facilities. Although these types of improvements may be appropriate for brick-and-mortar restaurants which can occupy a site for many decades, these may not be proportional or appropriate for the temporary parking of a mobile restaurant until such time as the site is more intensively (re)developed.

This lack of distinction between a food cart and full restaurant results in comparatively high permit costs for potential cart operators and hosts, many of whom have chosen to operate without permits in the urbanized areas of unincorporated Washington County. There are multiple unpermitted food carts in the unincorporated portions of the county, particularly in the Aloha and

Cedar Hills community plan areas. Aerial photos verify the extended presence of food carts near the intersection of 185<sup>th</sup> and TV Highway as far back as 2007. Code enforcement complaints typically originate from Clean Water Services, and relate to the improper disposal of wastewater containing fats, oils, and greases.

As detailed later in this paper, local governments are adopting a range of regulatory responses to address the rise of this new economic activity.

### What is a food cart?

The term “food cart” has become a catchall descriptor for mobile food businesses that market and sell to predominantly pedestrian traffic, though many people do drive to them. Operating individually or in groups, it is their mobility and small size that distinguishes them from brick-and-mortar restaurants.

Oregon Health Authority Rules recognize and regulate food carts as “mobile food units,” which include any food service business operating from a vehicle that is self-propelled (for example a “food truck”), or is capable of being pulled or pushed down a sidewalk, street, or waterway (for example, a food cart that may be pulled by a truck or mounted on a trailer). Active mobile food units within Oregon are required to obtain a Mobile Food License from the county in which they are based. About 100 mobile food licenses have been issued by the Environmental Health Program of Washington County, with jurisdiction in both the incorporated and unincorporated areas of the County. While hard data is difficult to come by, the vast majority of these are likely operating within the urbanized portions of Washington County. By comparison, there are approximately 800 carts within the City of Portland alone.

Under Oregon Health Authority rules, a mobile food unit must meet the following criteria:

- Mobile food units shall remain mobile at all times during operation. Tongues may be removed from trailers, but wheels must be mounted and operational at all times (OAR 333-162-0030).
- All operations and equipment must be integral to the mobile food unit. The only exceptions are for barbeques, customer seating, and auxiliary storage (OAR 333-162-0020).
- Mobile food units must operate from a licensed restaurant, commissary, or warehouse. Licensing authorities can waive this requirement if mobile food units are found capable of operating without a base of operation, by including all equipment and utensils that a commissary would provide (OAR 333-162-0040).

Food carts have become a popular business model for food entrepreneurs and owners of vacant or underdeveloped land, because they typically require lower overhead and less risk than traditional brick-and-mortar restaurants. The low cost of entry enables startup businesses to inexpensively experiment with menus, gauge customer preferences, and try out one or more

locations. Some food cart businesses evolve into permanent restaurants, and some established restaurants now offer their fare via food carts in order to satisfy customer demand. Similarly, carts have become popular with businesses that need or want to serve food (i.e., breweries and taprooms), but don't have the space or capital to invest in a commercial kitchen.

### Common types of food cart operations

Within the context of land use planning, there are three categories of food cart operations based on their location, duration, and type of activities and improvements usually associated with them. The three broad categories include truly mobile food vendors, stationary carts operating in partnership with a primary use, and multiple carts operating together in a single "pod."

#### 1) Truly Mobile Food Vendors

- Pushed, pulled, or self-propelled
  - Pushcarts
  - Custom-built food carts
  - Travel trailers
  - Food trucks
- Parked and operational in one location for a few hours or days
- Completely self-contained with no hookups and minimal site amenities
- Serves foot traffic associated with a specific use and/or location, for example:
  - Lunch at employment sites
  - Evening and weekend service at breweries and taprooms
  - Areas with high pedestrian traffic
  - Events

#### 2) Accessory to a Primary Use

- Carts may be parked long-term or in scheduled rotation
- Hosted by a primary use
  - Commercial parking lots
  - Breweries and taprooms
  - Gas stations / convenience stores
  - Entertainment venues
  - Retail
- Parking and support facilities (i.e., bathrooms and garbage receptacles) may be shared with primary use

#### 3) Mobile Food Unit Sites (aka "Cart Pods")

- A stand-alone site hosting one or more mobile food vendors
- Carts may vary over time – use and amenities remain
- Function as neighborhood centers or regional destinations
- Can provide an economically viable interim use for large parking lots and under or undeveloped sites
- May incorporate permanent structures for seating, bathrooms, or other amenities

- May provide utility hookups
- Common furniture and facilities
  - Seating, tents, awnings, decks, or storage
  - Exterior lighting
  - Grills or smokers
  - Propane tanks
  - Bathrooms
  - Garbage enclosures
  - Fencing
  - Signage
- May have off-street parking
- Outdoor Entertainment Venues
  - OLCC Licenses
  - Live music
  - Private parties

#### Potential community benefits of food carts

Food carts are a response to a public desire for gathering places and local food choices that reflect the community. At a broader level, food carts can provide a host of community benefits, including:

- Provide an opportunity to increase jobs and businesses: Low startup costs provide a means of self-sufficiency and upward mobility for entrepreneurs with little capital.
- Reduce investment risk and allow small businesses to serve larger markets: Their mobility allows operators to interact with potential markets, test recipes and pricing, and see if the restaurant fits within a community.
- Complement existing businesses and activities: The addition of one or more carts can enhance or complement existing brick-and-mortar businesses by providing food choices to customers and a supplemental income stream to the business.
- Create positive impacts on street vitality and neighborhood life: Mobile food vendors can provide affordable and convenient food options for local workers and residents, create opportunities for social interaction, improve public safety by increasing ‘eyes on the street,’ and help to facilitate a pedestrian-friendly urban environment by creating destinations within walking distance.
- Provide food choices where land use regulations limit or preclude restaurants: Metro Title 4 and the County CDC place limits on the type and scale of restaurant uses allowed in industrial and employment areas. The intent is to limit the dilution of these areas by service industries, but the effect can be to restrict food options for nearby employees who

must often leave the district to obtain meals. Food carts locate on convenient sites where demand for food is high.

- Increase activity in underperforming commercial areas: Food trucks can be a way to enliven an area, generating traffic for existing businesses and possibly spinning off new business activity.
- Provide an interim use on vacant properties: Food carts and other mobile vendors can provide a return to property owners not yet ready or able to lease or (re) develop a site into a permanent use.
- Signal that the community is evolving and supporting entrepreneurship: Mobile food vendors are reinventing and reviving an old way of doing business, forming a national trend that is appearing in many urban areas.

#### Potential adverse impacts of food carts

The regional and national experience with food carts suggests they have the potential to negatively impact user safety, residential land uses, and/or the environment if not properly managed. Locally, County staff have observed problems with the way some food carts are operating, including disposal of graywater directly into storm drains, the conversion of parking lots and landscape areas into customer queuing and eating areas, and the construction of decks and shelters without building permits.

Additionally, many brick-and-mortar businesses view food carts as unfair competition that can dilute their customer base. In other cases, some institutions have found unregulated food carts have less direct impacts, such as additional burdens on publicly accessible bathroom and parking facilities.

Common issues addressed by other cities and counties include the following:

- Safety: Compliance with building code for structural, electrical, and fire safety; ingress and egress of emergency vehicles and personnel; vehicle sightlines; trip hazards, monitoring of alcohol consumption, and management of solid waste.
- Community Compatibility: Adequacy of parking, setbacks and buffer distances; protection of required landscaping and parking, screening; site maintenance; signage rules; orientation toward public right-of-ways; hours of operation; performance standards for amplified music, and the aesthetics of food carts and food cart pods.
- Public Health and Environmental Protection: Requiring carts be placed on paved areas; management plans for disposal of graywater, and ensuring adequate bathroom facilities are provided.

### Washington County's land use regulations for food carts

As discussed earlier in this paper, the County CDC does not include land use regulations specific to food carts or food cart pods, as they are not defined or listed as an allowed use in any land use district. Uses or development not specifically authorized by the CDC are generally prohibited, unless the Director can make findings that the proposed use or development has “substantially similar use and impact characteristics” to an allowed use. For food carts, the most similar use is “Eating and Drinking Establishment,” which is defined as any establishment requiring an Oregon State Health Division Restaurant License or Oregon State Liquor License.

Given this regulatory path, a food cart or pod can only be reviewed and approved in the same manner as a permanent, brick-and-mortar restaurant. Like other permanent land uses, full site development is required prior to occupancy and commencement of commercial activity. Depending on existing conditions, this could include the construction of a paved parking area for carts and visitors, street widening and sidewalk improvements, and the extension of underground utility infrastructure. No lesser process exists. Although these types of improvements may be appropriate for brick-and-mortar restaurants which can occupy the site for many decades, they may not be appropriate for temporary or interim land uses that are present for only a few days or years until the site is more intensively (re)developed.

The typical inquiry is for a food cart on an existing commercial property with developed services. These sites are attractive because carts generally need water and electricity for sustained operations. Depending on existing conditions, one or more of the following improvements may be required by the CDC:

- Type II Discretionary Review;
- Paved parking lot (new or expanded) for customers and employees;
- Stormwater improvements to Clean Water Service (CWS) standards;
- Connections to public water and sanitary sewer;
- Installation of a grease interceptor to keep fats, oils, and greases (FOG) out of the sanitary sewer system;
- Right-of-way dedication;
- Sidewalk and road improvements;
- Payment of Transportation Development Tax (TDT) and System Development Charge (SDC) fees; and
- Restrooms with hot and cold running water.

In recent years the County's Current Planning section has held multiple pre-application meetings for potential food carts, many originating through code enforcement violations. Only one party, however, has submitted for and received a land use approval for a food cart. The application was approved in 2011 as part of the larger redevelopment of an existing building, and to staff's knowledge the food cart was never installed. As a result, all existing food carts operating in urban unincorporated Washington County are doing so without land use and building approval.

### Other agencies that regulate food carts

In addition to land use controls implemented by LUT Current Planning, all mobile food units are regulated by state and local agencies to ensure health, safety and environmental standards are being met. A brief discussion of each affected agency follows:

#### *Washington County Environmental Health*

Washington County Environmental Health is responsible for the licensing and inspection of food carts from a food safety perspective, the investigation of foodborne illness, and providing consultations for mobile food units operating in the county (incorporated and unincorporated areas). Approximately 100 carts are currently licensed by Washington County, though as mobile units, a few of these may operate outside of Washington County since County licenses are valid statewide.

As the lead agency for food safety in Washington County, Environmental Health requires all food carts to comply with the following requirements:

- Maintain Mobile Food Unit Licenses with twice-yearly inspections
- Use of a licensed commissary or warehouse for food storage and preparation unless mobile food unit has met criteria as approved by Oregon Health Authority
- Restrooms or restroom agreement to allow access during all hours of operation if the unit is stationary for more than two hours or if seating is provided.
- Handwashing must provide hot/cold running water.
- Assure that mobile food units are not permanently connected to potable water and electrical sources.
- Conveyance of sewage for proper disposal
- Ensures that mobile food unit is mobile per definition in OAR 333-150 and OAR 333-162-0030

#### *Washington County Land Use & Transportation, Building Services*

Washington County Building Services is charged with local enforcement of the State Building Code (SBC) within unincorporated Washington County. For permitting purposes, there is a line between mobile food units and buildings/structures and other site improvements. Generally, improvements that are attached to a cart and free of any support or permanent connections to the site are not subject to local building review. All other development not meeting those criteria is potentially subject to review, including the following:

- Building fire and life safety compliance for any buildings and structures
- Americans with Disabilities Act compliance
- Electrical systems
- Water supply
- Wastewater disposal

Based on the experience of local cities and the County Building Official, the structural, electrical and plumbing codes are well set up to deal with food carts, provided all improvements and connections are made to code and inspected to ensure compliance. It is makeshift improvements that have caused issues in Portland and elsewhere.

### *Clean Water Services*

Clean Water Services (CWS) is the region's wastewater/stormwater resources management utility serving the urbanized portions of Washington County, both incorporated and unincorporated. This responsibility includes operation of wastewater treatment plants and conveyance systems and protection of surface water quality through management of stormwater runoff, including development near riparian resources.

In relation to food carts, CWS is principally concerned with the control and proper disposal of fats, oils, and greases (FOG) generated through food preparation and consumption. Common sources of FOG include fried foods, cooking meats, dairy products, gravies and sauces, and salad dressings. Control of FOG is necessary to protect surface water quality, and reduce maintenance or harm to the sanitary sewerage system.

In the case of food carts, the two principal problems with FOG include the improper transfer and disposal of graywater and the conversion of parking lots into cooking and eating areas. CWS staff indicated that the growing number of carts, combined with only a single FOG dump station to serve the entire county, has resulted in a number of documented violations within their service area. These violations include the dumping of graywater containing FOG into storm drains, a car wash drain, and two cases of dumping into a creek (Beaverton & Sylvania). Additionally, impacts from daily use such as leaks/overflows from graywater storage tanks, food drippings and improper trash disposal can also affect stormwater facilities.

At present, there is no dump station setup for this sector of the food service industry. CWS allows for their Rock Creek Wastewater Treatment Facility's RV dump station to be used at no cost using rate payer fees to provide maintenance. Given the need for carts to empty their graywater tanks daily, some cart operators are choosing to remain stationary and hiring third party waste-haulers to drain and haul their waste for proper disposal. Since there is a possibility for spills every time a graywater tank is drained (daily in most instances) due to ineffective transfer procedures and/or connections, CWS' preference is for the development of some sort of on-site pretreatment such as a grease interceptor for any stationary food cart/pod.

### *Oregon Department of Environmental Quality*

Property owners are responsible for managing wastewater generated on their property in a manner consistent with Department of Environmental Quality (DEQ) rules. For those hosting food carts, there are two paths for compliance: providing hookups to public sewer, or (potentially) the use of portable holding tanks in compliance with DEQ requirements. As discussed below, the use of above-ground portable holding tanks is the subject of discussion between DEQ staff and the local Environmental Health Supervisors across the state.

Wastewater generated by food carts will generally be classified as graywater for purposes of regulation. Under Oregon law, graywater includes kitchen sink wastewater, shower and bath wastewater, and laundry wastewater. Graywater does not include toilet or garbage wastes, or wastewater contaminated by soiled diapers, which are regulated separately as blackwater. As food carts do not typically contain an on-board toilet, graywater rules generally apply during operation and disposal.

Disposal of graywater into an RV style hookup into a public sewer is superior to the use of a holding tank, as it is less likely to result in leakage, overflows, or spills. This is the default method of compliance, though DEQ rules do permit food carts to use portable holding tanks (on-board or above-ground) for graywater disposal, provided the tanks are owned and serviced by a DEQ licensed sewage disposal service (OAR 340-071-0340). Licensing ensures these businesses have the proper equipment to remove and transport wastewater and haul it to an approved facility. Through this exemption, many carts and pods rely on portable holding tanks for graywater disposal, particularly on sites with little or no existing infrastructure where considerable cost could be incurred to install such services.

Not all counties allow the use of above-ground holding tanks due to differing interpretations of OAR 340-071-0340 (5), which allows temporary placement of holding tanks at limited duration events or at temporary restaurants. Due to the absence of clear intent and definitions within the rule, there is inconsistent application across the state, depending on whether or not a local jurisdiction considers a food truck to be a “temporary restaurant” of “limited duration” for purposes of the rule. As this time, local environmental health supervisors are waiting for DEQ to provide clarity regarding the intent of the rule.

#### *Oregon Liquor Control Commission (OLCC)*

The Oregon Liquor Control Commission (OLCC) began issuing liquor licenses to qualified food carts in 2012. Two years later, formal rules were adopted under OAR 845-06-0309 to create a clear licensing pathway for food cart and pod owners. When not associated with a permanent building, a liquor license may be issued subject to the following restrictions:

- A designated and controlled area for consumption
- No sales and consumption between 10:00 pm and 7:00 am
- No amplified entertainment between 10:00 pm and 7:00 am
- Limits on the volume or number of drinks a patron may possess
- Growler fills permitted subject to size thresholds

#### *Tualatin Valley Fire and Rescue (TVF&R) or other responsible fire agency*

Local fire marshals are responsible for inspecting propane tanks on mobile food units.

Land Use regulations for food carts in other Oregon jurisdictions

Planning staff surveyed fifteen local governments to learn whether they had land use regulations for food carts. As detailed below, the majority of cities and counties in the region are choosing to allow and regulate food carts, though less than half have adopted standards and procedures specific to food carts.

<b>Food Cart Regulations by Jurisdiction</b>		
<b>Jurisdiction</b>	<b>Cart Specific Zoning Standards</b>	<b>Notes</b>
Washington County	No	Subject to same process and standards as brick-and-mortar restaurants.
Beaverton	Yes	Adopted land use regulations in 2015. These were refined and relaxed in December 2016.
Tualatin	Yes	Temporary regulations allow mobile food units in commercial and industrial districts. Project underway to develop permanent land use regulations.
Hillsboro	No	Business license regulations limit mobile businesses to no more than 7 hours in one location.
Tigard	No	CDC neither authorizes nor prohibits, City policy is to allow. Code amendments in work plan.
Forest Grove	No	CDC neither authorizes nor prohibits. City policy is to allow subject to informal site plan review. No plans to adopt formal land use regulations.
Cornelius	No	Prohibited - code amendments in work plan.
Sherwood	No	Special events only.
Multnomah County	No	CDC neither authorizes nor prohibits. County has minimal urbanized areas within which food carts might operate.
Portland	No	Carts exempted from land use standards provided certain criteria are met.
Gresham	Yes	Adopted land use regulations in 2013.
Clackamas County	Yes	Adopted land use regulations in 2012.
Happy Valley	Yes	Adopted land use regulations in 2015.
Oregon City	Yes	Specifically allowed in Willamette Falls Historic District (Blue Heron Site), prohibited elsewhere in city.
Lake Oswego	No	Land use regulations under development.
Salem	Yes	Adopted land use regulations in 2015.
Bend	Yes	Adopted land use regulations in 2012.

While the trend is to allow food carts, a wide range of regulatory approaches was documented when researching the jurisdictions above. Some jurisdictions' development codes do not contain

land use regulations for food carts, so they have made policy decisions on how or whether to regulate them. Others have adopted detailed regulations after significant planning efforts. Selected examples of each approach are discussed below, in order of most to least restrictive.

#### *City of Hillsboro – Time-Limited Approach*

The city of Hillsboro does not allow food carts or food trucks to be present on any property for more than seven hours in a day. Work was started on developing new regulations to allow the development of permanent food cart pods, but the project was placed on hold out of concern with the enforceability of site maintenance standards. As a result, any food carts seeking to operate in Hillsboro must comply with the following requirements of Chapter 5 Hillsboro Municipal Code (Business Licenses and Regulations).

- Limited to six hours of operation and one hour of setup in a single day
- Locations must be pre-approved by city if stops last more than two hours
- Site must be publicly owned or zoned for commercial, industrial, or multi-family
- May not occupy or block minimum required parking spaces
- No utility connections permitted
- Must be located on paved surface
- Time of day restrictions when located within or near residential zones.

#### *Beaverton – Permanent Infrastructure Approach*

The city of Beaverton adopted land use regulations in 2015 to allow the establishment of food cart pods within the city. Prior to the 2015 amendments, carts were restricted to one cart per site, and had to vacate the site after seven hours. These regulations were again revised in December 2016, when strict utility connection requirements were relaxed.

As adopted in 2015, Beaverton's standards were among the most restrictive in the metropolitan region with regard to utilities, sanitation, and parking. According to Beaverton Planning Staff, the city received consistent feedback from property owners regarding the high cost of underground utility installation resulting from both the cost of installation as well as associated System Development Charge (SDC) fees. As a result, the city adopted text amendments in December 2016 that would allow the use of aboveground tanks for potable water and graywater disposal. With the new amendments, the city now requires the following:

- Progressive review process:
  - Type I: On site less than seven hours
  - Type II: Expansion or Establishment of Food Cart Pod
  - Type I: Modification of an approved Food Cart Pod
- Site must be zoned commercial or industrial
- Development standards address circulation, safety, aesthetics, neighborhood compatibility, cart maintenance, and sanitation.
- A minimum of one parking space per cart is required. Carts located in multiple-use zoning districts are exempted from this requirement.

- Carts must connect to permanent electricity, water, and sanitary sewer through underground utility lines with an approved grease trap. Portable graywater storage tanks are prohibited.

### *Gresham – Community Design Approach*

The city of Gresham regulates food carts stopped more than four hours. Review procedures and standards are structured around public safety, equity with brick-and-mortar restaurants, urban design goals, and ensuring the carts remain a transitional use and do not become permanent.

- Progressive review process:
  - Exempt: On site for less than four hours in a single day.
  - Type I: Replacement of a cart on previously approved site
  - Type II: New site or expansion of previously approved site
- Allowed in commercial districts and on approved institutional sites
- Community design standards
  - Orientation of service windows toward the street
  - Setbacks
  - Vision clearance and site circulation
  - Screening of accessory items
  - Repair and maintenance
  - Lighting
- Self-propelled carts are prohibited – only carts that may be pushed or pulled are allowed
- Customer shelters limited to tents, canopies, and similar membrane structures.
- Parking demand analysis is required, including demonstration of sufficient off-street and/or on-street parking.
- Approvals automatically renew with business license. If code compliance is necessary to address an uncorrected violation, the renewal is not automatic and the cart(s) must go through a new Type II review to receive a permit. New or revised conditions of approval may be applied as a result of the violation.

According to Gresham staff, approximately seven applications have been approved under the current rules which were adopted in 2014. The city collects parks and transportation SDCs for food carts. Water and sewer charges are not collected as permanent hookups are not permitted.

### *Happy Valley – Residential Compatibility Approach*

Happy Valley recently adopted food cart standards that emphasize neighborhood compatibility through design standards, progressive review procedures, and permit revocation standards. Food carts are allowed as a restricted use within commercial and industrial zones, and prohibited in residential zones.

- Progressive review process:
  - Exempt: On site less than two-hours
  - Type I: One or two carts with no accessory buildings
  - Type II: Up to four carts and/or certain accessory structures

- Type III (Design Review): Five or more carts and/or certain accessory structures
- Site design standards
  - Setbacks from lot perimeter and adjacent residential land uses
  - Screening from residential uses
  - Vehicular and pedestrian circulation standards
  - Underground utilities required when site occupied more than 120 days per calendar year
  - Size limits for central pavilions
- Permanent restrooms required if five or more carts present
- Includes standards and procedures for permit revocation
  - Noncompliance with code or conditions of approval
  - Documented noncompliance with the neighborhood as a result of excessive traffic, noise, or other offensive activities.

### *Clackamas County – Tiered Approach*

Clackamas County regulates food carts based on a tiered scale of permanency, number of carts, and associated site improvements. The review process and standards are increased in proportion to potential impacts. Major components of this approach can be described as follows:

- Review processes vary from exempt (Level One) to Type II (Level Four)
  - Level I: parked less than 2 hours (exempt)
  - Level II: one or two carts and no accessory structures (Type I)
  - Level III: No more than four carts, accessory structures allowed (Type II)
  - Level IV: All others (Type II with Design Review)
- Allowed on both developed and undeveloped sites
- Different standards for food carts inside and outside the UGB with regard to minimum site improvements and graywater disposal
- Setbacks from property lines, residential uses, and vehicle/pedestrian areas
- Landscaping and screening standards
- Utility and sanitation standards
- Accessory structures permitted, including permanent bathrooms.

According to Clackamas County Planning staff, approximately two permits are issued a year. Applicants are not charged SDCs.

### *City of Tigard - Interim Approach*

The Tigard Development Code does not contain any land use regulations regarding food carts, and does not specifically allow or prohibit their operation on private property. In 2015, the City made a policy decision to allow food carts on private property, provided the placement of the cart did not expressly violate any applicable land use standards. This approach is intended as an interim solution, and carts will be addressed in future planning projects.

To avoid noncompliance with Tigard Development Code, a cart must conform with all of the following standards. No land use review is required.

- Meet state definition for a trailer or vehicle
- Locate in a zone that permits eating establishments
- Locate on a property with an existing building (vacant or occupied) and paved surface
- Meet applicable setbacks
- Cannot obstruct or make unsafe areas designed for pedestrian or vehicle movement
- If occupying a required parking space, a replacement space must be provided

Tigard's interpretation of the code to allow for food carts and trucks was a result of the city exploring ways to implement their strategic plan to make the city more walkable, as well as to support innovative local economic development and respond to requests from the business community. This interpretation is also part of an economic development strategy that is trying to encourage local food entrepreneurship.

#### *City of Portland – Limited Regulation Approach*

Portland has developed the largest and most robust food cart economy in the state, with approximately 600 carts operating across the city and in nearly all neighborhoods. The Portland Zoning Code does not list food carts as an allowed use, but the city has made a policy decision to allow food carts on private property as exempt vehicles that are not subject to land use regulations when they meet certain criteria.

According to the Bureau of Development Services (BDS) website, food carts on private property are regulated like new buildings and must meet all building and zoning regulations. However, carts meeting certain criteria can be considered vehicles and therefore exempt from building and zoning regulations, and most carts are able to meet the criteria for exemption. To be considered an exempt vehicle, all of the following criteria must be met:

- The site is zoned to allow retail uses;
- The cart will sit on a paved vehicle area;
- The cart will not be more than 16' in length;
- The cart has wheels, and the wheels will not be removed;
- Any canopies, awnings, or other attachments have to be supported entirely by the cart and cannot touch the ground; and
- The unit is self-contained, with no plumbing connections.

BDS staff confirmed no other development standards are applicable to exempt vehicles, including minimum standards for parking, landscaping, and compatibility with adjacent residential land uses. Pods of multiple carts are subject to the same minimal regulation as individual carts. Building, electrical, and plumbing permits are still required for any site improvements or utility connections. The effect is a wide variation between cart pod sites on matters of site aesthetics, neighborhood impacts, cleanliness, and infrastructure such as graywater disposal, restrooms, and solid waste management.

## **Analysis**

Because food carts in Washington County are regulated based on a code interpretation, rather than a deliberate planning process, the current requirements of the CDC are not well suited to the temporary and low capital aspects of food carts. This mismatch is creating uncertainty for potential applicants, and discouraging compliance due to the high capital and time costs associated with compliance. As a result, food carts are practically if not expressly prohibited from operating in the unincorporated areas of the county.

In evaluating the utility of other jurisdiction's regulations, as discussed in the background section, staff did not believe any were a perfect fit for Washington County. The Portland and Clackamas County models of clear exemptions and a tiered regulatory approach appear the most supportable. The Portland Model may be the most workable due to its use of clear and objective criteria, and a realistic assessment of enforcement capabilities. The Clackamas County approach, with differential standards based on size, impact, and location inside or outside the UGB, also has merit. Other elements of the regulations of other jurisdictions that staff believes warrant county consideration include allowing the placement of food carts on previously developed commercial or industrial sites and using a tiered approach to focus staff resources on larger assemblies of food carts where community impacts were more likely.

The County's current Temporary Use standards, and more specifically the procedures and standards for Farmers Markets and Mini Farmers Markets (CDC 430-135.1.C), may be the appropriate location for Food Cart regulations. This section was last updated in 2014 to help diversify the availability of local food, provide business incubator opportunities, and to create gathering places that illustrate the diversity of the community while minimizing offsite impacts. Farmers Markets and Mini Farmers Markets are subject to annual review and must demonstrate compliance with locational restrictions, operating rules, waste management, and minimum parking standards. Underlying the nature of the farmers market section was the assumption that such uses are interim in nature, and do not preclude redevelopment. Food carts can provide a complementary tool to achieve similar outcomes, and as such there may be existing procedures and standards within the CDC to address community concerns, should the County wish to consider food cart specific legislation.

Staff believes that consideration of food cart regulations should also review TDT charges and SDC fees for food carts, and whether or not an exemption would be appropriate. Fees for food carts are challenging to calculate for a number of reasons, primarily because they are not a clearly listed use in the use tables. There is also the question of how permanent such a use needs to be before a proportional system cost is collected (i.e., days, months, or years). Some jurisdictions make a point of collecting SDCs out perceived fairness (Gresham), while others do not collect SDCs since they only allow food carts on substantially developed sites (Clackamas County). Beaverton currently collects about \$2,000 in TDT fees per food cart, in addition to sewer and water SDCs associated with the installation of underground utility connections to service each cart, though the city is reconsidering these requirements after considerable and persistent feedback from property owners about the financial barriers this is creating.

## Recommendation

Staff requests policy direction from the Board on whether or not to proceed with development of new land use regulations specific to food carts, and if so, what sort of regulatory characteristics might be preferred. Three potential options are detailed below. Should the Board desire the preparation of CDC amendments, staff could prepare an ordinance for consideration in 2017.

**Option 1:** *Take no action at this time.*

Advantages of Option 1:

- When permitted, public impacts are likely to be fully mitigated.
- Establishes clear regulatory intent for Current Planning staff, as they respond to public inquiries and review applications for approval.

Disadvantages of Option 1:

- Diminishes likelihood of compliance.
- Potentially disproportionate to actual public facility impacts, both in significance and in duration.
- Existing process is burdensome and not well matched to needs of food carts
- Existing regulations effectively prohibit food carts in Transit-Oriented Districts, areas where food carts may be most appropriately and temporarily placed.
- Discourages the use of food carts in potential redevelopment projects, such as the Murray/Cornell Site.
- Reduces opportunities for placemaking and individual entrepreneurship.

**Option 2:** *Direct staff to move forward with developing CDC regulations specific to food carts as a Tier 1 task in the draft 2017 Long Range Planning Work Program, with policy direction as appropriate.*

*Should the Board wish to pursue food cart regulations, staff recommends preparation of CDC amendments that consider some or all of the following elements:*

- *Limit to developed sites in specified land use districts;*
- *Allow as a renewable temporary use, similar to Farmers Market and Mini Farmers Market regulations;*
- *Develop a tiered review process, for example:*
  - *Exempt: Less than 8 hours*
  - *Type I: 1-3 Carts*
  - *Type II: 4+ Carts*
- *Establish development standards to address garbage and wastewater disposal, safety, public health, stormwater impacts, and neighborhood compatibility;*
- *Possible exemptions or reductions from System Development Charges (SDC) and/or Transportation Development Tax (TDT).*

Advantages of Option 2:

- Increases likelihood that property owners and food cart operators will obtain the necessary land use approvals
- Better coordination of permitting with other County departments and special districts.
- Expanded opportunities for landowners and entrepreneurs lacking capital, experience, or market surety.
- Expanded opportunities for place making.

***Option 3:*** *Place on Work Program as a Tier 2 task for potential CDC regulation development in a future year if resources allow.*