

**Multnomah County
HEALTH DEPARTMENT**

DRAFT Policy and Procedures

Division: Public Health - Environmental Health Services		
SUBJECT: Food cart pod rules		
PRE-APPROVAL: Robert Sinnott Assistant County Attorney Jae P. Douglas Environmental Health Services Director DATE:	EFFECTIVE DATE: January 1, 2020	APPROVAL: Patricia Charles-Heathers Health Department Director Signature: Date:

POLICY:

Multnomah County has determined that it is necessary to regulate food cart pods to assure activities necessary for the preservation of health and prevention of disease in Multnomah County.

CONTACT:

Jeff Martin, Environmental Health Supervisor, Inspections Program
Multnomah County Health Department, Environmental Health Services

PERSONS AFFECTED:

Food cart pod operators (owners)

CROSS REFERENCES:

Multnomah County Code Chapter 21
Multnomah County Ordinance NO. 1275

DEFINITIONS:

Back of the House means the area where mobile unit operators store supplies, equipment, or dispose of solid waste and waste water.

Board means the Multnomah County Board of County Commissioners.

Department means Multnomah County Health Department.

Food Cart Pod means greater than one mobile food cart on private or public property for the purpose of selling food, beverages, or both food and beverages.

Front of the House means the area where customers can order and eat food purchased from a food cart.

Integrated Pest Management (IPM) Plan refers to a coordinated decision-making and action process that uses the most appropriate pest control methods and strategies in an environmentally and economically sound manner to meet agency pest management objectives. The elements of integrated pest management include the following:

- A. Preventing pest problems
- B. Monitoring for the presence of pests and pest damage
- C. Establishing the density of the pest population, which may be set at zero, that can be tolerated or correlated with a damage level sufficient to warrant treatment of the problem based on health, public safety, economic, or aesthetic thresholds
- D. Treating pest problems to reduce populations below those levels established by damage thresholds using strategies that may include biological, cultural, mechanical, and chemical control methods and that shall consider human health, ecological impact, feasibility, and cost effectiveness
- E. Evaluating the effects and efficacy of pest treatments

Imminent health hazard means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

- A. The number of potential injuries, and
- B. The nature, severity, and duration of the anticipated injury.

Permit means the document issued by the Department that authorizes a person or entity to operate a pod.

Permit Holder means an individual or entity that: (1) Is legally responsible for the operation of the food cart pod such as the property owner, the property owner's agent, or lessee of the property; and (2) Possesses a valid permit to operate a food cart pod.

Pests refers to any vertebrate or invertebrate animal, pathogens, parasitic plant, weed, or similar organisms that can cause disease or damage to crops, trees, shrubs, grasses or other plants, humans, animals, or property.

Potable Water means water that meets 40 CFR 141 National Primary Drinking Water Regulations and is traditionally known as drinking water or freshwater

Remodel means revising the pod from the original site design (e.g., adding some number of spaces for food carts or changing how utilities are provided to food cart operators).

Setbacks means the distance between food carts and between food carts.

Solid Waste means food waste, scraps, fats/oils/grease, recycle and/or garbage

Utilities means services that provide electricity, gas, water, sewage disposal, and/or solid waste removal.

Waste Water (also known as grey water) means water that has been used as part of the operation of a mobile unit or food cart pod.

PURPOSE:

The purpose is to permit and regulate the operation of food cart pods. The Department shall apply this Code to parcel(s) of land (defined as a unit of land created by partitioning land through deed, land sale contract or lease) or public right of way used to conduct business as a food cart pod by hosting more than one food cart for greater than 4 hours in a 24 hour period on the same property, characterized by proximity and connectivity of the carts to create a food service environment. In so doing the Department shall promote its underlying purpose of safeguarding public health and ensuring that food cart pods are safe and reduce any negative public health impacts.

It is the intent of the Department to provide education and assistance to food cart pods to help them comply with the ordinance and to enforce penalties in accordance with the Rules. The Department will work with food cart pods in order to remedy violations found during inspections.

CODE APPLICABILITY

Preventing Health Hazards, Provision for Conditions Not Addressed.

- A. If necessary to protect against public health hazards or nuisances, the Department authority may impose specific requirements in addition to the requirements contained in this Code that are authorized by law.
- B. The Department shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the Department's file for the food cart pod.

Modifications and Waivers.

- A. The Department may grant a variance from the requirements of this code as follows:
 - a. Where it is demonstrated to the satisfaction of the Department that strict compliance with the rule may be highly burdensome or impractical due to a special condition or cause;
 - b. Where the public or private interest in the granting of the variance is found by the Department to clearly outweigh the interest of the application of uniform rules; and,
 - c. Where such alternative measures are provided which in the opinion of the Department will provide adequate public health and safety protection.
- B. The applicant must include all necessary information to support the variance request, which may include, but is not limited to, required testing, challenge data and research results.

- C. If a variance is granted, the Department shall retain the information in its records for the food cart pod.
- D. The Department shall review variances at least triennially.
- E. Revocation or denial of the variance request shall be subject to the appeal process.

Documentation of Proposed Modifications/Waivers Justification.

- A. Before a variance from a requirement of this Code is approved, the information that shall be provided by the entity requesting the variance and retained in the Department's file on the food cart pod includes:
 - a. A statement of the proposed variance of the Code requirement citing relevant Code section numbers; and,
 - b. An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal.

PLAN SUBMISSION AND APPROVAL

When Plans Are Required.

- A. A permit applicant or permit holder shall submit to the Department properly prepared plans and specifications for review and approval before:
 - a. The construction of a food cart pod; or,
 - b. The conversion of an existing site or structure for use as a food cart pod.

Contents of the Plans and Specifications.

- A. The plans and specifications for a food cart pod, shall include, as required by the Department, the following information to demonstrate conformance with Code provisions:
 - a. Source of potable water to be provided to the carts and how water will be provided to carts;
 - b. A waste water spill control and spill response plan;
 - c. The capacity of solid waste receptacles;
 - d. An Integrated Pest Management plan and schedule;
 - e. A site plan to scale with location of food carts, amenities and utilities; and,
 - f. Any other specifications required by the Department to approve the plans.

Preoperational Inspections.

The Department shall conduct one or more pre-operational inspections to verify that the food cart pod is constructed and equipped in accordance with the approved plans; and that the approved modifications of those plans have established standard operating procedures.

PERMIT TO OPERATE

Prerequisite for Operation.

- A. An entity may not operate a food cart pod without a valid permit to operate issued by the Department.
- B. A Food Cart Pod Operator may be ineligible for a Food Cart Pod Operator permit if the Food Cart Pod Operator has outstanding penalties or violations for current or previous violations of these Rules.

Form of Submission.

An entity wanting to operate a food cart pod shall submit to the Department a written application for a permit on a form provided by the Department.

Qualifications and Responsibilities of Applicants.

- A. To qualify for a permit, an applicant shall:
 - a. Be an owner of the food cart pod or an officer of the legal ownership;
 - b. Comply with the requirements of this Code;
 - c. Agree to allow access to the food cart pod and to provide required information; and,
 - d. Pay the applicable permit fees at the time the application is submitted.

Contents of the Application.

- A. The application shall include:
 - a. The name, mailing address, email, telephone number, signature of the entity applying for the permit and the name, mailing address, and the location of the food cart pod;
 - b. Information specifying whether the food cart pod is owned by an association, corporation, individual, partnership, or other legal entity;
 - c. The name, title, address, email, and telephone number of the entity directly responsible for the food cart pod;
 - d. The names, titles, and addresses of:
 - i. The entity comprising the legal ownership as specified under “b” of this section including the owners and officers; and,
 - ii. The local resident agent if one is required based on the type of legal ownership.
 - e. A statement signed by the applicant that:
 - i. Attests to the accuracy of the information provided in the application, and
 - ii. Affirms that the applicant will:
 - 1. Comply with this Code; and

2. Allow the Department access to the food cart pod and to any records needed.
- B. Other information required by the Department.

New, Converted, or Remodeled Food Cart Pods.

- A. For food cart pods that are required to submit plans The Department shall issue a permit to the applicant after:
- a. A properly completed application is submitted;
 - b. The required fee is submitted;
 - c. The required plans, specifications, and information are reviewed and approved; and,
 - d. A pre-operational inspection shows that the food cart pod is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Code.

Existing Establishments, Permit Renewal, and Change of Ownership.

The Department may renew a permit for an existing food cart pod or may issue a permit to a new owner of an existing food cart pod after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the food cart pod is in compliance with this Code.

Denial of Application for Permit, Notice.

- A. If an application for a permit to operate is denied, within 30 days of receiving, the Department shall provide the applicant all necessary information and documentation. A notice that includes:
- a. The specific reasons and Code citations for the permit denial;
 - b. The actions, if any, that the applicant must take to qualify for a permit; and,
 - c. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under the Appeals and Hearings section or equivalent.

Responsibilities of the Department.

- A. At the time a permit is first issued, the Department shall provide to the permit holder information on how to obtain a copy of this Code so that the permit holder is notified of the compliance requirements that are applicable to the permit.
- B. Failure to provide the information specified in paragraph (A) of this section does not prevent the Department authority from taking authorized action or seeking remedies if the permit holder fails to comply with this Code or an order, warning, or directive of the Department.

Responsibilities of the Permit Holder.

- A. Upon acceptance of the permit issued by the Department, in order to retain the permit, the permit holder shall:

- a. Post the permit in a location at the food cart pod that is conspicuous to consumers;
- b. Comply with the provisions of this Code including the conditions of a granted variance and approved plan;
- c. Immediately discontinue operations and notify the Department if an imminent health hazard may exist;
- d. Allow representatives of the Department access to the food cart pod; and,
- e. Replace or modify existing facilities and equipment to comply with this Code if:
 - i. The Department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;
 - ii. The Department directs the replacement to meet current code requirements after the food cart pod has been closed for a minimum of six consecutive months; or,
 - iii. The facilities and equipment are replaced in the normal course of operation.
- B. Comply with directives of the Department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the Department in regard to the permit holder's food cart pod or in response to community emergencies;
- C. Accept notices issued and served by the Department as may be authorized under the Appeals and Hearings section or equivalent; and,
- D. Be subject to the administrative, civil, injunctive, and criminal remedies as may be authorized under the Appeals and Hearings section or equivalent.

Operating without Food Cart Pod Operator permit.

- A. If a Food Cart Pod Operator is found to be operating without a permit, the Food Cart Pod Operator will have 30 calendar days to apply for a permit.
- B. If the unpermitted Food Cart Pod Operator does not apply for a permit within 30 calendar days, the Food Cart Pod Operator will be considered in violation of the rules and be subject to civil penalties.
- C. If a Food Cart Pod Operator continues to operate without applying for a permit after the 30 calendar day period, the Department may impose penalties. Each day an unpermitted Food Cart Pod Operators may be considered a separate violation.

Permits Not Transferable.

A permit may not be transferred from one entity to another entity, from one food cart pod to another.

INSPECTION AND CORRECTION OF VIOLATIONS

Inspection Interval

The Department shall inspect a food cart pod at least once every 6 months.

Allowed at Reasonable Times after Due Notice.

After the Department presents official credentials and provides notice of the purpose of, and an intent to conduct an inspection, the person in charge shall allow the Department to determine if the food cart pod is in compliance with this Code by allowing access to the pod, allowing inspection, and providing information and records specified in this Code and to which the Department is entitled according to law, during the food cart pod's hours of operation and other reasonable times.

Refusal, Notification of Right to Access, and Final Request for Access.

- A. If a person denies access to the Department, the Department shall inform the person that:
 - a. The permit holder is required to allow access to the Department;
 - b. Access is a condition of the acceptance and retention of a food cart pod permit to make a final request for access; and,
 - c. If access still denied the pod will be subject to closure.

Refusal, Reporting.

If the person in charge continues to refuse access even after the Department presents credentials and explains to the authority upon which access is requested, the Department shall provide details of the denial of access on an inspection report form.

Documenting Information and Observations.

- A. The Department shall document on an inspection report form:
 - a. Administrative information about the food cart pod's legal identity, street and mailing addresses, inspection date; and,
 - b. Specific factual observations of violative conditions or other deviations from this Code that require correction by the permit holder.

Specifying Time Frame for Corrections.

The Department shall specify on the inspection report form the time frame for correction of the violations.

Issuing Report and Obtaining Acknowledgment of Receipt.

At the conclusion of the inspection and according to law, the Department shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder, or to the person in charge, and request a signed acknowledgment of receipt.

Refusal to Sign Acknowledgment.

- A. The Department shall inform a person who declines to sign an acknowledgment of receipt of inspectional findings that:
 - a. An acknowledgment of receipt is not an agreement with findings;
 - b. Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified;
 - c. Refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Department's historical record for the food cart pod; and,
 - d. Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

Public Information.

The Department shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

Ceasing Operations and Reporting.

- A. Except as specified in paragraph (B) of this section, a permit holder shall immediately discontinue operations and notify the Department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, gross insanitary occurrence or condition, or other circumstance that may endanger public health.
- B. A permit holder need not discontinue operations in an area of a pod that is unaffected by the imminent health hazard.

Resumption of Operations.

If operations are discontinued as specified under the ceasing operations reporting section or otherwise according to law, the permit holder shall obtain approval from the Department before resuming operations.

Timely Correction.

- A. Except as specified in paragraph (B) of this section, a permit holder shall at the time of inspection correct a violation of this Code and implement corrective actions.
- B. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department may agree to or specify a longer time frame, not to exceed 14 calendar days after the inspection, for the permit holder to correct violations.

Verification and Documentation of Correction.

- A. After observing at the time of inspection a correction of a violation, the Department shall enter the violation and information about the corrective action on the inspection report.
- B. After receiving notification that the permit holder has corrected a violation or at the end of the specified period of time, the Department shall verify correction of the violation,

document the information on an inspection report, and enter the report in the Department's records.

Approved Alternative Procedures.

- A. An alternative procedure may be approved on a temporary basis for a designated time period, if in the judgment of the Environmental Health Specialist the procedure provides interim health and safety protection equal to that provided by the rule. The Environmental Health Specialist may extend the designated time period if justified by unforeseen circumstances. Such an alternative procedure shall not authorize or condone any violation.
- B. All alternative procedures which have been approved shall be implemented immediately.

Closure of food cart pods.

- A. If the Department closes a food cart pod, a statement by the Department ordering closure and specifying the reasons therefore, and signed by the Department, shall be attached to the inspection form and delivered to the operator or person in charge:
 - a. When a food cart pod is closed, the Department shall post a notice of closure at the customary entrance(s);
 - b. No person except the Department representative shall remove or alter this notice; and,
 - c. No person shall operate a food cart once the pod has been closed.
- B. If a violation which creates an imminent or present danger to public health is not corrected immediately or an approved alternative procedure is not initiated immediately by the operator, the food cart pod shall be closed.
- C. If a violation which creates a potential danger to public health has not been corrected within the designated time limit, the food cart pod shall remain closed.
- D. Appeals of closures are contested cases pursuant to the Appeals and Hearings section or equivalent.

Civil Penalties.

- A. The Department may impose civil penalties on any entity for the following willful violations:
 - a. Operation of a food cart pod without a current permit to do so from the Department;
 - b. Failure to remedy violations cited by the Department; or
 - c. Failure to cease operation of a food cart pod that has been closed due to uncorrected violations.
- B. For the purposes of section (A) of this rule, the term 'willful' means intentional or deliberate.
- C. The maximum civil penalty for each of the violations listed in section (1) of this rule is \$500 per day of violation.
- D. Civil penalties shall be imposed in the manner provided by the Appeals and Hearings section or equivalent.

Appeals and Hearings.

- A. Procedure upon receipt of Request for Hearing:
 - a. The Hearings Officer will schedule and oversee the hearing within 60 days of the request;
 - b. Issue a ruling within 20 calendar days of the hearing's conclusion; and,
 - c. The Hearings Officer ruling will be final.
- B. If the Hearings Officer finds the violation to exist, the ruling will set a date for remedy of the violation to be accomplished by the Food Cart Pod Operator, authorized agent or designee.
- C. If the Hearings Officer determines that the violation was issued in error, the ruling may order the Department to vacate any penalties and take other necessary and appropriate actions to remedy the situation.
- D. If the Food Cart Pod Operator, authorized agent or designee for corrective action fails to pay imposed penalties, the Director may initiate collection action allowed by law.
- E. If any provision of these rules or its application to any entity or circumstance is held invalid, the application of the remainder of these rules is not affected.
- F. Access to an appeal and hearing as described in these Rules does not create or enhance any other legal process or remedy allowed by law.

Permitting.

- A. Any permit issued by the Department pursuant to rule shall expire and may be reinstated on December 31 of each year.
- B. Any permit issued for a new Food Cart Pod between October and December shall be prorated by 50% of the annual permit fee.
- C. A Food Cart Pod Operator permit is invalid if the permit fee has not been timely paid in full or the term of the permit has expired. The term of a Food Cart Pod Operator permit is a maximum of one year.
- D. Each Food Cart Pod Operator will apply for permit renewal and submit the permit fee no later than thirty days prior to expiration of the term.
- E. A Food Cart Pod Operator permit that is not timely renewed will expire at the end of its term.
- F. To not renew a permit in a timely manner as described above, the Food Cart Pod Operator must submit the application renewal form, permit fee and any late fees applied.

Fees.

- A. Each annual application for a new or renewed Food Cart Pod Operator permit will be accompanied by a permit fee as determined by Board Resolution.
- B. The Department may, on an annual basis, modify the fee required pursuant to this Section.
- C. The fee will be calculated to recover the cost of administration and enforcement of these Rules, but will not exceed the cost of the regulatory program authorized by these Rules.
- D. All fees and interest upon proceeds of fees will be used exclusively to fund the program.
- E. Late fees may be applicable as determined by Board Resolution.
- F. Fees are nonrefundable except as may be required by law.
- G. Any fee increase will be determined by the Department and then approved by the Board.

Department Review.

The Department may review these Rules as needed to provide recommendations to the Board to amend rules, regulations, standards, guidelines, or conditions to implement and enforce these Rules.

OPERATIONAL REQUIREMENTS

Potable Water.

- A. Food cart pod operators shall require that sufficient and adequate potable water is used by mobile food carts.
- B. Potable water supplied by mobile food cart operators, shall be done in an approved method that prevents contamination from collection at the source, transportation, and to the mobile unit.
- C. Potable water supplied by Food Cart Pod Operators:
 - a. Shall be provided in a manner that prevents contamination to and/or between food carts.
 - b. Piping and/or hoses, shall only be provided by using products approved for drinking water uses.
 - c. When provided by hauling, shall only be done in an approved method preventing contamination from collection at the source, during transportation, and delivery to the mobile food cart.
 - d. When provided via an on-site water system, shall be designed, constructed, approved and maintained in compliance with the requirements of all local, state and federal regulations.

Wastewater.

- A. Sewage and waste water shall be disposed of into a public sewerage system or in a manner approved by the local, state and federal regulations.
- B. No liquid wastes shall be discharged onto the ground or allowed to accumulate on the ground surface.
- C. All waste water cubes in use prior to 2020 must be discontinued by January 1st 2023.
- D. Food Cart Pod Operators will create a waste water spill/control plan that will address the following areas:
 - a. Education/Training of the food cart pod and mobile food unit operators.
 - b. Preparedness includes but not limited to staff responsibilities, equipment instructions, cleanup expectations, communication methods, and disposal protocols for residue.
 - c. Safety of the staff that will be cleaning up the spill.
 - d. Containment that will prevent the risk to the public and environment.
 - e. Notification of the appropriate parties when a spill occurs.
 - f. Other areas identified in the plan review process by the Department.

- E. Waste water plans will be reviewed and updated annually by the Food Cart Pod Operator.

Solid Waste.

- A. Solid waste shall be stored in individual garbage containers. All such containers shall:
 - a. Have tight fitting lids, covers or closable tops;
 - b. Be durable, rust-resistant, watertight, rodent-proof and readily washable.
- B. The premises of each Food Cart Pod shall be kept orderly and free of litter and refuse.
- C. All solid waste generated by front of house and back of house shall be collected for disposal at regular intervals so as not to create:
 - a. Vector production and sustenance;
 - b. Objectionable odors; and,
 - c. Any overflowing of solid waste or other unsanitary conditions.
- D. Solid waste containing putrescible waste shall be collected for disposal at regular intervals not to exceed seven days.
- E. Solid waste shall be stored, transported and disposed of in a manner which complies with local, state, and federal regulations.

Integrated Pest Management.

- A. Food Cart Pod Operators shall create, implement and maintain an integrated pest management plan and schedule that will ensure pest control measures are in place in order to safeguard public health and to prevent nuisance to the public.
- B. Developed areas, buildings, and structures to be maintained free of accumulations of debris.
- C. Areas around and underneath food carts are to be maintained free of accumulation of debris.
- D. Integrated Pest Management Plans will be reviewed and updated annually by the Food Cart Pod Operator.

Site Design and Setbacks.

- A. Food Cart Pod Operators shall design and maintain a site design that includes:
 - a. A 5-foot setback between mobile units; and,
 - b. Sufficient room to allow for timely egress of mobile carts in the event of fire or natural disaster.
- B. Food Cart Pod Operators shall ensure all other setbacks set by local, state and federal regulations are maintained.

Power Utilities.

- A. Food Cart Pod Operators shall require that safe, adequate, and sufficient electrical power is available to operate all mobile food carts on site.

- B. All electrical installations and repairs shall comply with the requirements of local, state, or federal regulations.
- C. Liquefied petroleum gas storage tanks shall conform in construction, design, installation, and operation with the rules of the State Fire Marshal.
- D. Natural Gas infrastructure shall conform in construction, design, installation, and operation with local, state and federal regulations.