


**Multnomah County
HEALTH DEPARTMENT**

Division: Environmental Health Services		
Subject: Food Cart Pod Rules		
<u>Pre-Approval</u> Robert E. Sinnott Senior Assistant County Attorney Andera Hamberg Interim - Environmental Health Services Director	<u>Effective Date:</u> January 1, 2021	<u>Approval:</u> Patricia Charles-Heathers Health Department Director Signature:  <hr/> Date: November 19, 2020

I. **POLICY:**

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

II. **CONTACT:**

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

III. **PERSONS AFFECTED:**

Property owners with mobile food units or food carts on their property, and other persons or entities operating pods.

IV. **CROSS REFERENCE:**

Multnomah County Code (MCC) Chapter 21

V. **DEFINITIONS:**

- A. **Back of the House** means the area of a mobile food unit or food cart where supplies and equipment are stored and where solid waste and wastewater are disposed.
- B. **Board** means the Multnomah County Board of County Commissioners.

- C. **County** means Multnomah County.
- D. **Front of the House** means the area where customers order or eat food purchased from a mobile food unit or food cart.
- E. **Integrated Pest Management (IPM) Plan** refers to a coordinated decision-making and action process that uses the most appropriate pest control methods and strategies to meet pest management objectives.
- F. **Imminent Health Hazard** means a product, practice, circumstance, or event that causes threat or danger to health and requires immediate correction or cessation of operation to prevent illness or injury. Examples of imminent health hazards include but are not limited to fire, flood, extended interruption of electrical or water service for more than 24 hours, sewage backup, misuse of poisonous or toxic materials, gross unsanitary occurrence or condition, or other circumstances that may threaten or endanger public health.
- G. **Person in Charge** means the permit holder, or the person designated by the permit holder, to be responsible for the operation of the pod.
- H. **Potable Water** means water that meets 40 CFR 141 National Primary Drinking Water Regulations and is traditionally known as drinking water.
- I. **Remodel** means modifying the pod from the original, approved site design, including but not limited to, adding or reorganizing spaces for mobile food units or food carts or changing how utilities are provided.
- J. **Setback** means the distance between mobile food units or food carts.
- K. **Site Plan** means the drawings and specifications for how a pod will be remodeled or formed, constructed, and maintained.
- L. **Solid Waste** means food waste, scraps, fats, oils, grease, recycling, or garbage.
- M. **Utilities** means services that provide electricity, gas, water, sewage disposal, or solid waste removal.
- N. **Wastewater** (also known as grey water) means water that has been used as part of the operation of a pod.

VI. **RULES APPLICABILITY**

The Department shall apply these rules, and require a permit, whenever greater than one mobile food unit or food cart is at the same location but not directly associated with a temporary public event. For purposes of these rules, the

Department shall consider mobile food units or food carts to be in the same location when, for greater than four hours in any 24 hour period, (1) they are on the same property, including any privately or publicly owned lot, parcel of land, or right-of-way; or (2) are on contiguous or adjoining properties, including any combination of privately or publicly owned lots, parcels of land, or rights-of-way, unless the Department determines that, based on inadequate proximity and connectivity, they are actually distinct and separate food service environments.

VII. **PERMIT APPLICATION**

- A. To qualify for a permit, an applicant shall:
 - a. Be a person, or an entity registered with the Oregon Secretary of State;
 - b. Comply with these rules, including providing any requisite records or information to the Department; and
 - c. Agree to allow the Department open access to the pod.
- B. The Department may issue a permit, or renew a permit, only after:
 - a. A completed written application, or renewal application, has been submitted;
 - b. The required site plan has been submitted, reviewed, and approved;
 - c. The site plan review fee, if applicable, has been submitted;
 - d. A pre-operational inspection has confirmed the pod has been built or remodeled in accordance with the approved site plan; and
 - e. The permit fee, or renewal fee, has been submitted.
- C. An applicant for a permit shall submit to the Department a completed written application, on a form provided by the Department, and must include the following information:
 - a. Their name, mailing address, email address, and telephone number.
 - b. The name (if applicable), mailing address, and the location of the pod.
 - c. All names, mailing addresses, email addresses, and telephone numbers of the person, persons, entity, or entities directly responsible for the operation of the pod.
 - d. The name and mailing address of the registered agent or other official contact authorized to receive service of process, correspondence, and other documents from the Department.
 - e. An attestation by the applicant:
 - i. Confirming the accuracy of the information provided in the application; and
 - ii. Affirming the applicant will:
 - 1. Comply with MCC § 21.625 through § 21.634 and these rules; and
 - 2. Allow the Department open access to the pod and to necessary records or information as needed.
- D. All applicants for a permit shall submit to the Department a site plan for the Department's review and approval prior to remodeling, forming, constructing, or operating a pod. The site plan shall include information about how the pod intends to comply with the operational requirements below, including:
 - a. The source of potable water that will be provided to mobile food units or food carts;

- b. A description of how potable water will be provided to mobile food units or food carts;
 - c. A sewerage and wastewater design and plan;
 - d. A wastewater spill control and spill response plan;
 - e. The capacity and location of the planned solid waste receptacles;
 - f. An integrated pest management plan and schedule;
 - g. The location of mobile food units or food carts, structures, and utilities; and,
 - h. Any other specifications that may be required by the Department.
- E. A permit holder may modify a site plan, but only after the permit holder has received written approval from the Department.
 - F. The Department shall conduct one or more pre-operational inspections to verify the pod has been constructed in accordance with the approved site plan.
 - G. If an application for a permit is denied, the Department shall provide the applicant a signed, written statement with the bases for the denial and the actions, if any, the applicant must take to qualify for the permit.
 - H. All permits issued by the Department shall expire on December 31 of each year, but may be renewed for the following year.
 - I. Each permit holder shall apply for permit renewal and submit the permit fee by January 1 of each year.
 - J. Any permit issued by the Department from January through September shall not be prorated and the permit holder shall be required to pay 100% of the permit fee.
 - K. Any permit issued by the Department from October through December shall be prorated and the permit holder shall be required to pay 50% of the permit fee.
 - L. The Department shall not grant a permit to any person or entity with outstanding penalties for failure to comply with MCC § 21.629 or these rules.
 - M. The Department shall not grant a permit for a pod on property owned by a property owner with outstanding penalties for failure to comply with MCC § 21.629 or these rules.

VIII. **RESPONSIBILITIES OF PERMIT HOLDER**

- A. Upon acceptance of the permit, permit holder shall:
 - a. Post the permit in a location at the pod that is conspicuous to the public;
 - b. Allow the Department open access to the pod;
 - c. Comply with these rules and, if applicable, any additional conditions the Department may have imposed;
 - d. Immediately discontinue operations and notify the Department if an imminent health hazard is discovered; and
 - e. Replace or modify the existing site plan, facilities, or equipment when:
 - i. The Department directs to mitigate a health hazard; or
 - ii. As necessary to meet any legal requirements.
- B. Permit holder shall comply with any additional directives of the Department, including but not limited to timeframes for corrective actions specified in inspection reports; and

C. Permit holder shall accept notices issued and served by the Department.

IX. **OPERATING WITHOUT A FOOD CART POD PERMIT**

- A. If the Department discovers a pod is operating without a permit, the unpermitted pod will have 30 calendar days from the date of discovery to apply for a permit.
- B. If the unpermitted pod has not applied for a permit within 30 calendar days of the date the Department discovers a pod is operating without a permit, the pod shall be in violation of these rules, and MCC § 21.629, and the property owner shall be subject to penalties set by the Board.
- C. Each day an unpermitted pod operates shall be considered a separate violation.

X. **OPERATIONAL REQUIREMENTS**

A. **Potable Water.**

- a. Permit holder shall ensure that sufficient and adequate potable water is available for mobile food units or food carts.
- b. Potable water supplied to the pod, and to mobile food units or food carts, shall be:
 - i. Provided in a manner that prevents contamination to and between mobile food units or food carts;
 - ii. Delivered only with pipes, hoses, and other products approved for drinking water uses;
 - iii. When provided by hauling, delivered by an approved method preventing contamination during collection, transportation, and delivery; and
 - iv. Compliant with local, state, and federal law.

B. **Wastewater.**

- a. Wastewater shall be disposed into a public sewerage, or in a manner that otherwise complies with local, state, and federal law
- b. No wastewater shall be discharged onto the ground or allowed to accumulate on the ground surface.
- c. All above ground wastewater tanks in use prior to January 1, 2021 that are not integral with a mobile food unit shall be discontinued prior to January 1, 2023.
- d. Permit holders shall create a wastewater spill and control plan that will address the following:
 - i. Education and training of staff for the pod and the mobile food units or food carts as to their respective duties and obligations for the wastewater spill and control plan, including any equipment instructions, cleanup expectations, communication methods, and disposal protocols;
 - ii. Safety of the staff that will be cleaning up the spill;
 - iii. Containment that will prevent risk to the public and the environment;
 - iv. Notification procedures when a spill occurs; and
 - v. Any other topics identified by the Department.

C. Solid Waste.

- a. Solid waste shall be stored in individual garbage containers and shall:
 - i. Have tight fitting lids, covers or closable tops; and
 - ii. Be durable, rust-resistant, watertight, rodent-proof, and readily washable.
- b. The premises of each pod shall be kept orderly and free of solid waste, litter, and refuse. All areas around and underneath developed areas, buildings, structures, and mobile food units or food carts shall be maintained free of debris.
- c. All solid waste generated by front of the house and back of the house shall be collected for disposal at regular intervals so as not to create:
 - i. Vector production and sustenance;
 - ii. Objectionable odors;
 - iii. Any overflowing of solid waste; or
 - iv. Other unsanitary conditions.
- d. Solid waste shall be collected for disposal at regular intervals not to exceed seven calendar days.
- e. Solid waste shall be stored, transported and disposed of in a manner that complies with local, state, and federal law.

D. Integrated Pest Management.

- a. Permit holders shall create, implement, and maintain an integrated pest management plan and schedule that will ensure pest control measures safeguard public health.
- b. The elements of an integrated pest management plan include the following:
 - i. Preventing pest problems;
 - ii. Monitoring for the presence of pests and pest damage;
 - iii. 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;
 - iv. 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; and
 - v. Evaluating the effects and efficacy of pest treatments.
- c. Integrated pest management plans shall be reviewed and updated annually by the permit holder.

E. Setbacks.

- a. Permit holders shall maintain the following minimum setbacks:
 - i. Five feet between mobile food units or food carts; and
 - ii. Notwithstanding subsection (i), sufficient space to allow for timely egress of mobile food units or food carts in the event of fire or natural disaster.
- b. Permit holders shall maintain all other setbacks set by local, state, and federal law.

F. Power Utilities.

- a. Permit holders shall ensure that safe, adequate, and sufficient electrical power is available to operate all mobile food units or food carts.
- b. All electrical installations and repairs, liquid petroleum gas storage tanks, and natural gas infrastructure shall conform in construction, design, installation, and operation with local, state, and federal law.

G. Provision for Additional Requirements

- a. The Department may impose additional specific requirements for a pod but only when necessary to protect against certain health hazards.
- 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 by the Department.

H. Modifications and Waivers.

- a. The Department may grant a variance from one or more of these rules as follows:
 - i. 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;
 - ii. 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,
 - iii. Where such alternative measures are provided which, in the opinion of the Department, will adequately protect public health.
- b. Before a variance from one or more of these rules is approved, the permit applicant or permit holder shall provide the following information:
 - i. A statement of the proposed variance citing the relevant rule or rules;
 - ii. An analysis and rationale for how potential health hazards will be alternatively addressed by the proposal; and
 - iii. Any other information requested by the Department.
- c. The Department shall review variances at least triennially.
- d. The Department has the sole discretion to determine whether to grant, revoke, or deny a variance.

XI. Inspections & Violations

- A. The Department shall inspect each pod at least once every six months.
- B. The Department shall have open access to the pod to allow for inspections during the pod's normal hours of operation and at other reasonable times. If the Department is denied access to the pod during normal business hours, or at other reasonable times, the Department shall provide notice that:
 - a. The pod is required to allow access to the Department;
 - b. Access by the Department is a condition of the permit; and
 - c. If access continues to be denied, the pod will be subject to closure.
- C. The Department shall document on the inspection report form:
 - a. Administrative information about the pod, including the location and date of the inspection;

- b. Any denials of access to the pod;
 - c. Any violations that require correction by the permit holder;
 - d. Information about any necessary corrective action; and
 - e. The deadline to correct any violations.
- D. The Department shall provide a copy of the inspection report form to the permit holder. If the permit holder, or person in charge, is present during the inspection, then the Department may request their signature to acknowledge receipt of the inspection report form. The Department may inform a permit holder, or person in charge, who declines to sign an acknowledgment of receipt 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 specified timeframes; and
 - c. Refusal to sign an acknowledgment of receipt will be noted on the inspection report form.
 - d. After informing a permit holder, or person in charge, of subsections (a)-(c), the Department may make a final request to the permit holder, or person in charge, to sign an acknowledgment of receipt.
- E. A permit holder shall, at the time of inspection, correct any violation of these rules. The Department may extend the timeframe to correct any violation of these rules when the nature and complexity of that corrective action may require additional time.
- F. After receiving notification that the permit holder has corrected a violation, the Department shall re-inspect the pod to verify correction of the violation. All re-inspections shall be subject to re-inspection fees as set by the Board.

XII. Revocation of Permit

- A. The Department shall revoke a permit when an imminent health hazard is not immediately corrected, or mitigated by an alternative procedure approved by the Department.
- B. The Department shall revoke a permit when a violation of these rules, or MCC § 21.625 through MCC § 21.634, has not been corrected within the timeframe designated by the Department.
- C. When the Department revokes a permit, it shall:
 - a. Provide a signed, written statement to the permit holder providing the bases for the revocation and closure;
 - b. Post a notice of closure at the customary entrance, or entrances, which shall not be removed or altered without authorization from the Department; and
 - c. Provide notice of the permit holder's right to appeal and request a hearing that shall also include the following information:
 - i. That an appeal and request for hearing must be received within ten business days of the Department's signed, written statement to the permit holder providing the bases for the revocation and closure; and
 - ii. That the appeal and request for hearing must be in writing, signed by the permit holder, and on a form provided by the Department.

- D. A permit holder shall immediately discontinue operations and notify the Department when an imminent health hazard is discovered. If the Department determines that a specific area of the pod is unaffected by an imminent health hazard, the Department may provide written authorization for the permit holder to continue operations in that specific, unaffected area.
- E. When a permit has been revoked, no person or entity shall operate a pod at that same location unless and until the Department provides written authorization for the permit to be re-instated and the pod to be re-opened.

XIII. **Appeals & Hearings**

- A. When the Department revokes or denies a permit, a permit holder, or an applicant for a permit, shall have the right to appeal and request a hearing.
 - a. An appeal and request for hearing must be received within either ten business days of the Department's signed, written statement to the permit holder providing the bases for the revocation and closure, or ten business days of the Department's signed, written statement denying an application for a permit.
 - b. An appeal and request for hearing must be in writing, signed by the permit holder, and on a form provided by the Department.
- B. Procedure upon receipt of an appeal and request for hearing:
 - a. The Department will contact the Hearings Officer, who will schedule the hearing within sixty days of the request;
 - b. The Hearings Officer will issue a ruling within twenty business days of the hearing's conclusion.
- C. If the Hearings Officer reverses the Department's decision to deny or revoke the permit, the Hearing's Officer may order the Department to issue the permit. The permit holder, or applicant for a permit, shall have no other remedies against the Department or the County.
- D. 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.

XIV. **Administrative Penalties**

- A. Any permit holder or property owner found to be in violation of these rules, or MCC § 21.629, may be liable for fees as set by the Board.
- B. Each day a violation occurs shall be considered a separate violation.
- C. If the permit holder, or property owner, fails to pay any fees, the Department or the County may initiate collection action as allowed by law.