

**ORDINANCE NO. 877**

**AN ORDINANCE AMENDING CHAPTERS 17.62, 17.68, 17.69, 17.70, AND 17.162 AND  
ADDING A NEW CHAPTER, 17.126 – FOOD CART POD PERMITS TO THE  
SCAPPOOSE MUNICIPAL CODE**

**WHEREAS**, an identified Scappoose City Council goal for FY18-19 was to explore a food cart ordinance since the only method the City currently has to allow food carts is through the issuance of a Temporary Use Permit, which is only good for 90-days, is intended to celebrate a specific season or event, does not have development standards, and is not renewable during the calendar year it is issued in; and

**WHEREAS**, three public City Council work sessions were held on the topic of food carts in order to gain feedback on setting appropriate standards to allow food carts to operate on a year-round basis; and

**WHEREAS**, the proposed amendments to the Scappoose Municipal Code are intended to allow individual entrepreneurship at a small scale and to provide unique eating establishments to the public, while ensuring that food carts are conducted as lawful uses and in a manner that is not detrimental or disruptive in terms of appearance or operation to neighboring properties and residents; and

**WHEREAS**, all legal and public notices have been provided as required by law for this application; and

**WHEREAS**, the Planning Commission held a hearing on the application on December 13, 2018 and the City Council held a hearing on the application on January 7, 2019 and January 22, 2019; now therefore,

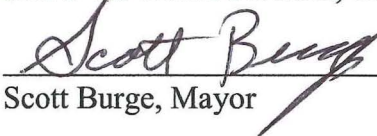
**THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:**

**Section 1.** The Scappoose Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and hereby incorporated by reference.

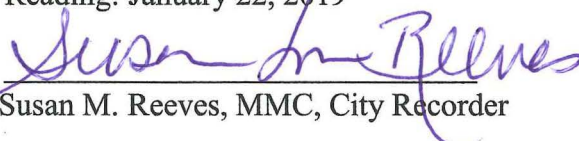
**Section 2.** The City of Scappoose adopts the findings and conclusions contained in the staff report dated December 6, 2018, attached to this ordinance as Exhibit B and hereby incorporated by reference, as the basis in support of this ordinance.

PASSED AND ADOPTED by the City Council this 22<sup>nd</sup> day of January 2019 and signed by the Mayor and City Recorder in authentication of its passage.

**CITY OF SCAPPOOSE, OREGON**

  
\_\_\_\_\_  
Scott Burge, Mayor

First Reading: January 7, 2019  
Second Reading: January 22, 2019

Attest:   
\_\_\_\_\_  
Susan M. Reeves, MMC, City Recorder



*Exhibit A*

Chapter 17.126

FOOD CART POD PERMIT

Sections:

- 17.126.010 Purpose
- 17.126.020 Applicability and Exemptions
- 17.126.030 Permit Procedures
- 17.126.040 Food Cart Pod Standards
- 17.126.050 Food Cart Standards
- 17.126.060 Food Cart Pod Modification
- 17.126.070 Submittal Requirements
- 17.126.080 Conditions of Approval
- 17.126.090 Approval Period
- 17.126.120 Grounds for Revocation

17.126.010 Purpose. Mobile food units, which are defined in OAR 333-150-0000 as “any vehicle that is self-propelled or that can be pulled or pushed down a sidewalk, street, highway or waterway, on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer”, can provide opportunities to enliven under-utilized parking lots, allow individual entrepreneurship at a small scale, and provide unique eating establishments for the public. The purpose of this chapter is to set standards to permit mobile food units, or “food carts” on a long-term basis. As with temporary uses, permanent site improvements may not be required; however, the standards and permit processes of this section are intended to ensure that food carts are conducted as lawful uses and in a manner that is not detrimental or disruptive in terms of appearance or operation to neighboring properties and residents.

17.126.020 Applicability and Exemptions.

A. Applicability.

1. This chapter is not applicable to temporary uses which are permitted through the Temporary Use Permit procedures of Chapter 17.128.
2. For the purposes of this chapter, the term “food cart” will be used interchangeably with “mobile food unit”. “Food cart pod” refers to a site containing one or more food carts and associated amenities on private property.
3. The provisions of this chapter apply to all food carts within the City, whether it is a single food cart, or multiple carts in a pod.
4. Food carts are not permitted to travel to different sites throughout the City and shall only be allowed through an approved permit issued in conformance with this chapter.

B. Exemptions. The following are exempt from the provisions of this chapter:

1. Locations where food carts are stored when not in operation are exempt

from the provisions of this section; however, the storage of commercial vehicles or trailers may be subject to other requirements of the Scappoose Municipal Code.

2. Food carts that are operated as part of an approved farmer's market or allowed under a special event permit are exempt.

17.126.030 Permit Procedures. Food cart pod permits will be processed in accordance with Chapter 17.162, as follows:

A. Type I. Up to two carts on one site with no accessory structures other than trash cans and portable accessory items, such as picnic tables, may be reviewed for compliance with this chapter and administratively approved by the Planner.

1. The Planner shall make findings of fact based on evidence provided by the applicant demonstrating that all of the applicable criteria for food cart pods and individual food carts has been satisfied.

B. Type II. Three or more carts on one site and/or accessory structures constructed in accordance with 17.126.040(B) may be reviewed in accordance with this chapter, and applicable chapters of the Scappoose Municipal Code and the Planning Commission shall be the approval body.

1. The Planning Commission shall approve, approve with conditions, or deny an application for a Type II Food Cart Pod Permit. The decision to approve, approve with conditions, or deny an application for a Type II Food Cart Pod Permit shall be made by the Planning Commission upon findings of whether or not the proposed use:

- a. Is in conformance with the standards contained in this chapter and any other applicable chapters, and
- b. Is undertaken in a manner that is not detrimental nor disruptive in terms of appearance or operation to neighboring properties, businesses and/or residents.

17.126.040 Food Cart Pod Standards. A property containing one or more food carts shall be maintained in a clean and orderly condition. Only those things authorized by the permit and shown on the site plan may be stored on the property. The following standards apply to food cart pod sites:

A. Zoning. Food cart pods are not permitted in special flood hazard areas or in residential zones but are permitted in zones that allow for eating and drinking establishments either outright or through conditional use approval. In the Light Industrial, LI and Public Use Airport, PUA zoning districts, Food Cart Pod Permit approval is subject to Chapter 17.130 – Conditional Use.

B. Accessory Items and Structures. Trash and recycling receptacles for customer use shall be maintained no more than ten (10) feet from food carts, at a rate of one trash and one recycling receptacle for every two food carts. Portable accessory items, such as picnic tables, are permitted. With Planning Commission approval, new accessory structures may be constructed, as follows:

1. A maximum of two restroom structures, provided that the combined square footage does not exceed two hundred (200);

2. A maximum of two storage buildings, provided that the combined square footage does not exceed two hundred (200);
3. One trash enclosure;
4. Outdoor seating areas, which may have roofs, floors, and railings, but no walls (e.g., decks, picnic shelters, pavilions), provided that the square footage does not exceed two hundred (200) square feet per food cart and that no single structure exceeds two thousand (2000) square feet. Any covered structure provided shall meet current Oregon Structural Specialty Code and be permanently attached to the ground;
5. A food cart pod site with 3 or more food carts shall provide covered seating and restrooms on site.

C. Signs. Type I approval: Signs are restricted to portable signs only, permitted pursuant to Chapter 17.114. Type II approval: Signs are permitted pursuant to Chapter 17.114. Signage painted on food carts is permitted.

D. Minimum Setbacks and Separation Distance. All food carts on the site shall be located a minimum of:

1. Five (5) feet from any structure or other food cart;
2. Ten (10) feet from any front lot line; and
3. Five (5) feet from any interior side or rear lot line, except if such lot line abuts a street the setback shall be ten (10) feet and if such lot line abuts a residential district the minimum setback shall be twenty (20) feet. In the downtown overlay, Chapter 17.80 governs required setbacks, however, the provisions of section E (Screening) still apply.
4. Awnings and canopies may encroach into the required setback not more than 36-inches, provided that the width of the setback is not reduced to less than three (3) feet.

E. Screening. If the food cart pod is located less than twenty (20) feet from a residential zoning district, the residential property shall be screened from the food cart pod, which may be a portion of a property including the food cart, seating, queuing, etc., abutting the residential zoning district and may not necessarily extend to the shared property line. Required screening:

1. May be provided by an existing, continuous, sight-obscuring structure, solid fence, or hedge;
2. If new, shall be a continuous, sight-obscuring vegetative screen; or if fencing is utilized as screening, shall be continuous, sight-obscuring fencing made of wood or ornate metal. Chain-link fencing with slats shall not qualify as acceptable screening material; and
3. Shall have a minimum height of six (6) feet.

F. Setback from Vehicular and Pedestrian Use Areas. Windows and doors used for service to customers shall be located a minimum of ten (10) feet from loading areas, driveways, on-site circulation drives, and parking lot aisles, and a minimum of five (5) feet from bicycle parking spaces and walkways.

G. Obstruction of Vehicular and Pedestrian Use Areas and Landscape Areas. No food cart or associated element, such as aboveground power cords, seating areas, trash receptacles, signs, and customer queuing areas, shall occupy bicycle parking spaces, loading areas, or walkways. Food carts and amenities shall not occupy landscaping areas approved as part of a prior design review or other land use application. However, occupying existing on-site automobile parking spaces is permitted, provided that such spaces are not simultaneously used for parking or required to meet minimum parking requirements on the site.

H. Surfacing. All food carts shall be placed on a hard-surfaced area such as concrete or asphalt, and any associated parking, loading, and maneuvering areas for vehicles shall be on hard-surfaced areas. If new paved surface is added to a site to accommodate a cart, the parking area shall comply with applicable parking design standards contained in Chapter 17.106.

I. Driveway Access. No new or modified driveway access is permitted, unless approved by the City Engineer, in accordance with this Chapter and other applicable sections of the Scappoose Municipal Code and the Public Works Design Standards.

J. Intersection Sight Distance and Visual Clearance Areas. The food cart and any attachments, accessory items, or customer queuing areas shall comply with the intersection sight distance and visual clearance area requirements of the Scappoose Municipal Code Chapter 12.10 and Public Works Design Standards.

K. Lighting. Outdoor lighting shall be required to maintain safety and for crime prevention, to be approved by the Chief of Police, if not already adequately provided by an existing use. All lighting on site shall be shielded so that it does not become a nuisance to neighboring properties.

L. Utilities. To the extent that utilities are desired by the applicant or required by applicable regulations, food carts shall have self-contained utilities, or if on-site utility connections are proposed, such utilities shall be installed underground, except where prohibited by the utility district or company.

M. Sanitation Facilities. Food cart pods shall ensure the availability of a restroom with hand washing facilities meeting the provisions of OAR 333-150-0000 for employees and customers. Portable restrooms and portable handwashing facilities are not permitted, unless the portable handwashing facilities provide hot running water meeting the provisions of OAR 333-150-0000. If portable restrooms and portable handwashing facilities are provided, they shall be screened from view with fencing or a solid vegetative screen, or a combination of the two, provided that the portable facilities are not visible from neighboring properties or public rights-of-way. The restrooms must either be on-site, within one-quarter mile or within 5 minutes walking distance and be available during the carts' hours of operation. Applicants shall provide the City with documentation that restrooms are available via the owners written permission for the utilization of facilities in an existing building.

N. Sewage Disposal. Subsurface sewage disposal is prohibited.

O. Vendor Parking. For any food cart pod requiring approval by the Planning Commission, vendor parking shall be provided in addition to the off-street parking requirements of Chapter 17.106 (Off-Street Parking and Loading Requirements) at the

rate of one parking stall per food cart. Vendor parking may be satisfied by the provision of off-site shared parking agreements, when the off-site parking space used is surplus parking and not required parking for an existing use.

P. Landscaping. Type II food cart pod permits are subject to Chapter 17.100 – Landscaping, Screening and Fencing. A portion of the landscaping required may be provided with attractive potted planters, provided they contribute to the aesthetics of the pod, provide effective screening, and are well maintained year-round.

Q. Noise. Any noise generated on site is subject to Municipal Code Section 9.12.040 – Offenses Related to Noise.

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17.126.050 Food Cart Standards. The following standards apply to each food cart on the site.

A. Attachments. Attachments to the food cart, such as awnings or canopies, are permitted only if they are supported entirely by the cart and do not touch the ground. Neither the food cart nor any item relating to the cart shall lean against or hang from any structure or utility pole. No structure shall be attached to the food cart.

B. Accessory Storage. Except as specifically allowed by 17.126.040(B), items relating to the food cart shall be stored in, on, or under the cart in an orderly manner, or out of sight.

C. Interior Seating or Vending. Customer seating or vending inside a food cart is prohibited.

D. Length of cart. Food carts shall not exceed 26 feet in length.

E. Carts and their accessory items shall be kept in good repair and be maintained in a safe and clean condition.

F. The following health and sanitation standards shall apply:

1. Applicants shall provide wastewater/graywater disposal documentation that indicates how the outputs will be stored (if applicable) and what wastewater/graywater disposal method will be used. The documentation shall indicate a proper disposal method that ensures fats, oils and grease do not enter the City's wastewater infrastructure. If the applicant intends to contract with a third party for wastewater/graywater disposal, a copy of the contract must be provided to the City within 15 days of receiving a permit.

2. Non-stormwater discharges to the City's stormwater system are prohibited.

G. Drive-Thru Service. Food carts shall not provide drive-thru service.

H. Other Licenses/Approvals Required. Besides meeting the requirements of this chapter, the operator of a food cart must have an active City business license, must comply with the current edition of the International Fire Code (I.F.C.) for Mobile Food Carts and receive an annual Fire District inspection and approval, and must receive approval and comply with the permit requirements of Columbia County Environmental Health Department.

17.126.060 Food Cart Pod Modification. An application for a food cart pod modification shall be required when any of the following thresholds apply:

A. Thresholds.

1. Modification to an approved food cart pod site layout or design, which does not increase the number of food carts permitted on the site.
2. Addition of non-permanent amenities to an approved food cart pod, such as but not limited to: picnic tables, awnings and landscaping.

B. Procedure Type.

1. The Type 1 procedure, as described in section 17.126.030(A) of this chapter shall apply to an application for a Food Cart Pod Modification when the thresholds above are met.
2. In the event that a modification exceeds the above thresholds, a new Type II Food Cart Pod Permit shall be applied for.

17.126.070 Submittal Requirements. An application for a Food Cart Pod Permit shall include the following:

A. A completed application, including the property owners' signature, on a form provided by the Planning Department; and

B. Information sufficient to address the standards in 17.126.040; and

C. A site plan of the subject property drawn to scale and including:

1. The lot lines,
2. The location of existing structures,
3. The proposed boundaries of the food cart pod. Within the boundaries of the food cart pod, the location of all food carts, seating areas, and any accessory items or structures,
4. The proposed distance between the food cart pod and adjacent lot lines, as well as the proposed separation distance between individual carts and between carts and other on-site structures,
5. The type and location of any proposed on-site utility connections for food carts,
6. Number and location of food carts on site and individual square footage and length of each cart,
7. Pictures or architectural elevations of proposed food cart(s),
8. The location of existing and proposed loading areas, driveways, on-site circulation drives, parking lots aisles, parking lot lighting, bicycle and automobile parking spaces, and walkways,
9. The orientation of service windows and doors on the food carts and location of customer queuing areas,
10. The location of existing and proposed landscaping,
11. The dimension, height, and location of proposed signs,
12. Proof of the availability of restroom facilities for employees and customers that meet the requirements of OAR Chapter 333-150-0000,
13. The method for disposing of wastewater and gray water,
14. Written verification of approval by Columbia County Health Department,
15. Written verification of approval by Scappoose Fire District,
16. Traffic generation memo, meeting the requirements specified in SDC



- 17.154.030(S),
17. A statement indicating any source of noise to be generated on the property and the method of mitigating the noise, and
  18. Any additional information that may be required by the Planning Department to properly evaluate the proposed site plan.

17.126.080 Conditions of Approval. The approval body may impose conditions upon the approval of a Food Cart Pod Permit to ensure compliance with the requirements of this chapter, and other applicable chapters of the development code, and to minimize adverse impacts created by the use on surrounding property and uses. These conditions may include, but are not limited to, the following:

- A. Limiting the hours, days, place and manner of operation;
- B. Requiring site and building design features which minimize environmental impacts such as noise, glare, and odor;
- C. Requiring additional building setbacks;
- D. Further limiting the building area and outdoor storage used by the food cart pod and restricting the location of the use on the site in relationship to adjoining uses;
- E. Designating the size, number, location and design of vehicle access points;
- F. Requiring landscaping, buffering and/or screening, of the food cart pod from adjoining uses and establishing standards for the continued maintenance of these improvements;
- G. Requiring storm drainage improvements, and surfacing of parking and loading areas;
- H. Limiting or setting standards for the location and intensity of outdoor lighting;
- I. Requiring and designating the size, height and location of fences and materials used for their construction;
- J. Requiring the protection and preservation of existing trees, and other vegetation, watercourses, slopes, wildlife habitat areas and drainage areas;
- K. Limiting the type and number of vehicles or equipment to be parked or stored on the site;
- L. Any other limitations which the approval authority considers to be necessary or desirable to make the use comply with this section; and
- M. Any limitations or conditions imposed by the City's service providers or the Fire Department.

17.126.090 Approval Period.

A. Type I: A Type I Food Cart Pod Permit approval is valid for two years from the date of the final written decision, provided the approval is implemented within a one-year period. If not implemented within a one-year period, the approval will become void. At the end of any two-year period, the applicant may apply for another two-year permit by filing a new Type I or Type II application, as applicable.

B. Type II: A Type II Food Cart Pod Permit approval does not expire, provided the approval is implemented within a one-year period. If not implemented within a one-year period, the approval will become void.

C. "Implemented" means all necessary development permits shall be obtained and maintained for the approved development.

17.126.120 Grounds for Revocation. The Planner or designee may:

A. Revoke a Food Cart Pod Permit approval if the conditions of approval have not been or are not being complied with and the food cart pod is being conducted in a manner contrary to this chapter.

B. The Planner or designee shall approve the use as it exists, revoke the Food Cart Pod Permit, or compel measures to be taken to ensure compatibility with the neighborhood and conformance with this section after reviewing a complaint. Complaints may be originated by the City of Scappoose or the public. Complaints from the public shall clearly state the objection to the food cart pod, such as:

1. Generation of excessive traffic;
2. Generation of excessive noise or litter;
3. Other offensive activities not compatible with the surrounding area.

C. Waiting Period for Reapplication. When a Food Cart Pod Permit has been revoked due to violation of these standards, a minimum period of one year shall elapse before another application for a food cart pod on the subject parcel will be considered.

D. The Food Cart Pod Permit owner may appeal the Planner's decision to the Planning Commission.

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**CITY OF SCAPPOOSE, OREGON**

\_\_\_\_\_  
Scott Burge, Mayor

First Reading: January 7, 2019

Second Reading:

Attest: \_\_\_\_\_  
Susan M. Reeves, MMC  
City Recorder

DRAFT

In the text below, language additions are double underlined. Only those sections being amended, have been included.

Chapter 17.62

C GENERAL COMMERCIAL

Sections:

- 17.62.010 Purpose.
- 17.62.030 Permitted and Conditional uses.
- 17.62.050 Dimensional requirements—Commercial and mixed-use buildings.
- ~~17.62.060 Dimensional requirements—Multifamily buildings.~~
- 17.62.070 Dimensional requirements Live/Work townhouse or live/work multifamily buildings
- 17.62.080 Live/Work Requirements.
- 17.62.090 Special Buffer Requirements for multifamily and Live/Work multifamily buildings.
- 17.62.100 Architectural character for multifamily and Live/Work multifamily buildings.

17.62.010 Purpose. The purpose of the general commercial zone is to provide for a concentrated, central commercial, office and major retail goods and services area with opportunities for employment and business and professional services in close proximity to residential services and located adjacent to arterial or collector streets. (Ord. 868, 2018; Ord. 634 §1 Exh. A (part), 1995)

17.62.030 Permitted and Conditional uses. (Ord 868, 2018)

<b>Use</b>	
Church	Permitted outright <sup>1</sup>
Community recreation facilities	Permitted outright <sup>1</sup>
Convenience sales	Permitted outright <sup>1</sup>
Cultural exhibits and library services	Permitted outright <sup>1</sup>
Day care facility	Permitted outright <sup>1</sup>
Mixed-use building	Permitted outright <sup>1</sup>
Eating and drinking establishments	Permitted outright <sup>1</sup>
Equipment rentals, general	Permitted outright <sup>1</sup>
Financial, insurance and real estate services	Permitted outright <sup>1</sup>
Food and beverage retail sales	Permitted outright <sup>1</sup>
<u>Food cart pod (Type I or II), subject to Chapter 17.126</u>	<u>Permitted outright<sup>1</sup></u>
General retail sales	Permitted outright <sup>1</sup>
Home occupation (Type I) subject to Chapter 17.142, Home Occupations	Permitted outright <sup>1</sup>



In the text below, language additions are double underlined. Only those sections being amended were included.

Chapter 17.68

EC EXPANDED COMMERCIAL

Sections:

- 17.68.010 Purpose.
- 17.68.030 Permitted and Conditional uses.
- 17.68.050 Dimensional requirements—Commercial and mixed-use buildings.
- 17.68.060 Dimensional requirements—Multifamily buildings
- 17.68.070 Dimensional requirements Live/Work townhouse or live/work multifamily buildings
- 17.68.080 Live/Work Requirements.
- 17.68.090 Special Buffer Requirements for multifamily and live/work multifamily buildings.
- 17.68.100 Architectural character for multifamily and live/work multifamily buildings.

17.68.010 Purpose. The purpose of the EC zone is to provide areas: A. For combining light manufacturing, office, retail sales, and complementary related commercial uses;

B. For combining uses which have no off-site impacts in terms of noise, odor, glare, lights, vibration, smoke, dust or other types of off-site impacts;

C. For combining parking, landscaping and other design features which physically and visually link structures and uses within one development;

D. Which utilize a basic street and utility pattern which will permit flexibility in the size of development sites and provide internal circulation which connect to adjoining sites; and

E. Which provide for a circulation system that provides direct access to arterials or collectors that will not channel traffic through residential areas. (Ord. 868, 2018; Ord. 634 §1 Exh. A (part), 1995)

17.68.030 Permitted and Conditional uses. (Ord 868, 2018)

Use	
Agricultural sales	Permitted outright <sup>1</sup>

Automotive and equipment: 1. Repairs provided that a five-foot landscaped perimeter setback surround all outdoor parking and storage areas and all repair work is performed indoors; 2. Sales/rental/storage of farm equipment, automobiles, recreational vehicles, boats or light equipment, provided that a five-foot landscaped perimeter setback surrounds all outdoor parking and all storage areas are buffered and screened in accordance with Chapter 17.100, Landscaping, Screening and Fencing.	Permitted outright <sup>1</sup>
Building materials sales and storage	Permitted outright <sup>1</sup>
Building maintenance services	Permitted outright <sup>1</sup>
Business equipment sales and services	Permitted outright <sup>1</sup>
Church	Permitted outright <sup>1</sup>
Commercial amusement facilities including bowling alleys, video arcades, and movie theaters other than adult motion picture theaters	Permitted outright <sup>1</sup>
Communication services	Permitted outright <sup>1</sup>
Construction sales and services	Permitted outright <sup>1</sup>
Day care facility	Permitted outright <sup>1</sup>
Mixed-use building	Permitted outright <sup>1</sup>
Eating and drinking establishments	Permitted outright <sup>1</sup>
Equipment rental and sales	Permitted outright <sup>1</sup>
Financial, insurance and real estate services	Permitted outright <sup>1</sup>
<u>Food cart pod (Type I or II), subject to Chapter 17.126</u>	<u>Permitted outright<sup>1</sup></u>
General retail sales	Permitted outright <sup>1</sup>
Home occupation (Type I) subject to Chapter 17.142, Home Occupations	Permitted outright <sup>1</sup>
Laundry services	Permitted outright <sup>1</sup>
Medical and dental services	Permitted outright <sup>1</sup>
Mini-storage with or without caretaker dwelling	Permitted outright <sup>1</sup>
Multifamily buildings, when located outside of the Scappoose Creek Flood Plain	Permitted outright <sup>1</sup>
Live/Work townhouses or live/work multifamily building	Permitted outright <sup>1</sup>
Packaging and production of finished products from previously prepared materials	Permitted outright <sup>1</sup>
Parking facilities	Permitted outright <sup>1</sup>
Participation sports and recreation, indoor	Permitted outright <sup>1</sup>
Postal services	Permitted outright <sup>1</sup>



In the text below, language additions are double underlined.

Chapter 17.69

PUA PUBLIC USE AIRPORT

Sections:

17.69.010 Purpose.

~~17.69.020 Conformance with public use airport safety and compatibility overlay.~~

17.69.030 Definitions.

17.69.040 Permitted uses.

17.69.050 Uses permitted subject to the acceptance of the airport sponsor.

17.69.060 Conditional uses.

17.69.070 Dimensional requirements and development standards.

17.69.010 Purpose. The purpose of the public use airport zone is to encourage and support the continued operation and vitality of the Scappoose Industrial Airpark by allowing certain airport-related commercial, manufacturing and recreational uses in accordance with state law. (Ord. 726 §2, 2002)

~~17.69.020 Conformance with public use airport safety and compatibility overlay.~~ All uses, activities, facilities and structures allowed in the public use airport (PUA) zone shall comply with the requirements of the Public Use Airport Safety and Compatibility Overlay (Chapter 17.88). In the event of a conflict between the requirements of this zone and those of the public use airport safety and compatibility overlay, the requirements of the overlay shall control. (Ord. 726 §2, 2002)

17.69.30 Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

A. "Aircraft" includes airplanes and helicopters, but not hot air balloons or ultralights.

B. "Airport sponsor" is the owner, manager, person or entity designated to represent the interests of an airport. For the Scappoose Industrial

Airpark, the airport sponsor is the Port of St. Helens.

C. "Airport compatible light industrial uses" are light industrial uses that do not create safety hazards or otherwise interfere with customary and usual aviation-related activities. (Ord. 846, 2015; Ord. 726, 2002)

17.69.40 Permitted uses. The following uses and activities are permitted outright in the PUA zone:

A. Customary and usual aviation-related activities, including but not limited to takeoffs and landings; aircraft hangars and tie-downs; construction and maintenance of airport facilities; fixed based operator facilities; a residence for an airport caretaker or security officer; and other activities incidental to the normal operation of an airport. Except as provided in this chapter, "customary and usual aviation related activities" do not include residential, commercial, industrial, manufacturing and other uses;

B. Air passenger and air freight services and facilities, at levels consistent with the classification and needs identified in the Oregon Department of Aviation Airport System Plan;

C. Emergency medical flight services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. Emergency medical flight services do not include hospitals, medical offices, medical labs, medical equipment sales, and other similar uses;

D. Law enforcement and firefighting activities, including aircraft and ground-based activities, facilities and accessory structures necessary to support federal, state or local law enforcement or land management agencies engaged in law enforcement or firefighting activities. Law enforcement and firefighting activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies;

E. Search and rescue operations, including aircraft and ground based activities that promote the orderly and efficient conduct of search or rescue related activities.

F. Flight instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. Flight instruction includes ground training and aeronautic skills training, but does not include schools for flight attendants, ticket agents or similar personnel;

G. Aircraft service, maintenance and training, including activities, facilities and accessory structures provided to teach aircraft service and maintenance skills and to maintain, service, refuel or repair aircraft or aircraft components. ~~"Aircraft service, maintenance and training"~~ includes the construction and assembly of aircraft and aircraft components for personal use, but does not include activities, structures or facilities for the manufacturing of aircraft or aircraft related products for sale to the public;

H. Aircraft rental, including activities, facilities and accessory structures that support the provision of aircraft for rent or lease to the public;

I. Aircraft sales and the sale of aeronautic equipment and supplies, including activities, facilities and accessory structures for the storage, display, demonstration and sales of aircraft and aeronautic equipment and supplies to the public but not including activities, facilities or structures for the manufacturing of aircraft or aircraft related products for sale to the public;

J. Crop dusting activities, including activities, facilities and structures accessory to crop dusting operations. Crop dusting activities include, but are not limited to, aerial application of chemicals, seed, fertilizer, defoliant and other chemicals or products used in a commercial agricultural, forestry or rangeland management setting;

K. Agricultural and forestry activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930;

L. Manufacturing, assembly, processing, packaging, testing, treatment, repair, or distribution of aircraft or aircraft related components or products for sale to the public; and

M. Other airport compatible light industrial uses. (Ord. 726 §2, 2002)

17.69.050 Uses permitted subject to the acceptance of the airport sponsor. The following uses and activities and their associated facilities and accessory structures are permitted in the PUA zone upon demonstration of acceptance by the airport sponsor: aeronautic recreational and sporting activities, including activities, facilities and accessory structures at airports that support recreational usage of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic recreation and sporting activities authorized under this section include, but are not limited to, fly-ins; glider flights; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; and gyrocopter flights, but do not include hot air ballooning, flights carrying parachutists or parachute drops (including all forms of skydiving). (2015; Ord. 726 §2, 2002)

17.69.60 Conditional uses. The following uses and their accessory uses may be permitted when authorized by the planning commission in accordance with the requirements of Chapter 17.130 (Conditional Use) of the Scappoose Development Code, other relevant sections of this title, and any conditions imposed by the planning commission:

- A. Auto rental agencies;
- B. Cafeterias and restaurants;
- C. Food cart pod (Type I or II), subject to Chapter 17.126.
- D. Motels; and
- E. Other commercial uses customarily located at public use airports. (Ord. 726 §2, 2002; Ord. 846, 2015)

17.69.70 Dimensional requirements and development standards.

- A. Lot Size. There is no minimum lot size in the PUA zone.
- B. Setbacks. No front, side or rear yard setbacks except on lots abutting a residential district, where the minimum setback is fifty feet on the side abutting or facing the residential district.
- C. Screening. All outside storage areas require buffering and screening as defined in Chapter 17.100 (Landscaping) of the Scappoose Development Code.

D. Uses shall be developed and located in a manner consistent with the most recent federally approved airport layout plan, the current Scappoose Industrial Airpark Airport Master Plan.

E. Additional requirements shall include any applicable section of this title. (Ord. 869, 2018; Ord. 786 §4, 2006; Ord. 726 §2, 2002)

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In the text below, language additions are double underlined.

Chapter 17.70

LI LIGHT INDUSTRIAL

Sections:

- 17.70.010 Purpose.
- 17.70.030 Permitted uses.
- 17.70.040 Conditional uses.
- 17.70.050 Dimensional requirements.

17.70.010 Purpose. The purpose of the light industrial zone is to:

A. Provide appropriate locations for industrial use including light manufacturing and related activities with few, if any, nuisance characteristics such as noise, glare and smoke;

B. To permit manufacturing, processing, assembling, packaging or treatment of produce or products from previously prepared materials; and

C. To provide a wide variety of sites with good highway or rail access. (Ord. 634 §1 Exh. A (part), 1995)

17.70.030 Permitted uses. In the light industrial zone, activities are subject to site development review, Chapter 17.120, Site Development Review. Only the following uses and their accessory uses are permitted outright:

A. Agricultural sales and services including uses customarily carried on outdoors except slaughterhouses, tanneries or rendering plants;

B. Animal sales and service including auctions, kennels and veterinary;

C. Automobile and equipment sales, service and repair (new and used);

D. Bakeries;

E. Building maintenance services;

F. Building materials sales and service;

G. Caretaker dwelling;

H. Construction sales and services;

I. Home occupation (Type I) subject to Chapter 17.142, Home Occupations;

J. Laundry services;

K. Research services;

L. Retail facilities on sites greater than one hundred thousand square feet;

- M. Manufacturing of finished products;
- N. Manufacturing of components for use in finished products;
- O. Packaging of previously processed materials;
- P. Participation sports and recreation: indoor and outdoors;
- Q. Processing and packing of food products;
- R. Processing of previously processed materials for use in components or finished products;
- S. Processing of materials for use in any construction or building trades;
- T. Public support facilities;
- U. Parking facilities;
- V. Public safety services;
- W. Transportation terminals and storage yards, provided that a five-foot landscaped perimeter setback surrounds all outdoor parking, all storage areas are buffered and screened in accordance with Chapter 17.100, Landscaping, Screening and Fencing, and all repair work is performed indoors;
- X. Vehicle fuel/convenience sales;
- Y. Wholesale, storage and distribution;
- Z. Any permitted use on a temporary basis subject to Scappoose Municipal Code 17.128, Temporary Commercial and Industrial Uses;
- AA. Wireless communications facilities, not to include antenna support structures, subject to the provisions of Chapter 17.93. (Ord. 846, 2015; Ord. 705 §1(part), 2001; Ord. 698 §3, 2000; Ord. 636 §1(part), 1996; Ord. 634 §1 Exh. A (part), 1995)

17.70.040 Conditional uses. The following uses and their accessory uses may be permitted when authorized by the planning commission in accordance with the requirements of Chapter 17.130, Conditional Use, other relevant sections of this title and any conditions imposed by the planning commission:

- A. Eating and drinking establishments;
- B. Commercial amusement facilities including bowling alleys, video arcades, and movie theaters other than adult motion picture theaters;
- C. Home occupations (Type II) subject to Chapter 17.142, Home Occupations;

D. Recycle stations, provided that a ten-foot perimeter setback containing both externally visible landscaping meeting buffering standards and solid screening surrounds the property, all operations are conducted entirely within buildings, and all



building setbacks shall be a minimum of thirty feet from any property line;

E. Major impact utilities, provided that a ten-foot perimeter setback containing both externally visible landscaping meeting buffering standards and screening surrounds property;

F. Wireless communication facilities, subject to the provisions of Chapter 17.93;

G. Mini-storage with or without a caretaker dwelling, provided that the facility size is three acres or less and that no adjoining sites or properties have mini-storage facilities.

H. Institutions of higher education, provided that the parcel size is 50 acres or less;

I. Food cart pod (Type I or II), subject to Chapter 17.126. Ord. 846, 2015; Ord. 829, 2013; Ord. 705 §1(part), 2001; Ord. 634 §1 Exh. A (part), 1995)

17.70.050 Dimensional requirements. A. Unless otherwise specified, the minimum setback requirements are as follows:

1. The front yard setback shall be a minimum of twenty feet;

2. On corner lots the minimum setback for the side facing the street shall be five feet;

3. On through lots, the front and rear setback shall be a minimum of twenty feet;

4. No additional side or rear yard setback shall be required except fifty feet shall be required where abutting a residential zoning district and the planning commission may reduce this required yard setback by fifty percent pursuant to Chapter 17.100, Landscaping, Screening and Fencing.

B. No building shall exceed fifty feet in height. Within one hundred feet of a residential zone, no building shall exceed thirty-five feet in height.

C. All outside storage areas require buffering and screening as defined in Chapter 17.100, Landscaping, Screening and Fencing.

D. Additional requirements shall include any applicable section of this title. (Ord. 846, 2015; Ord. 663 §7, 1998; Ord. 634 §1 Exh. A (part), 1995)



In the text below, language to be omitted is ~~strikethrough~~, and proposed language additions are double underlined.

Chapter 17.162

PROCEDURES FOR DECISION MAKING--QUASI-JUDICIAL

Sections:

- 17.162.010 Purpose.
- 17.162.020 Application process.
- 17.162.021 Consolidation of proceedings.
- ~~17.162.025 Noticing requirements.~~
- 17.162.030 Contents of notice for public hearings.
- 17.162.040 Failure to receive notice.
- 17.162.050 Time period for decision making.
- 17.162.090 Approval authority responsibilities.
- 17.162.110 Decision by the planner--No hearing required.
- 17.162.120 Notice of decision by the planner.
- 17.162.130 Hearings procedure.
- 17.162.140 Decision process.
- 17.162.150 Denial of the application--Re-submittal.
- 17.162.160 Record may remain open--Admission of new evidence.
- 17.162.170 Ex parte communications with approval authority.
- 17.162.180 Continuation of the hearing.
- 17.162.200 Evidence.
- 17.162.210 Judicial notice.
- 17.162.220 Participation in the decision--Voting.
- 17.162.230 Record of proceeding for public hearings.
- 17.162.240 Form of the final decision.
- 17.162.250 Notice of final decision.
- 17.162.260 Amending a decision by the planner.
- 17.162.270 Standing to appeal.
- 17.162.280 Computation of appeal period.
- 17.162.290 Determination of appropriate appeal body.
- 17.162.300 Type of appeal hearing--Limitations of appeal.
- 17.162.310 Transcripts.
- 17.162.320 Notice of appeal.
- 17.162.330 Fee waivers.
- 17.162.340 Persons entitled to notice of appeal-Type of notice.
- 17.162.350 Contents of notice of appeal.
- 17.162.360 Action on appeal.
- 17.162.380 Effective date of final action.
- 17.162.390 Revocation of approvals.

17.162.010 Purpose. The purpose of this chapter is to establish procedures for the consideration of development applications, for the consideration of quasi-judicial comprehensive plan or zoning amendments and for appeal of quasi-judicial decisions. (Ord. 634 §1 Exh. A (part), 1995)

17.162.020 Application process. A. The applicant shall be required to meet with the planner for a pre-application conference. Such a requirement may be waived in writing by the applicant.

B. The planner will invite city staff from other departments to provide technical expertise applicable to the proposal, as necessary, as well as other public agency staff.

C. At such conference, the planner shall:

1. Cite the applicable comprehensive plan policies and map designation;
2. Cite the applicable substantive and procedural ordinance provisions;
3. Provide available technical data and assistance which will aid the applicant as provided by the public works director;
4. Identify other policies and regulations that relate to the application; and
5. Identify other opportunities or constraints that relate to the application.

D. Another preapplication conference is required if an application is submitted six months after the preapplication conference.

E. Failure of the planner to provide any of the information required by this chapter shall not constitute a waiver of the standards, criteria or requirements of the applications. Neither the city nor the planner shall be liable for any incorrect information provided in the preapplication conferences.

F. Applications for approval required under this title may be initiated by:

1. Resolution of the city council;
2. Resolution of the planning commission;
3. The planner;
4. A recognized neighborhood planning organization or city advisory board or commission; or
5. Application of a record owner of property or contract purchaser.

G. Any persons authorized by this title to submit an application for approval may be represented by an agent authorized in writing to make the application.

H. The application shall be made on forms provided by the planner.

- I. The application shall:
1. Include the information requested on the application form;
  2. Address appropriate criteria in sufficient detail for review and action; and
  3. Be accompanied by the required fee.

J. The planner may require information in addition to that required by a specific provision of this title, provided the planner determines this information is needed to properly evaluate the proposed development proposal; and the need can be justified on the basis of a special or unforeseen circumstance.

K. The planner may waive the submission of information for a specific requirement provided the planner finds that specific information is not necessary to properly evaluate the application; or the planner finds that a specific approval standard is not applicable to the application.

L. Where a requirement is found by the planner to be inapplicable, the planner shall:

1. Indicate for the record and to the applicant the specific requirements found inapplicable; and
2. Advise the applicant in writing that the finding may be challenged on appeal or at the hearing or decision on the matter and may be denied by the approval authority; and
3. Cite in the staff report on the application the specific requirements found inapplicable, the reasons therefor and the specific grant of authority.

M. An application shall be deemed incomplete unless it addresses each element required to be considered under applicable

provisions of this title and the application form, unless that requirement has been found inapplicable by the planner. The planner shall not accept an incomplete application.

N. If an application is incomplete, the planner shall:

1. Notify the applicant within thirty days of receipt of the application of exactly what information is missing; and  
2. Allow the applicant to submit the missing information.

O. The application shall be deemed complete when the missing information is provided and at that time the one hundred twenty-day time period shall begin to run for the purposes of satisfying state law.

P. If the applicant refuses to submit the missing information, the application shall be deemed incomplete on the thirty-first day after the planner first received the application and returned to the applicant.

Q. Referrals will be sent to interested agencies such as city departments, police department, fire district, school district, utility companies, and applicable city, county, and state agencies. Affected jurisdiction and agencies could include the Department of Environmental Quality, the Oregon Department of Transportation, and Columbia County Rider. (Ord. 634 91 Exh. A (part), 1995)

17.162.021 Consolidation of proceedings. A. Except as provided in subsection C of this section, whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding.

B. In such cases as stated in subsection A of this section, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 17.164.110, in the following order of preference: the council, the commission, or the planner.

C. Where there is a consolidation of proceedings:

1. The notice shall identify each action to be taken;  
2. The decision on a plan map amendment shall precede the decision on the proposed zone change and other actions. Plan map amendments are not subject to the one hundred twenty-day decision making period prescribed by state law and such amendments may involve complex issues. Therefore, the planner shall not be required to consolidate a plan map amendment and a zone change or other permit applications requested unless the applicant requests the proceedings be consolidated and signs a waiver of the one hundred twenty-day time limit prescribed by state law for zone change and permit applications; and

3. Separate actions shall be taken on each application.

D. Consolidated Permit Procedure.

1. Use of the consolidated permit procedures described in this section shall be at the election of the applicant.

2. When the consolidated procedure is elected, application and fee requirements shall remain as provided by resolution approved by the council. If more than one permit is required by this title or other ordinance to be heard by the planning commission or city council, each such hearing shall be combined with any other permit also requiring such hearing. The standards applicable to each permit by this or any other ordinance shall be applied in the consolidated procedures to each application.

3. In a consolidated proceeding, the staff report and recommendation provided by the planner shall be consolidated into a single report.

4. All rules and ordinances of the city not in conflict with this section shall apply in a consolidated permit procedure. (Ord. 634 §1 Exh. A (part), 1995)

17.162.025 Noticing requirements. A. Notice of a pending quasi-judicial public hearing shall be given by the planner in the following manner:

1. At least twenty days prior to the scheduled hearing date, or if two or more hearings are scheduled, ten days prior to the first hearing, notice shall be sent by mail to:

a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;

b. All property owners of record or the most recent property tax assessment roll within three hundred feet of the property which is the subject of the notice plus any properties abutting proposed off-site improvements.

c. Any governmental agency or utility whose property, services or facilities may be affected by the decision. The reviewing City Staff shall determine the extent of notice to public agencies or utilities based on perceived interest or impact; noticed agencies may include:

- i. Columbia County Land Development Services;
- ii. Columbia County Road Department;
- iii. Oregon Department of Transportation (ODOT);
- iv. ODOT Rail Division;
- v. Portland & Western Railroad;
- vi. Scappoose Rural Fire Protection District;
- vii. Port of St. Helens;
- viii. Oregon Department of Aviation;
- ix. Scappoose School District;
- x. Columbia County Soil Conservation District;
- xi. Scappoose Drainage Improvement Company; or
- xii. Any other affected agencies as identified

by the planner;

d. Acknowledged neighborhood planning organizations, if active;

e. Any person who requests, in writing; and

f. The appellant and all parties to an appeal.

2. At least thirty-five days before the initial hearing on adoption of any proposal to amend the comprehensive plan map or zoning map, notice shall be sent to the Department of Land Conservation and Development;

3. Notice of a hearing on a proposed zone change for a manufactured home park shall be given to tenants of that manufactured home park at least twenty days but no more than forty days prior to the hearing; and

4. The planner shall cause an affidavit of mailing of notice to be filed and made a part of the administrative record.

B. For all quasi-judicial decisions requiring a public hearing, the applicant shall post signs provided by the planner displaying notice of the pending hearing at least fourteen days prior to the date of the hearing. One sign shall be required for each three hundred feet, or part thereof, of frontage of the subject property on any street. The content, design, size and location of the signs shall be as determined by the planner to assure that the information is legible from the public right-of-way. As a precondition to a hearing, the applicant shall file an affidavit of such posting with the planner no less than ten days prior to the hearing.

C. For all quasi-judicial decisions requiring a public hearing; at least ten days prior to the hearing, notice shall be given in a newspaper of general circulation in the city. An affidavit of publication shall be made part of the administrative record. (Ord. 828, 2013; Ord. 634 §1 Exh. A (part), 1995)

17.162.030 Contents of the notice for public hearings. Notice given to persons entitled to mailed or published notice pursuant to Section ~~17.28.120~~ 17.162.025 shall include the following information:

A. A description of the subject property, the street address if available, and a general location which shall include tax map designations from the county assessor's office;

B. Except for notice published in the newspaper, a map showing the location of the property;

C. An explanation of the nature of the application and the proposed use or uses which could be authorized; D. The applicable criteria from the ordinances and comprehensive plan that apply to the application;

E. The time, place and date of the public hearing;

F. A statement that both public oral and written testimony is invited, a general explanation of the requirements for submission of evidence and the procedure for conduct of the hearing;

G. State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

H. A statement that all documents or evidence in the file are available for inspection at no cost, or copies at a reasonable cost;

I. A statement that a copy of the staff report will be available for inspection at no cost, or copies at reasonable cost, at least seven days prior to the hearing;

J. A statement that failure to raise an issue in the hearing or during the comment period, in person or by letter, or failure to provide sufficient specific detail to give the decision maker or hearing body an opportunity to respond to the issue, precludes appeal to the land use board of appeals on that issue. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue. (Ord. 634 §1 Exh. A (part), 1995)

17.162.040 Failure to receive notice. A. Where either the planning commission or council or both intend to hold more than one public hearing on the same application, notice of several public hearings before both approval authorities may be given in one notice.

B. The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice.

C. Personal notice is deemed given when the notice is deposited with the United States Postal Service.

D. Published notice is deemed given on the date it is published.

E. In computing the length of time that notice is given, the first date notice is given shall be excluded and the day of the hearing or the date on which the appeal period expires shall be included unless the last day falls on any legal holiday or on Saturday, in which case, the last day shall be the next business day.

F. The records of the Columbia County assessor's office shall be the official records used for giving notice required in this title, and a person's name and address which is not on file at the time the notice mailing list is initially prepared is not a person entitled to notice. (Ord. 634 §1 Exh. A (part), 1995)

17.162.050 Time period for decision making. The city shall take final action on an application for a permit, plan change or zone

change, including the resolution of all appeals, within one hundred twenty days after the application is deemed complete, except:

A. The one hundred twenty-day period may be extended for a reasonable period of time at the request of the applicant;

B. The one hundred twenty-day period applies only to a decision wholly within the authority and control of the city; and

C. The one hundred twenty-day period does not apply to an amendment to an acknowledged comprehensive plan or land use regulation. (Ord. 634 §1 Exh. A (part), 1995)

17.162.090 Approval authority responsibilities. A. The planner shall have the authority to approve, deny or approve with conditions the following applications:

1. Interpretations subject to Section 17.01.050;

2. Determination of parking requirements for unlisted uses;

3. Determination of access, egress and circulation plan (not subject to planning commission approval) pursuant to public works design standards;

4. Sign, sign exception, and sign variance pursuant to Chapter 17.114;

5. Minor variance pursuant to Chapter 17.134;

6. Type I home occupation pursuant to Chapter 17.142;

7. Sensitive land permits (for applications not subject to planning commission approval) pursuant to Chapter 17.84, Chapter 17.85, Chapter 17.86, and Chapter 17.89; and

8. Public land tree removal not associated with timber harvesting and clearing from designated public recreation areas.

9. Type I Food cart pod permits, subject to Chapter 17.126.

B. The planner may refer any application for review to the planning commission.

C. The planning commission shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, approve with conditions, approve with modifications or deny the following development applications:

1. Recommendations for applicable comprehensive plan and zoning district designations to city council for lands annexed to the city;

2. A quasi-judicial comprehensive plan map amendment except the planning commission's function shall be limited to a recommendation to the council. The commission may transmit its recommendation in any form and a final order need not be formally adopted;

3. A quasi-judicial zoning map amendment shall be decided in the same manner as a quasi-judicial plan amendment and is subject to 17.160.120 (C);

4. Conditional use pursuant to Chapter 17.130;

5. Major variance pursuant to Chapter 17.134;

6. Sensitive land permits and variances pursuant to Chapter 17.84, Chapter 17.85, and Chapter 17.86 for applications requiring planning commission action;

7. Type II home occupation pursuant to Chapter 17.142;

8. Historic overlay district exterior alteration and new construction applications pursuant to Chapter 17.82;

9. Public land tree removal associated with timber harvesting and clearing from designated public recreation areas;

10. Authorization of Similar Use pursuant to Chapter 17.43;



11. Fence or fence/berm combination greater than eight feet in height;

12. Conceptual master plan or modification of conceptual master plan pursuant to Chapter 17.74;

13. Type II Food cart pod permits, subject to Chapter 17.126.

~~13.~~14. Appeal of a decision made by the planner; and

~~14.~~15. Any other matter not specifically assigned to the planner, or the city council under this title.

D. Upon appeal or recommendation, the city council shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, deny or approve with conditions the following development applications:

1. Annexations and the formal imposition of plan and zone designations made to lands annexed to the city;

2. Quasi-judicial plan and zone amendments, including overlay zones;

3. Creation, modification or removal of a historic overlay designation or demolition of a historic site, structure or landmark pursuant to Chapter 17.82;

4. Matters referred to the council by the planning commission;

5. Review of decisions of the planning commission, whether on the council's own motion or otherwise. (Ord. 857, 2016; Ord. 828, 2013; Ord. 820 §12, 2012; Ord. 817, 2011; Ord. 736 §1, 2003; Ord. 634 §1 Exh. A (part), 1995)

17.162.110 Decision by the planner--No hearing required. A. Pursuant to Section 17.162.090(A), the planner is authorized to make certain decisions, and no hearing shall be held unless:

1. An appeal is filed; or

2. The planner has an interest in the outcome of the decision, due to some past or present involvement with the applicant, other interested persons or in the property or surrounding property. In such cases, the application shall be treated as if it were filed under Section 17.162.090(C).

B. The decision shall be based on the approval criteria set forth in Section 17.162.140.

C. Notice of the decision by the planner shall be given as provided by Section 17.162.120 and notice shall be governed by the provisions of Section 17.162.030 and Section 17.162.040.

D. The record shall include:

1. A copy of the application and all supporting information, plans, exhibits, graphics, etc.;

2. All correspondence relating to the application;

3. All information considered by the planner in making the decision;

4. The staff report of the planner;

5. A list of the conditions, if any are attached to the approval of the application; and

6. A copy of the notice advising of the planner's decision, a list of all persons who were given mailed notice and accompanying affidavits.

E. Standing to appeal shall be as provided by Section 17.162.200.

F. The appeal period shall be computed as provided by Section 17.162.210.

G. The method for taking the appeal shall be as provided by Subsection 17.162.220(A) and the notice of appeal submitted by an appellant shall be as provided by Section 17.162.250.

H. The hearing on the appeal shall be confined to the prior

record as provided in Section 17.162.300.

I. Notice of the final decision on appeal shall be as provided by Section 17.162.250 and Section 17.162.240.

J. No decision by the planner may be modified from that set out in the notice except upon being given new notice.

K. The action on the appeal shall be as provided by Section 17.162.360.

L. A decision by the commission on an appeal of a planner's decision may be appealed to the council.

M. Re-submittal shall be as provided by Section 17.162.150, Denial of Application: Re-submittal.

N. The provisions of Section 17.162.390, Revocation of Approvals apply to a decision by the Planner. (Ord. 634 §1 Exh. A (part), 1995)

17.162.120 Notice of decision by the planner. A. Notice of the planner's decision on an application pursuant to Section 17.162.090(A) shall be given by the planner in the following manner:

1. Within five days of signing the proposed decision, notice shall be sent by mail to:

a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;

b. All surrounding property owners or record of property within three hundred feet of the property for administrative variances and sensitive lands;

c. All owners of record of property immediately abutting a site for home occupations and Type I food cart pods;

d. The applicant for a planner's interpretation or a planner's decision regarding an extension of approval;

e. The recognized neighborhood planning organization;

f. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city which includes provision for such notice; and

g. Any person who requests notice in writing.

B. The planner shall cause an affidavit of mailing to be filed and made a part of the administrative record.

C. Notice of a decision by the planner shall contain:

1. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision;

2. The address and general location of the subject property;

3. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;

4. The date the planner's decision will become final;

5. A statement that a person entitled to notice or adversely affected or aggrieved by the decision may appeal the decision:

a. The statement shall explain briefly how an appeal can be made, the deadlines and where information can be obtained, and

b. The statement shall explain that if an appeal is not filed, the decision shall be final;

6. A map showing the location of the property (planner's interpretations are exempt from this requirement); and

7. A statement that the hearing on an appeal will be confined to the prior record. (Ord. 828, 2013; Ord. 634 §1 Exh. A (part), 1995)

17.162.130 Hearings procedure. A. Unless otherwise provided in this title or other ordinances adopted by council:

1. The presiding officer of the planning commission and of

the council shall have the authority to:

- a. Determine standing;
- b. Regulate the course, sequence and decorum of the hearing;
- c. Dispose of procedural requirements or similar matters;
- d. Rule on offers of proof and relevancy of evidence and testimony;
- e. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation and rebuttal testimony; and
- f. Take such other action appropriate for conduct commensurate with the nature of the hearing;

B. Unless otherwise provided in this title or other ordinances adopted by council, the presiding officer of the planning commission and of the council shall conduct the hearing as follows:

1. Opening statement: announce the nature and purpose of the hearing and summarize the rules of conducting the hearing, and if

the proceeding is an initial evidentiary hearing before the planning commission or the city council, make a statement that:

- a. Lists the applicable substantive criteria;
- b. States that testimony and evidence must be directed toward the criteria described in subdivision (1) (a) of this subsection, or to the other criteria in the comprehensive plan or the title which they apply to the decision;
- c. States that failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the land use board of appeals on that issue.

2. Quasi-judicial hearing process:

- a. Recognize parties;
- b. Request the planner to present the staff report, to explain any graphic or pictorial displays which are a part of the report, summarize the findings, recommendations and conditions, if any, and to provide such other information as may be requested by the approval authority;
- c. Allow the applicant or a representative of the applicant to be heard;
- d. Allow parties or witnesses in favor of the applicant's proposal to be heard;
- e. Allow parties or witnesses in opposition to the applicant's proposal to be heard;
- f. Upon failure of any party to appear, the approval authority shall take into consideration written material submitted by such party;
- g. Allow the parties in favor of the proposal to offer rebuttal evidence and testimony limited to rebuttal of points raised.
- h. Make a decision pursuant to Section 17.162.140 or take the matter under advisement pursuant to Section 17.162.180.

C. Unless otherwise provided in this title or other ordinances adopted by the council, the following rules shall apply to the general conduct of the hearing:

1. The approval authority may ask questions at any time before the close of the hearing, and the answers shall be limited to the substance of the question;
2. Parties or the planner must receive approval from the approval authority to submit questions directly to other parties or witnesses or the planner;
3. A reasonable amount of time shall be given to persons to respond to questions;
4. No person shall testify without first receiving

recognition from the approval authority and stating his full name and address;

5. The approval authority may require that testimony be under oath or affirmation;

6. Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing or removal of persons responsible; and

7. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing. (Ord. 634 §1 Exh. A (part), 1995)

17.162.140 Decision process. A. The decision shall be based on:

1. Proof by the applicant that the application fully complies with:

a. Applicable policies of the city comprehensive plan; and

b. The relevant approval standards found in the applicable chapter(s) of this title, the public works design standards, and other applicable implementing ordinances.

B. Consideration may also be given to:

1. Proof of a substantial change in circumstances or a mistake in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application; and

2. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or positive attributes of the proposal or factors in subsections (A) or (B) (1) of this section.

C. In all cases, the decision shall include a statement in a form addressing the planner's staff report.

D. The approval authority may:

1. Adopt findings and conclusions contained in the staff report;

2. Adopt findings and conclusions of a lower approval authority;

3. Adopt its own findings and conclusions;

4. Adopt findings and conclusions submitted by any party provided all parties have had an opportunity to review the findings and comment on the same; or

5. Adopt findings and conclusions from another source, either with or without modification, having made a tentative decision, and having directed staff to prepare findings for review and to provide an opportunity for all parties to comment on the same.

E. The decision may be for denial, approval or approval with conditions.

1. Conditions may be imposed where such conditions are necessary to:

a. Carry out applicable provisions of the Scappoose comprehensive plan;

b. Carry out the applicable implementing ordinances; and

c. Ensure that adequate public services are provided to the development or to ensure that other required improvements are made;

2. Conditions may include, but are not limited to:

a. Minimum lot sizes;

b. Larger setbacks;

c. Preservation of significant natural features;

d. Dedication of easements; and

e. Conveyances and dedications of property needed for public use.

3. Conditions of approval shall be fulfilled within the

time limit set forth in the decision or, if no time limit is set forth, the conditions of approval shall be fulfilled within one year. Failure to fulfill any condition of approval within the time limitations provided may be grounds for revocation of approval, after notice and an opportunity to be heard as a quasi-judicial action;

4. Changes, alterations or amendments to the substance of the conditions of approval shall be processed as a new action;

5. Prior to the commencement of development, i.e., the issuance of any permits or the taking of any action under the approved development application, the owner and any contract purchasers of the property which is the subject of the approved application, may be required to sign and deliver to the planner their acknowledgment in a development agreement and consent to such conditions:

a. The city manager shall have the authority to execute the development agreement on behalf of the city,

b. No building permit shall be issued for the use covered by the application until the executed contract is recorded and filed in the county records, and

c. Such development agreement shall be enforceable against the signing parties, their heirs, successors and assigns by the city by appropriate action in law or suit in equity;

6. A bond in a form acceptable to the city or a cash deposit from the property owners or contract purchasers for the full amount as will ensure compliance with the conditions imposed pursuant to this subsection may be required. Such bond or deposit shall be posted prior to the issuance of a building permit for the use covered by the application.

F. The final decision on the application may grant less than all of the parcel which is the subject of the application.

G. If the planning commission fails to recommend approval, approval with modification, or denial of an application within sixty days of its first public hearing, the planner shall:

1. Report the failure to approve a recommendation to the council; and

2. Cause notice to be given, the matter to be placed on the council's agenda, a public hearing to be held and a decision to be made by the council. No further action shall be taken by the planning commission. (Ord. 634 §1 Exh. A (part), 1995)

17.162.150 Denial of the application--Re-submittal. An application which has been denied or an application which was denied and which on appeal has not been reversed by a higher authority, including the land use board of appeals, the land conservation and development commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least twelve months from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome. (Ord. 634 §1 Exh. A (part), 1995)

17.162.160 Record may remain open--Admission of new evidence. A. Unless there is a continuance, the record shall remain open for new evidence for at least seven days at the request of any participant in the initial evidentiary hearing before the planning commission or the city council, if the request is made prior to the conclusion of the hearing.

B. When the record is left open to admit new evidence, testimony, or criteria for decision-making, any person may raise new issues which relate to that new material. (Ord. 634 §1 Exh. A (part),

1995)

17.162.170 Ex parte communications with approval authority. A. Members of the approval authority shall not:

1. Communicate, directly or indirectly, with any party or representative of a party in connection with any issue involved except upon giving notice and opportunity for all parties to participate; nor

2. Take notice of any communication, report or other materials outside the record prepared by the proponents or opponents in connection with the particular case unless the parties are afforded an opportunity to contest the material so noticed.

B. No decision or action of the planning commission or council shall be invalid due to an ex parte contact or bias resulting from an ex parte contact with a member of the decision-making body, if the member of the decision making body receiving the contact:

1. Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

2. Makes a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

C. Members of the planning commission shall be governed by the provisions of Oregon Revised Statute 227.035 and the provisions of this section.

D. This section shall not apply to planner decisions made under Section 17.162.090(A).

E. A communication between any city employee and the planning commission or council shall not be considered an ex parte contact. (Ord. 634 §1 Exh. A (part), 1995)

17.162.180 Continuation of the hearing. A. An approval authority may continue the hearing from time to time to gather additional evidence, to consider the application fully or to give notice to additional persons.

B. Unless otherwise provided by the approval authority, no additional notice need be given of a continued hearing if the matter is continued to a date, time and place certain. (Ord. 634 §1 Exh. A (part), 1995)

17.162.200 Evidence. A. All evidence offered and not objected to may be received unless excluded by the approval authority on its own motion.

B. Evidence received at any hearing shall be of a quality that reasonable persons rely upon in the conduct of their everyday affairs.

C. No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence.

D. Evidence shall be received and notice may be taken of those facts in a manner similar to that provided for in contested cases before state administrative agencies pursuant to ORS 183.450, except as otherwise provided for in this title.

E. Formal rules of evidence, as used in courts of law, shall not apply. (Ord. 634 §1 Exh. A (part), 1995)

17.162.210 Judicial notice. A. The approval authority may take notice of the following:

1. All facts which are judicially noticeable. Such noticed facts shall be stated and made part of the record;

2. The Statewide Planning Goals and regulations adopted pursuant to Oregon Revised Statutes Chapter 197; and

3. The comprehensive plan and other officially adopted plans, implementing ordinances, rules and regulations of the city.

B. Matters judicially noticed need not be established by evidence and may be considered by the approval authority in the determination of the application. (Ord. 634 §1 Exh. A (part), 1995)

17.162.220 Participation in the decision--Voting. A. In addition to the provision of Oregon Revised Statute 227.035 which applies to planning commission members or Oregon Revised Statutes Chapter 244 which applies to all members of an approval authority, each member of the approval authority shall be impartial. Any member having any substantial past or present involvement with the applicant, other interested persons, the property or surrounding property, or having a financial interest in the outcome of the proceeding, or having any pre-hearing contacts, shall state for the record the nature of their involvement or contacts, and shall either:

1. State that they are not prejudiced by the involvement or contacts and will participate and vote on the matter; or

2. State that they are prejudiced by the involvement or contact and will withdraw from participation in the matter.

B. An affirmative vote by a majority of the qualified voting members of the approval authority who are present is required to approve, approve with conditions, or deny an application or to amend, modify, or reverse a decision on appeal.

C. Notwithstanding subsections A and B of this section, no member of an approval authority having a financial interest in the outcome of an application shall take part in proceedings on that application; provided, however, with respect to the council only, a member may vote upon a finding of necessity which shall be placed on the record by the presiding officer.

D. In an appeal, if there is a tie vote, the decision which is the subject of appeal shall stand. (Ord. 634 §1 Exh. A (part), 1995)

17.162.230 Record of proceeding for public hearings. A. A verbatim record of the proceeding shall be made by mechanical means (such as a tape recording), and:

1. It shall not be necessary to transcribe testimony except as provided for in Section 17.162.310.

2. The minutes or (if applicable) transcript of testimony, or other evidence of the proceedings, shall be part of the record.

B. All exhibits received shall be marked so as to provide identification upon review.

C. The record shall include:

1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and recorded or considered by the approval authority as evidence;

2. All materials submitted by the planner to the approval authority with respect to the application including in the case of an appeal taken pursuant to Section 17.162.270, the record of the planner's decision as provided by Section 17.162.110;

3. The transcript of the hearing, if requested by the council or a party, or the minutes of the hearing, or other evidence of the proceedings before the approval authority;

4. The written findings, conclusions, decision and, if any, conditions of approval of the approval authority;

5. Argument by the parties or their legal representatives permitted in Section 17.162.300 at the time of review before the council;

6. All correspondence relating to the application; and

7. A copy of the notice which was given as provided by Section 17.162.030, accompanying affidavits and list of persons who

were sent mailed notice. (Ord. 634 §1 Exh. A (part), 1995)

17.162.240 Form of the final decision. A. The final decision shall be a decision which is in writing and which has been signed by the planner.

B. The final decision shall be filed in the records of the planner within ten calendar days after the decision is made by the approval authority and notice thereof shall be mailed to the applicant and all parties in the action, and shall be available to the approval authority. (Ord. 634 §1 Exh. A (part), 1995)

17.162.250 Notice of final decision. A. Notice of a final decision shall briefly summarize the decision and contain:

1. A statement that all required notices under Section 17.162.025;

2. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;

3. The date the final decision was filed; and

4. A statement of whether a party to the proceeding may seek appeal of the decision, as appropriate, to wit:

a. In the case of a final decision by the council, the statement shall explain that this decision is final and how appeal may be heard by a higher authority; or

b. In the case of a final decision by the planning commission, the statement shall explain briefly how an appeal can be taken to the council pursuant to Section 17.162.290, the deadlines, and where information can be obtained.

B. Notice of the final decision by the planning commission or council shall be mailed to the applicant and to all the parties to the decision and shall be made available to the members of the council. (Ord. 634 §1 Exh. A (part), 1995)

17.162.260 Amending a decision by the planner. A. The planner may issue an amended decision after the notice of final decision has been issued and prior to the end of the ten-day appeal period.

B. A request for an amended decision shall be in writing and filed with the planner not more than eight days after the notice of final decision has been filed.

C. A request for an amended decision may be filed by:

1. The recognized neighborhood planning organization affected by the initial decision;

2. Resolution of the city council;

3. Resolution of the planning commission;

4. The planner;

5. Any party entitled to notice of the original decision;

or

6. Any party who submitted comments in writing on the original decision.

D. The amended decision process shall be limited to one time for each original application.

E. The planner shall make the determination as to issuance of an amended decision based on findings that one or more of the following conditions exist:

1. An error or omission was made on the original notice of final decision;

2. The original decision was based on incorrect information and incorrect information may only be considered in administrative actions before the planner;

3. New information becomes available during the appeal period which was not available when the decision was made which alters the facts or conditions in the original decision. New information may only be considered in administrative actions before



the planner.

F. An amended decision shall be processed in accordance with Section 17.162.120 of this title. (Ord. 634 §1 Exh. A (part), 1995)

17.162.270 Standing to appeal. A. In the case of a decision by the planner, any person entitled to notice of the decision under this chapter, or any person who is adversely affected or aggrieved by the decision, may file a notice of appeal as provided by Section 17.162.320.

B. In the case of a decision by the planning commission, except for a decision on an appeal of the planner's decision, any person shall be considered a party to a matter, thus having standing to seek appeal, provided:

1. The person appeared before the planning commission orally or in writing:

a. The person was entitled as of right to notice and hearing prior to the decision to be reviewed; or

b. The person is aggrieved or has interests adversely affected by the decision. (Ord. 634 §1 Exh. A (part), 1995)

17.162.280 Computation of appeal period. A. The length of the appeal period shall be fifteen days from the date of mailing the notice of decision.

B. In computing the length of the appeal period, the day that notice of the decision is mailed shall be excluded and the last day for filing the appeal shall be included unless the last day falls on a legal holiday for the city or on a Saturday, in which case, the last day shall be the next business day. (Ord. 634 §1 Exh. A (part), 1995)

17.162.290 Determination of appropriate appeal body. A. All appeals of decisions or interpretations made by the planner may be appealed to the planning commission or pursuant to Section 17.162.090 except the council may, on its own motion, seek to hear the matter by voice vote prior to the effective date of the notice of the decision.

B. Any decision made by the planning commission under this chapter may be reviewed by the council by:

1. The filing of a notice of appeal as provided by Section 17.162.320, by any party to the decision by three thirty p.m. on the last day of the appeal period;

2. The council or planning commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or

3. Referral of a matter under Section 17.162.090 (D) by the initial hearings body to the council, upon closure of the hearing, when the case presents a policy issue which requires council deliberation and determination, in which case the council shall decide the application.

C. Failure to file an available appeal shall be deemed a failure to exhaust administrative remedies. The filing of available appeals is a condition precedent to appeal to the land use board of appeals. (Ord. 634 §1 Exh. A (part), 1995)

17.162.300 Type of appeal hearing--Limitations of appeal. A. The appeal of a decision made by the planner under Section 17.162.090(A) or Section 17.162.110, shall be confined to the prior record and conducted as if brought under Section 17.162.090(B) or (C).

B. The appeal of a decision of the planning commission to the council shall be:

1. Confined to the record of the proceedings unless council determines the admission of additional evidence is

appropriate;

2. Limited to the grounds relied upon in the notice of appeal and the hearing shall be conducted in accordance with the provisions of this chapter.

C. The subject of written and oral argument. Such written argument shall be submitted not less than five days prior to council consideration; and

D. Reviews on the record by council of planning commission decisions shall be completed within forty days of when the notice of appeal is filed. (Ord. 634 §1 Exh. A (part), 1995)

17.162.310 Transcripts. A. The appellant shall be responsible to satisfy all costs incurred for preparation of the transcript. An estimated payment shall be made prior to the preparation of the transcript; any additional actual cost shall be paid prior to the hearing or if the actual cost is less than the estimate the remainder shall be returned.

B. Any party other than the appellant that requests a transcript shall be charged the actual copy costs. (Ord. 634 §1 Exh. A (part), 1995)

17.162.320 Notice of appeal. A. The notice of appeal shall be filed within the appeal period and contain:

1. A reference to the application sought to be appealed;
2. A statement of the petitioner's standing to the appeal;
3. The specific grounds for the appeal; and
4. The date of the final decision on the action or, in the case of a decision by the planner, the date the decision was filed;

B. The appeal application shall be accompanied by the required fee except as allowed under Section 17.162.330. (Ord. 634 §1 Exh. A (part), 1995)

17.162.330 Fee waivers. A. Fees for land use applications and appeals of a land use decision shall be waived for a recognized neighborhood planning organization (NPO) if all of the following conditions are met:

1. The appeal or land use application must have been supported by a majority vote of NPO members at a public meeting where a quorum of NPO members was present;

2. A copy of the minutes of the NPO meeting where the appeal or land use application was initiated must be submitted with the appeal or land use application;

3. The appeal or application will be considered valid when conditions (1) and (2) of this section are met and all other filing requirements are met; and

4. The NPO chairperson or designated representative shall appear at the next available city council meeting after the application or appeal is filed to request a waiver. The NPO shall work through the Planning Division to schedule the item on a council agenda.

B. Council may, on its own motion, waive the land use application or appeal fee for other nonprofit organizations. (Ord. 791 §3, 2007; Ord. 634 §1 Exh. A (part), 1995)

17.162.340 Persons entitled to notice of appeal--Type of notice. Upon appeal, notice shall be given to parties entitled to notice under Sections 17.162.025 and 17.162.270. (Ord. 634 §1 Exh. A (part), 1995)

17.162.350 Contents of notice of appeal. Notice shall include those matters provided by Section 17.162.030. (Ord. 634 §1 Exh. A

(part), 1995)

17.162.360 Action on appeal. A. The appellate authority shall affirm, reverse or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of Section 17.162.140; or

B. Upon the written consent of all parties to extend the one hundred twenty-day limit, the appellate authority may remand the matter if it is satisfied that testimony or other evidence could not have been presented or was not available at the time of the initial hearing. In deciding to remand the matter, the appellate authority shall consider and make findings and conclusions regarding:

1. The prejudice to parties,
2. The convenience or availability of evidence at the time of the initial hearing,
3. The surprise to opposing parties,
4. The date notice was given to other parties as to an attempt to admit, or
5. The competency, relevancy and materiality of the proposed testimony or other evidence. (Ord. 634 §1 Exh. A (part), 1995)

17.162.380 Effective date of final action. A. Within ten days of the filing of the final order of council, the planner shall give notice of the final order to all parties to the proceeding, informing them of the date of filing, the decision rendered, and where a copy may be found.

B. Action by the appellate authority on appeal shall be final and effective on the day of mailing notice of the final order. (Ord. 634 §1 Exh. A (part), 1995)

17.162.390 Revocation of approvals. A. The hearings authority may, after a hearing conducted pursuant to this chapter, modify or revoke any approval granted pursuant to this chapter for any of the following reasons:

1. A material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intentional or unintentional;
2. A failure to comply with the terms and conditions of approval;
3. A failure to use the premises in accordance with the terms of the approval; or
4. A material misrepresentation or mistake of fact or policy by the city in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional.

B. In the case of a decision made by the planner, the hearing on whether to modify or revoke an approval shall be held by the planning commission.

C. A petition for appeal of a revocation or modification may be filed in the same manner as provided by Section 17.162.290. (Ord. 634 §1 Exh. A (part), 1995)



DCTA2-18

December 6, 2018

*Food Cart Pod Permit – Chapter 17.126*

### **CITY OF SCAPPOOSE STAFF REPORT**

- Request: Approval of Development Code Text Amendment DCTA2-18 to make the following legislative changes to the Development Code:
1. The addition of a new Chapter to the Development Code, Chapter 17.126 – *Food Cart Pod Permits*.
  2. An amendment to Chapters 17.62 -*General Commercial (C)* and 17.68- *Expanded Commercial (EC)* to add food cart pods as a permitted use.
  3. An amendment to Chapters 17.69-*Public Use Airport (PUA)* and 17.70-*Light Industrial (LI)* to add food cart pods as a conditional use.
  4. An amendment to Chapter 17.162 - *Procedures for Decision Making--Quasi-Judicial* to clarify the approval process for food cart pod permits.

Applicant: City of Scappoose

### **EXHIBITS**

- A. Current draft of proposed Chapter 17.126 -*Food Cart Pod Permits*
- B. Current draft of proposed amendments to Chapters 17.62 -*General Commercial (C)* and 17.68- *Expanded Commercial (EC)*
- C. Current draft of proposed amendments to Chapters 17.69-*Public Use Airport (PUA)* and 17.70-*Light Industrial (LI)*
- D. Current draft of proposed amendments to Chapter 17.162-*Procedures for Decision Making--Quasi-Judicial*

### **INTRODUCTION**

An identified City Council goal for FY18-19 was to explore a food cart ordinance since the only method the City currently has to allow food carts is through the issuance of a Temporary Use Permit, which is only good for 90-days, is intended to celebrate a specific season or event (e.g., a Christmas tree stand or fireworks stand), does not have development standards, and is not renewable during the calendar year it is issued in.

City staff kicked off the food cart ordinance discussion during July 2018 with an introductory work session on the topic with City Council. Planning Department staff drafted a new development code chapter, Chapter 17.126 -*Food Cart Pod Permits*, and held a second work session with Council in September 2018 in order to gain feedback on the draft development code language.

*Food Cart Pod Permit – Chapter 17.126*

Some of the main topics of discussion during work session #2 involved:

- Where should food carts be allowed?
- Utility considerations
- Parking considerations
- Site Design Standards
- Review type and length of approval

Based on feedback received during the September work session, as well as input from the Economic Development Committee members, Planning Department staff revised the draft development code language and brought back the amended draft for a third and final work session with Council in early November 2018. Discussions during the third work session were limited to minor clarifications and a final review of the draft development code.

**ANALYSIS**

The proposed amendments to the Development Code are intended to allow individual entrepreneurship at a small scale and to provide unique eating establishments to the public, while ensuring that food carts are conducted as lawful uses and in a manner that is not detrimental or disruptive in terms of appearance or operation to neighboring properties and residents.

**AGENCY COMMENTS & PUBLIC NOTICE**

The City Manager, Chief of Police, Public Works Director, City Engineer, Fire Marshal and the Oregon Department of Land Conservation and Development (DLCD) have been provided the opportunity to review copies of this application. No objections to the proposal have been received and feedback from the Fire Marshall has been incorporated into the approval criteria.

Notice of the proposed amendments to the Development Code was published in the local newspaper on November 30, 2018 and December 7, 2018, as required by Chapter 17.160 of the Development Code. Staff has received no written comments from the public regarding this application as of the date of this report.

**RECOMMENDATION**

Based on the applicable statutes, rules, comprehensive plan provisions and implementing ordinances, staff recommends that the Planning Commission recommend adoption of the proposed amendments by the City Council.

**FINDINGS OF FACT**

1. The following Statewide Planning Goals have been considered by the City of Scappoose in the formation of the language contained within this request:

***Goal 1: Citizen Involvement***

*Objective: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

**Finding:**

This application complies with the citizen involvement processes included in the City's acknowledged Comprehensive Plan and Development Code, which is consistent with Statewide Planning Goal 1. The Planning Commission and City Council hold public hearings on the proposal prior to adopting any amendments to the Scappoose Municipal Code. Notice of the proposal and hearings was published in the local newspaper on November 30, 2018 and December 7, 2018.

Citizens may submit written or verbal testimony to communicate their input into the proposed Development Code amendments. For this application, the Planning Commission's hearing date is December 13, 2018, while the City Council's hearing date is January 7, 2019 for the first reading and January 22, 2019 for the second reading. This process complies with Goal 1.

**Goal 2: Land Use Planning**

*Objective: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

**Finding:**

The proposal to amend the Development Code is consistent with the City's regulations regarding legislative land use decisions. Legislative decisions require a Planning Commission recommendation to the City Council, which then makes a decision based on stated findings. The Planning Commission and City Council hearings are open to the public.

The procedural requirements for the proposed Development Code amendments involve assessment of the application's merits, notice to affected parties, and public hearings. Notice of the proposed amendment has been provided to the Oregon Department of Land Conservation and Development (DLCD) as required. The City's decision is based on findings of fact. This action complies with Goal 2.

**Goal 9: Economic Development**

*Objective: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

**Finding:**

By establishing standards whereby, a food cart owner can establish a small-scale year-round business, the City is supporting entrepreneurship which will lead to an increase in eating establishments and will promote overall commerce within the City. This action complies with Goal 9.

**Statewide Planning Goals 3-8 and 10-19 are not applicable to this application.**

*Food Cart Pod Permit – Chapter 17.126*

2. The following Goals and Policies from the Scappoose Comprehensive Plan have been considered by the City of Scappoose in the formation of the language contained within this proposal:

*GENERAL GOALS OF THE CITY OF SCAPPOOSE FOR LAND USES*

*19) Citizen participation will continue to be an important element of the City's land use planning process. Besides public hearings held by the Planning Commission and City Council, the City shall utilize the local newspaper and radio station to keep populace informed of land use issues. The City shall also publish quarterly a summary of past and future activities.*

**Finding:**

Notice of the proposed amendments to the Development Code has been published in the local newspaper to inform citizens of the opportunity to participate in the review and decision-making process. The applicable GENERAL GOAL OF THE CITY OF SCAPPOOSE FOR LAND USES is satisfied.

*GOALS FOR ECONOMICS*

*It is the goal of the City of Scappoose to:*

- 1) Maintain conditions favorable for a growing, healthy, stable, and diversified business and industrial climate.*

*[...]*

**Finding:**

By establishing standards whereby, a food cart owner can establish a small-scale year-round business, the City is supporting entrepreneurship which will lead to an increase in eating establishments and will promote overall commerce within the City. The applicable GOALS FOR ECONOMICS are satisfied.

*POLICIES FOR THE COMMERCIAL LAND USE DESIGNATION*

*[...]*

*2) Encourage the preservation, improvement, expansion, and renewal of the City's existing business district and implement the adopted Downtown Scappoose Plan supporting the existing business district in its role as a center of economic and civic activity for the entire community.*

*3) Encourage the filling-in of vacancies in present commercial strips, together with design features that would reduce conflict with traffic flow, such as frontage roads and single access joint off-street parking.*



4) *Locate business activities in clusters for the convenience of the public to be served rather than scattered or mixed with non-commercial land uses.*

5) *Allow a wide variety of business, office, and service uses, including motels, hotels, and rooming houses; however, care must be taken to ensure that non-retail uses such as apartments do not prevent the establishment of compact, clustered business centers.*

**Finding:**

Creating regulations aimed at allowing food carts on a year-round basis will encourage the preservation, expansion and renewal of the existing commercial district. Food cart pods will also support a pedestrian oriented downtown district which will complement existing businesses and contribute to a vibrant center for economic activity. The applicable *Policies for the Commercial Land Use Designation* are satisfied.

3. The following sections of Title 17 of the Scappoose Municipal Code (Scappoose Development Code) have been considered by the City of Scappoose in the formation of the language contained within this proposal:

*Chapter 17.22 AMENDMENTS TO THE TITLE, COMPREHENSIVE PLAN, AND MAPS*  
*17.22.040 Approval criteria. Planning commission review and recommendation, and Council approval, of an ordinance amending the comprehensive plan, the zoning map, or this title shall be based on the following criteria:*

*A. If the proposal involves an amendment to the comprehensive plan, the amendment is consistent with the Statewide Planning Goals and relevant Oregon Revised Statutes and Administrative Rules;*

*B. The proposal is consistent with the comprehensive plan (although the comprehensive plan may be amended concurrently with proposed changes in zoning or this title), the standards of this title, or other applicable implementing ordinances;*

*C. The change will not adversely affect the health, safety, and welfare of the community;*

*D. The proposal either responds to changes in the community or it corrects a mistake or inconsistency in the comprehensive plan, the zoning map, or this title; and*

*[...]*

**Finding:** The proposal to add Chapter 17.126, and to amend Chapters 17.62, 17.68, 17.69, 17.70 and 17.162 of the Scappoose Development Code agrees with the applicable goals and policies of the Scappoose Comprehensive Plan and adheres to the necessary ordinances regarding decision making and noticing. The proposed code amendments will not adversely affect the health, safety or welfare of the community. This proposal responds to changes in the community since the City Council recognized a need to set regulations pertaining to food cart pods since they are increasing in popularity and previously the City did not have a way to permit them long term, nor were there any development standards regarding individual food carts or food cart pods. Section 17.22.040 is satisfied.

Chapter 17.160 PROCEDURES FOR DECISION MAKING—LEGISLATIVE

17.160.120 *The standards for the decision. A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:*

- 1. Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes Chapter 197;*
- 2. Any federal or state statutes or rules found applicable;*
- 3. The applicable comprehensive plan policies and map; and*
- 4. The applicable provisions of the implementing ordinances.*

*B. Consideration may also be given to:*

*Proof of a substantial change in circumstances, a mistake, or inconsistency in the comprehensive plan or implementing ordinance which is the subject of the application.*

**Finding:**

The Planning Commission's recommendations and the City Council's decisions are based on applicable statewide planning goals and guidelines, state statutes and rules, Comprehensive Plan policies, and provisions of the Scappoose Municipal Code, as detailed in the findings. The City has publicized the proposed amendments and will hold hearings in accordance with applicable laws. The City is amending the Development Code to adopt regulations that will allow food cart pods to operate on a year-round basis in a manner that is not detrimental or disruptive in terms of appearance or operation to neighboring properties and residents.

Section 17.160.120 is satisfied.